



ADVANCE SHEET– SPECIAL ISSUE

President's Letter

Members of the Library and the Bar generally will have been saddened by the death of Judge James Schneider of the United States Bankruptcy Court, who has alternated with his wife Susan Marzetta, General Equity Magistrate of the Circuit Court for Baltimore City as a member of the Library's Board of Directors for more than forty-three years. Jim, in addition to being an incisive and decisive bankruptcy judge, humane without being naive, was an historian, who knew more than anyone else about Maryland's legal history, and not just its legal history.

But all who knew him felt that Jim's greatest distinction was his courage, humor, and grace in adversity. He did not have an easy career. He was the son of a postman, who received his college and legal higher education at the University of Baltimore. His first legal job was as a bailiff for Judge Albert Sklar of the then Supreme Bench of Baltimore City. He then became a General Equity Master and then a Bankruptcy Judge. He was afflicted with juvenile diabetes, which he overcame for a while with a dangerous pancreatic transplant operation, only to have a relapse. He had a kidney transplant operation, with his wife as a donor, referring to himself thereafter as a "bionic man." He also had problems with skin cancer and cardiac function, ultimately succumbing to a spinal infection. He spent long lengths of time in various hospitals, always emerging as an extraordinarily cheerful and considerate person, without any trace of bitterness at his fate.

His personal stoicism deserves a stoic tribute: "Never value anything as profitable to thyself which shall compel thee to break thy promise, to lose thy self-respect, to hate any man, to suspect, to curse, to act the hypocrite, to desire anything which needs walls and curtains; for he who has preferred to everything else his own intelligence and demon and the worship of its excellence, acts no tragic part, does not groan, will not need either solitude or much company; and, what is chief of all, he will live without either pursuing or flying from death; but whether for a longer or a shorter time he shall have the soul enclosed in the body, he cares not at all; for even if he must depart immediately, he will go as readily as if he were going to do anything else which can be done with decency and order; taking care of this only, all through life, that his thoughts turn not away from anything which belongs to an intelligent animal and a member of a civil community." (Marcus Aurelius, Meditations, III, 7)

At the risk of presumption, I express my personal hope that Susan will rejoin our Board, that we will be permitted to conduct a recorded memorial ceremony when the passing of the

present crisis permits, and that such of Jim's collection of books, papers and prints on Maryland legal history as can be spared be added to our collections and housed together with those of the Baltimore City Historical Society in a room named in his honor.

George W. Liebmann

Judge James F. Schneider Recollection

by John J. Connolly

For those of us who study Maryland's legal history and particularly its lawyers and judges, Judge Jim Schneider was our version of Thomas Young, the early 19th Century polymath called "The Last Man Who Knew Everything." It is still bracing to watch Judge Schneider, in the [oral history](#) he gave to the U.S. District Court in 2012, recall the precise dates of Judge Chesnut's service on the bench, or the name of Judge Soper's law clerk, or the title of a case decided by Judge Paca in the 1790s, all without notes and probably without preparation.

Judge Schneider's interest in the subject began when he wondered about the portraits hanging in the city courthouse during his clerkship for Judge Albert Sklar in the early 1970s. He carried that interest to the federal court after becoming a bankruptcy judge in 1982. Over the decades he wrote histories of the Baltimore Bar Library, the Maryland State Bar Association, and the U.S. District Court for the District of Maryland, and he gave countless formal and informal presentations on the stories of the icons and rogues of the Maryland Bar.

I was, coincidentally, the student editor of a piece he published in the 1991 *Maryland Law Review* on the district court in the Civil War era, and I had the privilege of editing one of his last articles, a history of the Supreme Bench of Baltimore City, which was published in the Library's 2017 symposium on the 150th anniversary of the Maryland Constitution. In between I would occasionally ask for his comment on a piece I was writing and, although he usually knew more about the topic than me, he was unfailingly encouraging and helpful. Unlike most judges I have known, he never gave the impression that he was too busy to talk. I usually viewed his historical work, like his personality, as considerably sunnier than mine, so I was somewhat concerned when I asked for comment on a long piece I wrote that discussed racism among the Maryland bar in the 19th Century. I shouldn't have worried: once again he knew the topic and the thesis in detail; added a few anecdotes and references to consider; and fully supported the thesis without suggesting that he would have presented it in the same way.

Judge Schneider did not pretend our forebears in the Maryland bench and bar were perfect. But he believed that many of them performed great deeds; that they all contributed to a rich heritage for the current generation of practitioners; and that their lives were worth remembering. Judge Schneider's life now becomes part of that heritage of great Maryland lawyers and judges, and I hope it is remembered and celebrated as he would have done for Judges Sklar, or Chesnut, or Soper, or many other figures who honored and improved Maryland law.

A Tribute To Judge James F. Schneider

I had known and admired Jim Schneider for 25 years before November 2006. That was when Jim re-joined and I joined the Bar Library's Board. The month is noteworthy because at its October meeting that year the Board by a slender 7-6 vote had decided to discontinue merger and management discussions with the State Law Library in Annapolis. Several Board members including the President resigned. Jim and I believed that it was important to assist in any way possible the new President, George Liebmann, in supporting the Library's contributions to the Bar, Bench, and the City's citizens, as well as its continued independence which began at its founding in 1840. To his great credit, George had stepped into the breach once again, having served as President back in 1975-77. Al Figinski began as a Director at the same time, and Gale Rasin joined a bit later.

This was no doubt an easy decision for Jim. After all, he had written his splendid history of the Bar Library in 1977. And he knew, better than anyone except for H. L. Mencken who had written the exhaustive dedicatory book, that the January 8, 1900 ceremony dedicating the Court House had taken place in the jam-packed Bar Library, "in the presence of a large and notable assemblage of men and women representing the most prominent business and professional forces in the City." Chief Judge Henry D. Harlan turned the keys to the Court House over to Mayor Thomas G. Hayes, and John Prentiss Poe delivered a stem-winder of a speech for the ages. Jim had been a major force in the Mitchell Court House's Centennial celebration in 2000. And he had co-founded its Museum of Baltimore Legal History 16 years earlier. Not one to rest on his laurels, in 2015 Jim took the lead in the Bar Library's 175th-year celebration.

