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By Josiah W. Bailey, United States Senator, North Carolina

The American people have within the last few days been suddenly confronted with a new and deeply disturbing question: The proposition has been put forward under alarming circumstances to increase the number of Justices of the Supreme Court from nine (the present number) to fifteen — provided those Justices 70 years of age or more shall not retire.

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What are the circumstances in which this far-reaching change in the fundamental structure of our Government is put forward?

First, we must take note of the fact that the Court has within the last two years found it necessary to hand down an annual number of opinions holding acts, or portions of acts, of Congress unconstitutional; and that in every instance it has sustained the historic interpretation of the Constitution. If the present Court has been wrong, then the Court has been wrong for seventy-five years or more.

Second, that these acts were passed by the Congress at the instance of the President.

Third, that when these measures were under consideration by the Congress, many Representatives and Senators were troubled on the question of their constitutionality.

Fourth, that in one instance the President sent a letter to a Representative advising him to disregard his doubts as to the constitutionality of a bill, however reasonable.

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Sixth, that the effect of this procedure was to subject the Supreme Court to widespread criticism and not a few bitter attacks. The Court was described as an oligarchy; it was spoken of as exercising the veto power; careless men said even that it had nullified acts of the Congress; — none of which accusations are true; — and even a scurrilous and ribald book was printed in which the highest court in our land, the highest on earth, respected always and everywhere, made up of learned and venerable men long known in our public life, was held up to scorn and contempt. I have read this book. There is more of falsehood and less of truth in it than in any similar number of pages of which I have had knowledge these fifty years I have been reading.

And seventh, we must bear in mind that in his address to the Congress on January 6th, the President complained of the decisions of the Supreme Court and made some suggestions, the full import of which did not appear at the time.

This is the general background in which legislation is proposed, which, if passed, would either enlarge the Court by six new members or cause six present members to retire and be re-

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Only nine short days have passed since the President sent to the Congress recommendations for the organization of the Federal judiciary. Yet in that brief time, unfriendly voices have filled the air with lamentations and have vexed our ears with an insensate clamor calculated to divert attention from the merits of his proposal. Let us, therefore, disregard for a moment these irrelevancies and direct our attention to a dispassionate consideration of the reasons for the action taken by the President and the remedy he suggests.

From the beginning of President Roosevelt's first administration I have been in intimate contact with him with reference to ways and means of improving the administration of justice. Literally thousands of proposals have been considered. In addition, the critical literature of the law has been searched, and the lessons of experience have been canvassed.

Out of it have come certain well-defined conclusions:

First: In our Federal courts the law's delays have become intolerable. Multitudes of cases have been pending from five to ten years.

Rather than resort to the courts many persons submit to acts of injustice. Inability to secure a prompt judicial adjudication leads to improvident and unjust settlements. Moreover, the time factor is an open invitation to those who are disposed to institute unwarranted litigation in the hope of forcing an adjustment which would not be secured upon the merits.

Furthermore, the small business man or the litigant of limited means labors under a grave and constantly increasing disadvantage because of his inability to pay the price of justice. I do not stress these matters further, because the congestion in our courts is a matter of common knowledge.

Second: Closely allied with this problem is the situation created by the continuance in office of aged or infirm judges.

For eighty years Congress refused to grant pensions to such judges. Unless a judge was a man of independent means there was no alternative open to him except to retain his position to the very last.

When, in 1869, a pension system was provided, the new legislation was not effective in inducing retirement. The tradition of aged judges had become fixed, and the infirm judge was often unable to perceive his own mental or physical decreptitude. Indeed, this result had been foreseen in the debates in Congress at that time. To meet the situation the House of Representatives had passed a measure requiring the appointment of an additional judge to any court where a judge of retirement age declined to leave the bench. However, the proposal failed in the Senate.

With the opening of the twentieth century similar proposals were brought forward. The justices of the Supreme Court, however, protested and the project was abandoned. When William Howard Taft, a former Federal judge, left the Presidency, he published his views.

"There is no doubt," he said, "that there are judges at 70 who have ripe judgments, active minds and much physical vigor and that they are able to perform their judicial duties in a very satisfactory way. Yet in a majority of cases when men come to be 70 they have lost vigor, their minds are not as active, their senses not as acute and their willingness to undertake great labor is not so great as in younger men and as we ought to have in judges who are to perform the enormous task which falls to the lot of Supreme Court justices."

