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THE COURT PLAN, B. K. WHEELER AND THE MONTANA PRESS

by

CATHERINE C. DOHERTY

B. A., Montana State University, 1953

**Presented in partial fulfillment
of the requirements for the degree of
Master of Arts**

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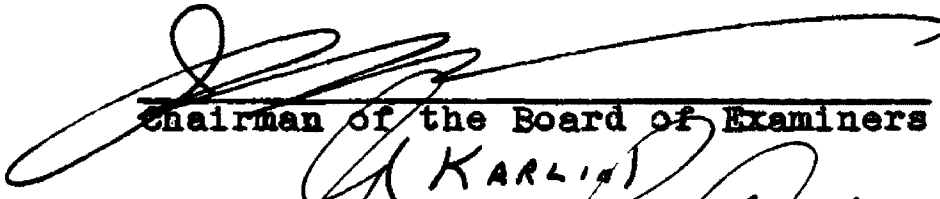
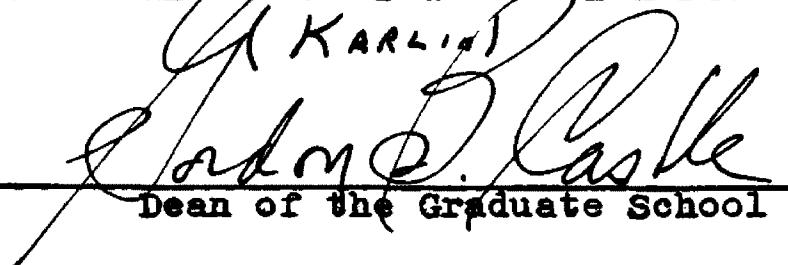
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THE COURT PLAN, B. K. WHEELER,
AND THE MONTANA PRESS

CHAPTER I

The Court Challenges the New Deal

One of the more controversial issues in the histories of the New Deal and of the Supreme Court was the attempt of President Franklin D. Roosevelt to "pack" the Supreme Court in 1937 by the addition of six new justices. This problem was of special interest to Montanans, and to Montana editors, not only because of the differing opinions which would naturally arise over the advisability of such a controversial proposal, but also because of the major role played in the Senate by Burton K. Wheeler, senior Democratic senator from Montana.

Although the Supreme Court has generally been considered the one branch of government immune from the vicissitudes of partisan politics, there have been occasions in the past when its structure, duties or membership were greatly altered for political purposes. These changes have usually been motivated by the desire to insure a certain type of decision--either support of the administration then in power, or protection of the interests of the party going out of power.¹ In 1937,

1. See the changes made in 1801 under Adams, 1802 under Jefferson, 1807 under Jefferson, 1837 under Jackson, 1863 under Lincoln, 1865 under a Republican Congress in defiance of Johnson, and 1869 under Grant.

President Franklin D. Roosevelt presented his court plan in an attempt to gain pro-administration decisions from a Supreme Court which, towards the end of his first term in office, had shown an increasing dislike of his New Deal legislation.

By the time Roosevelt entered office in 1933, the Supreme Court had developed two distinct and clashing constitutional philosophies on issues relating to state and federal regulation--one permissive, the other prohibitive.² But commencing with the post-World War I era, the Supreme Court had generally disregarded its permissive precedents and had shown an increasing tendency to invalidate legislation of both state and national governments which was designed to regulate industry, transportation, and wages and hours. President Roosevelt, however, faced in 1933 with a depression-bred national emergency, failed to take this threat into consideration. In a series of laws enacted during the famous "One Hundred Days," he attempted to solve the industrial, agricultural, and social problems of the country by extending his own and the federal powers to an unprecedented degree.³

Justice James C. McReynolds soon thereafter made President Roosevelt aware of the potential negatory powers of the

2. K. N. Llewellyn, "Proposed Amendment," Survey Graphic, XXVI (February, 1937), 88.

3. Joseph Alsop and Turner Catledge, The 168 Days (New York, 1938), 2. Hereafter cited as 168 Days.

Supreme Court by his dissent in Nebbia v. New York.⁴ In this case, he indicated the trend which future court decisions might take by asserting that regulatory measures should be considered as inroads upon the liberties of the citizens and that the Supreme Court must protect the people against such further abridgements of their freedoms. Concurring with McReynolds in this decision were Justices George Sutherland, Willis Van Devanter and Pierce Butler, who for the first time drew attention to the conservative bloc which was later to emasculate New Deal legislation.

It was generally recognized that Justices Louis D. Brandeis, Harlan F. Stone and Benjamin N. Cardozo could be counted upon to render favorable decisions even though both Stone and Cardozo had been elevated to the bench by conservative Republican presidents.⁵ That left the future of the New Deal in the hands of Justice Owen J. Roberts and Chief Justice Charles Evans Hughes. Both of these men had on occasion concurred in liberal decisions. But they were both conservative in profession and outlook, and had been appointed as conservatives by President Hoover. If New Deal legislation were ever to conflict with their basic convictions, it was reasonable to assume that Roberts and Hughes would concur with the Sutherland-Van Devanter-Butler conservative triad, thereby

4. Nebbia v. New York, 291 U. S. 502 (1934). The case involved the legality of a New York milk control law.

5. Coolidge nominated Stone; and Hoover nominated Cardozo.

providing the necessary majority to nullify the New Deal measures.⁶

On January 7, 1935, the New Deal came before the court in its first test case. The point at issue involved the constitutionality of Section 9 (c) of Title I of the NIRA, which gave the president the power to forbid shipment in interstate commerce of oil produced by companies refusing to comply with the regulatory codes established under the law. In its decision the court presented Roosevelt with his first defeat by declaring that this section authorized an unconstitutional delegation of legislative power to the president. Cardozo delivered the only dissenting opinion.⁷

This decision provided an introduction to what became the monotonously repetitive history of New Deal legislation before the supreme court. By the end of 1935, the court had declared wholly unconstitutional the Railroad Retirement Act⁸ and the Frazier-Lemke Act,⁹ had refused to accept the principle of the presidential removal power,¹⁰ and had completed the invalidation of the NIRA begun in the "hot oil"

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6. For a discussion of the extent to which judges base their opinions on their personal political and economic viewpoints see: Edward S. Corwin, Twilight of the Supreme Court (New Haven, 1934), 50-101 and 149-184.
 7. Panama Refining Company v. Ryan, 293 U. S. 388 (1935).
 8. Retirement Board v. Alton Railroad Company, 295 U. S. 330 (1935).
 9. Louisville Bank v. Radford, 295 U. S. 555 (1935).
 10. Humphrey's Executor v. U. S., 295 U. S. 605 (1935).

cases.¹¹

The year 1936 did not see any change in the attitude of the justices towards the New Deal. They greeted the New Year with a 6-3 decision against the Agricultural Adjustment Act.¹² This was followed in April by the refusal of the court to permit the Securities Exchange Commission to compel stock and bond dealers to testify about proposed issues of securities withdrawn before their registration became effective.¹³ In May, a 6-3 decision rendered invalid the entire Guffey Soft Coal Act,¹⁴ and a 5-4 decision declared the Municipal Bankruptcy Act unconstitutional.¹⁵ The justices finished the term with a 4-4 split over the New York Minimum Wage Law.¹⁶ The court did not completely nullify the New Deal, however. It did accept the validity of federal action in the Gold Clause Cases,¹⁷ the Silver Tax,¹⁸ and the TVA.¹⁹ But it

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11. Schechter Poultry Corporation v. U. S., 295 U. S. 495 (1935).
 12. United States v. Butler, 297 U. S. 1 (1936).
 13. Jones v. Securities Commission, 298 U. S. 1 (1936).
 14. Carter v. Carter Coal Co., 298 U. S. 238 (1936).
 15. Ashton v. Cameron County District, 298 U. S. 513 (1936).
 16. New York v. Morehead ex rel. Tipaldo, 298 U. S. 513 (1936).
 17. Norman v. Baltimore and Ohio Railroad Co., 294 U. S. 240 (1936); Nortz v. U. S. 294 U. S. 317, (1936); Perry v. U. S., 294 U. S. 330 (1936).
 18. United States v. Hudson, 299 U. S. 498 (1936).
 19. Ashwander v. TVA, 297 U. S. 288 (1936).

had declared enough New Deal laws unconstitutional to create in Roosevelt's mind the impression that his recovery program was being seriously hampered, and to provide him with strong arguments in favor of altering the power of a supreme court which seemed to be in complete disharmony with the legislative and executive branches of the government.

In view of the supreme court's apparent unfriendly attitude towards the New Deal, Roosevelt might have been justified in basing his 1936 campaign on the effects of its decisions and the necessity of limiting its jurisdiction over legislation. But instead, the Democratic convention speeches, the platform, and the campaign addresses of Roosevelt dealt mainly with the helpful effects of the recovery program in the past, and the promise of similar legislation in the future.

At the Democratic National Convention, held at Philadelphia, Senator Joseph T. Robinson (D., Ark.), the keynote speaker, made only a brief allusion to the Supreme Court:

Decisions of the Supreme Court in various cases have had the effect of slowing up national recovery because they have held invalid the NRA, AAA, the Guffey Coal Law and other laws intended to prevent labor controversies, eliminate unfair labor competition in trade and commerce, and to secure fair prices for agricultural products. We recognize that the decisions of the Supreme Court until reversed, are final, and we abide by them.²⁰

There was no indication in this speech of any desire to amend

20. New York Times, June 25, 1936, 13.

the constitution or pack the court in order to inhibit judicial action. Robinson merely mentioned the difficulty that New Deal legislation had experienced before the Supreme Court, and voiced the hope that it would alter the trend of its decisions in future encounters.

The platform, presented June 25, 1936, followed the lead taken by Robinson in his address. It discussed past and future New Deal policies in such fields as aid for veterans, agriculturalists, and those overtaken by disaster and unemployment; protection of the rights of labor, small business and consumers; security of savings and investments; the extension of rural electrification and public housing; the increase of job opportunities for youth; and the further breaking up of monopoly. The platform only mentioned the Supreme Court briefly:

We have sought and will continue to seek to meet these problems through legislation within the Constitution. If these problems cannot be effectively solved by legislation within the Constitution, we shall seek such clarifying amendments as will insure ...adequate regulation of commerce, public health and safety, and safeguard economic security. Thus we propose to maintain the letter and spirit of the Constitution.²¹

Throughout his campaign, Roosevelt followed the principles set forth in this platform. He limited his speeches almost entirely to matters affecting the economy of the country. The supreme court, when mentioned, was referred to

21. Ibid., June 26, 1936.

only obliquely, and then not as a possible object for Rooseveltian reform.²² The matter of court negation of New Deal legislation was never made a direct issue in the election race.

Roosevelt could claim popular approval of his platform, for in the election he carried every state but Maine and Vermont and had a popular plurality over his nearest competitor of 9,959,980 votes.²³ But popular acceptance of the platform would gain Roosevelt nothing if the supreme court were to continue invalidating his legislative program. One of the primary problems with which he would have to deal upon his return to the White House was that of Supreme Court adamancy.

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22. See especially speeches made as the campaign came to an end. New York Times, October-November, 1936.
23. World Almanac, (New York, 1937), 907. Roosevelt had 27,751,612 votes, Landon had 16,681,913.

CHAPTER II

Roosevelt's Reply

Although proposals had been offered in previous years for a constitutional amendment limiting the jurisdiction of the supreme court,¹ neither amendment nor remedial legislation relating to the court had been considered in the Democratic platform and campaign of 1936. Consequently, any immediate action taken by the White House would probably come as somewhat of a surprise to Congress, and to the country as a whole.

Roosevelt first made an allusion to the need for court reform in his annual State of the Union message delivered before Congress on January 6, 1937. After the usual laudatory discussion of New Deal accomplishments, Roosevelt, by the clever use of exclusion, pointed up the absolute failure of the Supreme Court to harmonize its decisions with those of the Legislative and Executive branches of government:

In the many methods of attack with which we met these problems, you [Congress] and I, by mutual understanding and by determination to co-operate, helped to make Democracy succeed by refusing to permit unnecessary disagreement to arise between two of our branches of government....I look forward

1. Carl Brent Swisher (editor), Selected Papers of Homer Cummings, Attorney General of the United States, 1933-39, (New York, 1939), 147-48. The Wheeler-Bone amendment was under consideration in 1935.

to a continuance of that co-operation in the next four years.²

Roosevelt then expressed the need, not for an amendment to the constitution limiting the jurisdiction of the supreme court, or for the clarification of controversial phrases of the constitution, but for a shift in judicial interpretation to a more liberal perusal of the constitution:

During the past year there has been a growing belief that there is little fault to be found with the Constitution of the United States as it stands today. The vital need is not an alteration of our fundamental law, but an increasingly enlightened view with reference to it. Difficulties have grown out of its interpretation, but rightly considered, it can be used as an instrument of progress and not as a device for prevention of action.

The president completed the section of his speech relating to the supreme court by reverting to the need to bring legislative and judicial thought into closer juxtaposition:

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 a 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.³

Although the inferences in the speech regarding the

2. Congressional Record, 75th Congress, 1st Session, Part I (January 6, 1937), 84. (Hereafter cited as Cong. Rec.)

3. Ibid., 85.

need for supreme court reform would seem to portend impending action, Congress, with a few exceptions, remained relatively non-committal in its evaluation of the contents. Such reactions from Democratic party members as Senator Kenneth D. McKellar's (D., Tenn.) "A very eloquent speech" were generally echoed by those senators who responded to press queries. The most effusive reaction by far was Senator Henry F. Ashurst's (D., Ariz.) ebullient "Apples of gold in pictures of silver."⁴ The Republicans offered an even more tight-lipped response. Senator Charles L. McNary (R., Or.) predicted: "A strong document that will provoke some controversy."⁵ Senator John G. Townsend (R., Del.) gave a somewhat bored, but non-committal, "It was a typical Roosevelt message."

Roosevelt saw fit to leave the Congress in a speculative mood regarding his future plans for over a month. Then, in a message delivered February 5, 1937, the president presented Congress with a fait accompli in the form of a speech outlining the reasons for court reorganization, a previously prepared bill, and a letter from Attorney General Homer Cummings intended to substantiate the need for the proposal. The president predicated his plan on the assumption that the advanced age of the judges, causing them to deny large numbers

4. New York Times, January 7, 1937, 1.

5. Ibid., 2.

6. Ibid., 1.

of writs of certiorari because of their inability to handle so many cases, and to view liberal legislation with ideas of the past, made necessary the enactment of court reform:

Modern complexities call...for a constant infusion of new blood in the courts, just as it is needed in executive functions of the government and in private business. A lowered mental or physical vigor leads men to avoid an examination of complicated and changed conditions. Little by little, new facts become blurred through old glasses fitted, as it were for the needs of another generation; older men, assuming that the scene is the same as it was in the past cease to explore or inquire into the present or the future.⁷

Mr. Roosevelt then presented Congress with his bill. The section pertaining to the supreme court proposed that there be an additional judge appointed for every judge then sitting on the bench who was seventy years or older and who had held his position for at least ten years, "provided, that no additional judge shall be appointed hereunder if the judge who is of retirement age dies, resigns, or retires prior to the nomination of such additional judges." Initial increases made under this clause would be permanent but the additional personnel on the supreme court could never exceed six. Two-thirds of the proposed total of supreme court justices (fifteen) would constitute a quorum and would be able to render decisions. Other sections in the bill provided for "roving" judges who would be sent to federal district courts where dockets were crowded, a proctor to regulate the activities of the "roving" judges,

7. Cong. Rec., Part I (February 5, 1937), 894.

and the speed-up of litigation over government legislation by sending controversial laws from the lower court directly to the supreme court.⁸

In retrospect it can be seen that the president made several serious mistakes in his presentation. First of all, he based one of his arguments on the number of writs of certiorari denied by the supreme court.⁹ Later, Chief Justice Hughes was to refute this argument completely through a letter read by Senator Burton K. Wheeler before the Senate Judiciary Committee.¹⁰ Then, Roosevelt's apparent attack on the supreme court for inefficiency and inadequacy in the performance of its functions due to the advanced age of the judges, injured the feelings of such liberals on the court as Brandeis and Cardozo, and alienated many of the pro-administration democrats of advanced age in congress.¹¹ Actually, these arguments were subterfuges. If Roosevelt had called for reform on the basis of court action in previous years it is possible that his bill would have passed, for congress was as irate as the president over the manner in which New Deal measures had been handled by the court.¹²

8. Ibid., 895-96.

9. Ibid., 894.

10. Senate Judiciary Committee Hearings, 75th Congress, 1st Session, Part III (1937), 490. Hereafter cited as Jud. Com. Hearings.

11. Charles Herman Pritchett, The Roosevelt Court, (New York, 1948), 8.

12. 168 Days, 58-59.

The third mistake was to thrust the bill upon an unprepared congress.¹³ Such a proposal should have been preceded by attempts to gain endorsements and to line up support. Presenting it in this way enabled the opposition to organize with almost the same speed and facility as the supporters, thus putting the administration at a distinct disadvantage.¹⁴ Roosevelt's mistakes, especially the failure to inform party leaders, were made obvious by the initial senatorial reaction. Vice-president John Nance Garner "...left the rostrum, expressing his reaction to a group of senators by holding his nose with one hand and energetically making the Roman gesture of the arena, thumbs down, with the other."¹⁵ Most

13. Ibid., 58. Not even Garner or Robinson was notified.

14. Roosevelt explained his reason for presenting this type of plan rather than an amendment in a letter to Charles C. Burlingham, dated Feb. 23, 1937: "...There are two difficulties with any amendment method at this time. The first is that no two people agree both on the general method of amendment or on the language of an amendment.... To get a two-thirds vote of both houses, this year or next, you and I know perfectly well that the same forces which are now calling for an amendment process would turn around and fight ratification on the simple ground that they do not like the particular amendment adopted by the congress. By the process of reduction ad absurdum, or any other better-sounding name, you must join me in confining ourselves to the legislative method of saving the United States from what promises to be a situation of instability and serious unrest if we do not handle our social and economic problems by constructive action during the next four years." Elliott Roosevelt and Joseph O. Lash (Editors), FDR, His Personal Letters, 1928-1945, Vol. 3 (New York, 1950), 661-62.

15. 168 Days, 69.

of the other senatorial reactions were equally unfavorable. Senator Carter Glass (D., Va.), a man who had been offered a cabinet post by Roosevelt, stated: "I thought it was generally understood that I was opposed to any tinkering with the Supreme Court." Senator George W. Norris (R., Nebr.), a man who had in the past advocated judicial reform through the amendment method, doubted "the wisdom of the remedy suggested."¹⁶ Senator William H. King (D., Utah), agreed: "I most certainly do not approve."¹⁷

Opposition in a more general national area was equally strong. The farmers' organizations, from which Roosevelt might have expected to receive his most ardent support for the plan, remained relatively non-committal. Edward A. O'Neal, president of the Farm Bureau, gave the plan his personal endorsement, but refused to permit this acceptance to be rendered in the name of the Bureau as a whole. Louis J. Taber, president of the Grange, and E. E. Everson, president of the Farmer's Union and their organizations, absolutely refused support.¹⁸ William Allen White, editor of the Emporia Gazette, decried the plan as dictatorship:

In a world challenging democracy, in a day when tyrants, appearing as demagogues, crying out against predatory wealth, have shattered Europe's democratic institutions, this court message of the

16. Time, XXIX (February 19, 1937), 19.

17. New York Times, February 6, 1939, 2.

18. 168 Days, 116.