I know that all of us agree that it has been our great good fortune to have known Jim Schneider and to have been in the presence of his considerable talents, gentle nature and humor, and formidable courage.

HENRY R. LORD

Remembering A Friend

by Christopher R. West

Jim Schneider was a close friend for over 40 years. A true gentleman in every sense of the word, he was unfailingly graceful, friendly, decent, principled and fair. My father-in-law participated in appointing him to the bench of the U. S. Bankruptcy Court and always held him in high esteem. And he rewarded that trust with decades of sensitive and effective service. Jim was never content to just do his job. He was the first to volunteer to organize projects of importance to the Bar of Baltimore City and the State of Maryland. He wrote histories of the Maryland federal bench and of the Bar Association of Baltimore City. He ran the annual memorial program in the Circuit Court for Baltimore City. I don't think he had an enemy in the world, because how could anyone possibly dislike such a wonderful man. About Jim, I think it can fairly be said that there will never come an end to the good he has done.

Walking Down The Street With A Friend

There are no words. There has been Shakespeare and Tolstoy, Homer and Hemingway, but still there are no words. What can you say about the Honorable James F. Schneider that would be adequate?

I have known Judge Schneider longer than I can remember. When I first came to the Library in January 1985, he had already been a member of the Library Board of Directors for eight years. At the time, he was an associate judge on the United States Bankruptcy Court, a court he would continue to serve on for another thirty-two years and eventually become chief judge of. In spite of my relative low status on the Library totem pole, the person who was in charge of computerized legal research, he treated me with kindness and respect. It was not that I was anybody special, he treated everyone that way.

There are so many memories that flow through my mind. Like life itself, they are both good and bad. Even the bad ones though are better because of the nature of the man. I remember one time when I was talking to him on the telephone for what must have been a half an hour or so, he sounding as if he did not have a care in the world. I asked him for his help with something and he responded that he would love to help, but that he was going in the hospital the next day for what they were calling “major surgery.”

Walking down the street with him was a thing of joy. Was there anyone he did not know? Was there anyone who did not like him? As much fun as the encounters that I experienced with him in these moments were the next few days when I would see the person he had spoken to and they would tell me what a lovely man he was.

It is my belief that the essence of who we are does not change simply because we depart this world for the next. The Honorable James F. Schneider is still the same man he was and I have a very strong suspicion that now when he walks down the street he is still going to know a great many people and they too are going to think him a lovely man.

Enjoy your much earned reward my friend and I look forward to the day when we can once again walk down the street together.

Joe Bennett

Interview Of The Honorable James F. Schneider

On September 11, 2012, Judge James F. Schneider was interviewed by his good friend and one time member of the Bar Library Board of Directors, the then State Archivist Dr. Edward C. Papenfuse. The following is a link to that interview:

<https://www.mdd.uscourts.gov/oral-histories>

Oh, The Places You Will Go!

There are so many remarkable places to go and things to be seen in the world. The problem, as I do not have to tell any of you, is that right now we are precluded from going much of anywhere. Well, in person anyway. It is said that the Internet has made the world smaller. For now, it is playing a priceless role in letting us travel to places we cannot otherwise go to. There are many sites that allow us to experience a wide ranging and diverse panoply. I would like to thank Mr. George Liebmann, President of the Bar Library Board, who recently sent me the following list to share with all of you. Enjoy.

Museums

- Anne Frank Museum, Amsterdam, Netherlands - <https://www.annefrank.org/en/museum/web-and-digital/>
- British Museum, London - <https://britishmuseum.withgoogle.com/>
- Guggenheim, Bilbao, Spain - <https://www.guggenheim-bilbao.eus/en>
- Hermitage Museum, St Petersburg, Russia - <https://www.youtube.com/watch?v=49YeFsx1rIw&feature=youtu.be>
- Louvre Museum Paris - <https://www.louvre.fr/en/visites-en-ligne>
- MASP, Sao Paolo, Brazil - <https://masp.org.br/en> • Met Museum, New York - <https://www.metmuseum.org/art/online-features/met-360-project>
- Musée d'Orsay, Paris - <https://m.musee-orsay.fr/en/home.html>
- Musei Vaticani, Vatican City - <http://www.museivaticani.va/content/museivaticani/en/collezioni/musei/tour-virtuali-elenco.html>
- Museum Of London Docklands - <https://www.museumoflondon.org.uk/about-us/business-services/venue-hire/museum-london-docklands/virtual-tour>
- National Gallery Of Arts, Washington DC - <https://www.nga.gov/> • National Gallery, London - <https://www.nationalgallery.org.uk/visiting/virtual-tours>
- National Museum Of US Air Forces - <https://www.nationalmuseum.af.mil/>
- Natural History Museum, London - <https://artsandculture.google.com/streetview/the-natural-history-museum-hintze-hall/yQHjHCmSOMKyhQ>
- Palestine Museum - <https://www.palmuseum.org/exhibitions/virtual-exhibitions>
- Picasso Museum, Barcelona - <http://www.bcn.cat/museupicasso/en/museum/presentation.html>

- Rijksmuseum, Amsterdam, Netherlands - <https://artsandculture.google.com/partner/rijksmuseum>
- Royal Academy Of Arts, London - <https://britishart.yale.edu/> • Salvatore Dali Museum, Figueres, Spain - <https://www.salvador-dali.org/en/museums/dali-theatre-museum-in-figueres/visita-virtual/#>
- Tate Britain, London - <https://www.tate.org.uk/visit/tate-britain/display/walk-through-british-art>
- The J. Paul Getty Museum, Los Angeles, United States - <https://artsandculture.google.com/partner/the-j-paul-getty-museum>
- The Museum of Flight - <https://museumofflight.org/Explore-The-Museum/Virtual-Museum-Online>
- The National Museum of Computing on Bletchley Park - <https://britishart.yale.edu/> • Uffizi Gallery, Florence, Italy - <https://artsandculture.google.com/partner/uffizi-gallery>
- US Holocaust Museum - <https://www.ushmm.org/information/exhibitions/online-exhibitions>
- Van Gogh Museum, Amsterdam, Netherlands - <https://artsandculture.google.com/partner/van-gogh-museum>
- Virginia Living Museum - <https://thevlm.org/visit/about-us/covid-19-update/natural-education/>
- Women's History Museum, Virginia, USA - <https://www.womenshistory.org/womens-history/online-exhibits>
- Yale Centre For British Art - <https://britishart.yale.edu/>

