

10-1-1967

## Dennis Chavez and Roosevelt's "Court-Packing" Plan

Barry A. Crouch

Follow this and additional works at: <https://digitalrepository.unm.edu/nmhr>

---

### Recommended Citation

Crouch, Barry A.. "Dennis Chavez and Roosevelt's "Court-Packing" Plan." *New Mexico Historical Review* 42, 4 (1967). <https://digitalrepository.unm.edu/nmhr/vol42/iss4/2>

This Article is brought to you for free and open access by UNM Digital Repository. It has been accepted for inclusion in New Mexico Historical Review by an authorized editor of UNM Digital Repository. For more information, please contact [amywinter@unm.edu](mailto:amywinter@unm.edu), [lsloane@salud.unm.edu](mailto:lsloane@salud.unm.edu), [sarahrk@unm.edu](mailto:sarahrk@unm.edu).

DENNIS CHAVEZ AND  
ROOSEVELT'S "COURT-PACKING" PLAN

BARRY A. CROUCH\*

WHEN, on February 5, 1937, Franklin D. Roosevelt announced his plan to enlarge the Supreme Court from nine to a maximum of fifteen justices, the formation of public opinion, pro and con, began almost at once. There were mixed emotions concerning the merits of the bill in both Houses of Congress, but the administration decided to introduce the measure in the Senate because Hatton W. Sumners, chairman of the House of Representatives Judiciary Committee, was openly hostile.<sup>1</sup> Although Roosevelt undoubtedly expected opposition to his court "reform" from Republicans and conservative Democrats,<sup>2</sup> he certainly planned on support from such staunch administration men as Joseph C. O'Mahoney of Wyoming, Tom Connally of Texas, Burton K. Wheeler of Montana, and Carl A. Hatch and Dennis Chavez of New Mexico.

In this particular instance, however, the President made a major political blunder. Men like O'Mahoney, Connally, and Wheeler opposed the bill, Hatch tried in vain for a compromise, and even Chavez remained noncommittal during the long struggle. To be sure, when the vote was finally taken on whether or not to recommit the court bill with all its amendments to the Senate Judiciary Committee, Chavez voted not to do so; thus, in effect, standing with the President. By this time, though, the court-packing plan

---

\* I should like to thank Sister Viatora (Schuller), former President of the University of Albuquerque; Mr. Richard B. Edwards, State Representative from District 7, and Mr. Charles J. Villa for making this article possible.

was assured of defeat and Chavez' vote was presumably calculated to keep him in the good graces of the administration. There were, understandably, other and more compelling reasons for Dennis Chavez' relative inaction during the court reorganization fight and he is a prime example of the approximately fourteen senators who remained noncommittal on the issue throughout the senatorial battle.<sup>3</sup>

DENNIS CHAVEZ was born in the small farming community of Los Chavez in Valencia County, New Mexico, on April 8, 1888.<sup>4</sup> Times were not easy for the family, because of the panic of 1893, and in 1895 David Chavez moved them to Barelás, a suburb of Albuquerque. When young Dennis was only thirteen he was forced to quit school and go to work as a grocery clerk to help out his parents. While at this job the young boy made the acquaintance of an engineer named Jim Gladding. Studying at night, Chavez eventually became a surveyor and later on qualified as an engineer. In 1906 Dennis left the grocery business<sup>5</sup> and took a job as assistant city engineer of Albuquerque, his boss being none other than Gladding. Serving the city until 1915, Chavez helped to plan and carry out some of Albuquerque's first municipal improvements. During these years he also became interested in political affairs and actively supported the Bernalillo County Democratic party, renouncing the Republican party—and its patron system—of which his father had been a lifelong member.<sup>6</sup>

The turning point in Chavez' life came in September 1917, when Senator Anson A. Jones of Las Vegas asked him to be his secretary in Washington. This was almost certainly a reward for his devoted campaign work for the senator in Rio Arriba and Taos counties in the election of 1916. After working with Senator Jones for six months he was appointed Assistant Executive Clerk for the United States Senate. He attended Georgetown Law School at night, graduating in 1920. Returning to Albuquerque he began practicing law and served intermittently as a member of the County and State Central Committees for the Democrats. These activities assuredly aided him in political circles, for he was elected

to the State House in 1922, receiving the largest electoral majority in the city. He served only one term, but his rise in New Mexico politics, with one brief exception, was continuous after that time. When he returned to Albuquerque, Chavez opened his own law office, specializing in criminal practice. In 1924 he was a delegate to the Democratic National Convention. In 1930 Chavez went to Washington for the second time as a member of the United States House of Representatives, defeating Albert Simms by nearly eighteen thousand votes.<sup>7</sup>

The 1932 Democratic landslide across the nation was a boon for Chavez, who was re-elected over Jose Armijo by 41,859 votes, garnering 64.2 per cent of the total cast, thereby establishing himself as one of the outstanding Democrats in the state. By 1934, after defeating George Cook for Democratic National Committeeman, Chavez felt ready to advance in the political hierarchy: He chose to run for the Senate against the Progressive Bronson Cutting, the most powerful politician in the state. Cutting had supported Chavez in 1932.<sup>8</sup>

Cutting was indeed a formidable opponent for the aspiring Chavez. First appointed to the Senate in 1927, he was elected as a Republican in 1928. A wealthy Harvard graduate and Phi Beta Kappa, Cutting came from Long Island but moved to New Mexico to seek a cure for tuberculosis. Not adverse to switching his party allegiance, he supported the Democrats in 1930 and, especially Roosevelt, in 1932. Known as "El Don," his power in New Mexico derived from owning a leading newspaper; having a real liking for the Spanish-American people and their culture; and being the head of a tough political machine.<sup>9</sup>