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placed by six new members; in either even giving the President leave to appoint six new Justices and so reconstruct at one stroke the highest Court in our land;—indeed to tear down the Court as it is and create a new Court in its stead — an action without precedent in our long history.

What are the grounds upon which this astonishing action is proposed?

In his message to the Congress presenting the legislation, the President undertook first to argue that the Court was behind with its work. But the fact is against him here. The Court is up with its work. His own Attorney General has made his annual report for the fiscal year ending last July 1st. In this report on page 9, the Solicitor General of the United States, who represents the Government before the Supreme Court, says: — I quote: "*The work of the Court is current and cases are heard as soon after records have been printed and briefs can be prepared.*"

This statement ends the argument that this radical change is proposed in order to expedite the determination of cases. It is conclusive testimony from the President's own witness. It is moreover a matter of record.

The President argued in the second instance that the Court had declined to allow petitions in many cases, and that this indicated necessity for six additional Justices. As to this let us hear his Solicitor General, in the same Report, page 13, in words as follows:

I quote—

"A very large majority of the cases on the appellate docket do not possess sufficient merit to warrant consideration on the merits. * * * Many petitions for writs of certiorari (i.e. appeals) are filed which in the light of settled practice must be regarded as entirely without merit."

To be sure that is a sufficient negation of the second of the alleged facts upon which the President seemed to base his recommendation. If petitions are without merit they ought to be declined and the reason for it lies in the petitions not the Court.

And how, anyway, could fifteen Justices hear and decide cases more quickly than nine men? As a rule the larger the number of participants in a discussion the longer and more difficult the consideration. It is easier for nine men to agree than for fifteen.

Just who misinformed the President I do not know. That he was not correctly informed in these essential matters of fact is only too plain from official statements I have quoted from his Solicitor General, and published in the latest Annual Report of his Attorney General.

The third consideration submitted by the President in support of his proposal was the presence on the bench of judges over seventy... Supreme Court) in his annual report for the Department of Justice urged that the Congress adopt a similar measure. Some judges, he argued, "have remained upon the bench long beyond the time when they were capable of adequately discharging their duties, and in consequence the administration of justice has suffered. I suggest an act providing when any judge of a Federal court below the Supreme Court fails to avail himself of the privilege of retiring now granted by law, that the President be required, with the advice and consent of the Senate, to appoint another judge, who shall preside over the affairs of the court and have precedence over the older one. This will insure at all times the presence of a judge sufficiently active to discharge promptly and adequately the duties of the court."

In 1914, 1915 and 1916, Attorney-General Gregory renewed his recommendation. Solicitor General John W. Davis aided in drafting legislation to carry out the proposal.

Instead of following this advice, however, the Congress in 1919 passed a measure providing that the President "may" appoint additional district and circuit judges, but only upon a finding that the incumbent judge over 70 "is unable to discharge efficiently all the duties of his office by reason of mental or physical disability of permanent character." This legislation failed of its purpose, because it was indefinite and impossible of practical application.

The unsatisfactory solution of 1919 had been endorsed by former Justice Charles Evans Hughes, but in 1928 he made this further observation: "Some judges," he said in part, "have stayed too long on the bench. It is extraordinary how reluctant aged judges are to retire and to give up their accustomed work. I agree that the importance in the Supreme Court of avoiding the risk of having judges who are unable properly to do their work and yet insist on remaining on the bench is too great to permit chances to be taken, and any age selected must be somewhat arbitrary as the time of the failing in mental power differs widely."

Despite this long history of effort to obtain some measure of relief, we are now told in certain interested quarters that age has no relation to congestion in the courts. The verdict of experience and the testimony of those eminently qualified to speak from actual service on the bench are ignored.

Third: Attacks upon the constitutionality of measures enacted by the Congress have burdened the courts. The powers of government are suspended by the automatic issuance of injunctions commanding officers and agents to cease enforcing the laws of the United States until the weary round of litigation has run its course.

