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Stephen Strong Gregory

By TAPPAN GREGORY, ESQ.

A lecture given by Mr. Gregory in October, 1956 at The Law School. The lecture is the first in a series of lectures on eminent lawyers.

It is with no little diffidence that I present the observations that follow, for Stephen Strong Gregory was my father. He and I were very close to each other, and it was my good fortune to be associated with him professionally for the last ten years of his life. I do not wish to picture him to you as a paragon of any sort. He had his faults; he made mistakes as all men do; he was human.

He was born in Unadilla, New York, on November 16, 1849; moved to Madison, Wisconsin, at the age of eight; and was educated at the University of Wisconsin, where he took his A.B. and LL.B. degrees in 1870 and 1871, respectively. Later he declined an honorary LL.D. degree from the same institution because he did not favor degrees not representing actual work done.

In his younger days he was possessed of a very quick temper, which years of self-discipline brought largely under control. With this went an extraordinarily warm heart, great kindliness, and lively sympathy always for the poor, the friendless, and the oppressed. His wit was quick and keen and occasionally a bit caustic, his mind alert, his judgment excellent.

He came to Chicago in 1874 and for many years thereafter was continuously in the trial of jury cases, literally going from one courtroom to another, day after day. He was a firm believer in trial by jury as one of the great bulwarks of our liberties; but he also thought that in civil cases trial by jury as at common law should be restored; that judges should be permitted to charge juries orally, without written instructions, and to comment on the facts. He once said he thought he had tried five or six hundred jury cases, perhaps more, though in the last fifteen years or so of his life most of his cases came from other lawyers and very frequently after they had been lost in the lower court.

After his first few years at the Bar, he became associated with the firm of Tenney and Flower. Dan Tenney, senior member, was an uncle of Horace Kent Tenney, who was for years at the head of the Bar of Chicago, and father of Henry F. Tenney, who stands in the same high position today—a worthy and distinguished son, ably carrying on in the best tradition of his illustrious sire. My father used to quote Dan Tenney as saying that every well-organized law office should have at least one lawyer in it.

At the request of Clarence Darrow, he joined in the defense of Debs in the contempt and conspiracy proceedings before Judges Woods and Grosscup in the United States Circuit Court in Chicago—without compensation. He held the opinion that labor unions were legitimate and necessary in affording the laboring man adequate protection of his rights and that the members of a union had a right to strike and to urge others to strike. But he believed that every effort should be made to adjust controversies between employer and employee by voluntary arbitration before resorting to strikes; and he always counseled earnestly against any action involving force or violence, threats of violence, or efforts to intimidate those whom it was sought to persuade.

Eugene V. Debs was president of the American Railway

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The Class of 1959

When the academic year 1956-57 began last October, one of the largest entering classes in the School's history began the work of the first year. One hundred and forty-two students, chosen from among 481 applicants, made up the entering class.

As in the past, many alumni have expressed an interest as to the origins of the student body, both in terms of their home communities and of the colleges from which they received their undergraduate education. The current student body consists of 233 students who have attended 172 different colleges and universities located in all parts of the United States and in foreign countries. Institutions currently represented by members of the student body are:

University of Alabama
Albion College
American Conservatory of Music
Amherst College
Antioch College
Armstrong College of Savannah
University of Athens
Aurora College
Austin College
Baghdad Law School
Bard College
Bates College
Beloit College
Boston University
Bowdoin College
Bradley University
Brandeis University
Brigham Young University
University of British Columbia
Brooklyn College
Brown University
Bryn Mawr University
University of Buffalo
University of California (L.A.)
Calvin College
Carleton College
Central State College
University of Chicago
City College of New York
Colby College
Colgate University
University of Colorado
Columbia University
University of Connecticut
Cornell College (Iowa)
Cornell University
Calvin-Stockton College
Dartmouth College
Davidson College
De Paul University
DePauw University
Drake University
Drew University
Earlham College
Emporia College
Emory University
Far Eastern University
University of Genova
George Washington Law School
Georgetown University
Goethe University
University of Grenoble
Grinnell College
University of Hamburg
Hamilton College
Harvard University
Haverford College
University of Hawaii
Hebrew University
Holy Cross, College of the Hope College
University of Illinois
Illinois Institute of Technology
Indiana University
James Milikin University
John Marshall Law School
Joliet Junior College
Kalamazoo College
University of Kansas
Kent University
University of Kentucky
Kenyon College
Lafayette College
Lake Forest College
Lincoln University
London School of Economics
Louisiana State University
University of Louisville
Loyola University
Macalester College
University of Maine
Marquette University
Maryville College
Mecer University
Mexico City College
University of Michigan
Michigan State University
University of Mississippi
Morehouse College
Morningside College
Wayne Junior College
Murray State College
University of Nebraska
Nebraska Wesleyan University
University of New Mexico
New Mexico Military Institute
University of North Dakota
University College of North Staffordshire
Northwestern University
From the point of view of geographic origin, members of the current student body represent thirty-five states, the District of Columbia, Hawaii, and ten foreign countries as follows:

Alabama
Arkansas
California
Colorado
Connecticut
District of Columbia
Delaware
Florida
Georgia
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Nebraska
New Jersey
New Mexico
New York
North Dakota
South Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
Tennessee
Texas
Utah
Washington
Wisconsin

Foreign Countries:

Australia
Canada
England
Germany
Greece
Iraq
Italy
Jordan
New Zealand
Sweden

The Blake Scholar: Robert Martineau, Oconto, Wisconsin; B.S., College of the Holy Cross, Milwaukee.

The Mary Beecher Scholar: Mrs. Miriam Chesslin Feigelson, New York; A.B., Western College for Women, Miami, Ohio.

The Phi Sigma Delta Scholar: B. Z. Goodwin, Miami Beach; A.B., University of Chicago.
Report on the Class of 1926 after Thirty Years
By ELMER P. SCHAEFER, '26

Of sixty-five class members, fifty-four responded to a questionnaire. Thirty years after graduation finds 1926 middle-aged, still working for their individual objectives and serving in their chosen field. A representative member of the class, Richard Bevan Austin, one of the greatest prosecutors Cook County, Illinois, has ever had, was nearly elected governor of Illinois in 1956.

While this class was "between the wars" from a military point of view, ten members saw wartime military service, three of them in both world wars.

Most of the class are practicing law, with Chicago's La Salle Street the favorite location. Geographically, they are residents of fifteen different states and of the District of Columbia.

Of those practicing law, eight are the senior partners in law firms. Past or present, there are five law professors or instructors and nine in the federal governmental service; four judges, one of whom is a judge of a state supreme court; three masters-in-chancery, or referees; five prosecuting attorneys; four city attorneys, or special municipal counsel; two are in suburban practice; and one has practiced in France. There are five bank or corporation presidents or vice-presidents. Nine are chief counsel for private corporations. There are two railroad general counsel, and one is president of the Association of American Law Schools.

There are six authors, five of whom have confined their writings chiefly to the field of law. There have been two college trustees or board members. There are two long-time members of the Illinois State Legislature, Senator Meritt Little and Legislator Richard Harewood; two title officers of title companies; six have been bar association presidents; three, members of boards of managers of bar associations. The activities of class members on school boards and in community activities have been too numerous to mention. Almost without exception the questionnaires revealed intense activity in fields other than law and the expenditure of large amounts of time and energy in educational, charitable, religious, legal, literary, military, and community causes. It is regretted that there is not space to detail all these activities. The replies were also noteworthy for their brevity. Your scrivener has several times added important facts known to him and omitted by the answer in the questionnaires. Most of the class have served extensively on bar association committees, from the American Bar Association to local city, county, and area bar associations.

Collectively the members of the class have eighty-four children and fourteen grandchildren. Most of the children are in their teens or younger. Gaylord Toft, for example, has four sons under eight, while A. S. Thorwaldson lists four grandchildren. There is one set of girl twins and one set of boy twins among the eighty-four children, and among the grandchildren is the illustrious name of Floyd Russell Mechem II. While inadvertently omitted from the questionnaire, four members volunteered the fact that their wives attended the University of Chicago. Three class members are practicing law with their sons, and four sons of class members are lawyers; and thirteen more children of class members intend to be lawyers.

The following biographical outlines are taken almost exclusively from answers submitted to the recent questionnaire.

ABRAHAMS, JEROME L., resides at 1456 Sheridan Rd., Highland Park, Illinois, and practices law at 38 S. Dearborn St., Chicago. He is a partner in the firm of David Paiman and Abrahams and
the father of Richard L. and Mrs. Barbara Grossman. He has three grandchildren: Glenn D. Abrahams, three years; Marc S. Abrahams, eleven months; and Michael L. Grossman, one and a half years.