President's seems strangely like the first looming American symptom of danger....Surely, Mr. Roosevelt's mandate was to function as the president, not as Der Fuehrer....How long will the American people be fooled?"¹⁹

Raymond E. Moley, editor of Newsweek and a former member of Roosevelt's original braintrust, insisted: "This comes perilously near to a proposal to abandon Constitutional government."²⁰

Although the opposition formulated its replies to the speech almost immediately, it took the administration forces a little longer to voice their reactions because of their complete unpreparedness. The loyal Senator Joseph T. Robinson of Arkansas, majority leader of the senate, waited to give his opinion on the plan until he had the opportunity to write a prepared statement. He then asserted that the president's plan did not constitute a violation of the constitution, and included the prediction that it would be substantially favored in Congress.²¹ Senator John H. Bankhead (D., Ala.) supported Robinson with the conclusion that the plan "was based on sound principles of judicial reform."²²

More generally, the administration also gained some

19. Literary Digest, CXXIII (February 13, 1937), 5-8.

20. Ibid.

21. New York Times, February 6, 1937, 1.

22. Ibid.

support. Labor's Non-partisan League endorsed the plan and sent requests to labor councils throughout the country to pass resolutions favoring the bill.²³ In editorial policy, both the Nation and the New Republic favored the bill, but both indicated the confusion extant in the minds of liberals over what stand to take on the proposal. The Nation initially answered the charges of dictatorship leveled by opposition journals with the countercharge: "The most sharply personal government we have had has been government by the judiciary. The soil of economic chaos out of which fascism grows has been supplied by the court's refusal to allow national action for economic control."²⁴ It then proceeded to threaten the opposition senators with a possible revolt by their constituents: "...Most of the senators know...that the people to whom they must look for re-election snicker at senility in high places and have none of the awful respect for courts and judges that John W. Davis, Newton D. Baker, Dave Reed, Herbert Hoover, Moo-cow Berah, and Carter Glass affect to have."²⁵ But the Nation was refuted within its own pages by one of its editorial associates, Oswald Garrison Villard. Nationally renowned as a liberal of long standing, Villard had consistently supported Roosevelt's New Deal measures. But, believing that constitutional amendment was the correct

23. Great Falls Tribune, February 17, 1937 (AP Report).

24. Nation, CXLIV (February 20, 1937), 201.

25. Ibid.

method of reforming the court, he refused to sanction the president's proposal. Consequently, when other editors of the Nation accused those fighting the plan of being "economic royalists" or "tories," Villard was able to disprove such contentions by pointing to his own case. After asserting his stand against the plan, Villard stated: "So now I am a recreant liberal gone tory, a miserable person who would fiddle with a constitutional amendment while America burns--with shame for the Nine Old Men."²⁶ Later he accused the administration of using the court plan to distract public attention from its own deficiencies: "Whatever else may be said about the president's supreme court proposal, it has become a red herring drawn across the trail which leads toward efficient legislation and administration....One cannot go to Washington without feeling the loose ends in every department. And in case after case, the situation leads straight back to the White House....Everywhere there is confusion and uncertainty."²⁷ The New Republic similarly represented two distinct viewpoints on the court plan, although its official policy favored the proposal. In its February 17 issue it labeled the plan as an undignified subterfuge to pack the court, and then stated that packing may be ineffectual ultimately since there was no way of

26. O. G. Villard, "What's Wrong with the Nation?" Nation CXLIV (March 27, 1937), 352,

27. Ibid., CXLIV (May 8, 1937), 534.

predicting how judges would vote once they ascended the bench. It completed its argument by pointing out that new, younger blood would not guarantee liberal viewpoints since many conservatives were young and many liberals old.²⁸ Then, on February 20, it changed its policy of original opposition to one of support by asking "What's wrong with having sympathetic judges?", and asserting that the plan would not be dictatorship since the judges would still be able to make independent decisions when they ascended the bench.²⁹

Montana press comment was as varied in its reaction to the president's proposal as was national opinion. Although all the newspapers in the state were consulted for editorial comment, many did not have editorial columns, and others did not mention the supreme court issue. A total of approximately twenty-three papers made consistent reference to the debate and to the principals taking part. However, these papers were so evenly distributed throughout the state that a fairly accurate picture of editorial opinion in the various sections--western, eastern and highline--can be obtained.

By combining political affiliation and editorial comment on the supreme court issue, it is possible to divide vocal Montana newspapers into three distinct categories. The

28. New Republic, XC (February 17, 1937), 31-32.

29. Leon Green, "Unpacking the Court," New Republic, XC (February 20, 1937), 67-8.

first of these groups would consist of the proponents of the bill, including the Great Falls Tribune (Dem.), the Bozeman Chronicle (Ind. Dem.), the Lewistown Democrat-News (Ind. Dem.), the Wolf Point Herald (Ind. Prog.), the Montana Labor News, unofficial labor organ for Montana, and the Great Falls News (Prog.).³⁰ The second group, that of the opposition, was led by the vocal Republican and the "Company" papers, who were joined in common cause by a third group of newspapers, those which were listed as Independent. The remainder of the editors of the state listed their journals as Independent or Democratic, but are not included in the survey because they maintained an unfathomable silence on the issue throughout the controversy.

Each of the three groups counted within its membership editors who were not only prominent in their communities, but in state politics as well. This factor tends to lend a greater importance to the stand various newspapers took on the issue since editorial opinion, under these circumstances, could well be an indication of the trend Montana politics would take in the future. Among the more outstanding of these editors were O. S. Warden, Great Falls Tribune, Democratic national committeeman from Montana and second in power in Democratic circles to Senators Wheeler and James E.

30. For listings of the political affiliations of Montana newspapers see: N. W. Ayer & Son, Directory of Newspapers and Periodicals (Philadelphia, Penn., 1937), 518-25.

Murray; Tom Stout, Lewistown Democrat-News, once Democratic Representative from Montana and about equal in power to Warden; Dan Whetstone, Cut Bank Pioneer Press, Republican national committeeman from Montana, a formidable force in the eastern district and on a political par in Republican circles with Warden and Stout in Democratic politics; Burley Bowler, Daniels County Leader of Scobey, long influential in Republican party affairs; T. J. Hocking, Glasgow Courier, a leader in eastern Montana Republican politics; G. G. Hoole, Dawson County Review of Glendive, also active in the Republican party, and many others.

Montana editorial opinion can be divided into three categories on the court issue--support of the proposal in its entirety, concession to some reform in the lower courts but revulsion to tampering with the supreme court, and complete opposition to the plan based chiefly on the sections relating to the supreme court. It should be pointed out, however, that those who initially supported lower court reform eventually joined with the administration supporters in condoning the complete plan.

The Great Falls Tribune, under the editorial leadership of Democratic national committeeman O. S. Warden, and the Bozeman Chronicle, an Independent Democratic newspaper edited by James P. Bole, took the lead in support of the president's plan. Shortly after Roosevelt tendered his proposal to Congress, the Tribune predicted:

Discussion of President Roosevelt's message on the federal court system will be hot and furious. It will be seized upon as an excuse for partisan attacks on the administration by the opposition, and the debate will at times misrepresent the issues raised by the President.

The editorial then went on to praise especially the sections of the bill relating to lower court reform, apparently in an attempt not to injure too extensively the feelings of some of its readers on the matter of additions to the membership of the supreme court.³¹ Later in the week, the Tribune again stressed the importance of improving lower court procedures:

The growing number of suits that fill the dockets of the federal courts to which the attorney general referred in his recent letter to the president in connection with changes in the judiciary, also applies as an argument in favor of the changes in technical procedure which he advocates to strengthen and simplify the trial of criminal cases.³²

These early editorials would seem to indicate that the Tribune's policy was intended to justify the president's court proposal, if only for the sake of lower court reform. The editor continued, however, to take a strong stand in favor of the entire bill, including the addition of six more justices to the supreme court. After certain of the traditionally liberal Democrats had announced their opposition to the plan, the Tribune again found it necessary to

31. February 8, 1937.

32. February 14, 1937.

refute arguments against supreme court reform. This time the editorial stressed the futility of the amendment method:

Inherent in the liberals' criticism of the president's judiciary proposals is the idea that some permanent reform of another nature can be devised which will automatically insure progressive interpretation of laws and constitutions by the judges of federal courts regardless of their personnel.

In that connection, it should be constantly emphasized that the constitutional crisis has developed, not alone because federal acts were invalidated, but because in several important decisions, the powers of the state governments to act in the fields of economic and social conditions have been severely curtailed by the federal judiciary....An amendment to the constitution will be interpreted after it is written by the judges with the same viewpoints which they possessed before.³³

The Montana Farmer, a Tribune-controlled magazine, made an even stronger stand in favor of higher court reform. It aimed its appeal directly at its farm group readers, threatening delay in farm legislation if the president failed in his attempt to add six justices to the Supreme Court:

Shall the president be granted authority to enlarge the present Supreme Court in order that he may, in the words of Secretary Wallace, appoint, subject to confirmation by the senate, "enough younger men who have been out in the hurly-burly of the changing world to bring the majority opinions of the court into line with the thinking of the people...?"

Or shall the program of readjustment be delayed, perhaps for years, until congress can agree upon one of the many forms of constitutional amendment that have been suggested and until that amendment has been ratified...?

33. February 19, 1937.

Farmers are pretty well agreed that something must be done to relieve the present blocking of progressive action (AAA) to meet the problems of the day.

If prompt action could be assured, we believe that most farmers would prefer the method of constitutional amendment to the expedient of adding to the present personnel of the court. Most farmers and most persons in other walks of life, however, strongly favor the administrative program to bring stabilization to our economic system in the hope that the periodic booms and depressions of the past may be avoided. They recognize the danger in long postponing the amendment process.³⁴

The Bezeman Chronicle (Ind. Dem.) made no initial pretense, as did the Tribune, to justify its stand in favor of the president's bill on the basis of lower court reform. It directly accused the supreme court of infringing upon the rights of the people, and asserted that the president's plan was the only feasible solution to the problem:

These words contain no hint that five of the nine life-appointees responsible to no one, answerable neither to the people, the congress, nor the president, shall be permitted to destroy legislation clearly approved by the majority of the people.

And that is the crux of the entire furor over President Roosevelt's judiciary proposal....He sought to restore government "by the people."

The abuses to which the will of the sovereign people has been submitted in recent years is a scandal which should be ended....

To overcome such a situation the president's proposal appears to be the most workable and the most sensible of the several that have been brought forward since he broke the ice with a clearcut stroke.

34. April 1, 1937.

...And he might have added with evidence to be seen every day by almost all of us, that most of those who claim their minds to be as good as ever, are mistaken and the very tenaciousness with which they hold to that opinion is evidence of their failure to understand present day needs and present day desires of the people.³⁵

Tom Stout, editor of the Lewistown Democrat-News (Ind. Dem.), was apparently laboring under some difficulty in determining exactly what stand he should take on the issue. His first editorial reaction was to accept the principle of lower court reform, but to question the advisability of adding members to the supreme court: "We will confess to a mild tingling of apprehension when we read of Franklin Roosevelt's message to the congress suggesting reforms of the judiciary....Numbers do not necessarily make for greater wisdom. Often they make only for increased confusion."³⁶ Later the Democrat-News indicated acceptance of the proposal for retirement after age 70: "...We believe that the people will approve those portions of the President's message which demand procedural changes and enforced retirement of federal judges at the age of 70..." but continued its reservations: "For an increase in the number of judges, we submit a respectful but emphatic dissent."³⁷ By the end of the month, however, the Democrat-News had joined the ranks of unqualified proponents by inference and later by fact: "...It is

35. February 20, 1937.

36. February 8, 1937.

37. February 13, 1937.

true that Mr. Roosevelt may have challenged the authority of the judicial branch...but it is also true that the supreme court first successfully challenged the authority of the executive branch. Court decision has become a challenge not only to the president, but through the last election, to the people themselves who showed approval of Roosevelt in the last election."³⁸

Charles L. Marshall's Wolf Point Herald (Ind. Prog.) joined the proponents of the bill when it predicted that the president would win: "Ultra-conservative reaction will soon die for lack of support of the country at large...The president and the people are right and will win. Right must prevail."³⁹ Joining the Herald in its prediction of ultimate victory was the Great Falls News (Prog.), which thereby completed the rolls of papers which committed themselves in favor of the bill immediately.⁴⁰

The opposition papers ranged in their reactions from fence-straddling, through cries of dictatorship, to a question of Roosevelt's ulterior motives in not presenting the matter for discussion in the 1936 campaign.

The Havre Daily News, although avowedly Republican, chose to straddle the fence in its initial reaction, by merely asserting that the proposal was made at the wrong

38. February 17, 1937.

39. February 12, 1937.

40. March 5, 1937.

time: "...Our personal reaction, though is a feeling of regret over the president's hasty action in this matter....The court has not since the election acted to invalidate any important New Deal legislation. As far as we know, all the justices can read."⁴¹ The Republican Phillips County News (Malta)⁴² and the Plentywood Herald (Ind.) agreed with the opinion expressed by the Havre paper, although the Herald added: "...We hesitate, however, to sanction such a plan if the doctrines on which this nation has been founded are placed in Jeopardy."⁴³ Later, however, these papers joined others on the opposition side in condemning the plan.

The Anaconda Copper Mining Company controlled papers⁴⁴ immediately came out in violent opposition to the president's plan. The Daily Missoulian asserted that: "Any tampering with the Supreme Court will be looked upon as one more effort on the part of Mr. Roosevelt to create for himself an unassailable position...."⁴⁵ The Helena Record-Herald predicted: "The fight which has already started in the senate

41. February 14, 1937.

42. February 18, 1937.

43. February 18, 1937.

44. These papers are listed as owned by Jan & Kelly, Inc. which is a subsidiary of the ACM. Included are the Daily Missoulian, Montana Standard, Helena Record Herald, Billings Gazette. For the listings see Editor and Publisher, LXXXVII (February 26, 1954), 94-95.

45. February 6, 1937.

of the United States on the proposal...by President Roosevelt for one man control of the Supreme Court will go down in history as the greatest war for human rights and human liberties since 1776."⁴⁶

The lead taken by the "Company" papers was followed by many of the Republican and Independent papers, which echoed the cry of dictatorship and one-man government. The Dawson County Review (Rep.) stated: "Its effect is intended and will make him an absolute dictator;" and added: "It is absurd to point to a single member of the Supreme Court today--most of whom are over 70--and accuse them of senility."⁴⁷ The Miles City Daily Star (Rep.) felt that the plan was intended to make the supreme court a rubber stamp on a par with the Congress,⁴⁸ and the Big Timber Pioneer Press (Ind.), in comparing Roosevelt to other strong executives found him the boldest.⁴⁹ The Glasgow Courier (Rep.) asked: "Is it possible that President Roosevelt's great popularity...has convinced him that he has been given a mandate to run the government without curb or opposition?"⁵⁰ and the Carbon County News (Rep.) replied: "Thousands, nay millions of the people who,

46. February 12, 1937.

47. February 11, 1937.

48. February 7, 1937.

49. February 11, 1937.

50. February 9, 1937.

in good faith, voted for Roosevelt now take the stand that they voted for a president, not a dictator."⁵¹ The Daniels County Leader (Ind.) hit first at the spinelessness of a congress which followed blindly the path of the president for the sake of partisan politics, then went on to condemn the plan as an attempt at dictatorship.⁵²

The fallaciousness of the contention that age impaired the judgment of justices was especially obvious to the Montanans who have seen Senator Walsh at the age of seventy-four appointed by Roosevelt to be Attorney General of the United States. The Big Timber Pioneer Press (Ind.) satirized this conclusion of the president.

...In spite of these infirmities the president insisted on Walsh taking a cabinet position he did not want...knew his advanced age, and four years later comes out with a reference to "lowered mental or physical vigor" and "new facts blurred by old glasses." Certainly the President's glasses were not "blurred" when he invited Walsh into the cabinet....⁵³

The Havre Daily News (Rep.) felt that the matter of age did not justify Roosevelt's attack on only one branch of government;⁵⁴ the Roosevelt County News (Rep.) of Wolf Point agreed: "If that theory is accepted, it should be applied as a matter

51. February 19, 1937.

52. February 11, 1937.

53. February 11, 1937.

54. March 28, 1937.

of principle to senators, representatives, governors and presidents."⁵⁵

A number of newspapers suggested: "The means of change is found in the body of the Constitution itself where provision is made for amendments,"⁵⁶ and added that if any change in the personnel of the court was to be made, the people should be permitted to vote upon it.⁵⁷ The Dawson County Review (Rep.) asserted this opinion:

...Yet the president insists that his proposal must be enacted at once ahead of everything else. He even had the effrontery to present a bill with his message overlooking the fact that the congress is supposed to prepare the bills which it is to consider. He is using all the pressure at his command to win the protesting senators over to his side.

It is our belief that the whole people should have a chance to vote on such a momentous question. If the Supreme Court is to be destroyed...let us all have a vote on the matter.⁵⁸

Completing the roster of opposition editorials were those which asked: "Why couldn't this have been done before November, 1936?"⁵⁹ The Phillips County News stated: "We

55. March 25, 1937.

56. Townsend Star (Ind.), April 8, 1937.

57. See Phillips County News, (Rep.), Feb. 25, 1937; Helena Record Herald (Company), Feb. 9, 1937; Carbon County News (Rep.), Mar. 5, 1937.

58. February 18, 1937.

59. Dawson County Review, March 11, 1937.

cannot adhere to the often stated theory that the last election results constitute a mandate for change in the court structure. . It would be so presumably, had the court been an issue in the campaign, but it was not."⁶⁰

Although the debate had barely begun, it can be seen that the three major alignments previously referred to had already been formed. That the proponents of the bill were all Democratic or avowedly liberal (i.e., listed as Progressive) would indicate at first glance that Roosevelt still maintained much of the loyalty of these elements. But it should not be forgotten that the papers listed herein as favoring the bill are far from being the total of the Democratic papers in the state. It would seem that many, possibly disliking the bill but fearful of mentioning this opposition editorially, failed to discuss the matter at all and by such abstention allowed the vocal Democratic papers to speak for them. On the other hand, the Republican papers and those labeling themselves as Independent were able to enunciate their beliefs immediately upon the reception of the president's message, for opposition to New Deal legislation constituted a general editorial policy for them.