In the uncertain condition of our constitutional law it is not difficult for the skillful to devise plausible arguments and to raise technical objections to almost any form of legislation that may be proposed. Often times drastic injunctive remedies are applied without

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Memo from the Editor

In the early part of 1937, President Franklin D. Roosevelt laid before the Congress of the United States a comprehensive plan for the reorganization of the federal judiciary. Dubbed by the American press as Roosevelt's "court-packing plan," the presidential measure's most controversial feature was that which concerned the Supreme Court. Contained in the President's message and the bill which was subsequently filed in the Senate was the provision for the appointment of an additional justice for every Supreme Court justice who failed to retire within six months following the age of 70. The total number of justices under this provision was not, however, to exceed 15.

President Roosevelt's "court-packing" bill came in the wake of a number of Supreme Court decisions invalidating the administration's "New Deal" measures. In no other period of American history had the gap between the legislative and executive departments on the one hand and the judiciary on the other widened to unusual proportions. Of 25 major decisions relating to New Deal legislation or activities, in the period from 1935 to 1937 alone, the Supreme Court supported the administration only 14 times but declared its acts unconstitutional 11 times. Typical of important administration measures ruled unconstitutional by the Supreme Court were the National Industrial Recovery Act and the Agricultural Adjustment Act — spearheads of the New Deal program for economic reform. In the face of this trend in the Supreme Court decisions, New Dealers raised a clamor for either judicial reform by congressional act or by constitutional amendment. President Roosevelt's "court-packing" bill was the administration's answer to this demand.

When the bill for "reform" of the Supreme Court finally came up for discussion in the Senate, it precipitated a long series of debates so bitter that they threatened to disrupt the Democratic Party. In their zeal to maintain the independence of the judiciary,

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THE SUPREME COURT . . .

And at all times it has been recognized that the Court's opinions have been consistent with the Court's historic interpretation of the Constitution — with the reading of the language of that document which Marshall and Story, Miller, Fuller, White and Taft have made familiar, and which the whole country has approved in every generation.

So, while we have only the fact of age here to support the President's suggestion, the truth of the matter is against it. If there were a presumption on account of age, it is rebutted by the facts I have cited. The Supreme Court today is up with its work, is capable, is vigorous; and it is guarding the Constitution with a vigor and a courage worthy of all the great traditions of its noble history, and worthy no less of the great Republic which rests upon that history. If the Court has offended, the offense is that it has in a trying time maintained the interpretation of the Constitution which the people have received from their Court and approved in every period of their history.

I have now disposed of the three reasons the President gave in his message of February 5th for the proposed changes.

It is safe to say that no advocate of the President's proposition will offer to maintain it upon the considerations upon which the President relies in his message.

In view of their manifest inadequacy, one may be justified in looking a little beyond the express reasons set out in the President's message supporting this bill — to ascertain whether the President has other ground for his extraordinary action. But I would not look beyond the manifest facts, I would not risk opinion. I would draw no inferences. Let us see and consider only what the President himself said on the subject. He closed his message of February 5th with a significant remark that if the measures recommended "achieve their aim, we may be relieved of the necessity of considering any fundamental changes in the powers of the courts or the Constitution." This indicated a purpose other than merely improving the Judicial system.

I now recur to the President's message of January 6th. In this message he discussed certain of his measures which the Supreme Court had held to be unconstitutional. He advised against amending the Constitution. He argued the necessity for general laws of the same type as those which the Court had declared to be unconstitutional. He put his faith in a different judicial interpretation. I quote his words:

"With a better understanding of our purposes, and a more intelligent recognition of our needs as a nation, it is not to be assumed that there will be prolonged failure to bring legislative and judicial action into closer harmony. *Means must be found to adapt our legal forms and our judicial interpretation to the actual present national needs of the largest progressive democracy in the modern world.*"

Thus the President made known his desire for general laws asserting the Federal power over activities heretofore throughout our history confined to State regulation, laws like the N.R.A., which the entire Court held to be unconstitutional. And quite plainly he seeks a Supreme Court which will hold such laws to be constitutional, notwithstanding all the precedents to the contrary. He says that if we reconstruct the Courts as he suggests, "we may be relieved of considering any fundamental changes in the powers of the courts or the Constitution." He would change the Court rather than amend the Constitution!