Alsclaler, Jacob E., resides at 143 Le Grande Blvd., Aurora, Illinois, and offices at 12 Water St., Aurora, where he is a partner with his brother, Sam Alsclaler, '35, in the law firm of Putnam Johnson and Alsclaler. He is married to Carolyn Straus Alsclaler, U. of C., 1926, and they have three children: Mrs. Rosalie A. Goldstein, twenty-six; Benjamin P., twenty-three; and George A., twenty-one. Both of the sons plan to study law and one is planning to attend The University of Chicago Law School. There is one grandson, Daniel Arthur Goldstein, fifteen months. Jacob was a member of the Illinois State Normal School Board from 1935 to 1943 and chairman of the Kane County Democratic Central Committee from 1932 to 1942.

Artzburn, Norman F., resides at 1325 Old Orchard Rd., Vincennes, Indiana, and his office address is Supreme Court, State House, Indianapolis. Norman is a justice of the Supreme Court of Indiana and is a former member of the Board of Managers and former president of the Indiana State Bar Association and also a former member of the Indiana State Board of Law Examiners. Justice Artzburn is married and the father of three children, Joan Marie, Linda L., and Faith E. Active in many Indiana fraternal and charitable organizations, Justice Artzburn taught law for one year at Washburn College of Law and was successively prosecuting attorney, practicing attorney, senior member of his law firm, and visiting professor at the University of Indiana School of Law. He has contributed law-review articles to the Illinois, Michigan, Pennsylvania, and Indiana law journals.

Austin, Richard Bryan, resides at 2634 Park Dr., Flossmoor, Illinois, and he may be addressed as Judge of the Superior Court of Cook County, Cook County Building, Chicago. Judge Austin is married and has three sons, Richard W., who was admitted to practice in October, 1955; David C.; and Robert B.; and one grandson, Marc R., age nine months. As assistant state's attorney and later first assistant state's attorney of Cook County, Judge Austin compiled an enviable record as one of the nation's greatest prosecutors. He recently was Democratic candidate for governor of Illinois and was defeated by the narrowest of margins.

Bade, Carl A., resides at 1434 W. 71st Pl., Chicago, and his office address is 165 N. Canal St. He has been a referee for the Illinois Department of Labor since 1939. Carl is married and has two sons, Carl Allen and Robert Harold. He saw service in the army in World War I, has written authoritatively on administrative law and labor problems, and is a recognized authority on Illinois labor law.

Bayse, Paul E., resides at 471 Cumberland Rd., Burlingame, California, and offices at 250 Park Road, Burlingame. Paul is and has been for some years professor of law at the University of California Hastings College of Law. Paul has two sons, Charles E., attending Stanford Medical School, and John P., attending Texas A. and M. College. Professor Bayse has practiced in Missouri and California and has been associated with the law schools of Michigan and Texas. His work as a legal draftsman and author has been outstanding. He is the author of Clearing Land Titles and of various articles on real property and probate law; former chairman of the Model Probate Code Committee and present director of the Real Property Division of Section of Real Property, Probate, and Trust Law of the American Bar Association; co-draftsman of the Model Probate Code for that Section and co-draftsman of the Model Small Estates Act for Commissioners on Uniform State Laws; and co-author, with Professor Lewis M. Simes, of Problems in Probate Law, including a Model Probate Code.

Becker, George W., resides at 418 S. 38th Ave., Omaha, Nebraska, where he has practiced since his admission to the Bar. George is married and practices under his own name at 1212 First National Bank Building, Omaha.

Becker, Jacob J., resides at 1501 Thayer Ave., Los Angeles, California, and offices at 1117 S. Grand Ave., Los Angeles. Jacob is professor of law at Loyola University School of Law in Los Angeles. He is married, and there are no children. Professor Becker was a sergeant in World War I.

Bloché, Emile O., resides at 803 N. Ridgeland, Oak Park, Illinois, and his office address is 1011 Lake St., Oak Park, where he has been for many years a partner in the law firm of Willard & Bloché. Emile is a past president and chairman of the Board of the West Suburban Bar Association. He is married and has two daughters, Florence Joan and Emile Susan; a third daughter died recently shortly after her graduation from college.

The Speaker's Table: left to right, John A. Rodcliffe, '57, President of the Student Body, Richard Berryman, '57, Resident Head of Mead House, Mr. Justice Brennan, Dean Bennett, '59, President of Mead House, and Terry Sandalow, '57, a Managing Editor of the Law Review.

The Bigelow Fellows for 1956-57: left to right, David B. Horley, Oxford University; Richard L. Dewmap, University of Utah; Charles M. Jacobs, University of Chicago; John W. Davies, Oxford University; Stewart Macaulay, Stanford University; Thomas E. Watts, Jr., Vanderbilt University; and Marc Galanter, University of Chicago.
A luncheon meeting of the Legal Ethics Seminar, held in the Law Lounge in Judson Court. Students participate in a series of such seminars throughout their first year, under the supervision of Frederick B. MacKinson, Director of the American Bar Center’s research activity in Legal Ethics.

BOLTON-SMITH, CARLILE, resides at 3007 “Q” St., N.W., Washington, D.C., and is staff attorney for the United States Senate Judiciary Committee. He is married and has four children, Mrs. Julia Patten, Carlile, Jr., and Ann and Robin, who are fifteen-year-old twin girls. Carlile, who is a graduate of Brookings Institute, helped in the formulation of the new codification of military departments. After leaving his association with Cravath Swain and Moore in 1937, he has worked in government where major problems presented themselves. Some of these posts were with the Agricultural Adjustment Administration, 1933–34; the National Recovery Administration, 1934 and 1915; the Securities and Exchange Commission, 1915–42; the Board of Economic Program Coordination, 1942–46; the Department of Commerce, 1946–47, where he was Associate Solicitor; the Foreign Service and Department of Defense, Office of the Secretary, 1947–51; the National Security Resources Board, 1951–53; and the Legislative Reference Service, 1953–56.

BOOTH, HARRY R., resides at 5715 Kimbark Ave., Chicago, and offices at 30 N. La Salle St., where he specializes in public utility litigation. Harry is married to Sylvia Whalley, Ph.B. 1937, and has two daughters, Susan and Alice. Mr. Booth has held a number of important federal and state positions. He was assistant attorney-general of Illinois from 1933 to 1940 and during 1956 served as special assistant state’s attorney of Cook County, Illinois.

BRODY, WALTER F., resides at 12199 Ann St., Blue Island, Illinois. His law office is in the same suburb that 13104 S. Western Ave. He is a master-in-chancery of the city court of Blue Island. He is married and has a son and a daughter.

BROOKER, EDWARD, resides at 8022 Kenwood Ave., Chicago. His Loop address is 315 Plymouth Ct., where he is professor of law at the John Marshall Law School. He is married and has two sons, Dean G. and Hugh A. His son Hugh is a lawyer who took his J.D. degree at The University of Chicago Law School in 1954. In certain matters father and son practice together. There is a grandson, Jennifer, age two. Edward is the author of a casebook Illinois Cases and Materials in Buildings, Liens and Pledges. He is frequently before the several United States circuit courts of appeal and the Supreme Court of the United States in connection with trade-regulations cases, in which he has specialized.

CAREE, BYRON A., resides at 18600 Fairway Dr., Detroit, Michigan, and his office address is 2306 Dine Building, Detroit. He practices alone, is married, and has two daughters, Barbara and Sandra.

CLARK, FRANCIS O., resides at 215 S. Walker, Clarendon Hills, Illinois. Frank’s other address is 4115 Packers Ave., Chicago, where he is house counsel in the Law Department of Swift and Company. Frank has been village attorney of Clarendon Hills and is well remembered for his football exploits. He became a “C” man playing end for A. A. Stagg at Chicago. He is married and has two daughters, Bernadine and Beulah. Bernadine is a student at Southern Methodist University.

CORNWALL, SYDNEY NEPP, resides at 3125 S. Oakwood St., Salt Lake City, Utah. He is a partner in the law firm of Van Cott, Bagley, Cornwall & McCarthy at 1311 Walker Bank Building, Salt Lake City. He is married and has two daughters, Mrs. Jane C. Laner and Barbara.

DeHaan, ABEL J., resides at 536 E. 88th St., Chicago, and for many years has practiced at 1 N. La Salle St. Until 1940 he was with the firm of Frisch and DeHaan and since that time he has practiced under his own name. Abel is married, and there are no children.