60. April 1, 1937.

CHAPTER III

WHEELER JOINS THE OPPOSITION

The line-up in the senate had become fairly clear soon after President Roosevelt presented his plan. In the predicted listings it is most important to note the large number of Democrats placed on the opposition side. This included Josiah W. Bailey of North Carolina, Edward R. Burke, Nebraska, Harry F. Byrd, Virginia, Bennett Champ Clark, Missouri, Royal S. Copeland, New York, Walter F. George, Georgia, Peter G. Gerry, Rhode Island, Carter Glass, Virginia, William H. King, Utah, and Frederick C. Van Nuys, of Indiana.¹ Although most of these senators cannot be termed ardent New Dealers, their position indicated that the proponents of the plan would not only have to contend with opposition from the Republicans, but would very likely be faced with a split within the Democratic party ranks over the matter. The administration forces, although initially confused over the issue, were able to organize their group more rapidly than the opposition for they had the ready-made guidance of Majority Leader Joseph T. Robinson (D., Ark.) and the president. On the other hand these opposition Democrats, while immediately able to announce their position, were leaderless, and were to remain so until February 13, when Senator Barton K. Wheeler announced his opposition to the court plan and was immediately selected to

1. Literary Digest, CXXIII (February 27, 1937), 3.

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head the group.

Burton Kendall Wheeler, Massachusetts-born and Michigan-educated, arrived in Butte, Montana, in 1905, where he had been offered a job as a law clerk for \$50.00 a month.² His first inclination was to decline the position, but after losing all his savings in an all-night poker game, he found it necessary to accept. Shortly thereafter, he was able to open his own law office in Butte and soon acquired a lucrative practice.

Wheeler first bucked the Anaconda Copper Mining Company in 1911, when he supported Thomas J. Walsh in his unsuccessful bid for election to the United States Senate. Walsh lost the election in the state legislature, but won the popular election the following year. In gratitude for Wheeler's support he was able to prevail upon President Wilson to appoint him United States district attorney for Montana in 1913. During the war, Wheeler became a controversial Montana figure because of his refusal to prosecute pacifists and militant labor leaders. He was later forced to resign since his stand would have injured Walsh's political position in Montana during the election of 1918.³

But Wheeler was not to remain out of politics for long.

2. Hamilton Basso, "Burton the Bronc," New Republic, CII (April 22, 1940), 528.

3. Ibid.

In 1920 he ran for governor with the backing of the Non-partisan League and the Labor League against Joseph M. Dixon. During the campaign the ACM covered the Montana countryside with posters depicting a bloody hand and a citation to the effect that if Wheeler were elected the mines would close.⁴ Wheeler lost, 111,113-74,875,⁵ but a year later the mines closed anyhow. In 1922, Wheeler filed for United States Senator on the Democratic ticket. This time his opponents were able to do no more than insinuate that Wheeler would introduce free love into the state if elected.⁶ Apparently this threat failed to deter the Montana electorate, for he defeated his Republican opponent by 18,741 votes.⁷

The United States Senate was immediately made aware of the presence of a new element in its midst. The first day it met, Wheeler had to be told from the chair that smoking was not permitted on the floor. Two days later he overrode party whips and precipitated a first-class row over committee assignments.⁸ Later during his first term, Wheeler led an

4. Robert Bendiner, "Man Who Would Be President," Nation, CL (April 24, 1940), 533.

5. Official Election Returns for the State of Montana, (1920). Dixon: 111,113; Wheeler: 74,875.

6. Bendiner, loc. cit.

7. Official Election Returns for the State of Montana, (1923), Wheeler, 88,205; Karl W. Riddick (Rep.), 69,464; George H. Ambrose (Socialist), 1,068.

8. Bendiner, loc. cit.

investigation into the activities of Attorney General Harry M. Daugherty. In retaliation for Wheeler's demand that he resign, Daugherty sent a group of secret service men into Montana to "get something" on Wheeler. The net result of the investigation was a charge against the senator of unlawfully receiving money as a retainer fee to influence the issuance of oil and gas prospecting permits.⁹ The senate quickly cleared Wheeler of all charges, but the justice department obtained an indictment against him in Montana in April, 1924, just in time to embarrass him as Robert La Follette's running mate during the presidential election. Wheeler and La Follette lost the election, but Wheeler was able to make short work of the case. The jury took two ballots during the entire trial--one to go out to lunch, and the other, after thirteen minutes of deliberation, to acquit Wheeler.¹⁰

During the campaign of 1924, Wheeler first publicly announced his dissatisfaction with the Supreme Court and his desire to reform it. The Progressive Party platform included a plank providing that any decision of the Supreme Court declaring unconstitutional a law of congress could be overridden by a two-thirds vote of congress following the next election. This amendment was afterwards pushed by Wheeler in the senate, and in the course of the debate over the

9. Basso, op. cit., 529.

10. Bendiner, loc. cit.

president's plan, was submitted as the Wheeler-Bone amendment.

Senator Wheeler had always been a faithful supporter of President Roosevelt. He was the first senator to come out in support of him in 1932, and he led the northwest delegations in the fight for Roosevelt's nomination at Chicago. From 1932 to 1936, Wheeler supported and voted for such New Deal legislation as the NLRA, Wage-Hour regulation, the Wagner Act, the Social Security Act, the SEC, TVA, and AAA. He served actively on the Senate Committee on Interstate Commerce and led a successful battle for the Public Utilities Holding Company Act for which defeat had early been predicted. There was, therefore, every reason to believe that Wheeler would support the president in his fight for court reform.

But Wheeler had apparently long been building up antagonism against the president. Although the reasons for his break are largely conjectural, there are several factors which might have motivated his action. His first disappointment came in 1932 when John Nance Garner received the vice-presidential nomination rather than Wheeler who had led the floor fight for Roosevelt.¹¹ This slight was compounded by others during the course of Roosevelt's first term in office. Wheeler was never permitted to sit in on any of the policy-making bodies, as his support of Roosevelt would have warranted. Then, at the president's personal request, Wheeler

11. Current History, LI (March, 1940), 25-27.

led the fight for the unpopular Public Utilities Bill. At the conclusion of his battle he found that many of the president's personal friends were involved in an attempt to defeat the act. In addition, he received no recognition from the president for his successful leadership.¹² Wheeler was again disappointed when he failed to get the appointment to the attorney generalship after Walsh died. Roosevelt's selection of Homer Cummings to fill the vacancy added insult to Wheeler's injury. Cummings was an intimate friend of J. Bruce Kremer, former Democratic committeeman from the State of Montana, a Company lobbyist, and one of Wheeler's bitterest foes. When Cummings was appointed, Kremer moved to Washington and the Justice Department lavished numerous favors upon the Kremer machine, thereby thoroughly embittering an already angered Senator Wheeler.¹³ Although Wheeler doubtlessly had sincere convictions regarding the advisability of the president's plan, these factors probably added to his readiness to break from his former position in support of Roosevelt and his program.

At the request of Roosevelt's aide-de-camp, Thomas G. Corcoran, the senator delayed in committing himself until February 13.¹⁴ Then, in a strongly worded statement, he announced he would fight the president's plan:

12. Richard L. Neuberger, "Wheeler of Montana," Harper's CLXXX (May, 1940), 611-12.

13. Bendiner, op. cit., 532-36; New Republic, XC (April 7, 1937), 261.

14. 168 Days, 100-101.

Every labor leader, every farmer and every progressive-minded citizen in the United States would have been shocked, and protested from the housetops if President Harding, President Coolidge or President Hoover had even intimated that they wanted to increase the Supreme Court so as to make it subservient to their wishes. The progressives would have said, and rightly so, that it was fundamentally unsound, morally wrong and an attempt to set up a dictatorship in this country.¹⁵

Shortly thereafter, Wheeler stated his position even more emphatically, this time laying a great deal of the blame for the plan on the shoulders of Attorney General Cummings:

We had better have no supreme court at all than to have a supreme court which is subservient to any one man....Not only does the president want to make each and every one of the branches of government subservient to him--as subservient as the congress is--but now he proposes to make the supreme court subservient to him....Stripped of all its plausibility, that is what his proposal means. He [FDR] is today the House of Representatives and to a larger extent, the Senate of the United States....I think he was unduly influenced by the attorney general of the United States. If I thought he wasn't then I would be alarmed at the granting of this extraordinary power which congress has seen fit to give him in the name of expediency and efficiency.¹⁶

Immediately upon the issuance of Wheeler's pronouncement the opposition forces completed their organization. At a dinner for anti-court plan Democrats given by Senator Millard E. Tydings of Maryland, Wheeler was officially recognized as the opposition leader. A steering committee consisting of

15. Time, XXIX (February 22, 1937), 11.

16. Great Falls Tribune, February 22, 1937, 1 (AP Report).

Democratic senators Van Nuys, Burke, Gerry, Byrd, George, Bailey, Clark, and Connally was appointed.¹⁷ Tydings, Wheeler and Gerry were to prepare weekly lists of pro and con opinion. A liason between the opposition Democrats and Republicans was to be maintained by Wheeler and Borah, with the Republicans pledged to fight the battle by remaining silent.¹⁸ The lines were now clearly drawn. The court fight which was to last from February to August, taking precedence over all other legislation, was about to begin.

Senator Wheeler's announcement apparently came as a surprise to Montana editors. The proponents of the plan were somewhat taken aback by Wheeler's break with his traditional political philosophy. They were now forced to realign themselves, for Wheeler's consistent popularity with the Montana electorate forbade a strong attack of his stand. To settle the conflict some of the administration editors, while continuing to support the plan, congratulated Wheeler for his courage and stated that his opposition would create a healthy situation. In an editorial dated February 26, 1937, the Lewistown Democrat-News (Ind. Dem.) indicated the manner in which pre-plan editors followed this policy:

Whatever else may be said for or against Senator Burton K. Wheeler of Montana, no one can honestly say

17. John T. Flynn, The Roosevelt Myth (New York, 1948), 107-08.

18. 168 Days, 104.

that he lacks courage to express his independent judgment on all matters of national importance....It is the opinion of this newspaper that intelligent, vigorous, sincere opposition will be no disservice to the president at this time....This paper is wholly in accord with most of the objectives which President Roosevelt desires to attain....We do not always agree with the views of our senior senator, but do believe that he is more and more demonstrating his fitness for the high position which he holds.¹⁹

The Great Falls Tribune (Dem.) eventually joined the Lewistown Democrat-News in expressing admiration for Wheeler's stand, but chose to avoid the issue until a later date.²⁰

Labor was in perhaps the deepest quandary over the situation created by Wheeler's stand. Labor's Non-Partisan League, almost a sacred organization among Montana labor groups, had announced its support of the president's plan on February 17, and had sent requests to the various labor councils throughout the country to pass resolutions favoring the supreme court bill.²¹ Yet, after Wheeler's announcement, necessity demanded that labor proceed with the utmost caution for the Senator had gained his title "liberal" as a champion of

19. February 26, 1937.

20. The Tribune's failure to discuss the issue was promptly explained in the Cut Bank Pioneer Press (Rep.), Feb. 19, 1937: "So far there has been no comment from the Great Falls Tribune. The publisher, Oliver S. Warden, is democratic national committeeman from Montana and a far-visioned political leader. He probably reasons that in the event of a break from the president by both Wheeler and Murray, he would become the patronage distributor for the state in major appointments."

21. Great Falls Tribune, February 17, 1937, 1. (UP Report).

labor's cause, and directly attacking his stand might seriously jeopardize labor's chances of gaining further benefits from the Senator's powerful political position. The labor councils of Butte, Anaconda, and Great Falls had received letters from Senator Wheeler and Representative Jerry O'Connell, expressing exactly opposite views on the plan. The councils decided ultimately that the arguments presented by O'Connell, plus the requests of the Non-Partisan League, constituted the more pressing arguments, and proceeded to pass resolutions endorsing the president's plan.²² The Montana Labor News did not immediately attempt to assuage matters with Senator Wheeler, but later, in June, during Wheeler's brief tour around the state, the paper carried large and complimentary stories on his speeches, thus establishing a satisfactory equilibrium between its contradictory positions.²³

Among the other administration papers, the Wolf Point Herald (Ind. Prog.) waited to comment until Wheeler's tour of the state, at which time it warned him of the unhappy political repercussions which might result from his stand.²⁴

22. Montana Labor News. For the write-up on the passage of a resolution in favor of the plan by the Cascade Trades and Labor Association see issue of March 4, 1937, p. 1. For the resolution by the Central Labor Councils of Butte and Anaconda see the issue of March 18, 1937, p. 1.

23. June 2, 1937; June 10, 1937.

24. June 7, 1937.

The Great Falls News (Prog.) remained non-committal until the end of the debate. But the Bozeman Chronicle (Ind. Dem.) immediately condemned Wheeler with vigor. In its comment on his opposition it incorporated a veiled threat of political disaster to those who failed to support the president in his endeavors to aid the country through court reform:

Many of the democrats, Montana's Senator Burton K. Wheeler among them, are siding against the president in his efforts to move a step nearer his goal of pulling the nation out of the slough of despond into which it slipped in the 'roarin' '20's.

They fulminate about the possibility of Hitlerism, or Mussolinism in the United States. They forget they are in office primarily because they supported the man they are attacking and were swept into office on the tremendous wave of faith United States citizens gave FDR. They also forget they still have but one vote in congress, no matter how many political enemies they make....

The democrats can take the Al Smith way out-- join the former titular head of the party on his now famous "walk." And the liberals of the Republican party and other progressive groups will band together into one great cohesive unit that will debate its problems in the congressional halls, and not in the newspapers or over the ether, and that will accomplish its purposes with more logic and less hot air.²⁵

There existed no need for the opposition papers to realign their positions in order to view Wheeler's stand with favor. They were immediately able to give their unqualified approval to Wheeler's break with the President. The Dawson County Review (Rep.) editorially indicated the pleasure the

25. March 9, 1937.

anti-administration forces felt over Wheeler's apparent ideological reversal:

Senator Wheeler who has always been radical enough to satisfy our most advanced reds and pinks cannot stomach the president's commands that the Supreme Court be made an errand boy in his outer office....

We get a lot of fun out of the antics of some local democrats. Many of the staunch supporters of the President were for his court proposals instanter and sooner, but when Burton K. said his little piece they didn't know what to say! Now they are silent. It's sure rough when the gods on high Olympus get to quarreling!²⁶

The Cut Bank Pioneer Press (Repub.), after Wheeler came out in opposition to the president's plan, felt that the accusation that only reactionaries were fighting the plan was now completely unjustified:

Our own senior senator Burton K. Wheeler, has declared himself opposed to the plan....Are these men to be classified as reactionaries?

Men like Wheeler, Norris, Borah and Johnson may reserve the privilege of criticising the high court on occasion, but they have no illusions as to what would be the ultimate result of the surrender of all sovereignty to any president....This is the sort of statesmanlike vision that we must lean upon in this crisis....²⁷

The Glasgow Courier (Repub.) commended Wheeler for his

26. February 25, 1937. See also Miles City Daily Star (Rep.), February 19, 1937.

27. February 19, 1937.

bravery in the face of possible political repercussions from the White House:

...Senator Wheeler, while he has frequently expressed disappointment at decisions of the Supreme Court, rightly fears that the proposal advocated by the president is a long step away from liberal and democratic government, and foreshadows the possibility of dictatorship....

Senator Wheeler must be given much credit for intellectual honesty and courage in his stand.... He has thereby incurred the displeasure of the administration and undoubtedly faces the risk of being "punished" by losing many of his senatorial prerogatives.²⁸

Additional opportunity for Montana press comment on Wheeler's position, this time not so favorable, occurred less than a week later when he introduced the Wheeler-Bone amendment on February 17. The bill provided that laws held unconstitutional by the Supreme Court could be validated after the next election by a two-thirds vote of Congress.²⁹

On this occasion, the Great Falls Tribune (Dem.) broke its silence over Wheeler's shift to the opposition side by commenting on his proposed amendment. At first the Tribune considered the plan as a feasible method of settling the Supreme Court problem on a long-term basis:

Senator Wheeler has advanced a plan in the senate that is perhaps more far reaching and fundamental than the president's....

28. February 23, 1937.

29. Congressional Record, Part II (February 17, 1937), 1273. The proposal was introduced as SJ Res. 80.

The point not made clear in the discussion of the Wheeler compromise so far is whether congress should be given the same authority to reject a decision of the court voiding a state law as in the case of a federal statute....

It certainly would set up a decided check on the present tremendous powers exercised by the federal judiciary. Unlike the president's plan it would affect a permanent change in our constitutional system. When future fundamental conflicts over national policy arose it would give us a method not now available for their final determination.³⁰

But later, the Tribune was to show much less approval for Wheeler's plan:

We note with interest the praise of some of the ardent conservative republicans for Senator Wheeler's stand on the judiciary issue. We are glad to note that the senator has at last done something which they approve. Their criticism has been unsparing of him in the past. As far as he is critical of the president's plan, they are very enthusiastic, but they should not overlook the fact that he is even stronger in his criticism of the reactionary decisions of the federal judiciary and that he proposes a concrete plan to sharply check judicial usurpation of power....

...But we suspect that conservatives who are praising the senator's position at present are making the mental reservation that when the time comes they will fight his plan just as bitterly as they now oppose the president's.³¹

However, the Tribune was not alone in its suspicions of the Wheeler-Bone amendment. Wheeler's supporters, as indicated by the Havre Daily News and the Miles City Daily Star

30. February 20, 1937.

31. February 26, 1937.

would also have liked to support his plan, but were unable to work up much enthusiasm for any proposal which might change the supreme court either in structure or in duties. The Havre Daily News (Rep.) felt that Wheeler's plan was better than the president's but did not consider it the best possible answer to the problem of court reform:

....Our own preference would be to change the situation by constitutional amendment as provided by existing law, but if that cannot be done, then the Wheeler suggestion seems to be less shocking than the Roosevelt proposal. The Montana Senator's plan offers the chance to meet emergency needs of the nation without making the Supreme Court utterly futile as a brake on unworkable or unwise legislation, which is what the president's scheme mounts to.³²

The Miles City Daily Star (Rep.) considered the amending process as the proper method of changing the supreme court, but could not see much basic difference between Wheeler's suggestion and the president's proposal:

Senator Wheeler is opposed to the request of the president for authority to increase the high court's membership unless Justices now over seventy years of age retire. In offering his amendment to the constitution, Senator Wheeler feels it might speedily be ratified by a special convention called in each state. Such a method is provided by the constitution but has rarely been used.

...However, if congress would be permitted to overrule with a majority vote, it would make the Supreme Court and its decisions political footballs.³³

32. February 21, 1937.

33. February 20, 1937.

Senator Wheeler's break with the president over the court packing plan, while it doubtlessly was an unexpected move, did not alter too extensively the previous journalistic line-up in Montana. The Republican papers and those Independent newspapers choosing to comment on Wheeler's ideological change of mind, considered the senator's attack an admirable move and added this to their storehouse of arguments against the plan. The only apparent shift in line-up was that which occurred in the administration ranks, and even this was rather negligible. The Great Falls Tribune (Dem.) and the Lewistown Democrat-News (Ind. Dem.), instead of condemning Wheeler for his break as might have been expected under the circumstances, accepted his attack as a courageous move and, at the same time, continued their support of the president's plan. On the other hand, the Bozeman Chronicle (Ind. Dem.) held no admiration for Wheeler's daring in joining the opposition side, and condemned his move in vigorous terms. The other pro-administration papers, the Wolf Point Herald (Ind. Dem.) and the Great Falls News (Prog.) remained completely silent on the issue.