That is, he holds a differently constituted Court would sustain his views; and that, if given the opportunity, he may appoint six Justices and so reconstruct the Supreme Court as to reverse recent decisions, change the established meaning of the Constitution, and assert the power of the Congress to pass general laws like the National Recovery Act — regulating activities which from the beginning until now have consistently been held to be within the province of the several states.

And so, reading his message of January 6th last, together with his message of February 5, 1937, we have no difficulty in perceiving the reasons for the President's . . .

and judicial action into closer harmony. Means must be found to adapt our legal forms and our judicial interpretation to the actual present national needs of the largest progressive democracy in the modern world."

In his message of Feb. 5 the President clearly and forcefully announced his considered and deliberate recommendation.

"Modern complexities," he said to the Congress, "call also for a constant infusion of a new blood in the courts, just as it is needed in executive functions of the government and in private business.

"Life tenure of judges, assured by the Constitution, was designed to place the courts beyond temptations or influences which might impair their judgments; it was not intended to create a static judiciary. A constant and systematic addition of younger blood will vitalize the courts and better equip them to recognize and apply the essential concepts of justice in the light of the needs and the facts of an everchanging world."

These four outstanding defects of our judicial system — delays and congestion in the courts, aged and infirm judges, the chaos created by conflicting decisions and the reckless use of the injunctive power, and the need for new blood in the judiciary — are dealt with by the President in his message of the 5th of February, in which he submits a simple, well-rounded, comprehensive and workable system which covers all these points and meets all these needs.

The proposed bill which the President submitted with his recommendations provides in substance that whenever a Federal judge fails to resign or retire at the age of 70, another judge shall be appointed to share in the work of the court.

In no event, however, are more than fifty additional judges to be appointed, the Supreme Court is not to exceed fifteen in number, and there are limitations on the size of any one of the lower Federal courts.

It also provides for a flexible system for the temporary transfer of judges to pressure areas, under the direction of the Chief Justice.

The President further recommended the adoption of a proposal now pending in Congress to extend to the Justices of the Supreme Court the retirement privileges long ago made available to other Federal judges. He also recommended that the Congress provide that no decision, injunction, judgment, or decree on any constitutional question be promulgated by any Federal court without previous and ample notice to the Attorney General and an opportunity for the United States to present evidence and be heard in behalf of the constitutionality of the law under attack.

He further recommended that in cases in which any District Court determines a question of constitutionality there shall be a direct and immediate appeal to the Supreme Court, and that such cases shall take precedence over all other matters pending in that court.

This is the sum and substance of what the President proposes. This is the so-called attack upon our judicial institutions.

Despite the manifest need of these reforms, despite the comprehensive and reasonable nature of these proposals, despite the long history which brought them forth, despite the eminent judges and statesmen who have either expressed views or actually proposed measures of substantially the same character, the President is now the storm center of a virulent attack. The technique of the last political campaign has been revived. We are solemnly assured that the courts are to be made mere appendages to the executive office, that the judges to be appointed cannot be trusted to support the Constitution, and the tragedies of despotism await only the adoption of the President's recommendations.

Yet, no serious objection has been made to any one of the purposes or to any part of the plan, except its application to certain members of the Supreme Court. Why the Supreme Court

ceiving the obvious fact that our President seeks to reconstitute the Supreme Court of the United States in the clear intention of bringing about a new interpretation of the Constitution, by decisions sustaining his view of the powers of the Congress and the rights of the people and the States. This is the "means" which he said on January 6th must be found "to adapt our judicial interpretation," and so avoid amendment to the Constitution.

In this, I submit with great respect, the zeal of the President has carried him far beyond wisdom and right.

The remedy is worse — infinitely worse — than the difficulty to which it is addressed. Grant that his motive is good, that his objective is worthy, he cannot afford to set such a standard or such a precedent.

It was never intended that any President or any Congress should control the Supreme Court of the United States, or any other Court. We settled that with the Stuart Kings of England 300 years ago. It is, if I may quote the President on another occasion, "more power than a good man should want or a bad should have."