DICKER, DEAN R., resides at 7025 59th Ave., Seattle, Washington, and is retired. He is married and has one stepson. He was secretary of the State Bar of California for five years and has practiced in Illinois and California. He was also chief deputy, Legislative Counsel, in California for two years. A 1918 graduate of the United States Military Academy, Dean spent five years in the regular army and was in the army of occupation in Germany following World War I. He was a lieutenant colonel of artillery in World War II. Dean spends much time at a mountain retreat in Pine Forest, Oregon. The address is Camp Sherman, Oregon. It is forty miles northwest of Bend, Oregon.

DOSLAND, GOODWIN L., is the senior member of the firm of Dosland and Dosland at Moorhead, Minnesota. The firm dates back to 1886 and is the oldest in that part of the country. His office address is Suite 209–210, American State Bank Building, Moorhead. He is married and has two sons. One son, W. B. Dosland, is a lawyer and a member of his firm. His second son, J. P. Dosland, is a Senior at the University of Minnesota Law School. Goodwin was county attorney of Clay County, Minnesota, for four years and is a past president of the Clay County Bar Association. He has been president of the American Radio Relay League and president of...
of the International Amateur Radio Union. A commander in the United States Naval Reserve, Goodwin is a veteran of both world wars. He has practiced law in Chicago and in Minnesota.

EGAN, CHARLES D., resides at 508 Monrovia St., Shreveport, Louisiana, and is a partner in the firm of Cook, Clark, Egan, Yancey and King, Commercial National Bank Building, Shreveport. Charles is married and has a son, Leonard Egan, and a daughter, Lucy Egan. He is a veteran of World War I.

GARVEY, HAROLD T., resides in Carthage, Illinois, and has his law office in the Marine Trust Company Bank Building in that city. Harold is married and has one son, Thomas Julian Garvey. He is currently vice-president of the Hancock County Bar Association and was formerly judge of the County Court of Hancock County and has served as a visiting probate judge in Cook County, Illinois. He was principal attorney for the Railroad Retirement Board in 1916, city attorney for Carthage from 1942 to 1949, and assistant attorney-general of Illinois from 1949 to 1953.

GURNEY, HARRY E., resides at 6114 N. Richmond St., Chicago, and has his law offices at 221 N. La Salle St. He is married and has two children, Merna L. and Gary.

HANCOCK, LYNNDON M., resides at 205 W. Church St., Harrisburg, Illinois, and his law office is in the Rose Building at Harrisburg. Lynndon presently is judge of the City of Harrisburg and was formerly county judge of Saline County, Illinois. Judge Hancock is married and has three daughters, Mrs. Mary Alice Garrison, Mrs. Martha Colley, and Mrs. Cynthia Guard. There are three grandchildren, Susan Lynn Guard, David Alan Colley, and Lynndon Michael Guard.

HAREWOOD, RICHARD A., resides at 606 E. Oakwood Blvd., Chicago, and his law office is at 306 E. 41st St. He has been at various times a representative in the Illinois General Assembly. He is married, and there are no children. Richard is particularly proud of the part he played in the case of Kane v. Johnson, 397 Ill. 112 (1947).

HAYES, EARL H., resides at 6214 N. Magnolia St., Chicago, and practices law at 64 W. Randolph St., where he is chief counsel for R. C. Darley. Earl has never married.

HOMERE, JAMES L., resides at 10 N. Kingshighway Blvd., St. Louis, Missouri, and offices at 906 Olive St., St. Louis, where he is vice-president and general counsel of the St. Louis-San Francisco Railway Company. His children are Mrs. Nancy A. H. Cunningham, James L., Jr., and Cynthia K. His son is studying law at Washington University Law School, St. Louis. There are two grandsons, Andrew R. Cunningham and Richard C. Homere. For many years James reviewed the decisions of the Supreme Court of the United States for the American Bar Association Journal.

HORRELL, ALBERT J., resides at 1173 Cherry St., Winnetka, Illinois, and offices at 100 N. La Salle St., Chicago. Albert is married and has four children, Michael E., Ruth Irene, Judith Ann, and Diana T. He is an instructor in the Illinois law of eminent domain in the Graduate School of John Marshall Law School. He is the author of the textbook used in the course. Albert was general counsel for the State of Illinois Medical Center Commission from 1946 to 1953 and was assistant state's attorney in charge of the Cook County State's Attorney's office from 1953 to 1956.

ISERMAN, THEODORE R., resides at 143 Willow St., Brooklyn, New York, and offices at 70 Broadway, New York, with the law firm of Kelley, Drye, Newhall and Maginnis. Ted is married and is a specialist in labor law (representing employers) and antitrust matters. He is the author of Industrial Peace and the Wagner Act (McGraw-Hill Book Co., 1947); Changes To Make in Taft-Hartley

A view of the Law Lounge in Judson Court

(Digest Publishing Co., 1913); and Three Taft-Hartley Issues (American Enterprise Assoc., 1955). In addition, Ted helped draft the Taft-Hartley Act and is the author of numerous articles on labor law and labor relations. In his student days Ted was on the staff of the Chicago Tribune, and "Ted Iserman" was a familiar Chicago "by-line." Later he practiced for some years in Paris, France.

JOHNSON, CRAIG R., the president of the Class of 1926 in the Law School, resides at 1608 Hinman Ave., Evanston, Illinois, and practices at 10 S. La Salle St., Chicago. Craig is married, and there are no children. He is a lieutenant in the United States Naval Reserve and saw active duty from 1942 to 1945.

KRAUSS, DANIEL T., resides at 603 E. Cecil St., Springfield, Ohio. He is married and is a professor of business administration at Wittenberg College, Springfield. Daniel has been an instructor in business and finance at Wittenberg for thirty years, and three of his former students are presently attending The University of Chicago Law School. Daniel is a veteran of World War I.

LITTLE, MERRITT J., resides at 2270 S. Elmwood Dr., Aurora, Illinois. He is the senior partner in the Aurora law firm of Little, Prebrey and Olse, with offices at 507 Aurora National Bank Building, Aurora. Merritt is married and has two sons, George Michael and John Merritt. He was master-in-chancellor of the Circuit Court of Kane County, Illinois, from 1936 to 1941; corporation counsel of the city of Aurora from 1931 to 1937; and state senator from 1944, having been re-elected for four years in 1956. He is a past president of the Aurora Bar Association and also of the Sixth Supreme Court District Bar Association. For fourteen years he has been the chairman of the Kane County, Illinois, Republican Central Committee.

LITTLE, ROLAND EARL, resides at 331 S. York Rd., Elmhurst, Illinois. Earl practices law at 139 N. Clark St., Chicago. He is married and has two daughters, Mrs. Lou Alice Soukup and Maudie, and a grandson, Scott Philip Soukup. He was in the army in World War I.
MARCHELLO, MAURICE R., resides at 31334 Forestville Ave., Chicago. His office is at 11 S. La Salle St. Maurice has been a widower for many years and is the father of Lieutenant Maurice N., a graduate of Purdue in engineering and an Air Force commander, and Marcia M., a student at the University of Illinois. He has a grandson, Maurice M. Marchello, age two. Maurice was personal attorney to Edward J. Barrett during his terms as state treasurer and state auditor and is a former vice-president of the Justinian Society of Advocates.

MAREMONT, ARNOLD H., resides at 614 Pine Lane, Winnetka, Illinois, and is president of Maremont Automotive Products, Inc., with offices at 1600 S. Ashland Ave., and chairman of the Board of Allied Paper Corporation. Arnold is married and has two children, Madelon and Nicholas Michael. He is a member of the Citizens' Advisory Board of the University of Chicago, a trustee of Roosevelt University and of the Community Music Center of North Shore, is on the Finance Committee of the Ravinia Festival Association, and is a governing life-member of the Art Institute of Chicago.

MCLEAN, HAROLD H., resides at 192 Mayfair Dr., Pittsburgh, Pennsylvania, and his office address is 318 Pittsburgh and Lake Erie Terminal Building, Pittsburgh. He is vice-president and general counsel of the Pittsburgh and Lake Erie Railroad Company. Harold has been in the law department of the New York Central System since January 1, 1927, and was general counsel of the New York Central Railroad Company from April, 1932, to March 1, 1936. The Pittsburgh and Lake Erie Railroad Company is a controlled subsidiary of the New York Central. He is married to Sarah M. Newton McLean (Ph.B., University of Chicago, 1923), and they have three sons, Arthur, James, and Hugh.

MECHEM, PHILIP, resides at 381 Penn Rd., Wynnewood, Pennsylvania, and his office is at the University of Pennsylvania Law School, Philadelphia. Philip is currently president of the Association of American Law Schools and heretofore has taught in the law schools of Washington University, the University of Kansas, the University of Iowa, and the University of Idaho. Professor Marchello is married and his son, Charles E. Mechem, graduated from the University of Pennsylvania Law School and is in the legal department of the Pennsylvania Railroad. He has a grandson, Floyd Russell Mechem II, age one year.