CHAPTER IV

The Fight Begins: Senate Debate and the Judiciary Committee Hearings

As the month of February drew to a close, relative inaction on the Supreme Court issue was replaced by vigorous discussion. From March until June such events as Roosevelt's speeches, Wheeler's Chicago appearance, the Judiciary Committee hearings, the Senate debate and the Judiciary Committee report offered a constant challenge to editors both nationally and in the state.

Mr. Roosevelt ushered in the five month controversy with a Victory Dinner speech on March 4,¹ and a fireside chat over national hookups on March 9.² Although both of these speeches dealt with the Supreme Court problem, the Victory Dinner talk aroused the greatest amount of controversy. During the course of his discussion, the president iterated the need for relief legislation "Now!", not several months or years in the future. He supported this contention by pointing up the requirements for further farm aid, for additional housing projects, and for government assistance in "dust bowl" and flood areas. He then inferred that the responsibility for failure to provide needed help rested upon the shoulders of the Supreme Court justices, adding that nothing further could

1. New York Times, March 5, 1937, 1 and 14.

2. Ibid., March 10, 1937, 1 and 15.

be done by the government until the court reorganization plan was passed by congress.³

Senator Wheeler immediately took the lead in condemning both the speeches and the plan: "The Democratic platform, dictated by the president himself, provided for meeting New Deal reforms by constitutional processes. The conditions which exist in the Ohio River Valley and the dust bowl are identical with those which prevailed when the platform was adopted."⁴ "To blame the Supreme Court for the failure of politically-minded members of Congress to give careful consideration to hastily-framed legislation more than once disregarding sound advice as to constitutional requirements, is an implication that the justices also may be held responsible for the drouth in the midwest and the Ohio flood."⁵

Although the highly controversial nature of the President's speeches of March 4 and 9 afforded Montana editors ample opportunity for comment, they failed to bestir the yet uncommitted Democratic papers from their editorial quiescence. In fact, editorial discussion was not too extensive. But what opinion was published indicated the contradictory attitudes among the editors regarding the plan. The Great Falls Tribune (Dem.) was effusive in its praise

3. Ibid., March 5, 1937, 14.

4. Time, XXIX (March 15, 1937), 15.

5. Great Falls Tribune, March 6, 1937.

of the speeches:

Opponents of the president's judiciary plan will do well to recognize the terrific force of his indictment in his recent speech of a judicial attitude that holds the states and the nation alike powerless to deal with irrepressible national problems....

Those who are urging us to be patient and seek constitutional amendments should not overlook the bitter criticism of the minority justices...to the effect that the majority were invading the province of the legislative branch....⁶

On the other hand, the Billings Gazette (Company), representing the opponents to the plan, took an exactly opposite view of the speeches, echoing thereby the sentiments expressed by Wheeler:

Already justly famed as an arouser of class hatreds, President Roosevelt set a new high standard for bitterness Thursday night in the first talk of his campaign to win America over to his plan for bringing the Supreme court under his domination and the domination of succeeding presidents. His smoldering hate for the judicial branch of the federal government has flared in searing flame.... He stood as a lion licking his chops, anticipating the time when he will be able to pull down and devour a foe as yet beyond his reach.⁷

Further occasion for press comment arose on March 10, when Wheeler made his first public appearance on behalf of the opposition before a group of women's clubs in Chicago. During the course of the discussion, Wheeler pointed out

6. March 7, 1937.

7. March 6, 1937.

the fallaciousness in Roosevelt's logic when he blamed floods, dust bowls and the farmer's plight on the supreme court. The senator concluded that he would again sacrifice party loyalty if it were necessary to do what he thought right for "the wage earners, small business men and the farmer."⁸

Although the speech was given fairly adequate front-page coverage throughout the state, editorial response was notably lacking, especially from those newspapers which supported the president's plan. The only comments noted were those printed in the two opposition papers, the Livingston Enterprise (Ind.) and the Helena Record-Herald (Company). The Enterprise prefaced its remarks by assuring Wheeler that his stand would not injure his political career: "We are not of the opinion that if a poll of Montana voters were to be taken, that the result would throw Senator Burton K. Wheeler and his counsel and advice into everlasting discard...." It then went on to characterize Wheeler's Chicago speech as "...a fearless and masterful presentation...."⁹ The Record-Herald, after briefly summarizing Wheeler's refutation of the President's speeches, commented: "All the evidence supports Senator Wheeler and refutes the president on that point....We would like to ask by what right--and by what superhuman and all-divining wisdom--the president takes

8. Daily Missoulian, March 11, 1937 (AP report).

9. March 12, 1937.

upon himself the authority to assign dishonest, selfish and vicious motives to all who opposed him in an election campaign."¹⁰

On March 12, Senator Wheeler again spoke in opposition to the president's plan, this time on the senate floor following a speech in support of the plan by Senator Robert M. La Follette, Jr. Senator Wheeler prefaced his remarks by stating that he also would like to cite a prominent authority on the court packing matter as did La Follette. He then proceeded to use as refutation a quotation from President Roosevelt's work, Looking Forward, written in 1933. After discussing the crowded condition of dockets in federal courts, the president had made the statement: "In face of this congestion the remedy commonly proposed is to add new judges or new courts, but it will readily be seen that if the problem is what I have stated it to be such a so-called remedy merely aggravates the complaint."¹¹ After reading several more pertinent passages from the book, Wheeler concluded his very brief statement:

I merely desire to say that, because some of us disagree with the method the president now proposes, and agree with what he said in 1933 as to the practical way to reach and solve the problem, it seems that we are considered to be just "defeatist lawyers" or something of that kind. I maintain

10. March 12, 1937.

11. Franklin D. Roosevelt, Looking Forward (New York, 1933), 193. See also Cong. Rec., Part II (March 12, 1937), 2146.

that the President of the United States in writing that book, was correct when he said that the un-sound way of going about this matter was to increase the membership of the court, because as he said, it would only add to the ravages of the disease.¹²

The speech, though short, apparently hit home with an unerring sureness. The president himself was somewhat taken aback. In a letter addressed to Senator Key Pittman (D., Nev.) he said: "I am sorry about Burt. His last attack on me seemed to me a little below the belt, because by using only a very small excerpt from the quotation, he deliberately gave a false impression."¹³

In Montana, even the supporters of the president's plan felt that Wheeler's speech was worthy of compliment. The Great Falls Tribune (Dem.), pro-administration in its editorial policy, gave Wheeler its unqualified praise: "Probably the most powerful replies to the President's speeches on the judiciary issue have come from Senator Wheeler of Montana. His contributions to the great national debate have been outstanding among the opposition addresses...."¹⁴ The opposition, as represented by the Phillips County News of Malta (Rep.), was equally effusive in its compliments: "Typical of Wheeler's cunning is his use of President Roosevelt's own book against him....the Wheeler blast will

12. Cong. Rec., Part II (March 12, 1937), 2146.

13. Elliott Roosevelt and Joseph P. Lash (Editors), FDR, His Personal Letters, 1928-1945, Vol. 3 (New York, 1950), 668.

14. March 13, 1937.

have its impression upon the country, and it reveals the Montana man once again as a master campaigner and a shrewd foeman."¹⁵

As Senator Wheeler was leveling his blasts against the president's plan, the Senate Judiciary Committee hearings got underway on March 10. Since this will be the only occasion on which arguments in favor of the bill will be discussed completely, it would be well at this time to consider thoroughly the testimony of the two more prominent administration witnesses.

Attorney General Homer Cummings appeared as the first witness in favor of the bill. In introducing his prepared address, Cummings gave four reasons for the particular plan proposed--the situation created by the reckless use of injunctions in restraining the operation of Federal laws; the presence on the Federal bench of aged or infirm judges; the crowded condition of federal dockets, delays in the lower courts and the heavy burden imposed on the Supreme Court as a result; and the need of an effective system for the infusion of new blood into the judiciary.¹⁶ The Attorney General then took up each point individually and elaborately, laying much stress on past numerical changes in the composition of the

15. March 18, 1937. See also Mineral Independent of Superior (Ind.), April 1, 1937.

16. Jud. Com. Hearings, Part I, 4.

supreme court as justification for the present bill.¹⁷ He concluded that the proposal was clearly constitutional since there was nothing in the constitution which forbade changing the number of justices sitting on the court; that any amendment which might pass congress, after prolonged debate over phraseology, would very possibly suffer the same fate as the child labor amendment which had been pending for thirteen years; that such an amendment must be construed and applied by the same judges who now sat on the court; and that an enlightened interpretation of the constitution, not an amendment, was needed.¹⁸

After completing his prepared statement, the Attorney General was subjected to a most searching questioning, especially by the opposition forces. This group had been previously primed for the occasion--as it would be whenever administration witnesses appeared before the committee--by a research bureau set up in Washington under the sponsorship of the Republican party. The duties of this staff were to supply the members of the opposition with sufficient material, including past writings and comments on the supreme court, to completely embarrass presidential supporters. The establishment of this research group proved to be one of the most successful political moves made by the anti-administration

17. Ibid., 5-12.

18. Ibid., 20.

senators.¹⁹

Cummings was followed on the next day by Assistant Attorney General Robert H. Jackson, who far surpassed all other administration witnesses in the completeness and logic of his testimony.²⁰ Jackson asserted that it was the intention of the framers of the constitution to enable the congress and the president to control the supreme court to prevent judicial tyranny. He argued that this intention was made obvious by the manner in which power was divided under the constitution--only a limited original jurisdiction was permitted the court; the number of justices was to be fixed by congress to facilitate control; the power of appointment to the supreme court rested in the executive and legislative branches, not the judicial; the amount of compensation was left up to congress with no sources of revenue permitted the justices except those obtained by congressional appropriation; the court did not possess the power to enforce its decisions, this being left up to the executive and the legislative branches; and lastly, the court was not permitted the right to pass judgment upon its own members. In Jackson's opinion, all these factors tended to illustrate that Congress was to be supreme over the court. Jackson concluded by

19. 168 Days, 122.

20. New York Times, March 11, 1937, p. 1. The members of the Judiciary Committee thanked Jackson profusely for his able discussion and commented on its high caliber.

stating: "Congress, by failure to exert checks and balances, assumes responsibility for functioning of the court. Congress has the power to see that the personnel is adequate. Congress must see that the court does not become the instrument for the defeat of constitutional government."²¹ In his prepared statement, Jackson indicated the lack of need for a constitutional amendment; but after cross-examination by Senator O'Mahoney, he later admitted that he would not object to such a method of revising the court.²²

Jackson was followed during the next weeks by such authorities as Edward S. Corwin, well known in the field of constitutional law, Leon Green, dean of the law school of Northwestern University, Thomas F. Konop, dean of Notre Dame law school, William Draper Lewis, director of the American Law Institute, Charles Grove Haines, professor of political science at UCLA, and others, who in general repeated what had been said by Jackson and Cummings.

On March 22, Senator Wheeler appeared as the first opposition witness before the Senate Judiciary Committee. Senator Wheeler began his remarks by disclaiming any particular satisfaction with the decisions of a supreme court which had abrogated New Deal legislation, but stated: "...I never for one moment entertained the idea that, because

21. Jud. Com. Hearings, 38-39.

22. Ibid., 53.

the court did not agree with me on what I thought was the needs of the times, that court should be increased in number with members who held my political and economic views."²³ The Senator then went on to discredit as an unfair subterfuge the president's attack on the abilities of older men. He illustrated this by pointing out the consistent liberality of the elderly justices Louis D. Brandeis and Oliver Wendell Holmes, the appointment by Roosevelt of seventy-four year old Senator Walsh to be Attorney General of the United States, and his offer of a cabinet position to Carter Glass, also well over seventy.²⁴ After reading these introductory arguments, the Montanan presented the committee with his soup de grâces in the form of a letter from Chief Justice Charles E. Hughes. The letter contained a complete breakdown of cases which came before the court and the manner in which they were handled, showing that the court was well up in its business and that no additional members were needed to alleviate a crowded docket.²⁵ The Chief Justice then went on to explain the methods by which writs of certiorari were granted, stating that all cases were given an equal hearing and that often at the request of only two or three of the justices, the writs would be accepted.²⁶ This discussion served to refute

23. Jud. Com. Hearings, Part III, 486.

24. Ibid., 487.

25. Ibid., 488.

26. Ibid., 490.

Roosevelt's argument that equal justice was not being imparted by the supreme court on the basis of the number of writs refused. Hughes concluded the letter by suggesting that more judges on the court would impede rather than facilitate the speed with which cases were handled.²⁷ The remainder of the senator's testimony was devoted to a discussion of the unconstitutionality of the proposed bill and the need to make any changes in the structure of the court by means of amendment only.²⁸

The group of witnesses who testified after Wheeler's appearance had been chosen by the senator and his steering committee on the basis of their past adherence to New Deal principles and their national reputations as liberals. This strategy proved to be a most skillful maneuver, for the anti-court plan forces thereby robbed administration supporters of the cry that the opposition came only from economic royalists and tories.²⁹ Among those speaking before the committee were E. H. Everson, national president of the Farmer's Union, Raymond E. Moley, editor of Newsweek and a former member of Roosevelt's brain trust, William Lemke, Representative-at-Large from North Dakota, Louis J. Taber, Master of the National Grange, O. G. Villard, editorial

27. Ibid., 491.

28. Ibid., 492-512.

29. John T. Flynn, The Roosevelt Myth (New York, 1948), 109.

associate of the Nation, and many others.

In Montana, editorial muteness indicated more clearly than words the feeling of the administration supporters towards Wheeler's testimony. The Great Falls Tribune merely mentioned that Wheeler had made an appearance.³⁰ The remainder of the plan's supporters, including the Lewistown Democrat-News, the Wolf Point Herald, and the Montana Labor News, studiously devoted their editorial columns to other matters.

But the opponents of the bill were verbose in their acclamation of Wheeler's tour de force. Indicating that the "Company" papers were fully in accord with Wheeler's position, the Daily Missoulian (Company) commented: "...The Montanan knew that he had a powerful argument from an unexpected quarter to present to the committee; he knew that this would create a stir, and he was not disappointed....By and large, opponents of 'packing' the Supreme Court seem to have had a very satisfactory day before the Judiciary Committee."³¹ The Helena Record-Herald (Company) viewed with special favor Wheeler's assertion that disagreement with the decisions of the court was no justification for changing its composition: "...Senator Wheeler is in disagreement with the Supreme Court majority in several of its recent decisions, but he demon-

30. March 23, 1937.

31. March 23, 1937.

strates the thoroughness of his thinking by saying he would prefer to have the court disagree with him than lose its cherished independence."³² The Miles City Daily Star (Rep.) thought that: "The 'surprise letter' from Chief Justice Charles Evans Hughes...seems to have pretty definitely disposed of one contention of those who want the court change. The charge [court behind in its work] has been proved erroneous."³³

Dan Whetstone, editor of the Cut Bank Pioneer Press (Rep.), was as amazed over the change of attitude of O. G. Villard who testified for the opposition, as he was over that of Wheeler. In an editorial dated April 16, he asserted his belief that having two such ardent liberals opposing the plan was more than ample proof of the evils inherent in the court proposal:

The editor of this paper often buys copies of the Nation as a sort of antidote for the cloying sweetness and depressing dullness of daily newspaper editorial writing, not agreeing with much that Villard raves about but liking the way he has of saying it.

So when this hater of Tories and former effective supporter of the president declares that the proposal opens the surest way to dictatorship, it will be agreed that with the exception, possibly of Senator Burton K. Wheeler, he more than any other liberal leader will be heeded by those elements who pride themselves as being progressive-minded and yet are "sorely crossed up" in their loyalties, as between

32. March 24, 1937.

33. April 3, 1937.

Roosevelt and that large band of unquestioned progressives who are fighting him on this issue....

Villard believes with Wheeler and others of his cast of mind that this court-packing move is the very opposite of liberal.³⁴

On March 29, Wheeler was forced to take the floor of the Senate in defense of the testimony he delivered before the judiciary committee on March 22, especially that relating to the letter received from Chief Justice Hughes. In the speech which necessitated Wheeler's rebuttal, Senator Kenneth McKellar (D., Tenn.) voiced the insinuation that the Montanan had subjected the administration to an unfair and unethical bit of political maneuvering by having Hughes' letter addressed to him rather than to Ashurst, the chairman of the committee.³⁵ Although Wheeler attempted to explain why the letter had been sent to him, McKellar refused to yield the floor for that purpose.³⁶ The Tennessean then went on to say that the letter did not answer the president's challenge regarding the number of writs of certiorari denied by the supreme court. He contended that three-fourths of the cases brought before the court, or seven-hundred writs of certiorari, were dismissed without proper consideration.³⁷ He also

34. April 16, 1937.

35. Cong. Rec., Part III (March 29, 1937), 2809.

36. Ibid., 2810.

37. Ibid., 2810.

asserted that whether or not applications were granted did not depend upon the rights of the litigants, but only upon the desire of the supreme court justices to harmonize federal court opinions generally and to keep federal court decisions consistent.³⁸

After McKellar concluded his attack, Wheeler rose in his own defense. He chided McKellar's attitude towards the supreme court, stating that it was natural for a lawyer to condemn judges and juries if he lost a case, but that he did not then necessarily demand that they be replaced because their attitudes were controlled by economic viewpoint or age. He contended that when the Attorney General appeared before the Supreme Court in the Gold Cases, as on other occasions, he based his arguments on politics rather than law, and therefore could be expected to lose.³⁹ Wheeler also accused McKellar of condemning the great liberal Brandeis when he attacked the letter of Hughes, because Brandeis and every other judge on the supreme court had concurred in its contents.⁴⁰ Wheeler then informed his antagonist that the letter had been addressed to him because he had asked Hughes to present the true facts regarding the number of cases disposed of by the supreme court, something which had not been done by

38. Ibid., 2811.

39. Ibid., 2815.

40. Ibid., 2816.

Senator Ashurst or any other member of the committee. He told McKellar that if Ashurst had asked for the information, the letter would doubtlessly have been sent to him.⁴¹ Senator Wheeler next attacked congress for failing in its responsibility to consider properly the constitutionality of laws passed:

But how many of us have had time in the last four years to give any consideration to the question of the constitutionality of some of the bills which have been pending before this body? We have passed them because we were told to pass them. Let us not blame the Supreme Court when some of the blame rests, and should rest, upon our own shoulders.⁴²

The Montanan concluded his speech by accusing the administration of using unethical methods to gain support by sending the Postmaster General, James A. Farley, into Montana to urge farm and labor groups to protest Wheeler's stand. But he re-asserted his intention of continuing his opposition regardless of such outside pressure.⁴³

In Montana, the reaction to this speech followed previous trends. The Lewistown Democrat-News (Ind. Dem.), representing administration supporters, did not condemn Wheeler for his words, but offered the timorous conclusion that perhaps he was being a little too violent in his attacks:

41. Ibid., 2816.

42. Ibid., 2818.

43. Ibid., 2836.

"....Sometimes even his best friends will regret to observe that his attacks at times indicate a certain degree of personal animosity towards Mr Roosevelt....As we have stated, we admire the independence of Montana's senator and hold some of his criticism of the president's program wholly logical, but we cannot avoid the feeling that, in the ardor of his advocacy, he sometimes goes further than is necessary to make his point."⁴⁴

The Meagher County News of White Sulphur Springs (Ind.), an opposition paper, felt that nothing the attorney general or the postmaster general could do would intimidate the senator:

Both sides of this fight are well led and our own Senator Wheeler will be right in the thick of it. He learned his law from our immortal Thomas Jefferson Walsh, but his methods of scrapping are still those of Dublin Gulch over in Silverbow county. You can beat a guy like Wheeler. Maybe you can swamp him by a flood of government money, but you can not shut him up and you can't scare him.⁴⁵

The Miles City Daily Star (Rep.) thought that Wheeler's opposition had raised him to heights of statesmanship which he had never before attained:

The guarding and the preserving of the independence of the Supreme Court of the United States is championed by Senator Burton K. Wheeler of Montana in a manner which has raised him high in the estimation of the citizens of the United States. This championing of a principle is the vehicle which has raised the senior senator from Montana to great heights and brought him the ecumiums of those who feel and believe with him that any tampering of the "packing" of the highest tribunal is absolutely out

44. April 17, 1937.

45. June 30, 1937.

of order in this enlightened age of American political progress. Expressed admiration for the position taken by Senator Wheeler is not confined within the ranks of the Democratic party, but extends to his political party opponents who come out openly to declare their attitude.⁴⁶

From this time until the judiciary committee issued its report, the Montana press limited itself to general observations on the issue. On March 21, the Great Falls Tribune suggested that a disunited opposition either get together and agree on some amendment or counter-proposal or go along with the president's plan: "The Tribune thinks it is the part of wisdom to follow the president, at least until there shall be presented a proposal having a united progressive support and one which will lead us out of the present deplorable situation--now."⁴⁷ It then re-asserted its stand in favor of the original proposal as the most practical instrument which had been offered for reform. The Columbus News (Ind.) expressed editorial concern that the extensive time being devoted to the debate would tend to cause public lethargy, and warned against such adamancy: "...the issue always resolves itself into the question of whether any executive shall be granted such power over the judicial branch of the government as the court reorganization plan is obviously designed to secure. All the pro and con arguments in the world will not change

46. June 15, 1937.

47. March 21, 1937.

that issue, but there is every possibility that the issue might vastly change America."⁴⁸ The Cascade Courier (Ind.) expressed disgust with the entire matter: "Whatever one's opinion on the burning issue of whether the Supreme Court is supreme or not there's one phase of the conflict that stirs one's bile--the hypocrisy of it all--the cowardice of some Congressmen, and the artful-dodgery of others...."⁴⁹

When the majority of the Senate Judiciary Committee turned in its recommendation against the president's bill on June 14, the Montana press was given something more concrete upon which to base its editorial comments. The report listed six reasons for the committee's disapproval of the act. These included the failure of the bill to accomplish its objectives; the restraint such a bill would confer upon the free expression of judicial opinion; its violation of existing precedents and its establishment of dangerous future precedents; the fallacious theory embodied in the bill that the constitution could be altered without popular consent; the centralization of the federal district judiciary through the power of assigning judges; and the political control over the judiciary which would be given to the legislative and the executive branches.⁵⁰ Each of these points was bulwarked by

48. March 18, 1937.

49. April 8, 1937.

50. United States Senate, Committee on the Judiciary, 75th Congress, 1st Session, Senate Report 711, 3.

elaborate argument.

The conclusion summarized again the reasons for the adverse report, and was worded in such a way that it provided a virtual indictment of the New Deal. It contained such phrases as: "It was presented to the Congress in a most intricate form and for reasons that obscured its real purpose," and "It is a proposal without precedent and without justification." The report ended with a strongly worded recommendation of rejection:

Its ultimate operation would be to make this government one of men rather than one of law, and its practical operation would be to make the Constitution what the executive or legislative branches of the government choose to say it is--an interpretation to be changed with each change of administration.

It is a measure which should be so emphatically rejected that its parallel will never again be presented to the free representatives of the free people of America.⁵¹

The report was signed by Senators William H. King, Frederick C. Van Nuys, Patrick McCarran, Carl A. Hatch, Edward R. Burke, Tom Connally, Joseph C. O'Mahoney, William E. Borah, Warren R. Austin and Frederick Steiwer. With the exception of Hatch and Austin, these senators formed the nucleus for the fight against the bill on the Senate floor.

The Montana opposition press was jubilant. It hailed

51. Ibid., 23.

the document as a new Declaration of Independence. The Dawson County Review (Rep.) stated:

June 14, 1937, a new Declaration of Independence was offered to America when the Senate Judiciary Committee presented to the senate its report on the President's supreme court packing bill....

When seven prominent democrats are willing to thus break definitely with the president, it is evident to all of us that there is real discord.⁵²

The Miles City Daily Star (Rep.) echoed these sentiments:

There is force to the document of rejection. There is a power in the denunciation of the recommendation which makes the cockles in the heart of patriotic devotion to country thrill with pride. There is the spirit of an unadulterated Americanism which is cheering and encouraging to those who have always felt and still believe that the destiny of the United States is irrevocably interwoven in the context of the American Constitution.⁵³

The Kalispell Daily Inter-Lake (Ind. Rep.) was especially interested in the parts of the report which could be construed as a rebuke to the president for presenting such a plan:

It is probably the most scathing rebuke given to a chief executive, and in our estimation it was entirely justified. It was in reality an effort to change our form of government from a democracy to a dictatorship without the consent of the people, and the committee certainly made it plain that it does not approve of any such procedure....It is cheering to know that congress is not, after all, merely a body of "yes" men, and that there are those in the

52. June 24, 1937.

53. June 17, 1937.

national law-making body with sufficient backbone to make so emphatic a declaration of principles.⁵⁴

With the filing of the report, matters in congress remained relatively quiet until July 2, when debate on the proposition began again with the introduction of the Hatch-Logan-Ashurst amendment to the president's bill. So, for a brief duration, the Montana press occupied itself with other matters.

Although the press alignment remained the same, with Independent and Republican papers generally opposing the plan, and vocal Democratic papers supporting the bill, it is interesting to note several developments. Such papers as the Bozeman Chronicle (Ind. Dem.) and the Wolf Point Herald (Ind. Prog.), which had previously shown that they would have no sympathy for Wheeler's stand, remained surprisingly quiet in spite of the senator's activities. The controversial "Looking Forward" speech, upon which the pro-administration Great Falls Tribune and Lewistown Democrat-News had both editorialized, was apparently not considered by the Chronicle and the Herald to be worthy of comment. No mention was made of Wheeler's appearance before the Senate Judiciary Committee. The Judiciary Committee report, which would have been as worthy of condemnation by administration supporters as it was of praise by the opposition, did not serve to break the silence. Even the Tribune remained tight-lipped over these following events.

54. June 14, 1937.

Not until the compromise bill was offered were the administration papers to again discuss the issue.

CHAPTER V

The Supreme Court Joins the Fight

While the anti-administration steering committee was organizing and pursuing the battle against the court proposal on the senate floor, the Supreme Court carried the fight relentlessly to the president, thereby aiding Wheeler and his forces by providing them with additional arguments against Roosevelt's plan.

The Court first moved on March 29 when, in a series of three decisions, it gave evidence of having accepted the New Deal philosophy of government. In the first case, a five-to-four decision, the court upheld the Washington Minimum Wage Law,¹ thereby reversing its previous decision in Morehead v. New York ex rel. Tipaldo, (298 U. S. 587). To supply the necessary majority, Justice Roberts had left his former position as a member of the conservative bloc and had joined Chief Justice Hughes and the three liberal justices, Brandeis, Stone and Cardozo, in upholding the constitutionality of the act. On the same day, Hughes read two unanimous decisions which accepted the validity of the Railroad Labor Act of 1935² and the revised Frazier-Lemke Act.³ On April 12,

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1. West Coast Hotel Company v. Parrish, 300 U. S. 379 (1937).
 2. Virginia Railway v. Federation, 300 U. S. 515 (1937).
 3. Wright v. Vinton Branch, 300 U. S. 440 (1937).

the court went even further in its apparent change of ideas by upholding the controversial Wagner Act in a five-to-four decision.⁴ Again, Justice Roberts' shift of opinion was responsible for the administration victory.

In spite of the tremendous victories the New Deal had scored through these decisions, administration forces were nevertheless somewhat taken aback, for the judicial change of mind removed the necessity for adding justices to the court to insure an "enlightened interpretation" of the constitution. The "aged" justices of the present court would seem to have attained the desired new views without benefit of the projected "infusion of new blood."⁵ The majority of the senators interviewed after these decisions had been rendered seemed to concur in the opinion that the president's aims had been achieved without the addition of six new justices, thereby eliminating any need for a reorganization plan. Senator Wheeler's statement, accepted in basic content by his fellow opposition Democrats, Peter G. Gerry, Tom Conally, Walter F. George and Royal S. Copeland,⁶ illustrates

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4. National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1 (1937).
 5. For the administration opinion on the decisions see: Harold I. Ickes, The Secret Diary of Harold I. Ickes, II (New York, 1954), 109. (Hereafter cited as Ickes, Diaries.) For Chief Justice Hughes' version of the apparent shift of opinion see: Merlo J. Pusey, Charles Evans Hughes, II (New York, 1951), 746-47, 757-59.
 6. Literary Digest, CXXIII (April 24, 1937), 3-5.

the manner in which the anti-court-plan Democrats took advantage of the action of the Supreme Court:

The decisions were great. I feel now that there cannot be any excuse left for wanting to add six more new members to the Supreme Court. The court enlargement proposal will certainly be defeated. A number of Senators have told me privately that if the court upheld the Labor Act, they did not see how they could vote for the court enlargement measure.⁷

Although general editorial comment was not too extensive in the state, it was apparent that the effect of the Supreme Court's blow was felt by administration supporters in Montana as well as in the nation's capitol. The Great Falls Tribune (Dem.), a consistent administration supporter, remained relatively non-committal on the matter. Its only mention of the decisions was contained in a front page story taken directly from the Associated Press wires.⁸ But the Montana Farmer, a Tribune-controlled magazine, gave editorial evidence that the Tribune's support of the reorganization bill might be wavering:

...The Wagner Act decision has all the earmarks of a change of heart on the part of Justice Roberts and an acceptance by a majority of the Supreme Court of the constitutionality of strong centralization of control in the federal government.

While we believe that some limit should be placed upon the tenure of office of Supreme Court judges, the urgency of immediate change in the

7. New York Times, April 13, 1937, 1.

8. April 13, 1937.

personnel of the present court would seem to have been largely relieved by this significant change of attitude. We think the administration will do well, therefore, to sidetrack the Supreme Court proposal and give the right of way to essential legislation that will place agriculture in a position to weather future economic storms.⁹

However, the Bozeman Chronicle (Ind. Dem.), even more vigorous in its defense of the plan than the Tribune, could see nothing in the change of judicial opinion which would warrant abandoning the president's proposal. After first stating that the court apparently had been affected by the election returns, since it had finished the year without invalidating any New Deal legislation, it continued: "Now it may be possible for President Roosevelt's court proposal to be discussed on a saner basis...."¹⁰

Opposition newspapers took even less notice of the Supreme Court's action than did the administration supporters. But the Daily Missoulian (Company) seems to illustrate their general attitude on the decisions, echoing by its words the convictions expressed by Wheeler. It not only published a series of editorials pointing out the present liberal nature of the court, and the futility of further pursuing the president's now outmoded court reform bill, but also affirmed the fact that revisions in the original bills had made them con-

9. May 15, 1937.

10. June 10, 1937.

stitutionally more acceptable.¹¹ After the full import of the court's decisions of March 29 had been realized the Missoulian stated:

But no court, even one most carefully hand-picked could have given Mr. Roosevelt, the New Deal and labor, anything more than they secured through Monday's decisions. They could, in fact, ask for nothing more.

So it seems to many on Capitol Hill that no reason now exists why there need be any change in the court....After the full effect of the court's action had become known, prediction was that the measure likely would go down in defeat in the Senate if reported at any early date.¹²

The Supreme Court next moved on May 18, when Justice Van Devanter sent his resignation to the White House. President Roosevelt now had a vacancy which could be filled by a pro-administration man, thus insuring the prolongation of the Supreme Court's display of friendship towards the New Deal. If nothing more, the decisions would now probably be five-to-four upholding the constitutionality of New Deal legislation, rather than five-to-four invalidating it.

Pro-administration forces considered the resignation an adroit conservative move designed to further weaken the president's supporters in Congress. Ickes reported that Thomas G. Corcoran, an active adherent to the President's plan,

11. See issues for March 30, 1937; March 31, 1937; and May 25, 1937. See also the Phillips County News (Rep., Malta) April 22, 1937.

12. April 13, 1937.

informed him that Van Devanter's resignation had been engineered especially for this purpose by Senator Wheeler, Chief Justice Hughes and Justices Van Devanter and Brandeis.¹³ The administration was further disconcerted when both opposition and administration senators began supporting the basically conservative Majority Leader Joseph T. Robinson as a candidate to fill the vacancy left by Van Devanter's retirement.¹⁴ Supporters of the plan, however, continued to feel that, in spite of the difficulty created by Van Devanter's resignation and the Senate's waning desire to pass the bill after the court's reversals, the president would insist on shoving the measure through the congress to re-establish his wavering authority.¹⁵

The Montana press virtually ignored the resignation, but the comments contained in two newspapers reveal more clearly the somewhat changed attitudes of some Democratic Montana editors towards the president's plan. Although the Bozeman Chronicle (Ind. Dem.) claimed that: "...Van Devanter's resignation is a practical victory for Roosevelt in his fight to make the court more responsive to the will of the people...." it refrained from asserting this time that the court reorganization plan was still necessary.¹⁶ The Great Falls Tribune

13. Ickes, Diaries, 153. Also see: James A. Farley, Jim Farley's Story, The Roosevelt Years (New York, 1948), 82.

14. Ickes, Diaries, 144.

15. Literary Digest, CXXIII (May 29, 1937), 3-4.

16. May 20, 1937.

(Dem.) took advantage of Van Devanter's resignation to deliver an editorial lecture on the necessity of limiting the tenure of justices serving on the Supreme Court. Apparently its policy had now changed to the acceptance of such limitation as a suitable alternative to the addition of six new justices to the court, although it still supported the original bill by inference:

A lag in judicial acceptance of new political and social viewpoints, so apparent at different periods in our history, is the natural result of unlimited tenure and that is the crux of the present controversy. It is the justification of new blood in the federal judiciary. Four justices with the viewpoint of a period which is over have not been able to meet the great issues of today realistically.

More frequent changes in the court's personnel are necessary for the adequate performance of the great responsibility placed in our system upon the judiciary. It is not a matter of age of the individuals, but of the average tenure of its members.

...In some way there will come a vastly altered court before the year has passed.¹⁷

In an editorial which might be interpreted as a possible clue to Republican reticence on the issue, the Glasgow Courier (Rep.) indicated a puzzled attitude towards the entire controversy: "The present controversy over the president's Supreme Court reorganization plan has headed into a maze of politics and behind-the-scene intrigues which is...puzzling...."¹⁸

17. May 21, 1937.

18. May 25, 1937.

In summation, it can be seen that though the Supreme Court, through this series of moves, had apparently eliminated the need for court reform to insure liberal interpretations of the constitution, the lines of Montana's administration supporters still held firm in spite of the initial wavering indicated by the editorial thought contained in the Montana Farmer. The Bozeman Chronicle (Ind. Dem.) continued its strong agitation in favor of the plan, and the Great Falls Tribune (Dem.) persisted in holding out for some reform. The only apparent change was that which occurred in opposition tactics after the court's reversal. Now, instead of condemning the plan as a prelude to dictatorship, they were able to attack it as unnecessary in view of the court's apparent decision to accept the New Deal philosophy of government.

CHAPTER VI

Wheeler and the Battle Outside the Senate

While the Supreme Court was dealing its blows to the court packing plan, Senator Wheeler became the center of a controversy over the rights granted a citizen by the first amendment. The senator had participated in a March of Time film which presented pro and con arguments relating to the bill. During the course of his discussion, Senator Wheeler stated:

You can say that the privilege of appointing post-masters will not be accorded to me. You can say what you please, but I say to you and Mr. Farley, to everybody else, that I will vote against this proposition because it is morally wrong, it is morally unsound, it is a dangerous proceeding.¹

The Kansas State Board of Review deleted this section from the film on the theory that the statement was "partisan and biased."²

The board action was immediately attacked as arbitrary and unconstitutional. When Wheeler heard of the censorship he stated that such methods should qualify "the governor of the state for the dictatorship of the United States."³ The

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1. Daily Missoulian, April 17, 1937 (AP Report).
 2. Literary Digest, CXIII (May 1, 1937), 3.
 3. Daily Missoulian, May 19, 1937 (AP Report).

ex-presidential candidate, Alf Landon, coming to Wheeler's defense, denounced the move as contrary to the rights inherent in the First Amendment; others considered it unconstitutional on the basis of the Minnesota "gag law" case.⁴ Eventually, the public outcry forced the board to rescind its censorship.

Surprisingly, the Montana press took little notice of this event. The Daily Missoulian (Company) carried a long, front page story⁵ as did several other papers around the state, but only the Miles City Daily Star (Rep.) chose to editorialize on the subject:

Senator Wheeler is a leader in the battle against the president's recommendations for the re-organization of the federal judiciary. If the Kansas brand of censorship became prevalent through the land, he would be shrouded in darkness because of the silly misconceptions of those who are blind to the eternal fitness of things in a free nation. This exhibition of an asinine, bull-headed try at a dictatorship is more like a brazen attempt to keep people in ignorance because one woman thought the Wheeler speech in film dialogue form was "partisan and biased."

...The reaction in favor of Senator Wheeler is sweeping in like a mighty tide on the shores of a public consciousness. It will make a hero of the senior senator from Montana, who is following the dictates of his conscience, to be made the victim of such underhanded attacks.⁶

But comment was not so meager when Senator Wheeler made

4. Literary Digest, loc. cit.

5. April 17, 1937.

6. April 20, 1937.

a brief tour through the state in June. In April, Representative Jerry J. O'Connell, a New Deal Democrat who shared Butte as his bailiwick with Wheeler, had appeared before a group of union men in Butte Miners' Union Hall, where he discussed the president's proposal. During the course of his speech, after first asserting that he had been sent to Montana to speak in favor of the bill by the president, O'Connell endeavored to convince his audience that big business had been maneuvering in an attempt to stalemate changes in the court. He added that Senator Wheeler had aligned himself with these "economic royalists."⁷

Although the Montana Labor News (Labor) indicated favorable acceptance of O'Connell's statements by the nature of its write-up of the speech, this opinion was not shared by other newspapers. The Cut Bank Pioneer Press (Rep.) loosed some of its bitterest invectives against O'Connell while supporting the position of Wheeler:

Young Jerry O'Connell, congressman from the First Montana district in an address...said that he had been "sent" out to Montana to support the president's proposals. In the same address he attacked Senator Burton K. Wheeler as a "pseudo-liberal." The story of having been sent out here is probably just another figment of Jerry's expansive imagination. However, that may be, the young man's slurring reference to Senator Wheeler, and particularly his inference that our senior senator is not a sincere liberal would arouse sentiment in many of the latter's friends

7. Montana Labor News, April 29, 1937.

but for the fact that Jerry's mouthings, being the outpourings from an empty mind, are not of sufficient importance to justify the trouble required to resent them.