Tourist Destinations

- Buckingham Palace, London - <https://www.royal.uk/virtual-tours-buckingham-palace>
- Colosseum, Rome - <https://tinyurl.com/thrprzf> • Machu Picchu - <https://www.youvisit.com/tour/machupicchu?pl=f>
- Northern Lights - <https://explore.org/livecams/aurora-borealis-northern-lights/northern-lights-cam>
- Pyramids - <https://www.tripsavvy.com/virtual-field-trip-pyramids-1259200>
- Stonehenge - <https://tinyurl.com/wz3xgz7> • Street Art with Google - <https://streetart.withgoogle.com/en/>

• Taj Mahal, Agra, India - <https://tinyurl.com/qpz7vmt> • The Great Wall Of China - <https://www.thechinaguide.com/destination/great-wall-of-china>

• Tour of Rome, Italy - <https://tinyurl.com/s5vlzbc>

General Sites

• AirPano - <https://www.airpano.com/>

• Berliner Philharmoniker - <https://www.digitalconcerthall.com/en/home>

• ExoPlanets NASA - <https://exoplanets.nasa.gov/> • Legoland - <https://www.legoland.dk/en/accommodation/hotel-legoland/virtual-tour/>

• NASA, Langley Research Centre - <https://oh.larc.nasa.gov/oh/> • The Kennedy Centre - <https://www.kennedy-center.org/digitalstage/>

• Walt Disney Parks - <https://tinyurl.com/v7qano5> • Wellcome Collection - <https://my.matterport.com/show/?m=rMGsprcVCAR>

Zoos

• African Animals - <https://explore.org/livecams/african-wildlife/african-animal-lookout-camera>

• Atlanta Zoo - <https://zooatlanta.org/panda-cam/> • Cincinnati Zoo - <https://www.facebook.com/events/2915534028492292/>

• Dublin Zoo - <https://www.dublinzoo.ie/animals/animal-webcams/elephants/>

• Edinburgh Zoo - <https://www.edinburghzoo.org.uk/webcams/panda-cam/>

• Explore.org Live Cams - <https://explore.org/livecams> • Flamingo Land - <https://www.flamingoland.co.uk/virtual-tour/>

• Florida Aquarium - <http://www.flaquarium.org/sea-span>

• Hirakawa Zoo, Japan - <https://hirakawazoo.jp/animal/movie>

• International Wolf Centre - <https://wolf.org/wolf-cams2/> • Kansas City Zoo - <https://www.kansascityzoo.org/ouranimals/list-of-animals/king-penguin/>

• Melbourne Zoo - <https://www.zoo.org.au/animal-house>

• National Aquarium, USA - <https://www.aqua.org/Experience/live>

• National Zoo, Washington DC - <https://nationalzoo.si.edu/webcams>

- Osaka Zoo - <http://www.wombat-tv.com/>
- San Diego, California, Zoo - <https://zoo.sandiegozoo.org/live-cams>
- Smithsonian, Washington DC - <https://nationalzoo.si.edu/webcams>
- Yellowstone National Park - <https://www.nps.gov/yell/learn/photosmultimedia/virtualtours.htm>

Texts For Our Time

Gorbachev: Time to Revise the Entire Global Agenda

An Interview with Mikhail Gorbachev, World BEYOND War, April 5, 2020

Q: How did you take the news of the pandemic?

A: I think I took it the way most people did. Initially, there was hope that it could be controlled, localized. But things took a very different turn and the epidemic spread far and wide. Unprecedented measures and decisions became necessary. Leaders, citizens and international organizations found themselves in an extremely difficult situation. All of this will have to be thoroughly analyzed, but the priority now is to take things in hand and defeat this new, vicious enemy.

Q: How do you assess the measures now being taken?

A: The main concern must be people's security and saving people's lives. I assume that the steps now being taken are based on science and the advice of the most competent experts. Right now they are practically unanimous that lockdown is necessary. This is something both the authorities and the people must accept. A lot depends on people's behavior. Utmost responsibility and discipline is of the essence. Then we may hope that the worst could be avoided.

Q: Is it time yet for lessons learned? Do you agree that the world will never be the same?

A: That depends precisely on what lessons will be learned. I recall recent history of how we addressed the nuclear threat. We understood that it is our common enemy, a threat to all of us, and the leaders of two nations, the Soviet Union and the United States declared that a nuclear war cannot be won and must never be fought. Then came Reykjavik and the first treaties eliminating nuclear weapons. By now, 85% of those arsenals have been eliminated. We must continue along this path but we now see new challenges. Together with my friends in the Forum of Nobel Peace Laureates we have for years been calling for a radical rethinking of international politics. Let me quote from our appeal adopted back in 2005:

“Focusing on meeting human needs and having a reverence for life are the foundation of human

security. Excessive military expenditures actually breeds insecurity. Two areas where funds need to be channeled by the international community are education and health, particularly regarding the scourges of AIDS, malaria and tuberculosis through both protection and prevention.” What could one add to this? Just the name of the new dreadful disease.

Over the past five years all we’ve been hearing is talk about weapons, missiles and airstrikes. But is it not clear by now that wars and the arms race cannot solve today’s global problems? War is a defeat, a failure of politics! This common tragedy has reminded us of the futility of trying to go into hiding and sit it out, ignoring the threats that we face. In today’s world, no one can hope to go into hiding!

And so I’ll never tire of repeating: We need to demilitarize world affairs, international politics and political thinking and reallocate funds from military purposes to the purposes serving human security. We need to rethink the very concept of security. Above all else, security should mean providing food, water, which is already in short supply, a clean environment and, as top priority, caring for people’s health.

To achieve human security we need to develop strategies, make preparations, plan and create reserves. This should be the responsibility of national leaders and leaders at all levels.

