



Abba Hillel Silver Collection Digitization Project

Featuring collections from the Western Reserve Historical Society and
The Jacob Rader Marcus Center of the American Jewish Archives

MS-4787: Abba Hillel Silver Papers, 1902-1989.

Series V: Writings, 1909-1963, undated.

Reel
178

Box
65

Folder
435

United States Supreme Court, comment about, 1937.

The President calls the attention of congress to two conditions in the federal judiciary with which most Americans have been familiar for many years. First, the insufficiency in the number of judges, and secondly, the number of superannuated judges on the bench. Both conditions lead to the retarding of the processes of law--and to the defeat of justice.

I believe that every fair-minded man will agree with the President in both of these contentions.

The principle of retirement from active duty at or near seventy has received the widest acceptance in the business and the academic worlds, in the army and navy, in civil service and elsewhere. There is no conceivable reason why it should not be applied to the all-important and heavily burdened federal judiciary and particularly to the Supreme Court of the United States.

Everyone will agree that the Supreme Court cannot but be greatly improved by "new blood". It does not follow, of course, that older men are necessarily more conservative than younger men. The oldest member of the present Supreme Court, Justice Brandeis, has been outstandingly liberal, and so was the aged Justice Holmes. Nevertheless, the President points out the increasing burdens and responsibilities of the office should, as a matter of course, be shifted to younger shoulders.

I am, however, of the opinion that the President's objective would be more directly reached and his purposes less open to misconstruction if he had called for a straight compulsory retirement of all federal judges at the age of seventy. The suggesting of "adding" younger judges to supplement older judges unfortunately carries the implication of "packing" the courts, and will be misunderstood, misinterpreted and distorted into something sinister.

Hand in hand with the recommendation for the compulsory retirement of judges at seventy should go the further recommendation that at least a two-thirds vote of the Supreme Court be required to override an act of congress.

PAGE TWO

These recommendations may require a constitutional amendment, but as there is no emergency existing at the present time, there is no reason why the slower method of a constitutional amendment should not be resorted to.