...That position [Wheeler's] has been won by hard fighting, by entire disregard of the possible effects of his advocacy upon his own political career, oft-times at the expense of agreeable personal relationships....Compared to Wheeler, O'Connell is just a rattle-pated kid who gives little present indication of ever remotely approaching the position held by Senator Wheeler, since to attain such a position one must possess at least an average equipment of brains, sincerity and character.⁸

But in spite of the continued support of his position by many Montana newspapers, Wheeler apparently realized that such arguments as those presented by O'Connell, with the friendly reception given them by labor's journal, could seriously injure his influence in both Butte-Anaconda and Great Falls where laboring elements were especially strong. So the senator took advantage of the slight lull which occurred in senate debate at the beginning of June to make a brief tour of the state. Eastern Montana had been suffering from a severe drought and Wheeler intended to investigate conditions for the purpose of obtaining the information necessary to draw up and sponsor a reclamation act.⁹ But he also took advantage of his trip to speak at the two centers of opposition

8. May 30, 1937. See also Daniels County Leader of Scobey, (Ind.) May 6, 1937.

9. Miles City Daily Star presented a story on Wheeler's investigation of drought areas and the possibility of his support for reclamation projects; June 8, 1937.

to his stand--Butte and Great Falls.

Montana was apparently looking forward to Wheeler's visit to the state in order to hear his viewpoint on the matter. The Fallon County Times of Baker (Ind.) wrote a highly commendatory editorial in anticipation of Wheeler's appearance in Great Falls.¹⁰ Bruce Steinmetz, president of the Cascade Trades and Labor Council, the group which was to sponsor Wheeler's speech in Great Falls, was similarly pleased with the fact that Wheeler would speak on the issue.¹¹

Nevertheless, there was one inharmonious note greeting the returning senator, that struck by the Great Falls News (Prog.), which informed him that he very likely was not supported in his stand by his Montana constituents:

Senator Murray and Congressmen O'Connell and O'Connor, we believe, will find the people of Montana are back of them in their stand for the President's program. We believe Senator Wheeler after he has given the subject more calm thought and deliberation, and after he has consulted with the many thousands of Montana citizens who have always backed him up, will also see that nothing is to be gained by making the fight on President Roosevelt's bill a bitter one.

When Senator Wheeler speaks in Great Falls on the night of June 5, we hope that in what he has to say on the subject of the President's proposal to change the Supreme Court, he will keep upper-most in mind the fact that thousands of his Montana friends who have stood loyally back of him from the day he was nominated for the legislature in 1910

10. May 27, 1937.

11. Montana Labor News, June 2, 1937.

in the Butte city auditorium to the present time, are not of the same opinion that he is as to the danger to the nation in the future.¹²

But before going to Great Falls, Senator Wheeler gave the commencement address at the Butte School of Mines on June 4, at which time he also was awarded an honorary doctor's degree. In general, he discussed his position as it related to the president's plan, but he also included sections in the speech which would especially appeal to the Butte miners:

I have supported President Roosevelt on all progressive legislation. I have not hesitated in the past to oppose him when he was wrong.

When the United Mine Workers were having difficulties in Pennsylvania, I went into that state and prosecuted the investigations into the abuses perpetrated by some companies on their employes. Numerous other instances might be cited to show how I stand with the cause of labor.

I expect to support him [Roosevelt] on all progressive legislation. But I have repeatedly opposed attempts to establish dictatorial powers and shall continue to do so. I fought the one man government plan under Hoover. I shall continue to do so. The fact that I oppose this measure however, does not mean that I will oppose Roosevelt on other matters. I expect to support liberal legislation for the workers and the farmers.¹³

Wheeler's Great Falls speech, delivered June 5, was a well-worded attack on the supreme court plan, designed to gain for his position the support of laboring elements as

12. May 28, 1937.

13. Montana Standard of Butte (Company), June 5, 1937.

well as other groups. Wheeler began his discussion by defending the liberal Justice Brandeis, whom he felt had been unduly injured by the insinuations regarding age included in the president's presentation of the bill. The president's argument that more liberals were needed on the bench was, to Wheeler, merely camouflage designed to hide his true intentions:

Would the appointment of any honest liberal to the bench insure the passage of all of the administration legislation? Of course not, for honest liberals will differ as to methods and means of accomplishing an objective although they might well agree on that objective. So it isn't liberals they want, but rubber stamps. If the bill is passed, what reputable liberal would accept the appointment? Even if I believe that every bit of legislation that has been proposed by this administration or which will be proposed in the next four years is right or would be right--I would oppose this plan with every ounce of energy I possess. I would call it reprehensible and dangerous. A precedent which will weaken our democratic system of government is too high a cost to pay for any plan no matter what its temporary and immediate benefits.¹⁴

Wheeler continued his assault on the New Deal with a statement designed to mollify the attitudes of both the ACM officials and the Butte miners over his opposition:

...The administration has said that the price of copper is too high and the upward swing must be stopped. The price of copper to which the president objects has made possible employment of hundreds of miners in my home town, Butte. They have for the first time in years been making a decent wage, or .

14. Great Falls Tribune, June 6, 1937.

working at all for that matter. The administration has tried to persuade these miners that their future depends on passage now of the Supreme Court plan, yet it is the administration that is lowering the price of copper and thereby reducing their wages. The Supreme Court cannot be blamed for that.¹⁵

He concluded his speech with a ringing appeal for a constitutional amendment:

Little New Deal legislation remains to be acted upon. Yet, after the Wagner labor act decision, the voices of administration leaders were raised still higher in insistence on the passage of the president's supreme court plan. The pack bayed louder and set themselves to make the kill. Secretary Wallace... raised his voice and cried for the icy blood of the nine old men....

We have public interest and public backing for quick action on any reasonable amendment. The time is ripe for action as provided for by the constitution. Action which would express the will of the people. Action which would be of permanent benefit. An action that would not endanger our form of government. Action of the people, by the people, and for the people.¹⁶

Wheeler's speeches generally received a warm response from Montana editors. The only paper not conforming to this general concensus was the Wolf Point Herald (Ind. Prog.) which saw fit to warn Wheeler that he was only injuring himself in attempting to defeat the reorganization bill:

It is equally distasteful to the people of Montana to disagree with the Senator. But so far as has been learned by listening and asking ques-

15. Ibid.

16. Ibid.

tions most of them, in this section, do disagree.... The people know the President too well to entertain any such charge [attempt at dictatorship].

...Senator Wheeler is not hurting the president nearly as much as he is hurting himself. The people of Montana owe the senator much and they are sorry to see him take this unfortunate and unnatural attitude. It is not just a difference of opinion, but bitter, relentless opposition to the things his state greatly needs in the present, critical circumstances.¹⁷

But the other papers which commented viewed Wheeler's speeches in a much more friendly light. The Montana Labor News (Labor) acclaimed Wheeler for his speech before the graduates of the School of Mines. It felt that Wheeler's talk had provided a refreshing change from the Company propaganda to which the students were usually subjected, and that perhaps he had helped the graduates a little in finding out what life was really like.¹⁸ The Montana Standard of Butte (Company) found itself in agreement with the Labor News on the quality of the commencement speech, stating that Senator Wheeler "...gave to his subject a masterly historic treatment that was both effective and enlightening."¹⁹ The Cut Bank Pioneer Press (Rep.) was now convinced that Wheeler's "...outlook on the national political scene has undergone a really fundamental upsetting...." adding that his break with

17. June 7, 1937.

18. June 10, 1937.

19. June 5, 1937.

the New Deal was merely the beginning of a general revolt against the president.²⁰ While the Daniels County Leader of Scobey (Ind.) disclaimed unqualified support of everything Wheeler had done, it expressed admiration for his willingness to fight for his convictions:

When Montanans want something in Washington, regardless of whether a New Dealer, a Democrat or a Republican sits in the White House, it is to Senator Wheeler they have looked for assistance. He has never failed them yet....

Wheeler has been bigger than his party, more liberal than his party and more independent when the rights and liberty of the people have been at stake. We may not always agree with his political views, but we admire his willingness to stand up and be counted and his refusal to barter his convictions in the political mart for pap and patronage doled out by political dictators.

Stick to your guns, Senator. Montana is with you stronger than ever.²¹

Although the Great Falls Fribune (Dem.) failed to comment, the attitude of court plan supporters was illustrated by an editorial appearing in the Lewistown Democrat-News (Ind. Dem.) which praised Wheeler's speeches:

The address delivered Friday evening by Senator Wheeler at Butte...illustrates his growth in intellectual attainments since he became a member of the Senate. It shows that he has in fact arrived at the stature of an "elder statesman."

20. June 11, 1937.

21. June 10, 1937.

...Even tho we should disagree with him in the future as we have occasionally in the past, we shall still insist that there is no man in Montana capable of rendering the services for his state and the nation that he is able to render.²²

In view of this editorial reception, Wheeler could very likely consider his visit to the state a success. Among the editors who normally opposed his stand he had scored a special victory. The comment on his Butte speech in the Montana Labor News would permit him to claim once again the support of the laboring element. The Great Falls Tribune failed on this occasion to editorialize, but it had given Wheeler's appearance a more than adequate front page coverage, and had, in the past, indicated that, while it would not support his stand, it would not oppose him personally. The Lewistown Democrat-News, while not agreeing with his position, lauded him for his statesmanship. The Bozeman Chronicle declined to comment on the speeches, leaving the Wolf Point Herald as the only paper continuing to condemn his viewpoint. However, other papers in that area, notably the Miles City Daily Star and the Havre Daily News, maintained their loyalty to his position. General Company policy had consistently upheld his stand, and, as illustrated by the Montana Standard, had praised highly his speeches, so he had no fear of political reprisal from that source. Consequently, Wheeler was able

22. June 6, 1937.

to return to Washington with some assurance that he had behind him the support of most of the Montana press.

CHAPTER VII

The End of the Debate

As early as May, the Great Falls Tribune (Dem.) had predicted that a compromise court plan would and must be formulated:

The present indications in the news confirm the belief on the part of the liberals in congress. The debate has reached the point where nothing new has been said for several weeks....

If the progressives have any political acumen left....They will agree on some definite and positive step forward that will consolidate some of the liberal gains of the past four years.¹

The Cut Bank Pioneer Press (Rep.) had agreed with the Tribune that a split might develop in the Democratic party over the court fight by predicting that the election which led to Roosevelt's feeling that he had a mandate from the people to reform the court might lead to the downfall of the Democratic party.²

Apparently the administration was inclined to concur with the opinions of both papers that a rapprochement between the supporters of the plan and the rebellious Democratic senators was needed to prevent an unbridgable split in the party, for on July 2, the Hatch-Ashurst-Logan compromise

1. May 7, 1937.

2. March 5, 1937.

amendment to the president's proposal was formally presented to the senate.

The part pertaining specifically to the increase of membership of the supreme court provided for the addition of "one justice for each justice over seventy-five, but not more than one appointment per calendar year." Following the death of a judge, no further appointments would be made unless the number of justices would then fall below nine under seventy-five years of age. Increases in the court's composition could never exceed two-thirds of its permanent (nine) membership.³ Actually, the only change included in this clause was the provision that only one justice could be added per year rather than six the first year as was contemplated by the original measure. The remainder of the amendment embodied most of the lower court proposals of the original bill, including the provisions for a proctor and for "roving" judges.

The position that the opposition would occupy in relation to the compromise was expressed by its leader, Senator Wheeler. He could see nothing in the compromise which changed the principle of the measure sufficiently to warrant his support, and felt that the aim of the compromise, like that of the original bill, was to humiliate and drive from the bench the older judges.⁴

3. Cong. Rec., July 2, 1937, 2740-41.

4. New York Times, July 3, 1937, 4.

In spite of his public attack on the compromise, President Roosevelt seemed to think that he could wean Wheeler away from the opposition and gain his support for the substitute measure. Originally, the Montanan had expressed a willingness to compromise on the addition of two new justices to the Supreme Court, and said that he would also be able to assure the resignation of Justice Sutherland through the intervention of Senator Borah.⁵ At that time Roosevelt had been unwilling to accept any compromise, but he now wished Wheeler's support of the Hatch-Ashurst-Logan amendment. At the personal request of Roosevelt's son, James, Wheeler accepted an invitation to call at the White House on July 6, the day that the debate on the compromise measure was to commence.⁶ After an hour-long conference, the senator emerged as unwilling to accede to the president's wishes as he had been previously. He allegedly had told Roosevelt that only if he were the president's worst enemy would he help him pass the bill. "But I am your friend, and this will kill your popularity. It is the difference between your coming out as a great president or as a bad one. I don't want to see that happen to you."⁷ Roosevelt declined to comment on the outcome. Following the conference, Wheeler returned

5. Iokes, Diaries, 175-76.

6. 168 Days, 251.

7. New York Times, July 7, 1937, 1.

to the senate floor where he took the lead in battling the compromise measure.

Senator Robinson, chosen to deliver the introductory speech, used virtually the same arguments in favor of the amendment as had been used in support of the original court plan--that nothing in the proposal could be considered unconstitutional, that the amending process was too slow when the same thing could be accomplished by legislative fiat, and that those now opposing the bill had at one time supported similar measures.⁸ After broaching the question of a possible filibuster to Wheeler,⁹ Robinson completed his often-challenged speech of introduction by mentioning briefly the attack made on the president by the wording of the judiciary committee report.¹⁰

Senator Carl A. Hatch then took the floor and began going through the compromise measure point by point, and was met, item by item, with the challenges of Wheeler. The main points of contention arose over the permissive "may" which Wheeler felt would allow undue humiliation of judges,¹¹ the question of whether or not age impairs abilities,¹² the

8. Cong. Rec., July 6, 1937, 6788-89.

9. Ibid., 6796.

10. Ibid., 6798-99.

11. Ibid., 6801-03.

12. Ibid., 6805.

matter of precedent for court packing,¹³ and the difference, if any, which existed between the compromise and the original bill. Wheeler contended that the purpose of the bill was not to aid incompetent judges in the performance of their duties by giving them assistants, but to obtain what Assistant Attorney General Joseph B. Keenan termed "six judges whom we can trust."¹⁴

The next day Senator Logan, in his supporting speech, launched a personal attack on both those who had signed the adverse judiciary committee report and those who opposed the president's plan on the senate floor. He contended that had it not been for the friendship of the president, many now holding office would not be in the senate, and that the opposition was breaking the president's heart by its traitorous actions. He then allegorized Shakespeare's Julius Caesar, picturing President Roosevelt as Caesar bleeding on the pillars of Pompeii while "Cassius" Wheeler and "Brutus" O'Mahoney looked on. He added that the opposition was attempting to destroy the president by trying to defeat his bill. Naturally, Logan was not permitted to go unchallenged, and it was brought out by Wheeler that it was not the president's support which gained many of the liberals their offices, for they had held their seats long before

13. Ibid., 6807.

14. Ibid., 6813.

Roosevelt had been nominated.¹⁵ Logan finished his speech with little further interruption the next day.

After Logan completed his statement, Wheeler took the stand to refute the administration supporters. Senator Wheeler's speech seemed to have a two-fold purpose. The primary one, of course, was to disprove the words of the previous speakers, but he also aimed an appeal directly at the Montana electorate.

Wheeler opened with an attack on the administration for the unscrupulous methods it was using to gain support-- methods which could directly affect Senator Wheeler, coming as he did from a state with a large farming population and an influential labor bloc. Wheeler mentioned that the proponents of the bill had paid men to go out and urge labor and farm leaders to condemn those opposing the plan. Opponents were being publicly denounced by the attorney general as economic royalists or as having sold out to Wall Street interests. He asserted that this was nothing more than intolerance and bigotry, mentioning his gratitude for coming from "the State of Montana where there is no intolerance." He then announced that he would not be intimidated by such nefarious actions.¹⁶ Wheeler next attacked the bill directly, stating that it was an immoral and unconstitutional attempt to coerce the judges,

15. Ibid., July 7, 1937, 6882-87.

16. Ibid., July 9, 1937, 6966-68.

that it was unduly humiliating for a justice to be given an assistant when it was not necessary, and that it did not eliminate the possibility of split decisions. He concluded that the substitute measure was identical with the original except that the packing would be done in slow-motion.¹⁷

On July 12, the administration took a definite step to prevent a possible opposition filibuster by enforcing Senate Rule XIX which provided: "No Senator shall speak more than twice on one question in debate on the same day without leave of the Senate, which shall be determined without debate."¹⁸ By recessing the senate instead of adjourning, it would be possible to seriously limit the number of speeches that a senator could make, since the legislative day could be continued indefinitely. The move was protested by Senators Wheeler and O'Mahoney, but the chair (Key Pittman) remained adamant.¹⁹

Although the rigid application of this rule did hinder somewhat the opposition forces, they were able to put their points across, in spite of the limitations imposed upon them, by the adroit use of leading questions. One example of this type of cross-examination can be found in Wheeler's question-

17. Ibid., 6968-91.

18. New York Times, July 13, 1937, 1.

19. Cong. Rec., 7033-36. For additional information also see New York Times, July 13, 1937, 1.

ing of his fellow enemy of the court plan, Senator O'Mahoney, over the matter of a proctor:

- BKW: Have the proponents given a reason for the revolutionary change in the assignment method?
- O'M: No explanation was given.
- BKW: Isn't it additionally dangerous because federal judges have the right to tell the jury, "This man is guilty" or "you should bring in a verdict in favor of the defendant or the plaintiff" as they see fit?
- O'M: That is absolutely correct.
- BKW: Under this law couldn't the Attorney General tell the Chief Justice that he wants judges sent from one place to another to take the place of the present judge on a particular case being tried?
- O'M: That is correct...
- BKW: What would have happened to Borah and myself if such a law had existed during the Daugherty administration?
- O'M: The Senator from Montana would not now be rising on the floor of the United States Senate to ask me questions.²⁰

The debate continued along this same stilted, seemingly rehearsed, basis until July 14, when Joseph T. Robinson died.²¹ Robinson had almost single-handedly led the fight for the administration, and his death was to portend the death of the bill for which he had fought.