The 1934 Senatorial campaign between Chavez and Cutting was probably one of New Mexico's most notable state elections. It was an uncommonly dirty campaign, even for New Mexico; both sides apparently engaged in irregularities. The Roosevelt Administration was obviously backing Chavez, for it sent Postmaster Jim Farley, Senate Majority Leader Joseph Robinson, among others, into the state. Cutting was the only Progressive the administration opposed in 1934; he was extremely antagonistic toward Roosevelt's

attempt to cut veterans' pensions and questioned the President's humanitarianism.<sup>10</sup>

Even before election day Senator James F. Byrnes, Democrat from South Carolina, and chairman of the Senate committee to investigate campaign expenditures, stated that investigators had been sent into New Mexico. They did not reveal which race was involved, but checked complaints concerning excessive campaign outlays.<sup>11</sup> The outcome of the contest was almost impossible to predict because various groups such as labor, the Spanish-Americans, and even the Republicans were divided. When it was all over Cutting emerged the victor by the thin margin of 1,284 votes.<sup>12</sup>

Confident that he had won, Chavez, with administration support, was ready to contest the election. The State Canvassing Board certified Cutting's victory and the State Supreme Court then rejected Chavez' request to grant an order to the Canvassing Board to throw out returns from a number of precincts in fifteen counties. Chavez was still not finished. On February 25, 1935, he filed a formal petition before the Senate, disputing the result of the election. The issue was undecided when Cutting, returning from New Mexico where he had gone to collect affidavits dealing with the contest, was killed in an airplane crash on May 6. Governor Clyde Tingley wasted no time in appointing Chavez to the Senate on May 11. As Chavez was sworn in, five Progressives, all friends of Cutting, walked out of the Senate chamber, but the new member ignored them and took his seat. The charges against Cutting were later dropped and he was fully vindicated.<sup>13</sup>

In 1936 New Mexico voters elected Chavez for the remainder of Cutting's unexpired term, over Judge Manuel A. Otero, Jr. by about twenty thousand votes. Until the court fight in 1937 Senator Chavez consistently voted for New Deal measures and in all likelihood seemed to be permanently in the Roosevelt fold. With the assistance the administration had provided in 1934 and 1935, as well as his record on bills in the Senate, FDR had almost every reason to believe that Chavez would not fail to support the struggle to reorganize the Supreme Court.

Undoubtedly Chavez was as astounded by the President's February 5 message as was the rest of Congress. By February 13 the *Albuquerque Journal* was chiding Chavez for not taking a stand on the court bill. This was partly due to New Mexico Representative John J. Dempsey's statement that he opposed the Supreme Court proposals but favored the lower court reforms. The Santa Fe *New Mexican*, after praising Dempsey, stated its hope "that New Mexico's two senators will also have enough intestinal fortitude to stand by the American system of government, regardless of the club."<sup>14</sup> The *Artesia Advocate* reported that Chavez was leaning toward the bill, although there seems to be no foundation for this statement, and that his colleague, Carl A. Hatch, was non-committal.<sup>15</sup>

The New Mexico State Legislature hurriedly passed a resolution approving the court reform plan. Only four senators opposed it and no representatives; moreover, the Governor, Clyde Tingley, stood firmly behind Roosevelt.<sup>16</sup> The *Journal* editorialized that it was doubtful whether the resolution would carry much weight with New Mexico's members in Congress, "but it might hasten Senators Hatch and Chavez into voicing their attitudes on the court plans." And again on February 17 it stated: "New Mexico has been awaiting the opinions of our Senators on the issues. Nearly all their colleagues have by this time expressed their views in one manner or another. The silence of New Mexico's senators is singular."<sup>17</sup> The *Las Vegas Daily Optic* was extremely upset because it thought that public opinion had been completely disregarded in the state legislature's support of the court bill.<sup>18</sup> The *Roswell Record* had little faith in Hatch and Chavez, saying: "Enough is known to indicate that they will do whatever the President wishes them to do, on this matter or on other matters." It believed the better elements would oppose the plan and the newer and inexperienced senators would support FDR. And although the bill faced a hard fight in the Senate, the *Record* predicted its probable passage.<sup>19</sup>

Replying to a constituent who was then in New York, Chavez said concerning the court proposal: "This matter is of extreme im-

portance and I am not arriving at conclusions impulsively. Will try to do my duty conscientiously and patriotically." Other people were not to be put off so easily, however, and a New York lady opposed to the measure wrote a second letter to the Senator because his first "reply was delightfully non-committal—and today's paper lists you as one of those who 'will probably go along with the President.' "20

Even at this early date Chavez was most certainly under pressure from all sides to take a definite position on the court bill. Newspapers either listed him as leaning toward the plan or being undecided, but his correspondence shows no evidence of any commitment. He advised a New Jersey couple in a standard reply that he would "not make a hasty decision on the [Supreme Court] matter, but that when I do decide I sincerely hope and trust that I will make such a decision as is to the best possible interest to the American people and in keeping with the duties of my office, and without fear of future votes and political reprisals."<sup>21</sup> Nothing could have been more evasive and this was to be the general tone of his statements, privately and publicly, for the remainder of the fight.

