

FDR and the Nine Old Men - Part IV

Lead: Emboldened by the most powerful election victory in memory, Franklin Delano Roosevelt tried to invalidate a hostile majority on the Supreme Court by packing the Court with new Justices.

Tag: *A Moment in Time* with Dan Roberts.

Content: The Court majority led by Chief Justice Charles Evans Hughes was opposed to a significant number of Roosevelt's New Deal laws and declared them unconstitutional. Instead of trying to amend the

Constitution to get his legislation through, the President decided to pack the Supreme Court with several new justices more attuned to his way of doing business. It was a political disaster.

Perhaps his stunning victory in November 1936 had dulled his political judgment, but in trying to pack the court, Roosevelt unleashed a firestorm of opposition, undermined the unity of his party, and raised questions about his program as a whole. The President sent to Congress a plan to add an additional judge to every federal bench whenever a judge reach the age of seventy and failed to retire.

Unfortunately, the plan was too clever by half and soon the real reason

emerged and became the focus of attention, he desired to appoint up to six new Supreme Court justices who would vote his way. At first he suggested the "nine old men," most of whom were well up in age, were overworked and needed help, but most people thought the President was being tricky. By the summer of 1937, Roosevelt was being forced to admit the real reason for his move, which was, "to save the Court from itself."

Actually the Court itself was beginning to do just that. Chief Justice Hughes in a letter to Congress demolished the President's spurious argument about overwork, but, probably under pressure from the election and the court-packing plan, he

and his fellow justices began to shift position and uphold Roosevelt's New Deal laws. By changing direction, the Court took the sting out of its earlier decision's against the President and, by lessening the perceived need for reform, pulled the rug out from under the FDR's plan.

Soon through death and retirement Roosevelt was appointing new justices and by 1941 had appointed his own, more sympathetic, "nine old men."

At the University of Richmond, this is Dan Roberts.

Resources

Kyvig, David. "The Road Not Taken," *Political Science Quarterly* 103 (3, Fall, 1989), 463-481.

Schlesinger, Arthur M., Jr. "Roosevelt and the Courts," *Society* 24 (November - December, 1986), 53-57.

"F.D.R.'s Scheme (expanding size of U.S. Supreme Court)," *Time* 124, (October 8, 1984), 34.

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