Almost as soon as the news was announced in the senate, it was assumed that the fight over the bill was at an end, and that it would soon be recommitted to the senate judiciary committee from which it would never be recalled. But the New

20. Cong. Rec., 7042-44.

21. New York Times, July 15, 1937, 1.

York Times reported that Roosevelt "is said to hold that the passing of his leader should make no difference to his legislative program" which included the court bill.²²

Senator Wheeler, with the concurrence of other opposition senators, appealed to the president to drop the fight for the bill: "Joe Robinson was both a political and personal friend of mine. Had it not been for the Court Bill he would be alive today. I beseech the president to drop the fight lest he appear to fight against God."²³ But the president remained unwilling to abandon his plan. The next day he sent the now famous "Dear Alben" letter to Senator Alben W. Barkley, demanding that the fight for the bill continue. In the letter Roosevelt stated that "to abandon judicial reform at this session means the abandonment of all objectives." In reply to Roosevelt's refusal to permit the bill to be shelved, the opposition steering committee announced that it had enough votes to recommit the bill to the judiciary committee.²⁴

The Roosevelt communication thoroughly angered many of Robinson's senatorial friends who considered such a demand the day after his death as the height of disrespect for his loyalty to the president. Wheeler expressed the general indignation when he said:

22. Ibid.

23. Ibid.

24. Ibid., July 16, 1937, 1.

I cannot believe the president wrote such a letter. It would not be in character for the man who is the leader of our party, the president of our country and the man other liberals and I triumphed with in 1932 and 1936. I cannot believe President Roosevelt would make political capital out of a tragedy of this sort, but if it is so he must have accepted poor counsel in an hour when men who have lost a friend are particularly susceptible. When Joe Robinson passed away, I canceled all engagements and forgot the court bill completely. After Tuesday [the day of the funeral], I hope we will all take counsel with one another for the good of the country.²⁵

The entourage which accompanied Robinson's body to Arkansas possessed little of the dignity which usually attends such an occasion. The members of the senate who went to the funeral turned the train into a caucus room as the various factions represented make political capital of the event in their attempts to maneuver their respective candidates into the vacant office of floor leader. Proponents of the re-organization measure favored Alben W. Barkley whom the president had already indicated as his choice through the "Dear Alben" letter. Opponents of the bill and many of the veteran senators supported the candidacy of Byron P. "Pat" Harrison of Mississippi, although he had thus far remained neutral in the court fight.²⁶

Attending the funeral was the vice-president, John N. Garner, who then returned to Washington with the intention of

25. Ibid., 16.

26. Time, LXX (July 26, 1937), 9.

salvaging all that was possible from the court plan, without permitting it to continue to divide the Democratic party any further.²⁷ On July 22, Garner visited Wheeler in his office, and told him he could write his own ticket, asking only that he salvage, if possible, the sections of the bill relating to lower court reform. Wheeler agreed, if the provisions for roving judges would be deleted and if there would be no political reprisals against the opposition.²⁸

During the session of that day, Barkley was elected floor leader over Harrison by a vote of 38-37.²⁹ But his election could do nothing to save the court bill. Shortly after the votes were tallied, Senator Logan, one of the co-authors of the compromise measure, made the motion that S. 1392 and its amendments be recommitted to the judiciary committee. The motion passed, 70-20; the long debate over the president's bill ended with the following note of relief which was generally echoed throughout the Senate chambers:

Logan: The Supreme Court will not be considered
[in the final bill].

Johnson, (Calif.): The Supreme Court is out of the way?

Logan: The Supreme Court is out of the way.

Johnson: Glory be to God.³⁰

27. Ibid., August 2, 1937, 11.

28. New York Times, July 23, 1937, 1.

29. Ibid.

30. Cong. Rec., July 22, 1937, 7381.

Senatorial events during this period were compressed into such a brief time, and were so interrelated, that press opinion on the matter can be examined more adequately in a separate section rather than phase by phase as has been done previously.

As the debate went into its final weeks, the Montana press renewed its interest in the senate fight. Although incidents occurred at a rapid rate, the various trends failed to alter the lines already firmly forged among Montana editors.

The first significant movement was the introduction of the Hatch-Ashurst-Logan amendment. Reactions of the Montana press to the compromise followed the previously defined alignment. The supporters of the president's bill felt that the compromise removed any objections which might have existed regarding the original proposal; the opposition felt that the compromise made no fundamental change. There was only one non-committal remark made, that of the Montana Standard of Butte (Company), which dwelt as much on the possibility of Robinson's appointment to the Supreme Court bench as on the plan itself.³¹

Although the Great Falls Tribune (Dem.) did not comment on the compromise measure, the Lewistown Democrat-News (Ind. Dem.) illustrated the opinion of the president's supporters:

A substitute for the original bill proposing changes in the membership of the United States

31. July 8, 1937.

Supreme Court has been introduced...The latest proposal removes the most serious objections made against the first measure and leaves the matter in a much more favorable position for final action....It has always been the conviction of this newspaper that a great deal of unnecessary heat has been engendered by this controversy....The clamorous and mildly intemperate contention that we are facing a constitutional crisis of major magnitude never particularly appealed to us for the reason that we were never able to be convinced that the controversy would result in any radical innovation. Once again the "republic is saved"....³²

On the other hand, the Miles City Daily Star (Rep.) felt that the compromise represented an admission on the part of the administration that its case was losing support, and insisted that:

"...The so-called compromise on the court bill may be a horse of another color, but it remains in the equine class just the same....Under the new court bill the ultimate object would be to pack the Supreme Court in line with the ideas of the executive, despite the fact that the process would take more time and might seem to some observers less painful."³³

The Pondera County News of Conrad (Rep.) insisted: "...This is in no sense of the word an honest compromise, and at the bottom of the new proposal is [sic] as devious and deceptive as its predecessor..."³⁴ The Dawson County Review of Glendive (Rep.) expressed the conviction that: "There is little evidence as yet...that very many, if any of the

32. July 7, 1937.

33. July 15, 1937.

34. July 22, 1937.

national legislators have been fooled by the apparent changes in the so-called compromise bill."³⁵

Logan's speech in support of the president's plan, and his assertion that the senators opposing the plan sought to destroy the president, brought immediate response from two of Montana's opposition papers. The Helena Record-Herald (Company) considered Logan's accusations ridiculous and challenged the senate to reassert its rights as a law-making body.³⁶ The Kalispell Daily Inter-Lake (Ind. Rep.) contended that: "...If it should happen that the President is wrecked as a result of this question, we should say that he alone will be responsible for his own downfall by seeking too much power."³⁷

When Wheeler rose in reply to Logan's speech, Montana editors gave only a complimentary response. Administration supporters retained a tactful silence, but the opposition to the bill was effusive in its praise. That a senator of Wheeler's caliber "should vigorously take a stand against the proposition" lent special importance to the matter for the Carbon County News of Red Lodge (Rep.), since, in the editor's opinion, Senator Wheeler was "noted for clear and sane thinking."³⁸ The Helena Record-Herald (Company) appre-

35. July 22, 1937.

36. July 9, 1937.

37. July 8, 1937.

38. July 16, 1937.

ciated the manner in which Wheeler "called a spade a spade, and he made it apparent that he would not hold back any of his punches."³⁹ The Daily Inter-Lake (Ind. Rep.) found Wheeler's verbal lashing of administration methods as worthy of special note:

In the opening attack on the President's Supreme Court bill today, Senator Wheeler said that never before had he seen such an appeal to the prejudices of the people as had been made in support of the measure, and there are those who will agree with him that this is a favorite method of the administration in the handling of political questions.

Senator Wheeler, leader of the opposition, is one of the most able men in debate and knows all the tricks of parliamentary procedure, and we think before it is all over the administration forces will know they have been in a battle.⁴⁰

After Wheeler's speech, the editors had little on which to comment until the death of Robinson. They then seemed to have realized that the end of the court fight was in sight, for along with their eulogies of Robinson and his abilities, they included speculative judgments on the eventual fate of the court plan.⁴¹

39. July 13, 1937.

40. July 9, 1937.

41. For editorial comment on Robinson's death see: Bozeman Chronicle (Ind. Dem.), July 16, 1937; Great Falls Tribune (Dem.), July 16, 1937; Montana Standard of Butte (Company), July 15, 1937; Glasgow Courier (Rep.), July 22, 1937; Havre Daily News, (Rep.), July 20, 1937; Helena Record-Herald (Company), July 15, 1937.

The Montana press was not to remain for long in a state of anticipation regarding the eventual outcome of the fight. Shortly after the death of Robinson, the court plan was recommitted with the assurance that any future bill for court reform would not contain any clauses pertaining to the Supreme Court. Most of the Montana reaction reflected praise for the role Wheeler played in attacking the plan, rather than elation over the mere fact that the plan had been defeated.⁴² The only inharmonious note struck was that of the Bozeman Chronicle (Ind. Dem.) which remained faithful to the New Deal to the end:

Undoubtedly the killing of the bill drew greatest applause from the rich--the economic royalists, the vested interests or whatever name seems applicable. To many of us the death of the bill seems deplorable. We believe the president believed the court bill to be the gateway to improved conditions for the common people of the nation.

It may be that the opposition to President Roosevelt, led by the Montana senator who has been dubbed "Bounding Burt," and is said to have presidential aspirations in 1940 has been strengthened by the defeat of the bill. The action of the senate represented the first major setback suffered by Roosevelt in his more than four years of leadership.⁴³

But the other administration supporters, the Great Falls Tribune (Dem.), the Lewistown Democrat-News (Ind. Dem.), the

42. Great Falls News, August 6, 1937.

43. July 24, 1937.

Montana Labor News (Labor), and the Wolf Point Herald (Ind. Prog.) failed to join the Chronicle in its denunciation of the "economic royalists" responsible for the defeat of the president's bill. They chose instead to completely ignore the fact that the fight for the reorganization bill had come to an end.

The opposition papers took many different slants in their views of the defeat of the plan, but always complimented Wheeler highly for his role. The Pondera County News of Conrad (Rep.) thanked the victorious senator for saving American liberties: "...There is little doubt that the people of this state and every state owe Wheeler more than a common debt of gratitude for undoubtedly saving the liberties of the American people...."⁴⁴ Others felt that "Whether there would have been much of a contest if he [Wheeler] had not taken his courageous stand is doubtful."⁴⁵ The praises lavished upon Wheeler by the Dawson County Review (Rep.) were perhaps the most effusive:

In the last five months Senator Burton K. Wheeler has become one of the great men of the day. Always a liberal of advanced views, a supporter of much of the New Deal and a close friend of the president, he broke very definitely with the president over the project to pack the Supreme Court.

44. July 29, 1937.

45. Meagher County News of White Sulphur Springs (Rep.), July 28, 1937. See also Wibaux Pioneer Gazette (Ind.), July 22, 1937.

He denounced the scheme as soon as it was made public last February and became one of the foremost leaders of the opposition. He staged a brave battle and shares with other great senators the laurel leaves of victory.

...We say all honor to Senator Wheeler and the other noble patriots who had the courage to oppose the president and to save our form of government.... Already administration spokesmen are busy "smearing" Senator Wheeler and other true patriots who dared turn down the court packing plan.

The bitter vials of their wrath are turned on full blast...They...are being dubbed reactionaries, "economic royalists," "princes of privilege," dishonest turncoats, and traitors to their party. Openly plans are being made to beat them in the coming election....

Senator Wheeler deserves re-election and we believe that in spite of all Farley can do to smear him he will receive the vote of innumerable patriotic Democrats and Republicans alike in 1938.⁴⁶

The Big Timber Pioneer Press (Ind.) seconded the opinion of the Dawson County Review, but seemed to feel that "beating the president" should gain for Wheeler additional praise:

For the first time in the history of the United States, so far as history records, Senator Burton K. Wheeler of Montana accomplished the remarkable feat of "licking the president" as many daily papers term the end of the long drawn out fight over the supreme court bill....

Of the ninety-six members of the senate, Senator Wheeler seems to have been the only one to lead the fight, endangering his chances to name any further federal appointees in this state, and by so doing to earn the title among Washington correspondents of "the spear head of the opposition."

46. August 5, 1937.

Friends of the senator, and there must be many thousands in this state...are not surprised that he took up what seemed to be a hopeless fight and that he won.

He fought his way up in this state against terrific corporation odds, won his way to the top in Washington by unusual ability, and will stay at the top for many years to come.⁴⁷

The end of the debate, with Wheeler's victory, brought no significant alteration in the previously established alignment among Montana newspapers. Throughout the last phases, the Democratic papers maintained their strong support of the president's plan; the independent and Republican journals, along with the Company dailies, continued to condemn the president's plan, and when the bill was recommitted to the judiciary committee, to praise highly the role Wheeler had played in its defeat.

47. July 29, 1937.

CHAPTER VIII

Conclusion

In conclusion it can be seen that there were actually three areas of consideration in this study. The first involved events as they occurred in the nation's capitol, the second, Montana press reaction to the court plan, and the third, Wheeler's opposition and the Montana opinion on his stand.

On the national level, Roosevelt's proposal served as the catalytic force which, for the first time, brought about an open split in Democratic party ranks. This break can possibly be considered as the result of the president's tactical errors in presenting his plan. Predicating the need for his proposal upon the allegation that age was synonymous with inefficiency and inadequacy lost him the support of older senators as well as some of the liberal justices on the court, and gave Democratic senators a plausible excuse for breaking from normal party loyalty. His failure to mention past decisions of the court as reason for reform also enabled his opponents to label the plan as an attempt at dictatorship rather than as a sincere effort to aid the country by changing the complexion of a judiciary which had negated New Deal legislation. And, of course, the unexpected nature of the proposal served to hinder the

organization of administration supporters, giving the opposition an advantage which it did not pass up.

Although the president's court reorganization plan and the resultant congressional fight impaired Democratic unity on a national level, vocal Democratic newspapers in Montana favored the proposal unanimously throughout the entire period. These newspapers offered in support of their stands arguments which accused the Supreme Court of dictatorship, supported the desirability of lower court reform, and iterated the need for changes in the higher court to insure the continuity of the liberal legislation required to bring the country out of economic depression. The opponents of the bill, those papers listed as Republican or independent, based their contentions on the assertion that the plan would lead to dictatorship by the president, and that age was no indication of inability to perform duties adequately.

Wheeler's opposition created an unusually paradoxical situation among the Montana press. His action bridged partisan politics and to a certain extent upset the normal line-up. The Democratic and labor papers split somewhat over this event, with such journals as the Great Falls Tribune and the Lewistown Democrat-News which favored the proposal, complimenting him for the caliber of his opposition. But it should be noted that his opposition made no difference to their positions on the president's bill. They continued

to support the plan in spite of Wheeler's stand, thereby placing themselves in disagreement with him. Others, such as the Bozeman Chronicle and the Wolf Point Herald, made their differences of opinion with the senator more obvious by threatening him with political reprisals. On the other hand, his political opposites, the Republican and Company papers, usually his bitterest foes, for the first time found themselves in agreement with their senior senator. This move across party lines is the first indication of Democratic opposition to Wheeler in Montana, a disagreement which was to culminate later with his defeat in the 1946 primary elections when he failed to win the support of counties having a normally heavy Democratic vote.

The initial disapproval of Democratic papers over Wheeler's position was made steadily more obvious as the debate continued. Wheeler's "Looking Forward" speech brought some compliments from the Great Falls Tribune, but did not alter this powerful Democratic paper's support of the plan. Pro-administration journals further indicated their dissent with Wheeler by their refusal to comment over his testimony before the Judiciary Committee. Although his tour of the state wrung some compliments from his partisan allies, it still did not gain him their support. In all of these situations, Wheeler received the whole-hearted backing of only his normal opponents, the Republican and Company papers.

Wheeler's first break did not seem to have any immediate effect on his political career, for in 1940 he took every county in Montana, receiving the largest vote ever given a political candidate in the state.¹ However, it must not be forgotten, when considering this election, that Wheeler's opponent, E. K. Cheadle, was an unusually weak candidate and was out of the state at the time, thus enabling the senator to defeat him virtually without campaigning.

During the next six years in the senate, Wheeler showed an increasing tendency to side with Republicans and southern Democrats in defiance of his normal party allegiance. This fact served to break more completely than previously his relationships with the Democratic party in a state which remained loyal to Roosevelt and the New Deal. Montana Democrats had apparently been willing to forgive Wheeler for his first break with the New Deal, but the consistency with which he followed this policy ultimately lost him the approval of the laboring elements and many of the Democratic farmers' groups. Wheeler retained the support of the Republican and independent journals for his defiant stand, but these editors would offer him no assistance in elections, for they had their own partisan candidates to support. The loss of his

1. Official Election Returns for the State of Montana, 1940. Wheeler, 176,753; E. K. Cheadle, 63,941.

er supporters reached a high point in 1946 when Wheeler led to win the primaries over Leif Erickson.²

Report of Official Canvass of Vote Cast at Primary Election, July 16, 1946. Wheeler, 44,513; Leif Erickson, 49,419. It is also alledged that another factor leading to Wheeler's defeat was the large number of Republicans who crossed party lines and voted against him on the Democratic primary ballot.

BIBLIOGRAPHY

I. Directories

Ayer, N. W. and Son. Directory of Newspapers and Periodicals. Philadelphia, Penn: N. W. Ayer & Son, Inc., 1937. 1-1314.

Editor and Publisher. International Year Book, Vol. 87, No. 9. New York: Editor & Publisher Co., Inc., February 26, 1954. 1-432.

II. Primary Sources

A. Government Documents

Congressional Record. 75th Congress, 1st Session (January-August, 1937).

United States Congress. Senate. Reorganization of the Federal Judiciary. Hearings before the Committee on the Judiciary. United States Senate, 75th Congress, 1st Session, on S. 1392, a bill to reorganize the Judicial Branch of the government. Washington: U. S. Government Printing Office, 1937.

United States Reports. Minneapolis, Minn: West Publishing Co., 1935-37.

Report of the Committee on the Judiciary. 75th Congress, 1st Session. Senate Report No. 711. Washington: U. S. Government Printing Office, July 14, 1937. 1-23.

B. Collected Papers and Memoirs

Hughes, Charles Evans. The Supreme Court of the United States. New York: Garden City Publishing Company, Inc., 1928. vii-269.

Ickes, Harold I. Secret Diary of Harold I. Ickes, Vol. II, The Inside Struggle, 1936-39. New York: Simon & Shuster, 1954. 3-759.

Good source for events relating to the court fight which were not made public.

Jackson, Robert H. The Struggle for Judicial Supremacy. New York: Alfred A. Knopf, 1941. xx-361.

Written to justify Roosevelt's court proposal. Of limited value.

Roosevelt, Elliott and Joseph P. Lash, (Edits.) FDR, His Personal Letters, 1928-1945, Vol. III. Foreward by Eleanor Roosevelt. New York: Duell, Sloan and Pearce, 1950. xvii-738.

Letters relating to the court fight of special importance. Reveal his attitude towards whole matter. Show his confidence in his ability to shove measure through Congress regardless of the opposition. Indicate his unwillingness to compromise.

Rosenman, Samuel I., Comp. The Public Papers and Addresses of Franklin D. Roosevelt, Vol. II, The Constitution Prevails. New York: The MacMillan Company, 1941. xliiv-659.