The Senatorial battle lines formed rather quickly. By February 23 the Senate count was forty for the bill and thirty-seven against. This tabulation, however, did not include nineteen uncommitted senators and a deeper analysis hinted at forty-eight against, forty-six for, and two determinedly on the fence. The President's bill was already in trouble, and there is every reason to believe, because of the nature of the attack and the institution involved, that the measure never had a chance of being passed. In an attempt to encourage retirement by Supreme Court justices, and with a very dim hope of breaking the executive-judicial impasse, the Senate, by a seventy-six to four vote, passed the Sumners-McCarran Supreme Court Justices Retirement Bill which allowed judges to retire at full pay, if they had served ten years, when they reached the age of seventy. Chavez voted for it.<sup>22</sup>

By March Chavez had changed his tune only slightly. In a typical letter to a California man he was as equivocal as ever: "I

have definite ideas on the subject," he wrote, "but due to the fact that this matter is so grave, I find myself reluctant to make a decision in haste, and will not decide without further consideration."<sup>23</sup> Speaking at a victory day dinner in Staunton, Virginia, on March 4, Chavez straddled the fence in his only public utterance during the 168-day fight. Praising both the President and those senators who opposed him in the court matter he stated:

Last fall it was the "rubber-stamp" Congress that the American people were asked to defeat. However, it is the Democratic Members of both houses of Congress who are courageously voicing their convictions that it is unwise to add more judges to our Supreme Court. By paradox, strangely enough, through an expression of their opinions these Democratic Senators and Congressmen demonstrate to the world the utter absurdity and assinine [sic] ridiculousness of those unkind opponents of the President's proposal who shamelessly hurl against him the charge of dictator.

We as Democrats, irrespective of our stand on this issue, can pride ourselves that of all our statesmen who are attacking the proposal, none have doubted our great leader's sincerity. None fear abuse on his part should he be entrusted with the appointment, with the advice and consent of the Senate of additional judges. They do not fear a Democrat in the White House. It is future abuse that they fear.<sup>24</sup>

In an editorial on Chavez' Staunton speech the Santa Fe *New Mexican* said that it was "a hopeful augury that the New Mexico Senator has not yet endorsed the court packing proposal, and that he apparently can discern the dangerous precedent."<sup>25</sup>

The administration now started a concentrated campaign to get the undecided behind the court plan. James Roosevelt sent Mary W. Dewson a list of the senators who had not declared themselves and who "should be impressed." Chavez, along with nine others, was listed as leaning toward an increase in the Supreme Court. New Mexico was also singled out as one of the "key states for propaganda."<sup>26</sup> The administration no doubt hoped that Chavez would be swamped with letters favoring the court plan.

If the New Mexico Senator had taken a position on the reorganization bill, it was still not evident in his correspondence. "I

have definite ideas on the subject," he wrote to a New Mexican then in Texas in what could be called a form letter, "but due to the fact that this matter is so grave, I find myself reluctant to make a decision in haste, and will not decide without further consideration."<sup>27</sup> Chavez was probably starting to feel uneasy concerning his position. On the one hand he felt a strong allegiance to the administration because of all the help it had given him, but on the other he possibly believed that the court bill was wrong, and his mail showed a definite trend that the people were positively opposed. The Senate Judiciary Committee had begun its hearings on March 10 and for a while public attention was focused on that body. The *Magdalena News* reported that the committee was said to be evenly divided on the Supreme Court bill "with Hatch, from New Mexico, never before hardly heard of in Washington, suddenly made important by being able to switch the recommendation of the committee either way." Then in a ruthless editorial it stated that "Hatch, it is said, is profiting by the example of his colleague, Chavez, by demanding plenty of New Mexico patronage in return for his vote in committee on the court packing scheme." Carl A. Hatch had not been as silent as his friend on the court issue. He advocated an amendment to the original bill which would have restricted appointments to one each year. In an editorial the *Roy Record* stated: "Now, if Senator Chavez, comes forth with a statement indicating he is for the Hatch plan a lot of us are due for a heart attack sure enough."<sup>28</sup>

Chavez' reluctance to make some kind of statement did not cause his mail to abate. In fact, from March until the court bill was recommitted in late July his mail increased. It was almost impossible for the New Mexico solon to dismiss it lightly, for the overwhelming majority of his correspondents opposed the President's plan. A good many people believed the only solution was to submit the bill in the form of a constitutional amendment. Robert P. Noble of Port Chester, New York, wrote late in April: ". . . I note you are still listed as among those honorable men who are withholding alliance with the Party Chieftains, awaiting I presume, the sentiment of the country at large before definitely com-

mitting yourself." Noble suggested that "the tide, while never at ebb, is now flowing fully in favor of a Constitutional Amendment swelled by a great majority of *real true* Americans." And even a well-known radical like Gerald B. Winrod of Wichita, Kansas, wrote that "Christians of the United States" were opposed to any change, increase, or compromise on the President's bill and it should be defeated "in its entirety."<sup>29</sup>

If Chavez was affected by letters of this type, and there were many of them, he certainly did not display it in any recognizable form. Answering F. O. Sandstrom's letter opposing the court reform Chavez noted the question is "a very grave one, and I do not believe it would be consistent with the duties of my office to make a decision in haste, and I will not decide until the matter has been thoroughly considered."<sup>30</sup> This vacillation may have been due in part to conflicting reports coming out of his own state. In late February a newspaper poll in Curry County revealed 530 people against and 340 in favor of the court bill. However, the farmers in this county endorsed Roosevelt's plan. A poll taken by the Clovis *Evening News-Journal* showed that a majority in that city apparently favored the plan. Later on another count listed the people as overwhelmingly opposed. In March the *Artesia Advocate* reported that twenty newspapers in the state were against the bill, four supported it, and a number were noncommittal. By April though, the *New Mexico Sentinel* stated that ninety per cent of the papers in the state were in opposition.<sup>31</sup>