I believe that preparations should start now for an Emergency Session of the United Nations General Assembly, to be held as soon as the situation is stabilized. It should be about nothing less than revising the entire global agenda.

Q: Could I ask how things have changed for you and for the Gorbachev Foundation?

A: Of course we are complying with all requirements and we have had to start working from home. I am communicating with colleagues by phone and we have created a discussion platform on the web. We’ll be adapting to the new circumstances. I’ve been asked to write an additional chapter for the English edition of my book *What Is At Stake Now*, to account for the new developments. I have agreed and will work on it.

Thanks to Pavel Palazhchenko and Metta Spencer.

Dorothy Thompson's 'Modern Coup D'état' Warning

By Dana Rubin March 31, 2020

The last in a series of articles commemorating Women's History Month by spotlighting a significant speech or testimony delivered by a woman in the U.S. on this date.

Franklin Delano Roosevelt’s ill-fated plan to pack the Supreme Court with justices favorably disposed to his New Deal legislation caused a political firestorm in 1937. Critics accused him of undermining American democracy. One of his most outspoken critics was the influential journalist Dorothy Thompson.

Thompson had witnessed the rise of fascism as a foreign correspondent traveling through Weimar Germany in the early 1930s -- until the Nazis kicked her out. As she told members of the Senate Judiciary Committee on March 31, 1937, she had seen how, step-by-step, Adolf Hitler had taken over the German courts, the parliament, the labor unions, and the press.

Thompson's experiences had provided the inspiration for her husband Sinclair Lewis' satirical novel "It Can't Happen Here," which is about a fascist demagogue who whips up popular resentment and takes over the United States. As she testified before senators on this date 83 years ago, a "modern coup d'état" was not just a dystopian conceit, it was her warning that it can happen here.

The Modern Coup D'état
By Dorothy Thompson
U.S. Senate Judicial Hearings, Washington, D.C.

I have responded to the request to come here to-day and testify on the question of the proposal to enlarge the Supreme Court, because I feel very deeply about the issues involved. I am speaking entirely as a private citizen. I have never been a member of any political party. As a journalist I supported almost all of the objectives of President Roosevelt during the last administration, though with certain reservations and criticisms mostly concerning method. I regret that I have not a more profound knowledge to lay before this committee.

I am not an expert on constitutional law, and my only justification for taking your time is that I have been for some years, as a foreign correspondent, an observer at the collapse of constitutional democracies. You might say I have been a researcher into the mortality of republics. The outstanding fact of our times is the decline and fall of constitutional democracy. A great need of our time is for more accurate analysis of the pathology of constitutional government, of why constitutional government perishes.

A great deal of such analysis has been made, but the more thoughtful students have not made much impress on public opinion. And there are a great many people in the United States, for instance, who think that fascism is completely described as a plot of big business to seize government and run it in their own interests, through a dictator who is their stooge. Or they think that fascism has come about through some evil man, perhaps an evil genius of overwhelming ambition, bent on personal power, who suppressed free institutions by violence. Or they think that fascism is a peculiar institution of certain peoples, arising from special and limited conditions. For instance, that Germany became national socialist because of the Treaty of Versailles; or that Italy became fascist because she did not get what she expected to get out of the war. Or they think that constitutional democracies have fallen because they "failed to meet human needs" and pass adequate social legislation. I refer to that because that, apparently, is the president's view. That is what he said, at his first speech in support of his proposals for reforming the judiciary. He said:

In some countries a royalist form of government failed to meet human needs and fell. In other countries a parliamentary form of government failed to meet human needs and fell. In still other

countries, governments have managed to hold on, but civil strife has flared, or threats of upheaval exist.

That is what the president said, and apparently the moral of that is that unless Congress is made perfectly free to make any sort of legislation it may hit upon and then pass it on to a Supreme Court representative of the ideas of the majority, we shall see the end of democracy. Also, Mr. Harry Hopkins, in a radio address, recently said, "The cure for the evils of democracy is more democracy." That is just another expression of the thought that democracies perish if they are curbed, or if they fail to respond immediately to all the economic and social demands of powerful groups of the community.

Gentlemen, I have come to a quite different conclusion about why democracies collapse, and give way to tyrannies of one sort or another. This blanket definition of fascism is not very descriptive of what is going on. Italian fascism, German national socialism, the military dictatorship of Pilsudski and of his successor in Poland, the monarchial dictatorship in Yugoslavia, the Catholic and semi-military dictatorship in Austria, the brain-trust dictatorship in Portugal, and the dictatorship of Comrade Stalin in Russia cannot be described as belonging to any one system of ideas.

In hundreds of respects they are completely dissimilar. But each of them was the answer of a particular people, with particular mores and particular traditions to governments which were failing, not to meet human needs -- if by that you mean failing to pass social laws -- but failing in the first function of government: Failing to keep order and social cohesion and respect for principles. And each of these dictatorships has the same essential function. Its function is to impose social disciplines; to impose those social disciplines by the edict and coercion of a single man and regime of men, because the people themselves had ceased to accept the discipline of law.

I think the disciplines of law are particularly needed in democracies and are especially needed at any moment when a powerful majority is in temporary control of the current political situation almost to the exclusion of minority representation. We have such a situation in this country now. The men who designed the structure of this Republic realized this. They did not believe that the cure for the evils of democracy was more democracy. They believed that the prevention against a democracy running away with itself, the prevention against a powerful majority riding roughshod over the temporary minority and selling short the whole future of the country, the prevention against today's majority mortgaging tomorrow's majority, lay in a written constitution and an independent Supreme Court to interpret that constitution.

There is a reason why Supreme Court judges are appointed for life, and removable only by impeachment. That reason is obvious. It was certain that successive executives and successive Senates would seek to put upon the Supreme Court bench men responsive to their own ideas. Everybody is human, but it was arranged that the Supreme Court, only by the merest chance, by a very remote mathematical chance, would ever coincide with the majority of the moment. It was so arranged that the Court should represent not the momentary dominant majority, but the continuity and tradition in American life.