Not too important on the court packing issue. Adds nothing that cannot be found in other sources.

Working With Roosevelt. New York: Harper & Brothers, 1952. xiv-560.

Good for an insight into the Roosevelt mind.

Smith, A. Merriman. Thank You, Mr. President, (2nd Edit.). New York: Harper & Brothers, 1946. x-304.

Swisher, Carl Brent. (Edit.) Selected Papers of Homer Cummings, Attorney General of the United States, 1933-39. New York: Charles Scribner's Sons, 1939. xxvi-316.

Not particularly valuable on the court issue.

Uehle, Louis B. Hidden Threads of History, Wilson Through Roosevelt. New York: The MacMillan Company, 1953. xix-300.

Nothing Pertinent.

C. Newspapers: National

New York Times, 1936-37.

D. Newspapers: Montana papers cited

Big Timber Pioneer Press (Ind.)

Billings Gazette (Company)

Bozeman Chronicle (Ind. Dem.)
Cascade Courier (Ind.)
Columbus News (Ind.)
Cut Bank Pioneer Press (Rep.)
Daily Inter-Lake, Kalispell (Ind. Rep.)
Daily Missoulian, Missoula (Company)
Daniels County Leader, Scobey (Ind.)
Dawson County Review, Glendive (Rep.)
Fallon County Times, Baker (Rep.)
Fergus County Argus, Lewistown (Rep.)
Glasgow Courier (Rep.)
Great Falls Tribune (Dem.)
Havre Daily News (Rep.)
Helena Record-Herald (Company)
Lewistown Democrat-News (Ind. Dem.)
Livingston Enterprise (Ind.)
Meagher County News, White Sulphur Springs (Rep.)
Miles City Daily Star (Rep.)
Mineral Independent, Superior (Ind.)
Montana Labor News, Butte (Labor)
Montana Standard, Butte (Company)
Phillips County News, Malta (Rep.)
Plentywood Herald (Ind.)
Pondera County News, Conrad (Rep.)
Roosevelt County News, Wolf Point (Rep.)
Sanders County Independent Ledger, Thompson Falls (Ind.)

Townsend Star (Ind.)
Libaux Pioneer Gazette (Ind.)
Wolf Point Herald (Ind. Prog.)

E. Newspapers: Montana papers not cited

Augusta News (Non-Partisan)
Bainville Democrat (Dem.)
Belgrade Journal (Dem.)
Belt Valley Times (Ind.)
Billings Times (Dem.)
Boulder Monitor (Ind.)
Bridger Times (Dem.)
Camas Hot Springs Exchange (Non-Partisan)
Chester Reporter (Rep.)
Chinook Opinion (Rep.)
Choteau Acantha (Ind. Rep.)
Circle Banner (Ind.)
Daniels County Free Press, Scobey (Ind.)
Denton Recorder (Ind. Rep.)
Dillon Examiner (Ind. Rep.)
Dillon Tribune (Dem.)
Dutton Sentinel (Dem.)
Ekalaka Eagle (Ind.)
Fairfield Times (Ind.)
Flathead Courier, Polson (Ind.)
Flathead Monitor, Kalispell (Dem.)

Forsyth Independent (Dem.)
Forsyth Times Journal (Rep.)
Fort Peck Press (Ind.)
Froid Tribune (Rep.)
Geraldine Review (Dem.)
Glacier County Chief, Browning (Ind.)
Glasgow Times (Dem.)
Grass Range Review (Ind.)
Hardin Tribune (Ind. Rep.)
Harlem News (Ind. Dem.)
Harlowton Press (Rep.)
Harlowton Times (Rep.)
Hill County Bulletin, Havre (Dem.)
Hingham American (Ind.)
Jefferson Valley News, Whitehall (Dem.)
Jordan Tribune (Ind.)
Judith Basin Star, Hobbs (Ind.)
Kalispell Times (Rep.)
Lake County Vista, Polson, (Dem.)
Laurel Outlook (Ind.)
Liberty County Farmer, Joplin (Dem.)
McCone County Sentinel, Circle (Ind.)
Madison County Forum, Sheridan (Ind.)
Manhattan Community Searchlight (Ind.)
Meagher County Democrat, Harlowton (Dem.)
Medicine Lake Wave (Rep.)
Midland Empire Farmer, Hysam (Ind.)

Midland Review, Billings (Ind.)
Missoula County Times (Ind.)
Montana Clarion, Ryegate (Ind.)
Mountaineer, Big Sandy (Rep.)
Phillipsburg Mail (Non-Partisan)
Picket-Journal, Red Lodge (Dem.)
Poplar Standard (Ind.)
Powder River County Examiner, Broadus (Ind.)
Savalli Republican (Rep.)
Redstone Review (Non-Partisan)
Richland County Leader, Lambert (Ind.)
River Press, Fort Benton (Ind. Rep.)
Ronan Pioneer (Ind.)
Roundup Record-Tribune (Ind.)
Saco Independent (Dem.)
Searchlight and Republican, Culbertson (Rep.)
Shelby Promoter (Ind.)
Kidney Herald (Ind.)
Silver State Post, Deer Lodge (Ind.)
Terry Tribune (Ind.)
Three Forks Herald (Ind.)
Troy Ranger (Ind.)
Valerian, Valier (Dem.)
Western News, Hamilton (Dem.)
Western Progressive, Helena (Dem.)
Whitefish Independent (Ind.)
Whitefish Pilot (Dem.)
Winifred Times (Ind.)

III. Secondary Sources

A. Books

Alsop, Joseph and Turner Catledge, The 168 Days. New York: Doubleday, Doran & Co., Inc., 1938. viii-312.

A detailed account of the court fight by two New York Times Correspondents. Only complete discussion of the issue available. An invaluable source.

Boudin, Louis B., Government by the Judiciary. 2 vols. New York: William Godwin, Inc., 1932.

Written to encourage and justify Supreme Court reform. Good for examples it gives of past attacks on the court and attempts to reform it.

Carr, Robert K., The Supreme Court and Judicial Review. New York: Farrar & Rinehart, Inc., 1942. xiv-304.

Corwin, Edward S., Twilight of the Supreme Court. New Haven: Yale University Press, 1934. xxvii-236.

Published to support the constitutionality of the NIRA, but when the author is not concerned directly with this purpose he gives a good analysis of the development of constitutional law.

Farley, James A., Jim Farley's Story, The Roosevelt Years. New York: Whittlesey House, McGraw-Hill Book Co., Inc., 1948. x-388.

Flynn, John T., Country Squire in the White House. New York: Doubleday, Doran and Co., Inc., 1941. vi-122.

_____ The Roosevelt Myth. New York: The Devin-Adair Company, 1948. x-438.

Gosnell, Harold F., Champion Campaigner, FDR. New York: The MacMillan Company, 1952. viii-235.

Gunther, John, Roosevelt in Retrospect. New York: Harper & Brother, 1950. xii-410.

Haines, Charles G., Role of the Supreme Court in American Government and Politics, 1789-1835. Berkeley and Los Angeles: University of California Press, 1944. xii-679.

Excellent for background on Supreme Court history.

Hitchett, Charles Herman, The Roosevelt Court. New York: The MacMillan Company, 1948. xvi-314.

Written after Roosevelt had gained control of the court through appointments. A good epilogue to the court fight.

Musey, Merlo J., Charles Evans Hughes, Vol. II. New York: The MacMillan Company, 1951. 1-811.

_____, Supreme Court Crisis. New York: The MacMillan Company, 1937. vi-108.

Written at the request of the opposition Democrats for popular consumption. Virtually useless.

Wisher, Carl Brent, Roger B. Taney. New York: The MacMillan Company, 1935. x-608.

Excellent study of the Taney Court. Shows how social, economic, political beliefs and pressures affect decisions of the justices.

Periodicals

It should be pointed out that, among the periodicals listed, the Nation and the New Republic were especially important as sources for gaining the liberal viewpoint on the court issue; the Literary Digest and Current History provided valuable interpretations of events taking place and, although against the court plan, were less obviously biased than the liberal magazines; and Time, Newsweek and Business Week were the best sources for straight reporting of the fight although they contained some bias in their interpretations.

"After the Court Bill," Christian Century, LIV (August 4, 1937), 965-67.

"After the Great Fight," Business Week (July 31, 1937), 48.

Allen, R. S. "Roosevelt's Defeat: the inside story, with editorial comment," Nation, CXLV (July 31, 1937), 115-16.

A good summation of the fight and is valuable for its analysis of the factors contributing to the defeat. Has a pro-New Deal bias and deals rather harshly with Senator Wheeler.

"Wheeler and the Liberals," Current History, LI (March, 1940), 25-27.

Speculates on the possibility of Wheeler being nominated for the presidency. Predicts failure because of his break with the New Deal over the court packing plan.

"As Bad as the Original; Court-packing Bill," Business Week (July 10, 1937), 64.

Basso, Hamilton. "Burton the Bronc," New Republic, CII (April 22, 1940), 527-30.

Good biographical sketch of Wheeler's political career. Generally complimentary.

Bendiner, Robert, "Man Who Would Be President," Nation, CL (April 24, 1940), 532-36.

Sketch of Wheeler's political career. Adequate.

"The Big Debate," Time, XXIX (March 1, 1937), 10-13.

"The Big Debate," Time, XXIX (March 29, 1937), 14-15.

"Big Fight to Pack the Supreme Court," Business Week (April 3, 1937), 14.

Black, Ruby A. "Mighty Battle of the Courts," Independent Woman, XVI (March, 1937), 75-76.

Good, unbiased analysis of pro and con arguments on the Supreme Court issue.

Blakely, P. L. "Liberalism v. the Court," Review of Reviews, XCV (April, 1937), 54.

Brown, Haywood, "Those Liberals Again," Nation, CXLIV (March 6, 1937), 269.

"Expert Testimony," Nation, CXLIV (March 27, 1937), 353.

"Some Sleeping Beauties; Drive Against the Roosevelt Plan a Piece of Camouflage," Nation, CXLIV (June 26, 1937), 730.

"Chambermaid's Day," Time, XXIX (April 5, 1937), 11-13.

"Champions of the Senate Wage Wordy War Over the President's Plan," Newsweek, X (July 17, 1937), 8-9.

Clark, Grenville, "Supreme Court Issue," Yale Review, XXVI (June, 1937), 669-88.

An exceptionally well-written and astute review of the issues at stake in the court fight. Gives a fairly good background.

Collins, M. "To the Roots of Court Reform," Commonweal, XXVI (May 28, 1937), 122-23.

"Compromise Court Bill Before the Senate," Christian Century, LIV (July 21, 1937), 915.

"Constitutional Crisis," Commonweal, XXV (February 26, 1937), 481-82.

"Court and Fascism," Nation, CXLIV (February 20, 1937) 200-201.

"Court and the Press," Current History, XLVI (September, 1937), 19-24.

"Court and the Willful Men," Business Week (February 20, 1937), 16-17.

"Court as the Guardian of Liberty," New Republic, XC (March 10, 1937), 124-25.

"Court Balloon; Compromise Proposals Heard By Judiciary Committee," Literary Digest, CXXIII (April 3, 1937), 4-5.

"Court Bitter-Enders," New Republic, XCI (July 21, 1937), 306.

"Court Compromise," Current History, XLVI (August, 1937), 9-11.

"Court Fight Continues," New Republic, XCI (July 21, 1937), 306.

"Court Issue Clarified," Current History, XLVI (April, 1937), 15-17.

"Court Issue Supplanted in Congress by New Labor Bill," Congressional Digest, XVI (June, 1937), 161-63.

"Court Plan Dead But Not Buried," Literary Digest, CXXIII (May 29, 1937), 3-4.

Discussion of possible candidates to fill vacancy left by Van Devanter's resignation.

- "Court Plan Leaps Over Party Lines," Literary Digest, CXXIII (February 20, 1937), 3-5.
- "Court Plea to the Public," Literary Digest, CXXIII (March 20, 1937), 4-5.
- "Court Reform: A Recess," Nation, CXLV (August 14, 1937), 163.
- "Court Vacancy," Newsweek, XIV (November 27, 1939), 13.
- "Courts Reverse: Justice Roberts' Change of Mind Fans Fire Over Enlargement Plan," Literary Digest, CXXIII (April 10, 1937), 8.
- "Courts: Roosevelt Prepares Infusion of New Blood," Newsweek, IX (February 13, 1937), 7-9.
- "Court Rules On Itself," Commonweal, XXV (April 23, 1937), 707-709.
- "Crisis in the Court Fight," Business Week (May 15, 1937), 72.
- "Curbing the Supreme Court," New Republic, XC (February 17, 1937), 31-32.
- Denny, L., "Wheeler as a Candidate," Current History, LI (March, 1940), 26.
- "De Senectute," Time, XXIX (February 15, 1937), 16-19.
- "Evolution of a Senator," Time, XXXV (June 24, 1940), 15.
- "Excerpts From Address, Now, of FDR, With Comments," Time, XXIX (March 15, 1937), 14-15.
- "Experts on the Court," New Republic, XC (March 31, 1937), 226.
- "Eyes On Wheeler," Newsweek, XIV (November 13, 1939), 17.
- "FDR Cracks Whip for Court Plan," Business Week, (February 27, 1937), 15.
- Flynn, John T., "Other People's Money: Open Forums on the Court...", New Republic, XC (March 10, 1937), 138.
- "Forest v Trees," Time, XXIX (July 14, 1937), 11-12.
- "Fortune Survey: Roosevelt and the Supreme Court," Fortune, XVI (July, 1937), 96-98.

"Great Debate," Christian Century, LIV (March 10, 1937), 311-14.

"The Great Debate," Time, XXX (July 19, 1937), 10-11.

Green, Leon, "Unpacking the Court," New Republic, XC (February 24, 1937), 67-68.

"Half a Loaf," Commonweal, XXVI (August 6, 1937), 353-54.

Hendrick, B. J., "Senate Report No. 711," Saturday Review of Literature, XVI (June 26, 1937), 7.

A discussion of the literary value of the judiciary committee report. Not pertinent, but interesting.

"Historic Sideshow," Time, XXIX (April 12, 1937), 16-17.

"How Big a Revolt Against FDR?" Business Week (June 19, 1937), 26-27.

"How to Bust Court Filibuster," Business Week (July 17, 1937), 14.

"Is It To Be Buchanan," Nation, CXLIV (March 6, 1937), 255.

"It Must Not Pass," Business Week, (February 20, 1937), 64.

"John Doe Also Speaks Mind On President's Proposal," Newsweek, IX (February 20, 1937), 17-19.

Laski, Harold, "An Englishman Looks at the Court," New Republic, XC (March 3, 1937), 104-105.

Leach, H. G., "The Supreme Court," Forum, XCVII (June, 1937), 321-22.

Lerner, Max, "Great Constitutional War," Virginia Quarterly Review, XVIII, No. 4 (October, 1942), 530-45.

Brief synopsis of the court fight written in retrospect, but still containing obvious pro-administration biases on the issue. Valuable for analysis of inside maneuvers.

"Lippman and the Court," Nation, CXLIV (February 27, 1937), 230.

Llewellyn, K. N., "Proposed Amendment," Survey Graphic, XXVI (February, 1937), 88-91.

- "President Faces the Court," New Republic, XC (March 17, 1937), 153.
- "President Slips One Over," Catholic World, CXLV (May, 1937), 129-36.
- "Priest v Priest," Time, XXIX (March 8, 1937), 14.
- "Projected Changes," Catholic World, CXLIV (March, 1937), 748.
- "Purging the Supreme Court," Congressional Digest, XVI (March, 1937), 86-87.
- "Purging the Supreme Court," Nation, CXLIV (February 13, 1937), 173-75.
- "Quarterback's Surprise," Time, XXX (July 26, 1937), 9.
- "Quiet Crisis," Time, XXIX (March 22, 1937), 14-16.
- Randall, J. G., "Interrelation of Social and Constitutional History," American Historical Review, XXXV (October, 1929), 1-13.
- Discussion of the motives which affect supreme court justices in handing down decisions. Invaluable for a general background on the supreme court.
- "Reforming the Judiciary," Current History, XLV (March, 1937), 15-16.
- "Requiescat in Committee," Time, XXX (August 2, 1937), 11.
- "Roosevelt Looses: How?" Catholic World, CXLV (September, 1937), 641-48.
- "Roosevelt Wants Right of Way," Business Week (February 13, 1937), 13-14.
- Roper, Elmer B., Jr., "Supreme Court 'Opinion'," Literary Digest, CXXIV (July 31, 1937), 23.
- Ryan, J. A. and W. F. Sands, "Supreme Court Debate," Commonweal, XXV (April 16, 1937), 683-86.
- "Senate Holds Fate of Court Plan," Literary Digest, CXXIII (February 27, 1937), 3-5.
- "Senate Spars for Time on Reform Bill," Newsweek, IX (February 27, 1937), 10.
- Shaw, Albert, "Compromise Plan as Bad as the Original," Literary Digest, CXXIV (July 24, 1937), 21.

- _____ "Politics and the Supreme Court," Review of Reviews, XCV (May, 1937), 34-35.
- "Should Congress Vote the President the Power to Enlarge the Supreme Court," Congressional Digest, XVI (March, 1937), 91.
- "Sound and Fury Over Free Speech," Literary Digest, CXXIII (May 1, 1937), 3.
- "Speak Frankly, Mr. President," Business Week, (March 6, 1937), 68.
- Stone, I. F., "Munichman From Montana," Nation, CLII (January 11, 1941), 35-36.
- "Storm Clouds in the Legislative Sky," Literary Digest, CXXIII (April 24, 1937), 3-5.
- "Supreme Court Controversy; Pro and Con Arguments," Congressional Digest, XVI (March, 1937), 66-96.
- Thorpe, M., "Pedigree of a Watchdog," Nation's Business, XXV (April, 1937), 13.
- Tracy, M. E., "This Supreme Court Muddle," Current History, XLVI (May, 1937), 37-40.
- "Trust Me, He Said," Business Week (March 13, 1937), 60.
- "Unexpected Fishing Trip," Time, XXIX (June 21, 1937), 15.
- Villard, Oswald G., "What is the Nation Coming To?" Nation, CXLIV (March 27, 1937), 352.
- _____ "Issues and Men: Senator Wheeler May Be a Candidate," Nation, CXLIX (July 15, 1939), 72.
- _____ "Issues and Men," Nation, CXLV (August 7, 1937), 152.
- "Visibility Poor," Time, XXIX (February 22, 1937), 11-12.
- Ward, P. W. "Roosevelt Will Win," Nation, CXLIV (February 20, 1937), 202.
- "Washington Notes," New Republic, XC (February 17, 1937), 44. XCI (May 12, 1937), 15. (June 16, 1937), 156. (April 7, 1937), 261.

Wertheim, M., "Nation and the Court," Nation, CXLIV
(April 10, 1937), 399-400.

"Where Does the New Deal Go From Here?" Literary Digest,
CXXIII (June 26, 1937), 3-4.