All the lawyers' associations in Albuquerque were opposed to the plan, as was the national American Bar Association. The Albuquerque Lawyers Club voted thirty-three to ten; the local ABA chapter poll showed forty-three to nine; and the Junior Bar Association was unanimously against. Later on the newly formed Lea County Bar Association joined the opposition. In an editorial the *Roy Record* stated that even though Hatch and Chavez were members of the bar fraternity they were "sort of sympathetic to the plan." It also believed that Jim Farley's threat of a loss of patronage to those who deserted the President would "no doubt have a lot of effect on senators of the ilk of those who are supposed to

represent the people of New Mexico." Farley, it is interesting to note, had also been making speeches all over the country constantly predicting the "court bill was in the bag," when, of course, it was not. The administration forces were split over the effectiveness of these speeches, and when pressed for the names of any senators they had influenced, the pro-Farley faction could produce only the name of Dennis Chavez.<sup>32</sup>

According to a Gallup Poll published on May 24, fifty to fifty-two per cent of the people in New Mexico were against the President's attempt to "reform" the Supreme Court. It also listed Chavez for and Hatch against the bill. One writer has said that, except for organized urban labor, the rural inhabitants of the Southeast, the South, and the Southwest and "poorest in economic ability and lowest in library development" became the most avid supporters of the President's proposal.<sup>33</sup>

From late March through April and May Roosevelt received numerous setbacks in his effort to enlarge the Court. First of all, in a series of decisions the Supreme Court upheld a Washington state minimum wage law for women; the revised Frazier-Lemke Farm Mortgage Moratorium Law; sections of the Railway Labor Act which required railroads to engage in collective bargaining; and lastly the National Labor Relations Act. The Court's new outlook combined with the dual blow of May 18 thoroughly finished the court bill. On that date the Senate Judiciary Committee voted ten to eight to report the reorganization plan unfavorably, and Justice Willis Van Devanter announced he would retire on June 2, the end of the Court's term. A few days later when the Court sustained the Social Security Act, many believed that enlargement of the Supreme Court was no longer necessary.

On June 14 the Senate Judiciary Committee delivered the coup de grace. In its adverse report the Committee stated in its summary: "It is a measure which should be so emphatically rejected that its parallel will never again be presented to the free representatives of the free people of America." Roosevelt, who had adamantly refused even to consider a compromise up to this time, now had no choice and the final drive for a substitute court

bill was begun. In preparation for the showdown Senate Majority Leader Joseph Robinson, who was to lead the fight, made a list of where each senator would probably stand. Chavez was listed as "pretty sure pro."<sup>34</sup> This prediction proved correct when the final vote was taken.

On July 6 the debate on the compromise bill opened on the Senate floor. Two days later Senator Marvel M. Logan of Kentucky made loyalty to the President the criterion for support of the new bill. He stated that those senators who had opposed FDR on the original measure had demonstrated their ingratitude to the President because he had helped to elect most of them. In reply Burton K. Wheeler of Montana, the man who had led the opposition, brought up the Cutting controversy of 1934 and 1935 which eventually brought Dennis Chavez into the fray. "Many of us, instead of coming in on the coattails of the President," snapped Wheeler, "helped to nominate Mr. Roosevelt in the convention of 1932." In fact, he had known men "who left their party in order to support" FDR. "Then I saw the present administration send speakers to New Mexico to fight the late Senator Cutting, notwithstanding the fact that he had left his party to campaign" for Roosevelt. The reason for this, he added, was because Cutting had disagreed with the chief executive concerning the overriding of his veto, on the Soldiers' Bonus Bill. The reference to Cutting's last race brought Chavez to his feet. Wheeler may know about politics in the Northwest, the New Mexican replied, but he knew little about the politics of the Southwest and New Mexico. He said he had helped nominate FDR in 1932 by being partly instrumental in getting the state delegation instructed for him and even before that had promoted the President's nomination. In his final comment Chavez showed quite clearly he had not forgotten the help the administration had given him in his race and contested election with Bronson Cutting in 1934 and 1935:

Without minimizing in the least the virtues of my predecessor, he did not help to nominate President Roosevelt. As a matter of fact, his representatives were at the other convention helping to nominate Mr.

Hoover. So I know that the President . . . should not be accused of ingratitude because, he dares, in his own way, to try to help those who helped nominate him at the Chicago convention.<sup>35</sup>