MOHRDECK, RALPH F., resides at 3553 N. Newark Ave., Chicago, and is a title officer with the Chicago Title and Trust Company at 111 W. Washington St. He is married and has a daughter, Joan, and a son, William.

OBERDORF, HOWARD M., resides at 16 Dunlap Rd., Park Forest, Illinois, and his office is at 30 Plaza, Park Forest, where he is general counsel for American Community Builders, Inc. He was formerly assistant regional agency counsel for the Reconstruction Finance Corporation at the Chicago Loan Agency. He is married, and there are no children.

PERLMAN, SAMUEL B., resides at 3528 C Pine Grove Ave., Chicago, and is in the private practice of law. He is married and has two sons, James and Robert. He was a senior attorney in the United States Department of Labor from 1939 to 1945 and was chief district counsel, Office of Price Stabilization, 1951-53.

PROCTOR, RICHARD WILLIS, resides at Kirkland, Illinois, and is a title examiner with the DeKalb Abstract Company at 108 N. Main St., Sycamore, Illinois. Willis was with Loucks Eckert and Peterson from 1928 to 1944 and with the United States Department of Labor Solicitor's Office from 1944 to 1952. From 1953 to
The Kosmerl Scholars: Alan Washburn, Rapid City, South Dakota; A.B., Shimer College; Charles Lewis, Dayton, Ohio; A.B., DePaul University.

the present he has been with the DeKalb Abstract Company. He is married and has a son, John, and a daughter, Ann. His son attended the University of Chicago, and his daughter is a Sophomore at the University of Wisconsin. He has a granddaughter, Leslie Ann Proctor.

Rollins, Herman D., resides at 1409 Sweetbriar Rd., Charleston, West Virginia, and is a partner in the firm of Letz and Rollins, Davidson Building, Charleston. He is married and has a daughter, Lois Jeanne, and a son Herman Dennis, Jr., who is sixteen and plans to study law at The University of Chicago Law School. He is a veteran of World War I. His law work is chiefly trial and appellate.

Rosenbaum, Joseph, resides at 1338 Fargo Ave., Chicago, and practices law at 20 S. La Salle St., as a partner in the firm of Ruskin and Rosenbaum. He has two children, Mrs. Erwin Cohen and Henry Joseph.

Ruppelt, Ernest Williams, resides at 1108 G. Ave., Grundy Center, Iowa, and is a member of the firm of Ruppelt and Kimball at 609 F 8th St., Grundy Center. Ernest has been president of the Grundy County Bar Association and of the Bar Association of the Tenth Judicial District of Iowa. He has been county attorney of Grundy County. He served in both world wars. In World War II he was a major in the Asiatic Pacific Theater. He is married and has two daughters, Jean Marie Evans and Mrs. Judith Ann Ferrero.

Sammons, George F., resides at Kentland, Indiana, and practices law with his son, George M. Sammons, under the firm name of Sammons and Sammons. George is married and has two other sons, James E. and William F. George was judge of the Newton Circuit Court from 1932 to 1941. He was in military service in World War I.

Samuels, Ernest F., resides at 3116 Park Pl., Evanston, Illinois, and is professor of English at Northwestern University, Evanston. He is married and has three children, Susanna, Jonathan, and Elizabeth. His legal practice is confined to consultation with his brothers, Leo S. and Arthur S., who are lawyers, and to consultations as a legal literary expert. He was awarded the Guggenheim Fellowship in literature in 1955-56 and is the author of *The Young Henry Adams* (Harvard University Press 1948) and *Business English Projects* (Prentice-Hall, 1936-40). He was president of the Northwestern Chapter of the American Association of University Professors, 1954-55, and president of the Chicago Regional Chapter of the College of English Association, 1954-55. He was formerly on the faculty of Washington State College.

Schafer, Elmer P., resides at 184 Lawndale Ave., Elmhurst, Illinois, and his office is at 30 N. La Salle St., Chicago, where he is regional counsel for a federal agency, the Federal National Mortgage Association. From 1927 to 1942 he was an instructor in business law at Loyola University in Chicago and during the same period was associated with Tolman, Sexton and Chandler and its successor Chicago law firms. Since 1942 he has been a lawyer in the federal service. Elmer is married and has twin sons and a daughter, all of whom plan to attend The University of Chicago Law School.

Schweitzer, Richard H., resides at 5600 Blackstone Ave., Chicago, and his office is at 5608 Blackstone Ave. Richard practices under his own name and for the last ten years has also been president of the Illinois Construction Corporation, building schools, factories, apartments, and homes. He is married, and there are no children.

Shanberg, Maurice G., resides at 1755 E. 55th St., Chicago, and his office is at 10 S. La Salle St., where he has for many years been a partner in the law firm of Marshall and Marshall. Maurice is married and has two daughters, Jean and Alice.

Stiefel, Charles W., Jr., resides at 7341 South Shore Dr., Chicago, and is the senior partner in the law firm of Stiefel, Greenberg, Burns & Balridge. Charles is married and has a daughter, Cynthia, and a son, John C., who may attend The University of Chicago Law School. He was an assistant city attorney.

Sullivan, Pike H., resides at 222 E. Chestnut St., Chicago. His office is at 910 S. Michigan Ave., where he practices law as manager of the Development and Patent Department of the Standard Oil Company of Indiana. Pike specializes in patent matters and is presently a member of the Board of Managers of the Patent Law Association of Chicago. He is married and has three children, Pike H., Jr., Gary B., and Marie E. Pike H. Sullivan III, two years of age, is a grandson.

Tascher, Lucy Lucile, resides at 202 W. Ash St., Normal, Illinois. She is a professor of social science at Illinois State Normal University. Lucile practiced in both Indiana and California and joined the faculty of Illinois State Normal University in 1935.

Thorwaldson, A. S., resides at 292 Claremont St., Elmhurst, Illinois, and offices at 38 S. Dearborn St., Chicago, where he is assistant vice-president of the First National Bank of Chicago. He is married and has two children and four grandchildren.

Tinsley, Walter E., resides at 880 Private Rd., Winnetka, Illinois. He is a partner in the Chicago law firm of Kirkland, Fleming, Green, Martin and Ellis. Walter entered this firm immediately upon leaving law school. He is married and has one daughter, Mrs. Jeanne Tapp, and a granddaughter, Karin Tapp.

Toft, Gaylord A., resides at Fair Oaks Rd., West Chicago, Illinois, and practices law at 231 S. La Salle St., Chicago, where he is senior partner in the law firm of Toft, Fitzsimons and Livingston. He is married and has four sons, ages seven, six, three, and one.

Toomin, Philip R., resides at 970 Bluff St., Glencoe, Illinois, and practices law at 120 S. La Salle St., Chicago. He is married and has two children, Marcia Jane and Michael.

Weissbrod, Martin O., resides at 3121 N. Sheridan Rd., Chicago, and offices at 221 N. La Salle St. He is married, and there are no children.
The Monopoly Problem as Viewed by a Lawyer

By EDWARD H. LEVI
Dean and Professor of Law, University of Chicago Law School

A Talk Given before a Section of the American Economic Association, December 28, 1936.

A suggestion for the application of law to the solution of a social problem always raises at least three questions. These are: (1) How serious is the need for some correction of the social problem? (2) How great will be the loss of freedom as the inevitable result of the application of the coercive power of law? (3) What are the foreseeable consequences, intended or unintended, of the legal means of the remedy which are proposed? In a sense all these questions—and they could be elaborated into many more—are but parts of one inquiry into whether the legal cure is not worse than the social disease. And it is, of course, natural that people will differ in their judgment as to their prediction of results. It is perhaps worthwhile reminding ourselves of these obvious questions, for they emphasize that the separate disciplines of the social sciences may not be able by themselves, and in isolation, to determine whether law ought or ought not to be applied in a particular way. In this connection we should remind ourselves that law is a blunt instrument, and some of the subtleties of theoretical analysis may be beyond the law's practical performance.

In addition, so far as the subtleties of theoretical analysis are concerned, we must be aware that, when the intended or unintended consequences of law's application are considered, the factors are numerous and complicated. For many reasons prediction is not easy. Inevitably, a decisive role is likely to be played by the basic presumption with which we approach suggestions for the application of law. The basic presumption, or the alacrity with which suggestions for more law are accepted, will determine which side has the burden of persuasion.