The difference between a regime of pure democracy, which moves from majority to majority, one often overthrowing the other and seeking to destroy all or much of what its predecessor has done -- the difference between that kind of government, which I do not think has ever worked on this globe -- and our own constitutional democracy is the difference between legislation which is haphazard, which is directed by powerful forces at large in society, and legislation which is somewhat checked by the will to continuity.

It is true that the Supreme Court is conservative. I think it is conservative by its very nature. And that, gentlemen, is its function -- to conserve. It represents, the opponents, say, the past. Yes, perhaps it does. It represents continuity; it demands that today's laws shall be checked against the whole body of law and the principles governing the state, and thus it ensures that new laws shall be designed in some conformity with certain long-established customs and ways of life. And just because it represents continuity, because it exerts a constant reminder on the people that they have a past, a past to which they have a duty; just because it reminds them that when they act, however radically, however drastically, they must keep an eye on long-established patterns of law and behavior -- just for that reason I think it safeguards the future. For certainly those political democracies, gentlemen, have been proved safest which have the longest and most unbroken traditions. You might say that just because we have a past, we can be most confident that we have a future.

The dangers that threaten democracies are two: One is that the legal pattern should be too rigid; that the dynamics in society should shatter themselves against a Chinese Wall which can be broken only by revolution. That argument is constantly advanced these days by the advocates of rapid and drastic change. That argument is implicit in the president's speech at the Democratic Party rally. It is the threat of revolution. I am not impressed by that argument. I am not impressed by it because in the past 17 years I have attended the funerals of many democracies and I have not seen one in which the cause of death could so diagnosed. This danger confronts absolutist systems, where popular opinion is not allowed to function, where there is no representative government, where insurrection is the only outlet. Mr. Hitler faced such a danger the summer of 1934; in Moscow, recently, we have had trials indicating that Mr. Stalin has been facing such a danger, or the danger can arise in a sudden and acute crises such as occurred here, in 1932, when thousands of people were threatened by actual starvation, by bankruptcy, and by the complete breakdown of economic life. Such emergencies from time to time hit all republics, and often, during them the constitution is tacitly suspended, by almost universal consent. Such an emergency occurred in France in 1926-27 when the franc fell catastrophically. For years, Poincaré was virtually a dictator. It happened here and elsewhere during the war. But wise democracies do not attempt during such emergencies to fundamentally alter the continuing structure of the State or set precedents for new procedures, and they return as rapidly as possible to the traditional pattern of procedure.

I think the second danger to democracies is far greater: It is that reforms, often very good and much needed reforms, should be rushed through at a rate in which they cannot be digested in society. It is the danger that eager and unchecked majorities should set up new instruments of power, before they are equipped properly to administer such instruments. It is that the will of powerful pressure groups, even when such groups embrace a majority of voters, should find expression in total disregard of the feelings, apprehensions, and interests of large and important

minorities. All of those things, for instance, would hold true if you analyzed the pathology of the Austrian republic.

There is the danger that radical changes, affecting the social structure, should take place without the guidance or the check of any clear unequivocal principles. I think the greater the demand for popular franchises and rights, the greater is the need for constitutional control. Otherwise, this struggle for democratic rights -- or, if you want call it that, for new economic freedoms -- can very rapidly degenerate into a chaotic redistribution of privileges. That again is what happened in Austria. There are always hundred percenters for democracy, those who want pure democracy. They want to do away with every impediment, and march at high speed toward what they call a real or modern democracy, or the democracy in harmony with the times. But precisely in such revolutionary times -- and we live in one -- it is most necessary to have a point of reference, a warrant, an instrument which confidently assures the legitimacy of what is being done. For without such a point of reference, there ceases to be a spontaneous social cohesion and what you then get as sure as fate is social cohesion by coercion.

I am sorry, gentlemen, to take your time by what may seem to be a lot of political philosophizing. But this question is essentially a political, and not a juridical, one, and I do not know how to discuss it except on the basis of a philosophy of politics. I know that the president's proposal is legally constitutional. But I am convinced that it is not politically constitutional.

It strikes the Supreme Court and the Constitution in the most radical and drastic fashion imaginable, because it proposes to switch the supreme bench into line with the current political majority. That was frankly admitted by the president in his metaphor about the three-horse team. It proposes to create a court whose eyes are fixed not upon the Constitution, and upon the whole body of existing law, but upon the White House and the ruling majority in Congress. It proposes to make the Supreme Court the instrument of that majority. The proposal suggests that its framers were in a confusion about the functions of society, the state, and the government.

The Supreme Court is essentially an instrument of the state, not of government, which is a temporary majority running the State machinery. That is to say, it is a part of the entire legal apparatus. It is not there to guarantee that the will of the majority shall be expressed but to see that the will of the majority does not infringe the basic guaranteed rights of any individual citizen who wants to appeal against that will to a higher institution of reference. In fact, the very existence of the Supreme Court is an affirmation not only that every individual citizen has equality before the law, but that any individual citizen may, at some point, assert his equality with the whole political set-up. The conception that the individual may appeal to a court of reference which is above the majority; that he can stand there, all alone, and demand a right which perhaps 99 percent of the people do not want or cherish, is the most grandiose concept of political freedom. It was recognized as such by foreign critics and students of our system of government, such as Lord Brougham, Bryce, and Gladstone.

Incidentally, 40 years ago Bryce pointed out that the power of the President to expand the Supreme Court was the weakest point in the whole system. And it has reality only if the court is independent of the government, and that independence has been arranged for by a way of appointment and removal which gives every mathematical chance of success. If it becomes the

instrument of the majority today, what possible guaranty have you that it will not become the instrument of another majority tomorrow? If, in our desire -- a desire which I share with many members of this administration -- to see a greater national consolidation, to extend the economic control of government over chaotic economic forces -- an objective with which in the large sense I am in sympathy -- if in order to do that, we pack the court, what possible guaranty have we that tomorrow a government which believes that a national emergency demands the curbing of free speech, the dissolution of certain political parties, the control over the radio, will not pack it again?