Chavez' correspondence indicates that the people who wrote to him were definitely against the compromise measure. The Citizens' Committee for Court and Constitution listed him among the twelve "doubtful" senators who should be written to by those who opposed the new bill. Even Ignatius M. Wilkinson, Dean of the Fordham University School of Law, who had appeared before the Senate Judiciary Committee, in opposition to the original bill, wrote Chavez urging him to vote against the substitute plan. But, as with Roosevelt's original bill, Chavez was not going to commit himself in any way. His standard replies were that he still had "an open mind on the subject," or that "you may be sure that your suggestions will be considered." Although no one knew for certain which way he would go until the roll was called, the *Clovis Evening News-Journal*, on July 10, listed him as having spoken publicly for the original or compromise bill. In his column in the *Albuquerque Journal* E. Dana Johnson wrote that the paper was informed that Chavez, "regarded as a key-man in the fate of the Administration judiciary-abolishment program, is being overwhelmed with letters and telegrams urging him to stand by the Constitution and the American system of the independent court, as the crisis in the packery fight nears." Hoping this was true, Johnson said that if he had not been deluged with messages he soon would be. "If Senator Chavez proves big enough to divorce a crisis in government from a transitory political line-up, and act as he would were no partisanship involved, we have little doubt where he will stand; but that is a large order." In an ending admonishment Johnson wrote: "In historical perspective, the partisan politics of those who voted for or against this measure will soon be forgotten in history. And history has been made by men able to rise above 'organization' loyalties—not by politicians."<sup>36</sup>

With the death of Senator Robinson on July 14 the substitute bill had no chance whatsoever of passing. Extreme political

maneuvering, even during his funeral, resolved the issue. The Judiciary Committee met at ten o'clock on July 22 and after much debate Senator O'Mahoney of Wyoming wrote on a memo: "No change in S.C.—No Proctor—No roving judge."<sup>37</sup> When the Senate convened a little after noon Senator Logan of Kentucky moved to recommit the original bill with all its amendments to the Judiciary Committee. The vote was seventy in favor and twenty against. Chavez was among those who voted no. He had finally cast his lot with the President. On that same day he had written O. S. Evans of Shiprock, New Mexico: "As yet I have not made a decision on this matter for I believe that every phase of the question should be carefully considered before a decision is made and I also think that a hasty decision might be detrimental to our Nation and State."<sup>38</sup> After 168 days of tense battle the court fight was over at last.

A New Mexico newspaper had to have its say though. In a scathing editorial, the *Albuquerque Journal* said that although the bill was dead it was not because of New Mexico's two senators, who had stood by the President when the proposal faced certain defeat. Hatch's vote was expected, because he had signed the compromise, but Chavez, "who had remained noncommittal on the various measures through the long controversy and was one of the few who had not openly stated his position, could easily have chosen to vote with the majority in embalming the 'slow degree' court plan." Instead, he chose to support FDR "and thus perhaps ingratiate himself in the favor of the Administration." Indeed the two senators were free from reprisals and "ought to be set for a flow of patronage in payment for their 'valiant' efforts."<sup>39</sup>

Why indeed did Dennis Chavez remain noncommittal during the court bill fight and then finally support the President? Whichever position he took he surely had reasons for justifying it. If he had decided to oppose the bill, his correspondence would have probably been a major reason for his so doing. Of those letter-writers who were not Chavez' constituents the count ran four hundred and sixty-four against the original bill to three for it. The out-of-staters were even more strongly against the compromise, the count being one hundred and sixty-one opposed with no one in support.

From his own electorate ninety-six were against the original measure while only one favored it. In equal disfavor, the compromise plan lost twenty-three to one.<sup>40</sup> This, plus the fact that many of the New Mexico newspapers were in opposition, would seem to have been sufficient reason for voting against the bill.

On the other hand there is one important, yet seemingly unrelated, factor that just possibly compelled Chavez finally to support the President. This factor was not patronage, and it must be said that there is no evidence to indicate it ever entered the picture in relation to Chavez' final decision. After the retirement of Justice Willis Van Devanter many men were mentioned as possible appointees to fill the vacancy. One of the more prominent names that cropped up was Sam G. Bratton, former senator from New Mexico, and a Federal Circuit Judge.<sup>41</sup> Most of the state's newspapers, if not all, favored the appointment of Bratton and their editorials strongly urged it.<sup>42</sup> What they failed to realize, because they could afford to be idealists instead of realists, was that it is very doubtful whether Roosevelt would have given Bratton a second thought if Chavez, or even Hatch, had voted against him. And, of course, Chavez was also deeply indebted to the administration for all the backing it had given him in past years. To desert Roosevelt, regardless of the Bratton appointment, might have seemed to Chavez paramount to treason, and no matter what happened he could not force himself to leave the fold.

Prior to Van Devanter's resignation Chavez was still in a quandary about what to do. His mail showed that people were strongly opposed to increasing the Supreme Court, but the administration's hold was strong enough to make it impossible for him to take a definite stand and get caught in the middle. This is precisely one reason why Roosevelt lost the battle: In the later stages of the struggle the administration forces could always count on at least forty-four senators, but beyond that they had to go to men like Chavez and could never be entirely certain, despite the influence they believed they had on such senators, that these men would not vote against the bill.<sup>43</sup>

In any case, Chavez is an excellent example of the senator who was able to keep from becoming deeply committed in the long fight. Whatever his reasons for supporting the President, he was no doubt able to justify them fully, for most certainly he had given the issue long and careful consideration.