Courts, in order to administer justice, must be independent. Grant that his motive is the purest — I deny a President's right to seek to mould the Supreme Court to his heart's desire. I deny the right of Congress to seek to form a Court that will interpret the Constitution to suit its interpretation, its judgment or its will. None may seek to influence the Court save by the accepted processes of Justice. President, Congress, and Court are each under the Constitution. It is the people's instrument; the charter of their rights; the sheet anchor of their liberties. And it must be interpreted, if it is to be of value, only by a Court of Justice, independent of all influence, free of all politics or personal will, free of all force, inducement of temptation, and upon the altars of Reason and Conscience under the oath duly taken before the God from whom our liberties and the great instrument of their preservation were alike derived. As was said of old, so must it be said now and ever more to all who minister in the People's Temple of Justice:

"What doth the Lord God require of Thee but to do Justice, love mercy and walk humbly before the Lord Thy God?"

Grant that the President's objective is desirable; his method is indefensible. It must be resisted because it is wrong; and also because there is a right way. If the President or the Congress or both ought to have more power, and the people and the States less, let an amendment to the Constitution be submitted to the people. Let us never seek to reconstruct a court to suit our wills. Upon proper grounds we may impeach and remove, but we cannot reconstruct a Court. Truth and Justice find their sources in a higher will than any man's or all men's. We interfere with the processes by which they are revealed at no less peril than that of the rash young men of old who laid hands upon the Ark of the Covenant of the Chosen People.

I know that this question is not a party question: It strikes throughout America far deeper than party lines or partisan predilection. But I am glad that I can invoke the Platform of my Party at this moment. Precisely on the point of the President's position, the Democratic Convention of 1936 has spoken. In full view of the opinions of the Supreme Court on the legislation of the Administration, and in the prospect of the campaign, the candidate, and the election, the Democratic Party gave its most solemn assurance. I quote:

"If these problems cannot be effectively solved by legislation within the Constitution, we shall seek such clarifying amendment as will assure to the legislatures of the several States and to the Congress of the United States, each within its proper jurisdiction, the power to enact those laws which the State and Federal legislatures, within their respective spheres shall find necessary in order adequately to regulate commerce, protect public health and safety, and safeguard economic security. *Thus we propose to maintain the letter and spirit of the Constitution.*"

should be granted a special exemption from the plan no one has been able to explain. If there were no judges on that court of retirement age there would be no substantial objection from any responsible quarter. What then is the real objection? It is simply this: Those who wish to preserve the status quo want to retain on the bench judges who may be relied upon to veto progressive measures.

Opponents of this measure assert that it is immoral. The reason they charge that it is immoral is because they are unable to charge that it is unconstitutional. Whether the plan is immoral or not must be tested by the results it produces. If it produces a wholesome result in a perfectly legal way it can scarcely be called immoral.

It is true that the President's proposal may possibly but not necessarily have the effect of increasing the size of the Supreme Court. But there is nothing new in that. Jefferson, Jackson, Lincoln and Grant, together with the Congresses of their respective periods, saw no objection to enlarging the court.

Again, it is loosely charged that the present proposal is a bold attempt to "pack" the court. Nothing could be farther from truth. Every increase in the membership of a court is open to that charge, and indeed every replacement is subject to the same objection. Under the President's proposal, if there is any increase in the total number of judges, it will be due entirely to the fact that judges now of retirement age elect to remain on the bench. If those judges think it would be harmful to the court to increase its membership, they can avoid that result by retiring upon full pay.

The Constitution imposes upon all Presidents the duty of appointing Federal judges, by and with the advice and consent of the Senate. Upon what ground, may I ask, do the opponents of the President justify the claim that he shall not perform the duty that all other Presidents have performed. George Washington appointed twelve members of the Supreme Court. Jackson appointed five. Lincoln appointed five. Grant appointed four. Harrison appointed four. Taft appointed five and elevated still another to be Chief Justice. Harding appointed four and Hoover appointed three. President Roosevelt has appointed none at all.

Out of every attack of hysteria on this question there comes a further charge that the President's proposals will lead to dictatorship, through the establishment of an evil precedent. But there have been far more significant precedents than this. Jefferson ignored a subpoena issued by Chief Justice Marshall. Jackson, in a stubborn moment, told the Supreme Court to try and enforce its own decrees. Lincoln totally disregarded Chief Justice Taney's demand that the privilege of the writ of habeas corpus be restored. No one of these Presidents was a dictator, but each illustrated how powerless the courts are unless the purity of their motives and the justice of their decisions win them the popular support. Indeed, the Supreme Court in its opinions has specifically recognized this fact.