The choice of the basic presumption concerning the proper role of law may be said to be closely related to the history of antitrust, which is the history of the use of law in a particular way. That history is not simple, and it includes many diverse and sometimes contradictory ideas and movements. It is perhaps an oversimplification to suggest that antitrust itself reflects a presumption against the use of law and in favor of freedom from law in the pursuit of trade. To be sure, the origins of antitrust reflect an opposition to the exercise of power by the government in interference with freedom of trade. The opposed governmental power manifested itself either in monopoly grants or in the misuse of grants by semigovernmental or semiprivate groups. But the underlying theory of antitrust is sometimes summarized not so much as an opposition to interference by the government through law with the freedom of trade but rather as directed against the usurpation of government-tal power by private groups. Monopoly in its various forms in private hands was thought to be such a usurpation. So the underlying presumption of antitrust might be thought to be not so much against governmental power or interfering laws but rather as against that private power which when it reaches monopoly strength has the effect of law. A persistent theme in antitrust enforcement, however, has been to create a code of fair competition or at least to give relief to, or erect safeguards for, private parties who are considered injured by unfair tactics. And in this sense an underlying presumption of antitrust might be thought to be in favor of the use of law to interfere with trade if the result is increased fairness. So antitrust might be regarded, then, as but another instrument of law for governmental planning for, and interference with, the competitive economy.

Yet acknowledging the complexities of the history of antitrust, and the uses to which it has been put, there probably is agreement that the antitrust laws are supposed to be characterized as distinctive because they do not represent government planning for the economy. In this sense they are supposed to be non-regulatory. They are supposed to be based on freedom from law, both the private variety and the public, for a competitive economy. And such interference as the law inevitably brings is justified as the minimum interference or regulation made necessary because of the existence otherwise of monopoly. And possibly therefore we can say that the antitrust laws basically reflect a presumption that the burden of persuasion must be placed on the side of those who urge the application of law to a social problem. As I have suggested, it could be urged that this statement of the presumption reflected in antitrust is too far-reaching and that, indeed, all we know is that the antitrust laws are against some forms of private power on the somewhat dubious basis that private power is less good than public. But we must recall that the antitrust laws are not against private power in its numerous manifestations. At least until recently they were not even against economic power, nor, as has so often been said, do they justify interference to compel all competition that is possible. For the most part they are directed solely against monopoly and those restraints of trade which in antitrust history have come to be thought inextricably interwoven with monopoly. Thus the use of law and the role of government are narrowly confined, and this is supposed to be the distinctive feature of antitrust.

In large measure this limited conception of the role of law as reflected in the antitrust laws was the reason that the revival of antitrust enforcement in the Robert Jackson and Thurman Arnold period was greeted with scepticism. Monopoly then was popularly regarded as a significant cause for unemployment and depression. The solution of the monopoly problem was regarded as particularly difficult because of the assumption, held by many, that new conditions of economic life required firms to reach monopoly size. A widely held view was that any attempt to deal
with this problem through antitrust would be an ineffective effort to turn back the clock. In the wake of the demise of the NRA many thought some new form of economic planning and control would have to be devised. Symbolically, antitrust enforcement, which gained formulation and momentum under Arnold, represented the alternative to planning and control. Antitrust came to portray the federal government’s interest in free enterprise, and this was a freedom from administrative regulation as well as from monopoly enterprise. To be sure, it was suggested that the new consent decrees were to become charters for industry and thus a constructive formulation of administrative rules for industry. But this promise was unfulfilled. Rather through many devices, in retrospect some good and some bad, the antitrust ideal was revived. The antitrust laws, at least in the abstract, became popular. The effect was to be seen not only in enforcement policy but in the substantive content of the laws themselves. As a result, in every subdivision of the laws, whether dealing with patents, price-fixing agreements, conspiracies, division of territory arrangements, or monopoly size as monopolizing, there was an expansion of legal concepts. The labor area was the one exception.

If the application of law to a social problem raises the question of whether the cure is worse than the disease, then the problem has to be faced in terms of the situation as it exists at a particular time. While there is a great deal of continuity of talk between the Arnold period and the present, there are numerous differences between the total situation as it is found today and the prior period. The connection between the monopoly problem and business cycle, depression, and unemployment no longer seems as decisive as it then did to many; indeed, the connection seems remote except for the possible accentuating effect of rigid prices. Perhaps therefore there is less of a felt need to do anything about the monopoly problem. Moreover, reflective studies do not show any recent significant increase in concentration; indeed, they do not show any significant increase since 1904. The sense of urgency previously present either has or should have disappeared. Further, if the greatest contribution of the Arnold period was the symbolization of the government’s interest in free enterprise as opposed to control through regulation, perhaps in the present setting this is no longer so much required. Moreover, it is no longer so clear what symbolic meaning is to be attributed to antitrust enforcement.

Probably what is regarded as the continuing monopoly problem today is the existence of economic power in firms of large size. Many of these firms are in industries where a relatively few firms have a major portion of the output. Thus oligopoly is thought to require special attention. And because the problem of economic power through size is hard to handle directly, in that economic power is hard to evaluate and that the allowable limits are not easy to determine, much attention has been centered on the causes and effects of this power, as, for example, mergers, price discrimination, exclusive arrangements, and unfair dealing with distributors. An initial question, of course, is whether this economic power means monopoly. So far as the law is concerned, firms of monopoly size which operate without economic justification or, more certainly, engage in exclusionary tactics are guilty of monopolizing and can be dealt with under the antitrust laws. Are these the firms which are thought to have undue economic power, or does that concept refer to firms beyond the scope of the present law’s reach? If the latter is the case, is this because the law’s definition of monopoly or monopolizing is out of step with the economic definition and is wrong? Or is economic power something beyond and above monopoly or monopolizing for economics as well as for law? These seem to be basic issues when the law approaches what is often described as the present monopoly problem.

It must be admitted at once that the law in action reflects uncertainty as to what illegal monopoly or monopolizing is. The law has sometimes appeared to incorporate the idea that illegal monopoly or monopolizing exists, at least when there is no justification, when a single firm through control of its own output can change the market price. The firm is then said to be engaged in a kind of price-fixing certainly as effective as illegal price-fixing arrangements between competitors dominant in an industry. This indeed might be thought to be the doctrine of the Alcoa case. But Alcoa, under the computation used, controlled 90 per cent of the output. The opinion states that such a percentage is enough to constitute a monopoly and goes on to say that it is doubtful whether 60 or 64 per cent would be enough. Yet a producer of that lesser amount and considerably smaller amounts would be able to change the price by curtailing his own production. His control would

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Roger C. Cranton, JD ’54, is law clerk to Mr. Justice Burton of the United States Supreme Court. Last year Mr. Cranton was clerk to Judge Sterry Waterman of the United States Court of Appeals for the Second Circuit.
Conference on Judicial Administration

In November The Law School sponsored a Conference on Judicial Administration as a part of its regular Conference Series. The opening session of the Conference, which was chaired by Assistant Dean Lucas, was concerned with "The Administration of Court Systems." Speakers were Henry P. Chandler, director of the Administrative Office of the United States Courts, who discussed "Problems in Administration of Courts of the United States," and Edward B. McConnell, administrative director of the courts of New Jersey, who described "The Administrative Office of a State Court System." Professor Harry Kalven, Jr., presided over the luncheon session, which featured an address by Judge James B. M. McNally of the Supreme Court of New York on "Judicial Administration and the Trial Judge," and comment on Judge McNally's speech by Erwin W. Roemer, of Gardner, Carton, Douglas, Roemer and Children.

The subject of the afternoon session, over which Professor Allison Dunham presided, was "Problems of Judicial Administration." Speakers were Judge Harry M. Fisher of the Circuit Court of Cook County, who talked on "Problems of Metropolitan State Courts," and Judge Alexander Holtzoff of the United States District Court for the District of Columbia, who discussed "Problems in the Federal System."

Professor Philip B. Kurland chaired the dinner session, the topic of which was "The Role of Appellate Courts in Judicial Administration." Judge Roger J. Traynor of the Supreme Court of California discussed "A State Supreme Court," while Judge Charles E. Clark of the United States Court of Appeals for the Second Circuit analyzed the problems of "The United States Court of Appeals." Judge Edwin A. Robson of the Appellate Court of Illinois acted as commentator on the two preceding papers.

At the Conference on Judicial Administration: Hon. Edwin A. Robson, of the Appellate Court of Illinois, who spoke at the Dinner Session, with Mr. and Mrs. Henry P. Chandler, Mr. Chandler, Director of the Administrative Office of the United States Courts, spoke at the Morning Session.

At the reception preceding the Dinner Session of the Conference on Judicial Administration: Professor Francis Allen; Hon. James B. M. McNally, of the Supreme Court of New York, who spoke at the Luncheon Session; Hon. Walter V. Schafer, JD '28, Supreme Court of Illinois; and Professor Philip B. Kurland.