### NOTES

1. Returning to Capitol Hill after Roosevelt's announcement, Sumners told other congressional leaders: "Boys, here's where I cash in my chips." The larger House of Representatives would be a more difficult group to manage than the Senate, and would also contain greater numbers of undecided votes. Stephen Early to Franklin D. Roosevelt (Confidential Memorandum), February 8, 1937, Franklin D. Roosevelt Papers, President's Secretary's File, Franklin D. Roosevelt Library, Hyde Park, New York. Early wrote the President that Sumners had held an "off the record" news conference on that morning and was savage in his attack upon the court bill, calling it "infamous." One of the newspapermen called Early and said Sumners gave the proposal "hell, specifically and generally." Early told FDR these statements would "lead the press into writing more and more stories about opposition by Congressional leaders, etc." Joseph Alsop and Turner Catledge, *The 168 Days* (Garden City, 1938), pp. 67-68; William E. Leuchtenburg, *Franklin D. Roosevelt and the New Deal, 1932-1940* (New York, 1963), p. 234; James M. Burns, *Roosevelt: The Lion and the Fox* (New York, 1956), p. 294. For the origins of the court plan see the excellent article by Leuchtenburg, "The Origins of Franklin D. Roosevelt's 'Court-Packing' Plan," in *The Supreme Court Review*, ed. by Philip B. Kurland (Chicago, 1966), pp. 347-400; and Turner and Catledge, pp. 13-60.

2. Karl A. Lamb, "The Opposition Party As Secret Agent: Republicans and the Court Fight, 1937," *Papers of the Michigan Academy of Science, Arts, and Letters*, vol. 46 (1961), pp. 539-50; James T. Patterson, "A Conservative Coalition Forms in Congress, 1933-1939," *Journal of American History*, vol. 52 (1966), pp. 757-72; John R. Moore, "Senator Josiah W. Bailey and the 'Conservative Manifesto' of 1937," *Journal of Southern History*, vol. 31 (1965), pp. 22-24.

3. This figure is taken from a list entitled "Senators' Stand on Court Reform" in the Mary W. Dewson Papers, FDR Library. Senate Majority Leader Joseph Robinson listed twelve question mark senators in "File, Confidential, under 'Robinson,'" June 17, 1937, FDR Papers, President's Secretary's File. The *Citizens' Committee for Court and Constitution* listed twelve "doubtful" senators on July 15, 1937, Dennis Chavez Papers, University of Albuquerque. The number of uncommitted senators obviously fluctuated in the first one or two months after the court bill was presented but stabilized between twelve and fourteen undecided by April or May. The administration's count in the Dewson Papers is surprisingly accurate for so early in the court fight.

4. For background on the Chavez name and family see "New Mexico Family Names: The Name of 'Chaves,'" *El Palacio*, vol. 22 (1927), pp. 112-16; Edward Lahart, "The Career of Dennis Chavez As a Member of Congress" (unpublished Master's thesis, Department of Government and Citizenship, University of New Mexico, 1959), pp. 1-2; Charles F. Coan, *A History of New Mexico*, 3 vols. (Chicago and New York, 1925), vol. 2, p. 34. Fray Angelico Chavez, *Origins of New Mexico Families* (Santa Fe, 1954), p. 23, says the name is not a patronym and therefore does not merit the final "z" like most Spanish names of this ending.

5. *The Chavez 1952 Handbook for Speakers*, Chavez Papers. This is obviously a campaign document which was issued to supporters of Dennis Chavez. It does, however, contain some useful information. The following reason is given (p. 3) for Chavez' leaving the grocery business: "And so one day in 1906, when the proprietor told young Dennis to deliver some groceries to some men who were hired to break a strike, the boy refused. He lost his job. Dennis Chavez had made his first stand on behalf of organized labor, a stand which he was to repeat again and again throughout his life." (Hereinafter cited as *Speakers Handbook*).

6. *Ibid.*, pp. 1-4; Coan, vol. 2, p. 35; Lahart, pp. 2, 4-7, 10-15; *Albuquerque Journal*, Evening Edition, Aug. 6, 1930, p. 1; *New York Times*, May 12, 1935, p. 2.

7. *Speakers Handbook*, pp. 4-6; Lahart, pp. 16-25, 29-45, 130-35; *New York Times*, May 12, 1935, p. 2; Coan, vol. 2, p. 35; *Albuquerque Journal*, Evening Edition, Aug. 6, 1930, p. 1. Before 1942 New Mexico had only one Representative.

8. *The New Mexico Blue Book, 1933-1934* (Santa Fe), p. 74; *New York Times*, May 12, 1935, p. 2; Lahart, pp. 71-76, 97-100, 138-40; Warren A. Beck, *New Mexico: A History of Four Centuries* (Norman, 1962), p. 314, says Chavez challenged Cutting "because he wanted to succeed him as the political leader of the Spanish-Americans of the state."

9. Frederick R. Barkley, "Cutting: A Blue-Blooded Buccaneer," in *Sons of the Wild Jackass*, ed. by Ray Tucker and Frederick R. Barkley (Boston, 1932), pp. 196-220; Raymond Moley, *After Seven Years* (New York and London, 1939), pp. 125-26; Jonathan R. Cunningham, "Bronson Cutting: A Political Biography" (unpublished Master's thesis, Department of Government, University of New Mexico, 1940) *passim*; Arthur M. Schlesinger, Jr., *The Politics of Upheaval* (Boston, 1960), pp. 139-40; Leuchtenburg, *Franklin D. Roosevelt*, p. 12; Beck, pp. 303, 305-12. For background on Cutting and the Progressive Party in New Mexico see Lloyd K. Kerbow, "The New Mexico Progressives" (Seminar paper, Department of History, University of New Mexico, 1966).

