



1936

Constitutional Law

C. J. Murphy

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BAR BRIEFS

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CONSTITUTIONAL LAW

Since announcement of the President's plan for appointment of additional judges to the Supreme Court of the United States, if, when and why, it has been an open season for "pinks" and "near pinks" in the land. They are bobbing up on every hand, and our institutions of higher education are certainly furnishing their full quota. It is amazing and distressing to hear and read about the recklessness and irresponsibility of this class of people. There is some comfort in the thought that those who are attacking the Government belong to the vocal element, and perhaps are not as representative of the real sentiment of our people as the noise they are making would indicate. It is really too bad that a few more Heywood-Goldman sentences cannot be imposed. It is likely that the question whether additional Judges of the Supreme Court may be appointed by the President will be settled before this is published. Regardless of what happens it behooves the friends of constitutional government, as the same has been understood for the past 150 years, to arouse themselves and show the courage of their convictions. If we are to have representative government in this country according to the constitution as it has been heretofore consistently construed we must fight for it. It seems clear that those who discount and ridicule the Constitution of the United States, and the safeguards of personal and property rights provided for, and who

(Continued on Next Page)

(Continued from Page One)

Belittle and treat with scorn the statesmanship and patriotism of the great judges of this country from Marshall to Hughes, are making headway with a large proportion of our people who are not fully informed and who may be groping more or less in the dark. It is distinctly up to all honest patriotic citizens to stand firm for government by law and do their utmost to offset the vicious teaching and propaganda of the radical forces which are met with no matter where we may turn. We must work every year, every month in the year, every week in the month, every day in the week, and every hour of the day. This is what our opponents are doing.

C. J. MURPHY, President.

COMMENT OF OUR REFERENDUM

Our Executive Committee has recently devoted some time to the earnest consideration of the President's proposal with reference to the United States Supreme Court, and what, if anything, the lawyers of North Dakota should do about it, as it was deemed by them to be a crisis in Government affairs. Some of our members have urged that the Executive Committee adopt a drastic resolution in opposition to the plan. Others thought such an expression would be construed as an attempt to bind the membership of our Association without knowing how they stood. The by-laws provide that the Executive Committee shall manage the affairs of the Association in the interim between assembly meetings of the entire Association. But it was urged that that applied only to matters within the ordinary scope of association affairs, and analogous to powers of the Board of Directors of a corporation. Other suggestions were made and considered as to procedure. It was finally decided that the Executive Committee would order a referendum to be taken immediately among all the members of our Association and report to our Senators and Congressmen whatever the result of the ballot might be. This referendum is now in progress. Ballots were sent to 581 members and at the present time, some 350 of them have been returned, with nine days more before the expiration of the time limit set.

Comment published by the Associated Press in the Chicago papers upon the referendum conducted in Illinois, in part, was as follows: "President Roosevelt evidently believes that John Marshall and all the great judges who have been on the Supreme Court for the last hundred years were wrong in their interpretation of the Constitution when they held that the Supreme Court was an independent department of the government from the executive and legislative departments. The President's proposal is that he appoint new judges who agree with him that the Court should be subservient to the President and Congress. That is to take the last trench in which the defenders of our constitutional liberties stand."

That lawyers should be so overwhelmingly opposed to the President's plan of revamping the Supreme Court is not strange,