Professor Karl Llewellyn with Hon. Charles E. Clark, Judge of the U.S. Circuit Court of Appeals for the Second Circuit. Judge Clark spoke at the Conference on Judicial Administration.

Hon. Harry Fisher, Judge of the Circuit Court of Cook County, addresses the Conference on Judicial Administration in Law North.
Alumni Notes

The School notes with regret the recent passing of Mitchell Dawson, JD'13, Albert S. Long, Jr., JD'47, and Max Derry, JD'49. Mr. Dawson had practiced law in Chicago for more than forty years, carrying on the office established by his father. In addition to being an eminent member of the bar, he was for many years active in the affairs of the City Club of Chicago and of the Chicago, the Illinois, and the American Bar Associations. He was well known as a highly successful general writer, with much of his work published in magazines of general circulation, and was as well the author of a well-known book for children.

Mr. Long, after several years of practice, both private and institutional, had become, shortly before his death, general solicitor and secretary of the Chicago, Indianapolis and Louisville Railway Company, generally known as the Monon Line.

Mr. Derry, upon graduation, joined the staff of the Hartford Accident and Indemnity Company and somewhat later became associated with the Harris Trust and Savings Bank. In 1953 he became associated in practice with Allin H. Pierce, JD'23. After Mr. Pierce became a judge of the United States Tax Court, Mr. Derry continued in individual practice. He served on several committees of the Chicago Bar Association and was an active member of The Law School Alumni Association.

Elmer Gertz, JD'30, acted as one of the leading figures in the recent celebration of the Bernard Shaw Centennial. As well as acting as chairman of exhibits and displays, he participated in two programs on WTTW, in the WIND "Forum of the Air," and in a nationally broadcast program of the "Northwestern Reviewing Stand." A recent issue of Chicago magazine featured an article by Mr. Gertz on the political career of Colonel Jacob Arvey.

The Record is pleased to report that Jerome S. Weiss, JD'30, is currently serving as second vice-president of the
Chicago Bar Association and that HUBERT L. WILL, JD'37, is acting as librarian. Moreover, LEE C. SHAW, JD'38, and ALLEN D. HOLLOWAY, JD'25, are members of the Board of Managers.

GEORGE JOSEPH, JD'54, has joined the faculty of Ohio Northern University.

JACK E. FRANKEL, JD'50, is assistant secretary of the State Bar of California, with offices in San Francisco. Mr. Frankel is California field representative of the National Legal Aid Association as well as chairman of the East Bay Committee on Student Enrollment for the University of Chicago.

ABA Annual Meeting

Three members of The Law School Faculty participated in activities in connection with the annual meeting of the American Bar Association in Dallas last August.

Professor Harry Kalven, Jr., discussed the School's Jury Project at a meeting of the Junior Bar Conference.

Professor Nicholas Katzenbach, who recently joined the Law Faculty after teaching at Yale, and Assistant Dean James Ratcliffe were Faculty hosts at a cocktail party held for all alumni of the School during the annual meeting. About fifty alumni and wives were in attendance.

An oil portrait of the late GEORGE MAURICE MORRIS, JD'15, which now hangs in the Members Lounge of the American Bar Center. Mr. Morris served as President of the American Bar Association and took a leading part in the creation of the Bar Center.

Professor Nicholas deBelleville Katzenbach, formerly of the Yale Law School faculty, who recently joined the Law Faculty at the University of Chicago.
Federal Tax Conference

In October the School sponsored the Ninth Annual Federal Tax Conference. A three-day meeting, the Conference attracted an audience of more than four hundred, composed of lawyers, accountants, and corporate officials from all over the United States.

Again this year, the Conference was planned by a committee composed of Chicago lawyers and accountants, with Professor Walter Blum and Assistant Dean James M. Ratcliffe representing The Law School. Members of the Committee were as follows:

WILLIAM N. HADDAD, Chairman, Bell, Boyd, Marshall and Lloyd
WALTER J. BLUM, Professor of Law, University of Chicago Law School
FREDERICK O. DICUS, Chapman and Cutler, Chicago
WILLIAM M. EMERY, McDermott, Will and Emery, Chicago
JAMES M. HEAD, Winston, Strawn, Smith and Patterson
PAUL F. JOHNSON, Ernst and Ernst, Chicago
ROBERT R. JORGENSEN, Sears, Roebuck and Company, Chicago
WILLIAM A. MCSWAIN, Eckart, Klein, McSwain and Campbell, Chicago
JAMES M. RATCLIFFE, Assistant Dean, University of Chicago Law School
FREDERICK R. SHEARER, Mayer, Friedlich, Spiess, Tierney, Brown and Platt, Chicago
MICHAEL J. SPORER, Arthur Andersen and Company, Chicago
HARRY B. SUTTER, Hopkins, Sutter, Owen, Mulroy and Wentz, Chicago

The program of the Conference was as follows:

"Address of Welcome": GLEN A. LLOYD, Chairman, Board of Trustees, University of Chicago

"Maintaining an Effective Internal Revenue Service": HON. RUSSELL C. HARRINGTON, United States Commissioner of Internal Revenue, Washington, D.C.

"Current Issues in the Use of Tax-exempt Organizations": NORMAN A. SUGARMAN, Baker, Hosteier and Patterson, Cleveland

Panel Discussion of Mr. Sugarman's Paper: PAUL F. JOHNSON, Ernst and Ernst, Chicago; MIDDLETON MILLER, Sidney, Austin, Burgess and Smith, Chicago; HARRY N. WYATT, D'ARCONA, Pfauhn, Wyatt and Rükind, Chicago


"Some Highlights of Recent Tax Regulations Affecting Trusts and Estates": JAMES P. JOHNSON, Bell, Boyd, Marshall and Lloyd, Chicago


"Tax Consequences of Thin Incorporations": BORIS I. BITTKER, Professor of Law, Yale Law School

"Tax Advantages and Pitfalls in Collapsible Corporations and Partnerships": IRVING I. AXELRAD, Mitchell, Silberberg and Knupp, Los Angeles

Panel Discussion of Bittker's and Axelrad's Papers: CHARLES W. DAVIS, Hopkins, Sutter, Owen, Mulroy and Wentz, Chicago; WILLIAM M. EMERY, McDermott, Will and Emery, Chicago; ROBERT F. GRAHAM, Gardner, Carton, Douglas, Roerner and Childs, Chicago

"Business Purchase Agreements": A Round-Table Discussion: LEONARD M. RUSER, Moderator, Sommerschein, Berksen, Laumann, Levinson and Morse; WALTER J. BLUM, Professor of Law, University of Chicago Law School; MAX E. MEYER, Lord, Bissell and Brook, Chicago; MICHAEL J. SPORER, Arthur Andersen and Company, Chicago; HUBERT L. WILL, Nelson, Boodell and Will, Chicago

"Recent Developments in the Taxation of Executive Compensation": LESLIE MILLS, Price, Waterhouse and Company, New York

"Some Subchapter C Trouble Spots—after Two Years": GEORGE STINSON, Cleary, Gottlieb, Friendly and Hamilton, New York


Panel Discussion of Mr. Wales's Paper: DWIGHT HIGHTOWER, Baker, McKenzie and Hightower, Chicago; ROBERT R. JORGENSEN, Sears, Roebuck and Company, Chicago; FREDERICK R. SHEARER, Mayer, Friedlich, Spiess, Tierney, Brown and Platt

"The Penalty Surtax on Unreasonable Corporate Accumulations: A Mock Trial"

Presiding Judge: THE HONORABLE ALLIN H. PIERCE, Judge of the Tax Court of the United States, Washington, D.C.

Taxpayer Counsel: FRANCES H. URBELL, Pope and Ballard, Chicago

Governmental Counsel: ABRAHAM J. FRIEDMAN, Assistant Regional Counsel, United States Internal Revenue Service, Detroit

Ronald Tonidandel, winner of the Joseph Henry Beale Prize, awarded annually to the first-year student whose work in the first-year tutorial program is judged most worthy of special recognition. Mr. Tonidandel is from Stafford Springs, Connecticut, and received the A.B. degree from Amherst College.
Gregory—
Continued from page 1

Union and had been since its organization, June 20, 1893. On the second of July, 1894, a complaint or bill in equity was filed in the Circuit Court of the United States for the Northern District of Illinois against Debs and his associates, praying that the defendants be "enjoined touching a certain conspiracy in said complaint or bill in equity alleged."

The bill was founded on the antitrust law of July 2, 1890, the Sherman Act.