10. Frank D. Reeve, *History of New Mexico*, 3 vols. (New York, 1961), vol. 2, p. 362; Harold L. Ickes, *The Secret Diary of Harold L. Ickes: The First Thousand Days, 1933-1936* (New York, 1953), p. 217; *New York Times*, Oct. 7, 1934, section IV, p. 7; Nov. 4, section IV, p. 7; Schlesinger, Jr., p. 140; Lahart, pp. 84-85; Burns, pp. 202, 496; Arthur T. Hannett, *Sagebrush Lawyer* (New York, 1964), pp. 210-11. Moley (pp. 191, 193) says he saw FDR "lose his poise, self-confidence, and good humor but once," during the Hundred Days. "That was when Cutting refused to compromise in the fight on veterans' cuts."

11. *New York Times*, Oct. 21, 1934, p. 25.

12. E. E. Maes, "The Labor Movement in New Mexico," *New Mexico Business Review*, vol. 4 (1935), p. 139; *Literary Digest*, vol. 118 (Nov. 3, 1934), p. 13; *New York Times*, Nov. 4, 1934, section IV, p. 7, Nov. 7, p. 2; Lahart, pp. 101-20, 141-47; *The New Mexico Blue Book, 1935-1936* (Santa Fe), pp. 81-82.

13. For all the relevant documents see *Chavez vs. Cutting in Senate Election Cases From 1913 to 1940*, 76th Congress, 3rd Sess., Doc. no. 147, comp. Frank E. Hays (Washington, 1940), pp. 681-709; Donald R. McCoy, *Angry Voices: Left-of-Center Politics in the New Deal Era* (Lawrence, Kansas, 1958), pp. 68-70; Schlesinger, Jr., pp. 140-41; Burns, p. 202; Ickes, pp. 358-59; Cunningham, pp. 185-202; Lahart, p. 121; *New York Times*, Nov. 23, 1934, p. 7, Nov. 24, pp. 4, 14 (editorial), Nov. 25, p. 34, Nov. 27, p. 5, Dec. 16, section II, p. 2, Dec. 30, p. 17, Jan. 1, 1935, pp. 13, 26 (editorial), Feb. 26, p. 1, Mar. 2, p. 13, Apr. 12, p. 5, Apr. 20, p. 2, May 12, p. 2, May 21, p. 13, June 6, p. 2; *Congressional Record*, vol. 79, part 1, 74th Cong., 1st Sess., p. 358; part 3, p. 2513; Norman L. Zucker, *George W. Norris: Gentle Knight of American Democracy* (Urbana and London, 1966), pp. 18-19; Oswald Garrison Villard, "Issues and Men: Senator Cutting," *The Nation*, vol. 140 (May 22, 1935), p. 591. Hannett (pp. 212, 213-16) says Jim Farley told him to "go ahead and file the

contest but with this understanding. Don't file it unless you have a good cause of action and unless you are sure you can show Chavez was elected."

14. *Albuquerque Journal*, Feb. 13, 1937, p. 10, Feb. 15, p. 4, Feb. 17, p. 10; *Santa Fe New Mexican*, Mar. 9, 1937, p. 4; *Magdalena News*, Feb. 18, 1937, p. 4.

15. *Artesia Advocate*, Mar. 4, 1937, p. 2.

16. *Santa Fe New Mexican*, Feb. 12, 1937, p. 1. The *New Mexican's* headline was: "N. M. Legislature For Dictatorship." On February 13 (p. 1) it said there was a rumor that FDR had telephoned Tingley urging him to get the legislature to support his court plan; see also Feb. 10, p. 1, for Tingley's stand; *Albuquerque Journal*, Feb. 13, 1937, p. 10.

17. *Albuquerque Journal*, Feb. 13, 1937, p. 10; Feb. 17, p. 10.

18. *Las Vegas Daily Optic* quoted in the *Albuquerque Journal*, Feb. 23, 1937, p. 6; Feb. 24, p. 3.

19. *Roswell Record* quoted in the *Albuquerque Journal*, Feb. 22, 1937, p. 4.

20. Dennis Chavez to Nancy Lane, Feb. 13, 1937; Anselo Lane to Dennis Chavez, Feb. 15, Chavez Papers. (Hereinafter Dennis Chavez will be abbreviated DC).

21. DC to Mr. and Mrs. R. H. Whitaker, Feb. 20, 1937. See also Edward B. Lee to DC, Feb. 19; A. F. Sanford to DC, Feb. 23; Humbert B. Powell, Jr. to DC, Feb. 25; P. G. Schroeder to DC, Feb. 26; George H. Buecking to DC, Feb. 23; Charles D. McCormick to DC, Feb. 24; Martin F. Comeau to DC, Mar. 1, all in the Chavez Papers.

22. E. Kimbark MacColl, "The Supreme Court and Public Opinion: A Study of the Court Fight of 1937" (unpublished Ph.D. dissertation, Department of History, University of California, Los Angeles, 1953), pp. 169-70, 210; James J. Anderson, "The President's Supreme Court Proposal: A Study in Presidential Leadership and Public Opinion" (unpublished Ph.D. dissertation, Department of Government, Cornell University, 1940), pp. 201, 203; *Congressional Record*, vol. 81, part 2, 75th Cong., 1st Sess., p. 1649; Burns, pp. 313-15; L. Loyal Turner to DC, Feb. 25, 1937, Chavez Papers.

23. DC to H. B. Hammond, Mar. 5, 1937. The only variation in the letter was "this matter is so grave" is changed to "this is such a grave question." DC to L.M. Wilbur, Mar. 6, all in Chavez Papers.

