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HONORABLE HOMER CUMMINGS

ATTORNEY GENERAL OF THE UNITED STATES

Under the Auspices

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LABOR'S NON-PARTISAN LEAGUE

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Over the Red Network of the
National Broadcasting Company.

Ladies and Gentlemen:

It is proper that your meetings, held throughout the country on this auspicious day, should be dedicated to the cause of liberalism and progress, and devoted to a consideration of the President's Plan for Judicial Reform.

During recent months the responsibilities of the Supreme Court in interpreting and applying the Constitution, have been more thoroughly sifted and explored than ever before. It is at length becoming clear that judges do not simply lay a statute alongside the Constitution and arrive at an inevitable result by mere measurement.

Let me illustrate. Twenty years ago the Supreme Court divided evenly on the validity of an Oregon minimum wage statute for women. In 1923, the District of Columbia act was held invalid, and in 1925 the Arizona and Arkansas statutes met the same fate. Only last June the Court reaffirmed its position in holding the New York act invalid. But on March 29th of this year the Court completely reversed its stand of 1923, 1925, and 1936 and upheld the minimum wage act of the State of Washington.

Out of this amazing experience come three significant propositions: First, in the earlier cases, the result was reached upon a hard and fast legal theory, that bore no relationship to the actual facts of industrial life. Secondly, neither the states nor the Congress could legislate on the evil of the sweatshop, for the Court had staked out a no man's land within which all organized government was powerless to act.

Thirdly, the vote of a single judge, holding office for life, had determined the social policy of the nation for twenty years.

A week ago another striking demonstration was afforded in the five to four decisions sustaining the National Labor Relations Act and incidently, upsetting the solemn pronouncements of the Lawyers Committee of the Liberty League.

And yet, the enlightened judgment, which has given us these recent decisions by the narrowest of margins may be eclipsed tomorrow by a return to abstract theories and mistaken assumptions. The statutes recently validated may be whittled away in their application bit by bit until nothing remains but an empty victory.

Surely this is an unhealthy condition. The bench still lacks a sufficient number of judges whose self-restraint is predictable, judges who are willing to see the facts as they are and to decide under the Constitution and not over it.

American constitutional history is illuminated by occasional flashes such as we have witnessed in the last few weeks, but that same history is often darkened. We find ourselves now in a moment of light. Our problem is to keep that light burning.