We have had times in our history when honest men tried to suppress all civil liberties -- we have been told a lot about Supreme Court decisions that have balked social legislation and we are asked to turn back history and remember the Dred Scott case, which, they say, brought on the Civil War. But some of you gentlemen in this committee are from the South, and I wonder if you are lawyers. Do you remember the role that the Supreme Court played in the Reconstruction era, in the days of the carpetbaggers, when men like Thaddeus Stevens -- who were the radicals of their day -- convinced that they were trying to fasten a hideous tyranny forever on the South? In those days the Supreme Court alone stood between the people of the South and a black terror organized by white Northerners. In those days the South was in the minority; in those days the North, in its own mind, represented all the forces of national union and solidarity, progressiveness, and enlightenment. And like lots of enlightened, progressive, world-savers in history they were ready to resort to any means whatever to make the forces of what they called justice prevail.

I do not know whether you remember that great lawyer, Benjamin Hill, of Georgia, who said: "The written Constitution is my client, and its preservation the only fee I ask." Who encouraged the desperate people of the South to stick to the Constitution and seek aid and redress through the law and through the law alone? Fighting the military bill, which was to suspend all civil liberties and freedom of the press in the South, and fasten a permanent occupation on it, Hill said:

"The South can fight with the Constitution in her hand. Better to brook the cost of delay for 10 years" — he means by appealing our way through the courts — "than to accept anarchy and slavery for a century."

I do not know whether you remember the Supreme Court decision in the Milligan case, denying the right to Congress to suspend trial by jury. "Then," says Claude Bowers, who is an ambassador of this administration in Spain, "the ringing opinion of Justice David Davis, startling as a fire bell in the night, was among the landmarks of human liberty." But against that Supreme Court decision in that day, all the radicals clamored. They turned all their batteries on the Supreme Court, and Harper's Weekly proposed that it be swamped "by a thorough reorganization to increase the number of judges." Thaddeus Stevens, leading the radicals in the North, said of the decision refusing to allow a suspension or trial by jury:

"That decision though in terms not so infamous as the Dred Scott decision is more dangerous in its operation upon the lives and liberties of loyal men. ... That decision unsheathes the dagger of the assassin. Now, surely every one can clearly see the need for drastic action."

And the drastic action he proposed was a bill dividing the South into military districts under commanders armed with arbitrary power. Stevens did everything he could to water and diminish the power of the Supreme Court. But I wonder if anyone thinks we would have been better off today if he had been successful.

I have spoken occasionally of the dangers of dictatorship and been roundly trounced for it by my friends who call themselves liberals. I no longer know what a liberal or a conservative is. They say that I go around seeing bogeys. Perhaps I go around seeing bogeys because I have seen, in the last 15 years, so many bogeys suddenly take on flesh. In Germany in 1928 you could hardly find a civilized man who thought that the Republic was in serious danger. I remember in 1928 there was an election, and the German Social-Democrats, who were somewhat "new dealers" in Germany, came into power by a big majority, and Hermann Müller became chancellor. I remember sitting in his office and talking with him about what I thought was the feeling in the country, a feeling of hostility and of disappointment and of rage, because they thought things were going too far, and he laughed at me. "Why," he said, "the Republic was never safer in the world than it is at this moment." Well, it was as dead as a doornail five years later. I have never suggested that President Roosevelt is trying to establish a dictatorship. I would not be so foolish. But I have said that if any president wanted to establish a dictatorship and do so with all the appearance of legality, this is the way he would take. The modern coup d'état, by which so many democratic systems have fallen, does not destroy the legal apparatus of the state. The modern revolution is not made by violence. It keeps it, for the coup d'état wishes to appear legal. It only alters its spirit and its aim. Mr. Hitler took an oath to the Constitution of Weimar, and he has never offered another constitution. He has just obliterated it by a series of decrees backed by a supine parliament. He has just changed the rules under which it meets and made race and sedition laws which have caused the expulsion and arrest of part of its membership. You say this couldn't happen here, but it has happened here.

It happened in New York State during the war, when the Socialists were expelled from the State assembly. The courts are all there, in Germany, but they are packed. And Hitler calls his system democracy -- you can be put in jail in Germany for saying Hitler is a dictator -- and from time to time subjects its ruling to a general plebiscite and gets a mandate from the people. But we call it dictatorship. There is a systole and diastole, an ebb and flow in the life of democracies. Radical or liberal regimes, particularly if they move very fast and introduce a great deal of legislation which is not based always on any very clear principles but is chiefly designed to meet emergencies of the moment and the demands of powerful groups, and which lead to considerable redistributions of wealth and power, sometimes with chaotic accompaniments -- such regimes are almost invariably succeeded by conservative regimes, and the vigor and tempo of the retreat are usually in direct ratio to the vigor and tempo of the advance.

Today we have soil-conservation laws designed to keep land from eroding. Tomorrow another Congress in which you gentlemen may not sit may, in the face of some other emergency, pass a law to conserve natural resources by forbidding the waste of paper pulp and limiting all newspapers to 4 pages. And then, on top of that, that Congress might conceive that the public enlightenment and general welfare demand that certain edicts of government shall be published in full in such newspapers — and their publication might consume four pages. And a Supreme Court packed to give all legislation the benefit of every reasonable doubt, packed by the ruling

government, might uphold such a law. That seems utterly fantastic, but I have seen laws just as fantastic as that passed in highly enlightened countries. And all in the name of the general welfare. If I, who believe in most of the president's objectives, protest against these proposals of Mr. Roosevelt and the attorney general now, it is because I should like to be in a position to protest four years from now, or 10 years from now, when somebody else wants to do the same thing for other objectives, and I should like to be able to protest with some sort of moral consistency.

Professor Corwin, who testified here the other day, said, I believe, that the courts are not packed in advance of dictatorships — I think he said in advance of fascism — but are packed afterward by the Fascists. Gentlemen, neither the Italian nor the German dictatorships started as pure dictatorships. Mussolini went in as premier of a parliamentary government, and it took him four solid years to change that government into an authoritarian state. Hitler went in as premier, in a cabinet where he had no majority — I think he only had three seats out of 11 — and it was nearly two years before he really finished with free institutions. But, anyhow, if you want the explanation of Mr. Hitler, you must look for it in the history of the German Republic, and in the mistakes and failures of the German Republic; and if you want the explanation of Mr. Mussolini, you must look for it in the history of Italy between 1919 and 1921.