Let us have done with irresponsible talk about dictatorship. Let us turn our minds to realities. We hear much about the perils that beset democracy. If we are to defend successfully our institutions against all comers from the right and from the left we must make democracy work.

Those who were violently opposing the President's recommendations insist that the reforms he seeks to bring about should be accomplished by amending the Constitution and by that method alone. This is the strategy of delay and the last resort of those who desire to prevent any action whatever. Thirteen State Legislatures can prevent the adoption of any constitutional amendment. The Child Labor amendment, submitted thirteen years ago, has not yet been ratified. Furthermore, if any amendment were secured, it would still have to run the gauntlet of judicial interpretation.

(*Continued on page 378*)

These are the words of the President's Party's Platform. This was his platform as recently as November 3, 1936.

I stand on this Platform, and I have the right to ask that my Party shall stand on this Platform. It is the Platform on which the President was a candidate, and on which he was standing in the campaign. It was accepted by the American people. It was good November 3, 1936. It is good at this moment. Not one word was said for the present proposition before the election. Had we offered a Platform in which we promised to reconstruct the Supreme Court and so reconstruct it as to change the historic interpretation of the Constitution, the campaign would have been fought out on that question. And yet, if this measure is to be considered, that is what we should have done. This at least would have given the people a chance to express their will in the matter. And it is a matter in which they have right to express their will.

If change in the meaning of the Constitution is desired, the way to bring that change about is to amend the Constitution, not the Court. That is what the Platform says. If a "modern" Constitution is desired, we can have it only one way — that is in the way we got the old Constitution, by the will of the people. It is their instrument. They made it, and only they may change it. We cannot alter the Ten Commandments by interpretation. The meaning they had the day they were given upon Sinai, that meaning they have had these five thousand years and will have until the end of time. We cannot change the meaning of the Magna Charta by interpretation; we cannot change the meaning of our Bill of Rights by interpretation. May they abide forever! We can change the language of the Constitution in the way provided, but we cannot ordain an interpretation of the language as it stands to suit ourselves, nor may we contrive a tribunal for such a purpose. One may attach to that language a different meaning from that which the Court has given it, but he cannot reconstruct a Court of Justice to bring about that meaning. To do so would put an end to the significance of the Constitution as the instrument of the Government's existence and stability, as the supreme law of the land and the charter of the people's rights. For if one Congress may add six members to the Court in order to validate its acts, another Congress may add ten more members to validate its acts. This would be to destroy the Court and the Constitution. And it would be better not to pretend to have either, but frankly confess that our Government has become a Government of men, not of laws.

Let me give you an illustration. Many of you have had law suits or served on juries. What sort of justice would we have if a litigant could increase the jury to suit his purposes, putting jurors thereon to do his will? What sort of jury would that be, if upon finding that it was divided, one might add to it six men to suit his purpose? Juries find the facts; Courts, i.e., Judges, find the law. It is just as important that the law be interpreted by an impartial Court as that the facts be found by an impartial jury. There is a process of Justice, and it is not political. It looks to the will of the law, not the will of men or any man.

A stacked jury, a stacked Court, and a stacked deck of cards are in the same moral category — one has no more confidence in one than in another of them.

Set the precedent for a good purpose, and it will be invoked for a thousand bad purposes.

We cannot put Congress or President above the Constitution. Like the Flag, it is over all. George Washington was our greatest man. He kept himself under the Constitution. But if he had not been willing to do so, the people would have broken down the Republic rather than put him above it. They loved him, they trusted him, he had served them as no mortal has ever served his fellow men; but his generation knew, as this generation knows, that no man, no Congress, is great enough or wise enough or good enough to be entrusted with unbridled power. No man should ask in our land, even with the highest motives and the best objectives, to be given leave so to reconstruct the Supreme Court as to give him power to determine the meaning of the Constitution. That would put him over it, not under it. There would be at once an end of Constitutional government, and the question with reference to legislation or any executive act would not be, is it within the powers granted by the people in the Constitution? — but only, is it within the purpose of a President or Congress which have taken over the power to mould the Constitution to their will? Under such conditions where would be that which we now know as the Judicial Power — in the Temple of Justice, where the people have placed it, or in the will of the President and the Congress? Under such conditions what sort of Republic would this Republic be?

