

## **Judicial Branch Reorganization Plan February 5, 1937**

*To the Congress:*

1. I HAVE recently called the attention of the Congress to the dear need for a comprehensive program to reorganize the administrative machinery of the Executive Branch of our Government. I now make a similar recommendation to the Congress in regard to the Judicial Branch of the Government, in order that it also may function in accord with modern necessities.
- 2.
- 3.
4. The Judiciary has often found itself handicapped by insufficient personnel with which to meet a growing and more complex business.
- 5.
6. In almost every decade since 1789, changes have been made by the Congress whereby the numbers of judges and the duties of Judges in federal courts have been altered in one way or another. The Supreme Court was established with six members in 1789; it was reduced to five in 1801; it was increased to seven in 1807; it was increased to nine in 1837; it was increased to ten in 1863; it was reduced to seven in 1866; it was increased to nine in 1869.
- 7.
8. A letter from the Attorney General, which I submit herewith Justifies by reasoning and statistics the common impression created by our overcrowded federal dockets - and it proves the need for additional judges.
9. Delay in any court results in injustice.
10. It makes lawsuits a luxury available only to the few who can afford them or who have property interests to protect which are sufficiently large to repay the cost.
- 11.
- 12.
- 13.
- 14.
15. Apart of the problem of obtaining a sufficient number of judges to dispose of cases is the capacity of the judges themselves. This brings forward the question of aged or infirm judges - a subject of delicacy and yet one which requires frank discussion.
- 16.
- 17.
- 18.
- 19.
- 20.
- 21.

22. Modern complexities call also 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.
23. We have recognized this truth in the civil service of the nation and of many states by compelling retirement on pay at the age of seventy. We have recognized it in the Army and Navy by retiring officers at the age of sixty-four. A number of states have recognized it by providing in their constitutions for compulsory retirement of aged judges.
24. Life tenure of judges, assured by the Constitution, was designed to place the courts beyond temptations or influences which might impair their judgments: it was not intended to create a static judiciary. A constant and systematic addition of younger blood will vitalize the courts and better equip them to recognize and apply the essential concepts of justice in the light of the needs and the facts of an ever-changing world.
25. It is obvious, therefore, from both reason and experience, that some provision must be adopted, which will operate automatically to supplement the work of older judges and accelerate the work of the court.
26. We therefore, earnestly recommend that the necessity of an increase in the number of judges be supplied by legislation providing for the appointment of additional Judges in all federal courts, without exception, where there are incumbent judges of retirement age who do not choose to retire or to resign. If an elder judge is not in fact incapacitated, only good can come from the presence of an additional judge in the crowded state of the dockets; if the capacity of an elder judge is in fact impaired, the appointment of an additional judge is indispensable. This seems to be a truth which cannot be contradicted.
- 27.
- 28.
29. These proposals do not raise any issue of constitutional law. They do not suggest any form of compulsory retirement for incumbent judges. Indeed, those who have reached the retirement age, but desire to continue their judicial work, would be able to do so under less physical and mental strain and would be able to play a useful part in relieving the growing congestion in the business of our courts....