I would like to ask a question: Did the German Republic fall because it failed to meet human needs, because it was slow in extending the responsibility of government for the public welfare?

It did not. The German Republic came into being in a moment of national disaster. It was not the result of a revolution. Nobody shed his blood for it. You might say it was a "new deal" in German politics. The Weimar Republic had all the things, did all the things, that the New Deal wishes to accomplish. It had universal sickness and old-age insurance; unemployment insurances and federal relief; vastly extended public parks, playgrounds and sports arenas, subsidized housing for the poor, general trade-unionism guaranteed in law, with wage and hour agreements worked out by collective bargaining, and having the force of law. It raised the standard of health in Germany and more evenly distributed the economic gains. It finally came to control something like 40 percent of the national income. It had machinery for controlling both prices and wages, and it used that machinery; but it found, as other democratic governments have done, that that machinery was no guarantee of prosperity. The failure of the German Republic was not a failure to respond to the demands of the masses, but it failed to create loyalty to its own basic principles. Perhaps if there had been a real revolution, for which men had died, the Republic might have survived. But the Republic made no such demands on its citizens. And the masses never regarded this Republic as holding the charter of their liberties, as being something in itself for which they were willing to make sacrifices. They regarded it as the instrument for their well-being; and it perished not because it failed to meet human needs, but rather because it guaranteed to meet them, and there came time when it could not possibly meet them on the scale to which the people had become accustomed.

The German people were never prepared, psychologically or otherwise, to fight for the constitution and political freedom. They were prepared to fight for minimum wages and maximum hours and social insurance; and finally parliamentary government was first suspended, not under Hitler but under Brüning, a democratic chancellor. He invoked an emergency decree,

giving President Hindenburg power to govern by edict, because Germany was facing an inflation that required government retrenchment; and Brüning couldn't get a parliamentary majority for retrenchment, because it would mean cutting in too many things that the people needed to have.

Hitler came in and used the precedent that Brüning had established. Germany has been governed by decree from that day to this. The masses under the German Republic, in other words, cared more for what they could get out of it than they did for the Republic itself or for the principle of republican government; and when hard times came and neither the republican government nor any other could go on meeting those demands, it found no one was loyal to it. And then it found something else — it found that the German Republic had cut itself off from many old and deep traditions and codes of social behavior, which in an emergency came again to the surface and proved to have much more vitality and moral strength than the leaders had dreamed. And eventually the German people followed a leader who promised them neither shorter hours nor higher wages, but who demanded sacrifice, and in return promised only one thing: Order and the establishment of a unifying principle — the principle of a unified Germany.

Now, if you are interested, you might go to the explanation of Mussolini. It is to be found in the governments which preceded him. Really, fascism was brought about by a deadlock between capital and labor, whereby no one of the two could win. And that deadlock had been brought about by political policies. Labor was becoming more and more irresponsible, because the labor leaders at the top had an eye on political power, and the leaders of the rank-and-file were without adequate experience or the discipline of long trade-union training. The employers were frightened to death, both of the strikers and of the government, which they considered hostile, and they were afraid to invoke old-fashioned methods of suppressing the strikes. At the same time, the government of Giolitti was trying to be clever and extend political power over powerful economic interests by using the militant workers as pressure from the country. The Giolitti government was not willing to break the deadlock, and so this went on until somebody who had been patronizing and advocating the most radical methods of the workers offered his services to the employers and broke it. That man was Mussolini. But Mussolini could not have gone as far as he eventually did if he had not won the collaboration of the last and highest point of reference in the state, or in Italy, the Crown. In other words, Mussolini had to have support in the masses plus the constitutional power in order to effect a legal coup d'état.

Now, I know that many people will say that these are very poor analogies, and they are right. The United States is not Germany and not Italy. This country has a long tradition of free government. And those critics are correct. One must not push analogies too far. Analogies as well as metaphors are always dangerous. But neither can one divorce events in this country from ideas and tendencies which are manifest throughout the world. The problems which we face are not unique. Everywhere constitutional democracies have had to face the question of how to make new integrations between economic and political power. We want power. That is the whole problem, the basic problem, of the New Deal. Everywhere constitutional democracies have had to meet increased demands from the masses for a greater share of the national wealth and for more security.

Everywhere there is a demand for more efficient instruments of political power. And accompanying these demands is a growing tendency toward personal leadership and personal

government, and for a very simple reason: Personal leadership and personal government are the quickest and easiest way to get the things that people want. It is always easier to change the men than to change the law. People grow restive under the checks imposed by a regime of law. And yet all history proves that what Aristotle said is correct — that regimes tend to turn into their opposites, if the political principle which they represent is allowed to develop to the bitter end. If democracy becomes so pure and so immediate that the popular will is subjected to no standards, it rapidly moves into tyranny.

The whole world today has a new vision of freedom; economic freedom. That actually means a redistribution of wealth which will diminish the privileges of the few for the sake of the underprivileged many. From both a moral and an economic viewpoint that demand is justified and made inevitable, by our era of mass production. But that economic freedom — I do not think this can be said too often — will prove a complete mirage unless it is accomplished with the maintenance of political freedom. Political freedom is the condition of all freedom, as the people of Russia have learned, as the people of Italy have learned, and as the people of Germany have learned. They gave up political freedom to get something else which they thought at the moment was very much more important, and then they found out that there is not anything more important. And the first condition of political freedom is that we should stick to a regime of law, and not move off the path toward a regime of men.

It is precisely because we live in a revolutionary age that it is most necessary for us to guard with the greatest caution the traditional procedures of government. I believe there is a constitutional crisis in this country. I said so in print last June. I feel very strongly that the way to meet it is to meet it in law and not in personnel. I do not like the constant reiteration that something — anything — must be done now, at this moment, in this instant, otherwise the whole country is going to bust. What social forces are threatening to overthrow everything if they are not immediately conciliated? Who is encouraging them? I do not like the talk about an outworn Constitution, or the pillorying of judges as “defeatist” lawyers — judges, incidentally, who are hampered by their very office from defending themselves. Precisely because we live in a revolutionary period, it is no time to break down public confidence in the basic institutions. And I am very sure that this proposal of the president would break down confidence. On the contrary, this is the moment to make clear to the people of the United States that social advances can only be won in conformity with established procedures, which require political effort on the part of the people themselves.