24. *Congressional Record*, vol. 81, part 9 (appendix), 75th Cong., 1st Sess., p. 441; *New York Times*, Mar. 5, 1937, p. 15; *Albuquerque Journal*, Mar. 5, 1937, p. 11; MacColl, p. 216.

25. *Santa Fe New Mexican*, Mar. 6, 1937, p. 4.

26. James Roosevelt to Mary W. Dewson, Mar. 10, 1937; Dewson to Roosevelt, Mar. 6; Mrs. May Thompson Evans to Mrs. Harriet A. Kerr,

Mar. 19; Kerr to William Gordon, Mar. 22; and list entitled "Senators' Stand on Court Reform," all in the Mary W. Dewson Papers.

27. DC to Robert H. Trufant, Apr. 13, 1937; see also DC to C. E. Degner, Apr. 17; DC to O. T. Tatman, Apr. 19; DC to Allen P. Terrell, Apr. 19; DC to F. E. Taylor, Apr. 20, all in the Chavez Papers.

28. *Magdalena News*, Apr. 15, 1937, p. 4; *Roy Record* quoted in the *Albuquerque Journal*, Apr. 5, p. 4; Mar. 26, pp. 1, 9.

29. Robert P. Noble to DC, Apr. 26, 1937; Gerald B. Winrod to DC, May 4; see also Henry DeC. Ward to DC, April 23; Eliot G. Parkhurst to DC, May 24; Herlwyn R. Green to DC, Feb. 24; F. Louis Slade to DC, Apr. 23; J. Harper Bonnell to DC, Apr. 11, all in the Chavez Papers.

30. DC to F. O. Sandstrom, May 10, 1937, Chavez Papers.

31. *Albuquerque Journal*, Feb. 21, 1937, p. 2, Feb. 26, p. 10; *Clovis Evening News-Journal*, Feb. 13, 1937, p. 8, May 3, p. 2; *Artesia Advocate*, Mar. 4, 1937, p. 2; *New Mexico Sentinel*, Apr. 6, 1937, pp. 4, 11.

32. *Albuquerque Journal*, Apr. 13, 1937, pp. 1, 10, Apr. 19, p. 4, July 21, p. 1; *Roy Record* quoted in the *Albuquerque Journal*, Apr. 19, 1937, p. 4; Alsop and Catledge, pp. 189-90; Frank O. Westerfield to DC, Apr. 19, 1937; F. Morse Hubbard to DC, Apr. 20; Mrs. Raymond Buss to DC, Apr. 24; E. C. Speiden to DC, Apr. 21; Harry T. Hughes to DC, Aug. 7, Chavez Papers.

33. MacColl, pp. 237, 348; cf. Thomas C. Parsons to DC, Apr. 20, 1937; A. L. Shapleigh to DC, Apr. 21; J. Earle Bacon to DC, July 22; C. R. Burnett to DC, July 20; Jane L. Montgomery to DC, July 12; F. M. Mason to DC, July 17; V. G. Potter to DC, July 16, Chavez Papers; *Albuquerque Journal*, July 6, 1937, p. 4.

34. "Reorganization of the Federal Judiciary," Adverse Report, 75th Cong., 1st Sess., Report no. 711, p. 23, Joseph C. O'Mahoney Papers, University of Wyoming, Laramie; "File, Confidential, under 'Robinson,'" June 17, 1937, President's Secretary's File, FDR Papers.

35. *Congressional Record*, vol. 81, part 6, 75th Cong., 1st Sess., pp. 6883-84; *New York Times*, July 8, 1937, p. 2; Richard T. Ruetten, "Burton K. Wheeler of Montana: A Progressive Between the Wars" (unpublished Ph.D. dissertation, Department of History, University of Oregon, 1961), pp. 237-38; *Albuquerque Journal*, July 8, 1937, pp. 1, 3.

36. *Citizens' Committee for Court and Constitution*, July 15, 1937; Ignatius M. Wilkinson to DC, July 20; DC to R. C. Garland, July 14; DC to Tom W. Neal, July 20; DC to J. A. Mahoney, July 20; DC to Katherine Patterson, July 10; DC to Misses Eva and Mathilde Ammen, July 14, Chavez Papers; *Albuquerque Journal*, July 21, 1937, p. 8.

37. Memorandum, Joseph C. O'Mahoney, July 22, 1937, O'Mahoney Papers.

38. DC to O. S. Evans, July 22, 1937; M. I. Thompson to DC, Aug. 16, Chavez Papers; *Congressional Record*, vol. 81, part 7, 75th Cong., 1st Sess., p. 7381; *Albuquerque Journal*, July 23, 1937, pp. 1, 5.

39. *Albuquerque Journal*, July 24, 1937, p. 8.

40. These figures are the author's. I counted every letter in the Chavez Papers dealing with the Supreme Court fight.

41. Bratton was one of eight men considered for the appointment. Alsop and Catledge, p. 298; *New York Times*, Aug. 6, 1937, p. 9; *Albuquerque Journal*, May 31, 1937, p. 4, Aug. 12, p. 8. In the *Journal* of Aug. 13 (p. 1), E. Dana Johnson wrote that Bratton would not be appointed because he was "neither aggressive nor militant; a crusader nor a scrapper."

42. *Curry County Times*, June 3, p. 6; *Magdalena News*, May 27, p. 4; *New Mexico Sentinel*, Aug. 3, p. 4; *Clovis Evening News-Journal*, July 21, p. 1; *Santa Fe New Mexican*, July 23, p. 4, July 31, p. 1.

43. Alsop and Catledge, pp. 245-46.