Very plainly more is now involved than has been involved in our entire history. Court and Constitution are at stake. We cannot properly measure their value. But I must offer, as I conclude, a further word to that end.

The Supreme Court of the United States is not the creature of Congress. It is not the creature of a moment. It is their institution. It is not the creature of a moment. It has been in continuous existence nearly 150 years. We see it today embodied in nine learned and venerable men, but the Court consists of all who have ministered in its Temple, the dead as well as the living. Its voice is the voice of Past and Present. Its function is Truth and Righteousness, the ancient word for Justice. It does not rule. It merely affirms the will of the people in the instrument which they uttered to preserve their rights over against all powers of the government. It does not veto acts of the Congress: It declares only when those acts transgress the limits set upon the powers of the Congress by the people in their Constitution. This and no more. It does not pass on the wisdom of legislation. It does not determine economic questions.

It has no earthly power. Congress has the purse, the President is Commander-in-Chief of the Army and Navy, and the Executive of the Republic. The Supreme Court has neither purse nor sword. It cannot even defend itself against criticism. Its decrees prevail only by reason of the spiritual appeal of Justice in the human heart.

Beautiful to behold is the fact that now for 150 years without other aid, such has been the capacity of the American people for Justice, such their native feeling for its processes, that in all seasons and events, in war and peace, in poverty and prosperity, in the day of small things and the day of great things, whether agreeing or disagreeing, they have exalted this Court; they have kept it above politics; they have protected it against all who would tear it down; they have upheld it against all who would bring it low; they have accepted its decisions as the ultimate determination of controversies, civil or criminal, in high or low estate, in life and in death.

On the other hand, it has never failed them. It has stood between them and all who would impair their rights. It has succored rich and poor with equal hand. It has vindicated freedom of speech and of the press. The humble ex-slave has found refuge in its precincts against the power of mighty States; and States have found by means of it their rightful place in the Union the fathers brought forth. It has guarded the rights of the people, it has preserved the rights of the States, it has maintained the rights and the powers of the Union — and all without purse,

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The more thoroughly the President's plan is debated the more clearly will its merits appear. It meets legitimate need. It is reasonable, it is moderate, it is direct, it is constitutional. It works out our problems within the framework of our historic institutions and it guides us to a clear path away from our present difficulties.

The envious and the malicious may challenge the integrity of the President and the purity of his motives, but the only apostasy of which he could be guilty would be to break faith with the people who trust him to carry on.

DEBATE ON SENATE BILL NO. 170 AMENDING OR REPEALING CERTAIN SECTIONS OF THE JUDICIARY ACT OF 1948

May 5, 1954 — 11:00 A.M.

SENATOR PRIMICIAS. Mr. President, I now ask for immediate consideration of Senate Bill No. 170, the amendments to the Judiciary Act.

PRESIDENT. Consideration of Senate Bill No. 170 is in order.

SENATOR PRIMICIAS. The sponsor of the measure, Mr. President, is the distinguished Chairman of the Committee of Justice, the gentleman from Batangas, Senator Laurel. I ask that he be recognized.

PRESIDENT. The gentleman from Batangas has the floor.

SENATOR LAUREL. Mr. President and gentlemen of the Senate: Senate Bill No. 170 which is now the bill submitted for the consideration of this Honorable Body, is the result of what might be considered a compilation of the different measures submitted to the Committee on Justice, and to a very great extent, incorporates features taken from the reorganization bill submitted by Senator Mabanag as well as the recommendations made by the Department of Justice and likewise the recommendations at one time made by Associate Justice Ramon Diokno, now deceased. Senate Bill No. 170 is not a complete reorganization of the judiciary, but in the opinion of the Committee on Justice incorporates what might be called the principal features which need to be incorporated in a legislative measure in order to improve the present organization of the judiciary as well as certain features of fundamental character which must be inserted in the new reorganization measure. I am going to refer to the principal features which we have incorporated in this bill.