There is one other point I would like to make, and that is that I am apprehensive of the effect which packing the Supreme Court will have upon the state courts. After all, the Supreme Court is not only there to pass on acts of Congress. It is the pinnacle of the whole legal apparatus. You gentlemen know that state courts have been packed with politicians, and that in such states when a lawyer felt that a client was on the wrong side politically he has tried to transfer his case from a state to a federal court, knowing that there might be one place where men stood above the conflict. That was a common condition in the state of Louisiana during Huey Long’s regime. When the Supreme Court invalidated some of his laws, he put in men who would support them. We were all very much outraged by that at the time. I want to ask whether there is any difference essentially from what is proposed here? What effect will this precedent in Washington have on

the state courts? Is there anything to prevent a strong governor from taking a tip from this procedure down here?

I will support heartily as a journalist a constitutional amendment designed to meet the new problems of these times in the constitutional way. I have been convinced for at least two years that constitutional amendment would eventually be unavoidable. We are moving toward national consolidation. I think that tendency is necessary and desirable. But it will certainly involve questions of sovereignty as between the national government and the states, and I do not believe any set of judges will be able to solve these problems on the basis of the Constitution as it now stands, with several hundred volumes of interpretations behind it. After all, the NRA was declared unconstitutional by all nine judges. So was the first Frazier-Lemke Farm Mortgage Act. So was the case of Hopkins Federal Savings and Loan v. Cleary. So was the AAA processing tax in the Rickert Rice Mills case.

I am of course looking at this problem not as an expert, but as a citizen and as a publicist, and it seems to me that we ought to be educating the public to the real issues involved, very complicated issues on matters of sovereignty, and interpretations of property rights, instead of telling the public that they are the victims of six malicious old dictators. The only argument against this is that it will take time. I think that if an amendment were put forward, not as a party measure, not as a political measure, but with the backing of a commission of highly respected nonpartisan constitutional experts, an amendment designed to meet specific needs, and if the president would put his enormous prestige behind it, it would go through very rapidly. But anyhow, what about spending a little time?

Democracies need to make radical changes with the greatest possible measure of collaboration from all classes in society, if there is to be smoothness and continuity, and not abrupt and upsetting periods of chaos. Forty percent of the American voters have almost no political representation today in Congress. Those people ought to be considered a little.

I have always had considerable admiration for British government, and one thing that has always impressed me has been the willingness of the British people to take time for decisions. Laws which we rush through overnight, and some them very badly framed and ill-advised laws -- and I know a lot of you gentlemen agree with me -- would have been investigated for a couple of years beforehand by a British Royal Commission, and then passed only after a great deal of debate. I remember when the NRA codes were being framed that a member of the Cabinet expressed astonishment and pique that a huge and important industry had not come in with a code after two weeks, and he asked the question: How can we get all industry under codes in 30 days' time? In England they have codes governing certain industries, which operate pretty well. But I asked Mr. Walter Elliott, the minister for agriculture, once, how long it took to get one of them into operation, and he said "Oh, about 30 years."

We are constantly being told these days that if we cannot have the Supreme Court changed, we cannot even control floods. But I understand that four New England states have just made a joint program for controlling floods in the Connecticut River Valley without even thinking about the Supreme Court, or for that matter, about the United States Congress. We have been told that we have to have federal jurisdiction to control labor troubles, but federal jurisdiction did not help

much in the maritime strike, I noticed, in an industry which is unqualifiedly within the jurisdiction of the federal government. One wonders why, if federal jurisdiction did not solve that labor situation immediately, we should think that it would work perfectly in settling disputes in the automobile business. Inflation can be controlled through existing agencies and perfectly constitutional policies, but it will cost some sacrifices. But, after all, that is one of the problems of our days, how to get everything done without its costing anybody anything. We are told that unless the government has power over the courts it cannot be done. All that does not mean that I think a constitutional amendment unnecessary. I think it will be proved to be, in the long run, no matter who is on the bench, provided they are honest men.

We live in a time when many of the functions traditionally resting in society are being taken over by the State, and many of the functions of the State are being taken over by the government, and many functions of the government are becoming centered in the executive. That is unquestionably true. That has been the tendency.

And now you gentlemen are being asked to push that process suddenly a long step farther and do it in a hurry. You are presented with a proposal — not asked to help formulate one — which was not in advance discussed even with the Cabinet, to say nothing of being discussed with the responsible committees of Congress. You are being asked to take to yourself somebody's baby — but you don't know whose. And you are told that if you do not adopt this child and accept these proposals democracy is threatened. I think the question to ask is by whom and by what?

Source: Thompson, Dorothy. "Reorganization of the Federal Judiciary," Hearings on S. 1392. 75th Congress, 1st session. Washington, DC: U.S. Government Printing Office, 1937, pp. 858-884.

Dana Rubin is a speaker and consultant focused on women's voice and speech. She's the founder of Speaking While Female, the first-ever online collection of contemporary and historical speeches by women from across time and around the world. Dana recently gave a TEDx Talk on "Unlocking the Secret History of Women's Speech," and she's working on an anthology of women's speech. For more on how she helps organizations attract, retain and develop their women leaders, visit SpeakingWhileFemale.biz.

On Pandemics

Recently, Wolfson College, Cambridge distributed links to three recent articles or interviews relating to the work of its former President, Sir Richard Evans, an historian of Germany who wrote a detailed account of the 1887 Hamburg cholera epidemic. They provide food for thought:

<https://www.newyorker.com/news/q-and-a/how-governments-respond-to-pandemics-like-the-coronavirus>

<https://www.talkingpoliticspodcast.com/blog/2020/231-from-cholera-to-coronavirus>

<https://bostonreview.net/science-nature/alex-de-waal-new-pathogen-old-politics?fbclid=IwAR1P3IAuSnLkYzo6OD1d3m56j1rJmiDoGJ5esqUMnUTdygYRUevOgGjj7Rs>