It referred to the fact that in May, 1894, a dispute arose between the Pullman Palace Car Company and its employees and that, as a result, the employees or a "considerable portion of them" left the service of the company. It then proceeded to charge that the defendants and other members of their union combined together and with others unknown and announced that for the purpose of compelling an adjustment between the Pullman Company and its employees the American Railway Union would create a boycott against Pullman cars and that, by direction, many of its members would seek to make the boycott effective by leaving the employ of some twenty-one named railroads maintaining 120,000 miles of track; that the defendants entered into this conspiracy with the intent and for the purpose of preventing the railroads from performing their duties as common carriers and to injure and obstruct interstate carriage of freight and passengers and the carrying of the mails; that they issued strike orders pursuant to their unlawful conspiracy and by threats, intimidation, force, and violence prevented the railroads from retaining employees or hiring new men and stopped, obstructed, derailed, and wrecked engines and trains, and thus curtailed necessary supplies of fuel and food; and that, with other parties unknown, they threatened and announced that they would tie up and paralyze, if necessary, the operations of every railroad in the United States and the business and industries dependent thereon.

That was the sum and substance of the charges, omitting, of course, a vast amount of detail. The injunction prayed was issued without notice to Debs and the other defendants. It was served and published.

On July 17, 1894, the government filed an information charging the defendants with violation of the injunction and praying that a rule be entered against them, requiring them to show cause why they should not be attached for contempt. They appeared and answered, denying all matters of substance in the information. They admitted the organization of local unions but denied any power in themselves or any intent to secure the power to order the institution or cessation of strikes. They denied that they ordered the employees of the railroads in question to strike but alleged that the members of their union, without orders, but of their own free will, by a vote of a majority of them in a regular meeting, decided to strike and, pursuant to that vote, "freely and voluntarily of their own accord, without any order, direction or control on the part of said American Railway Union, its officers or directors," or of the defendants or any of them, did strike. They denied any part in the violence that admittedly resulted and alleged that they always counseled and advised their members with whom they were in communication "to at all times abstain from violence, threats, and intimidation, and to at all times respect the law and the officers thereof."

Motions to dismiss the information had been heard and denied by Judges Woods and Grosscup.

The charges and answers were heard by Judge Woods, and on December 14, 1894, he adjudged the defendants in contempt and sentenced them to jail—Debs for six months, the others for three. The sentences were to commence ten days after the order. But, on December 24, sentences were suspended until January 8, 1895, at which time the defendants were committed to the jail in Woodstock, McHenry County, because the Cook County jail was overcrowded.

On July 4, 1894, Debs had addressed the following to the public:

... The business of the country has been demoralized to an extent that defies exaggeration. To say that the situation is alarming is entirely within the bounds of prudent statements. Every good citizen must view the outlook with grave concern. Something should, something must be done. The American people are peace-loving people; they want neither anarchy nor revolution. They have faith in their institutions; they believe in law and order; they believe in good government; but they also believe in fair play.

The boycott of Pullman cars and ensuing strikes had begun on June 26, 1894, and on June 29 Debs had written a letter to the Railway Employees of America in which he said in part:

I appeal to strikers everywhere to refrain from any act of violence. Let there be no interference with the affairs of the companies involved, and, above all, let there be no act of depredation. A man who will destroy property or violate law, is an enemy, and not a friend to the cause of labor... Let it be understood that this strike is not ordered by myself or any other individual; nor is the strike inaugurated anywhere except by consent and authority from a majority of the employees themselves.

After the entry of the order of December 14, the defendants, through their counsel, presented a petition for writ of error and supersedeas to Mr. Justice Harlan, and he directed counsel under date of January 12, 1895, to present it to the Supreme Court of the United States in open session. It was denied January 17.

But on January 9, 1895, the day after the incarceration of the defendants, a petition for habeas corpus and certiorari was executed for presentation to the same court at the October term. And it was in this proceeding that arguments were made in the Supreme Court on March 25, 1895. Here the issues were finally determined. It is true, indictments charging criminal conspiracy were filed July 10 and July 19, 1894, but, when the trial of these was nearing its close, one of the jurors became quite ill, and on February 12, 1895, Judge Grosscup, declining to look with favor upon any
of the motions for the defense, declared a mistrial, discharged the jury, and continued the case to May, 1895. It was never called up again except to be finally dismissed. The defendants and their counsel had felt certain of a verdict of not guilty, and the conduct of the jurors after their discharge seemed to confirm the reasonableness of this hope.

As he approached the close of his printed argument before the Supreme Court in the contempt proceeding, Mr. Gregory reached the most vital aspect of his case as he viewed it. He expressed it in this way:

It is the main purpose of this argument to demonstrate the right of all persons charged with infractions of Federal law to trial by jury and to show that the position of counsel for the government and the court below involves a denial of this right as to offenses against the act in question. This is the most important question in the case. It is not a technical but a substantial and practical question of the deepest interest and most essential character. . . .

It cannot be doubted that without trial by jury civil liberty could not exist. This does not deny participation of a court nor import that life and liberty are to be disposed at the pleasure of the unlettered panel. Trial by jury is trial by court and jury; the court to decide the law, the jury the facts.

He believed that, whenever the act constituting the contempt was a crime, there should be a jury trial.

Long after the court had decided this point against him, he said: "That this is the law in strike cases, is now well settled by the decisions of courts of high authority. That it is compatible with the spirit of American constitutional law I shall never concede."

The argument of Richard Olney, the Attorney-General of the United States, was, according to Mr. Gregory, excellent and impressive, and he felt certain that it had been committed to memory. Mr. Olney expressed the opinion that it was quite inadvisable that the jurisdiction of the lower court should turn upon the government's technical relations to the mail and the mailbags or upon the novel provision of an experimental piece of legislation like the act of 1890. He based his argument on broader grounds, insisting that the Interstate Commerce Act of 1887 and one other act of Congress furnished ample authority for the action of the court below. He cited Section 5258 of the Statutes at Large authorizing steam railroads, for compensation, to carry property from state to state, and with roads of other states in continuous lines to destination.

On May 27, 1895, the Supreme Court handed down its decision in an opinion by Mr. Justice Brewer. The Court decided all the questions against the petitioners except that it declined to express any opinion as to whether or not the act of July 2, 1890, was applicable. In dealing with the principal point at issue, the opinion stated:

So here, the acts of the defendants may or may not have been violations of the criminal law. If they were, that matter is for inquiry in other proceedings. The complaint made against them in this, is of disobedience to an order of a civil court, made for the protection of property and the security of rights. . . .

Nor is there in this any invasion of the constitutional right of trial by jury. . . . But the power of a court to make an order car-
Meanwhile Mr. Gregory and Mr. James Harlan tried to find a judge who would hear a petition for an inquest into Prendergast's then sanity, based largely on the affidavit of the prisoner's brother, John Prendergast, to the effect that the prisoner had become insane since his sentence. The statute, as it relates to this case, is substantially as follows:

... and if, after judgment and before execution of the sentence, such person becomes lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all of these cases it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of impaneling, insane or lunatic.

In connection with my father's participation in the case he said: "All of the attorneys now defending Prendergast are doing it gratuitously, without any possibility of pecuniary reward, and from purely charitable motives."

Before he died, Prendergast gave out this written statement as reported in the Herald, July 14, 1894:

... "It was the spirit of Christ in me, the character of Christ as embodied in me, that made me kill. For Christ loves humanity and the elevation of the railroad tracks could only come, as the spirit of Christ dictated to me, by arousing the minds of the people by spilling of the mayor's blood. The blood of obscure people was being spilled day after day. Why not kill the mayor if his killing would save the killing of thousands? It was one life against many, and the salvation of the many moved the Christ in me to do the killing. There was no malice. It was not the act of Patrick Eugene Joseph Prendergast. I was as little responsible as the gun that did the work. The gun was a tool in my hand. I was a tool in the hands of Christ. . . ."

"I have only words of thanks to Mr. Gregory, Mr. Heron, Mr. Darrow and Mr. Harlan and the other lawyers who mistakenly tried to serve me, for had they put in a plea of justification and not the ridiculous one of insanity this execution would not take place." . . .

Though not a lawyer, he had thought he should be made corporation counsel so that he might accomplish track elevation in the interest of public safety.

Finally, twenty-four hours before the time set for the execution an inquiry was begun before Judge Arthur Chetlain into the argument that Prendergast had become insane since the first trial. The session before the court lasted through much of the night, resulting in postponement of the execution, due then to be carried out within a few hours.