The first has reference, Mr. President, to the increase of the salaries of the Chief Justice and Associate Justices of the Supreme Court and the Chief or the Presiding Justice and Associate Justices of the Court of Appeals and also the judges of the courts of first instance. This feature of the bill is not a new one because, as the members of this body will recall, last year we approved the Senate bill concurred in by the House of Representatives providing for the increase of the salaries of the Justices of the Supreme Court and the Justices of the Court of Appeals and the judges of the courts of first instance. That bill, however, was vetoed by the chief executive then on the ground that the bill was unconstitutional because the bill treated of various matters and these matters are not mentioned or referred to in the title of the bill. So that the veto by the former chief executive was based more on a technical ground than on anything else and it seems that even the former executive was not opposed to the augmentation or increases of the salaries of the Justices of the Supreme Court and of the Justices of the Court of Appeals and the judges of the courts of first instance. It is hoped that we have eliminated even the technical objection of the former chief executive, and that is the reason why the increase is being reiterated in this measure which is practically a reproduction of the bill which was vetoed by the former chief executive. That is one feature, and it is not necessary for me to argue in favor of the increase because this Honorable Body having already approved the increase in last year's session, I suppose, unless conditions have changed or opinions have changed, this Body will likewise approve what it had approved last year.

The second feature of this reorganization bill is the abolition of judges at large and cadastral judges. The reason for the abolition is, first, to make the organization of courts of general jurisdiction which are the courts of first instance more simple. In other words there will only be one kind of judges of courts of first instance and these judges are the district judges of courts of first instance. While probably in the past there might have been a need for the appointment of cadastral judges and, perhaps, judges at large, or even at one time, auxiliary judges it seems that conditions have changed now, and even the cadastral judges do not devote their time exlusively to the hearing and trial of cadastral cases. With the conditions having changed and in view of the fact that all these different judges, whether district judges, judges at large, or cadastral judges, all belong to the same category, namely, they are judges of courts of first instance, it would be more simple in the plan of judicial reorganization to make all these judges district judges. So that in order to implement this provision which is intended to simplify our judicial organization, we provide for the absorption of the judges at large and the cadastral judges by considering them as judges of the district to be distributed and

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without patronage, without propaganda, without force; but not without Power — not without the power in it and in ourselves which makes for Righteousness. Our forefathers brought it forth, our fathers have preserved it for us; and we now will maintain it for ourselves, our children and our children's children.

And what is this Constitution of the United States?

It is the charter of the national existence and stability; and it is more. It is the charter of the powers given to the Republic, of the powers reserved to the States, of the inalienable rights in the people. It is their instrument. They made it. They made it not just to constitute a government, but also to preserve their rights — the blessings of liberty to ourselves and our posterity. They know that any sufficient government would become stronger than any one of themselves. They created a government, and gave it power — so much and no more — and they asserted rights in States which they could control, rights in themselves singly and as a whole which none could violate. They set up a Court to declare the metes and bounds of the powers they were vesting, and made it independent, to define, to declare, and to affirm the powers they were holding to themselves, or to their States.

The Constitution is no device to block the people's progress. It is the device of the people to preserve themselves, their States, their local self government, their inalienable rigats, their homes, and the future of their children. The people made it and only they can change it — and only in the way they provided. Let others denounce it; let others criticise it; the people will preserve it as the charter of their liberties, their rights, their votes, their democracy, their place in the life of their Republic. It stands between them and the possibility of a dictator. They require every public officer to take solemn oath to maintain and support it. They give no man power save upon this oath.

Sometimes we forget; sometimes impatience overcomes our better judgment. But at last we remember. Down in our hearts we know that so long as the Constitution stands, the Republic will stand; so long as the Constitution stands, our rights are secure our homes are our own and none may make us afraid. It restrains the over-reaching hand of power. It stops the army on the threshold of the cabin. It asserts the dignity of man, his place in the earth and the freedom of his soul.

Congress is mighty, but the Constitution is mightier. Presidents are powerful, but the Constitution is more powerful. Courts are great, but the Constitution is greater. Laws are strong, but the Constitution is stronger. And it is so because the Constitution is the expressed will of all of the people, the supreme law of the land, to be altered only by themselves, and therefore the living soul of democracy.

The Court and the Constitution: — They stand to fall together. The Constitution creates the Court, and the Court declares and maintains the Constitution. To weaken one is to weaken the other. To destroy one is to destroy the other. To weaken either is to weaken the foundations of our Republic; to destroy either is to destroy the Republic.