Of the selection of Judge Chetlain, Mr. Gregory's partner during his first years in Chicago, he commented as follows:

I am sure Judge Chetlain was as averse to handling this case as any of the Judges to whom I applied, and that he consented at last to do so from the purest motives of official obligation. That the statute required him to do so I have not a shadow of doubt, and, unless it were absolutely certain that he had no right to act, I think his character as a man and a Judge should have saved him from severe criticism. I happen to know that he has, in this affair, the sympathy and support of almost the entire bench. The Judges
would not, of course, express an opinion to outsiders, but you will find out in due time that Judges Tuley, Clifford, Baker, McConnell, and practically the entire bench are with him in every step he has taken.

Moreover, if, under such circumstances, Judges are assailed by the press, there is danger that they may become afraid to do their duty, unless they have first got the consent of the press, which would be the ruin of all justice and all liberty. The press ought to have a much clearer case against a Judge than it has against Judge Chetlain before it assumes to ruin his reputation and his prospects.

An affidavit of John Prendergast was presented, touching on the condition of the prisoner's mind since he had been condemned, and oral testimony was heard by Judge Chetlain before passing on the application and the affidavit. The collateral question of some importance raised in the arguments was whether or not Judge Chetlain had power to stay the execution. The judge expressed himself as satisfied that the affidavit and the evidence he had heard were sufficient to bring the case within the statute, but he appeared reluctant to rule on the question of his right to stay the execution.

Finally, he ordered a stay until April 4 to allow the mental condition of the prisoner to be determined.

Later there was another stay until July 2; but when in May a stipulation was presented to Judge Payne agreeing to defer the trial to the September term and the execution until November, he refused to accept this stipulation and set the trial for June 20. It was concluded on July 3, when a verdict was returned finding the prisoner neither insane nor a lunatic. The defense had presented the testimony of a score of witnesses, pre-eminent in reputation and standing in the community. Most of them were doctors, and, of these, the majority were specialists in diseases of the brain. All the doctors had had broad experience. They all had visited the prisoner and conferred with him at some length. They testified as to these visits and the conversations between them and the prisoner and then each stated that in his opinion the prisoner was insane at the time, and they stated the basis of their findings. The evidence of the state was unimpressive. Meanwhile, the execution had again been stayed until July 13.

Application was made immediately after the verdict to Judge Bailey, of the Illinois Supreme Court, for a writ of error and supersedeas. It was denied. Governor Altgeld, when appealed to, refused to intervene. Judge Grosscup, of the Circuit Court of the United States, was then petitioned for a writ of habeas corpus, which was denied, as was a prayer for appeal to the United States Supreme Court and request for stay of execution. This was the end. No further move to save the condemned man was possible.

Earlier in the case, in opposing a continuance requested by the state to permit the return and participation by A. S. Trude as special prosecutor, privately employed, Mr. Gregory had said:

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Gregory—
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It cannot altogether have escaped the attention of the court that, with some honorable exceptions, a desperate effort is made and being made in the press of this city to see that this defendant does not secure the justice which this court is bound neither to sell to any man, nor deny to any man nor to refuse, in the language of magna charta, and substantially in the language of our constitution. And I do not desire that opportunity should be given further, unless, in the view of the court, the interests of justice may require it, to foment, stimulate and strengthen public sentiment to intimidate witnesses, break down counsel in the case and bring all these blighting and destroying influences into the very atmosphere of the courtroom where the rights of a man are to be determined and his right to life, valueless though it may be to him, I beg to say, so far as the counsel are concerned, that these efforts will not be successful. In the language of the greatest of English advocates, "I shall not alter my course." And it would be impertinent for me to say that we expect less of the court.

Prendergast's last word to his brother John was not to neglect telling Mr. Gregory that he wished to see him before he died, to thank him for all he tried to do.

The Chicago Evening Post of July 13, 1894, reported:

A few minutes later Attorney S. S. Gregory came in. He was much affected and there were tears in his eyes when he spoke to Sheriff Gilbert.

"This man has sent for me and I would like to see him a moment."

"He will be hanged in five minutes," replied the sheriff, "and it will do no good to see him."

"It's not a pleasant thing for me, but he asked me to come," pleaded Mr. Gregory.

"Well, you can see him and shake hands with him only," said the sheriff.

Mr. Gregory went back to the prisoner's room and shook hands with Prendergast, who thanked him for the zeal with which he had defended him. Then the attorney hurried away. . . .

Prendergast was hanged on the thirteenth of July. The proceeding to inquire as to his then sanity authorized by Judge Chetlain was unusual at that time, although it has since become a not uncommon practice.

Among Mr. Gregory's earlier cases in the Supreme Court of the United States—and he argued quite a few before that exalted tribunal—was the case of Cornell University v. Fiske, decided in his favor in the spring of 1890. He and his associates represented the surviving husband and heirs at law and next of kin of Jennie McGraw Fiske.

At the close of the argument there was handed to Mr. Gregory a white paper card, bearing the notation, "Excellent argument. H." The "H" stood for Justice Harlan.

Perhaps the most important case that my father argued before the United States Supreme Court was the so-called Lake Front case, Illinois Central R. Co. v. People of the State of Illinois. In this case he was associated with John S. Miller. They represented the city of Chicago. The case was decided in December, 1892, in an opinion by Mr. Justice Field.

The railroad claimed title to certain submerged land under the waters of Lake Michigan by virtue of an act of the Illinois legislature passed April 16, 1869, Section 3 of this act purported to grant title in fee to these submerged lands to the railroad. This act was repealed by the act of April 15, 1873.

The court held that the title of the state to the submerged lands was held in trust for the people of the state that they might "enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties." The state, therefore, the court held, had no right to convey any of these lands to the railroad, and the act of April 15, 1873, was effective to repeal the earlier act.

The railroad, however, held title to certain land reaching to the edge of Lake Michigan but not submerged. This carried riparian rights and gave the railroad ownership of its piers, wharves, and docks out into the lake to the point where the water was navigable.

By act of the legislature and ordinance of the city the railroad was granted the right to lay its tracks and construct its works within the city limits.

The last question concerned the rights of the city of Chicago. It was thus stated by the court:

The claim of the city is to the ownership in fee of the streets, alleys, ways, commons, and other public grounds on the east front of the city bordering on the lake, as exhibited on the maps showing the subdivisions of fractional sections ten and fifteen, prepared under the supervision and direction of United States officers in the one case and by the Canal commissioners in the other, and duly recorded, and the riparian rights attached to such ownership. By a statute of Illinois the making, acknowledging, and recording of the plats operated to vest the title to the streets, alleys, ways and commons, and other public grounds designated on such plats, in the city, in trust for the public uses to which they were applicable.

These lots lay between the Chicago River and Park Row.

The court said that the fact that the land which the city had a right to fill in and appropriate as riparian owner had
been filled in by the railroad in its construction work did not deprive the city of its riparian rights. The exercise of these rights was subject only to the city's agreement with the railroad giving it a perpetual right of way for its tracks and the continuance of the breakwater as a protection against the violence of the lake. The court went on to say that the city as riparian owner, and in virtue of the authority conferred by its charter, "has the power to construct and keep in repair on the lake front, east of said premises, within the lines mentioned, public landing places, wharves, docks, and levees, subject, however, in the execution of that power, to the authority of the State to prescribe the lines beyond which piers, docks, wharves, and other structures other than those erected by the general government, may not be extended into the navigable waters of the harbor, and to such supervision and control as the United States may rightfully exercise."

It was really a great triumph for the city.

James S. Harlan, son of Mr. Justice Harlan, then sitting on the Supreme Court, wrote, saying: "A letter received from father this morning says that Mr. Justice Field spoke most handsomely of your brief in the Lake Front case."

The Chicago Herald published this brief interview with Mr. Gregory:

"Is not the point you and Mr. Miller raised that the state had no right to give an irrevocable grant, one presented to the Supreme court for the first time?"

"I believe it is."

Mr. Gregory was greatly pleased over the decision and all day long was the recipient of congratulations from brother lawyers both in this city and in the east.

As to whether or not the point in question was new, the court said: "We cannot, it is true, cite any authority where a grant of this kind has been held invalid, for we believe that no instance exists where the harbor of a great city and its commerce have been allowed to pass into the control of any private corporation."

And the Chicago Record of December 6, 1892, reported:

People talked about it on the streets. The "lake-front case" had been decided in favor of the city, and Chicago received the news with a metropolitan smile. Business men expressed their satisfaction in loud, jubilant voices; lawyers eagerly inquired for the full text of the celebrated decision, and everyone, with the exception of the comparatively few who are interested in the Illinois Central railroad, was unfeignedly delighted that the United States Supreme court thought just as 1,500,000 Chicago citizens always did think—that the city, and not the Illinois Central railroad, owned the lake front.

In an earlier case, in 1890, Mr. Gregory had also represented the city; in that case he and John P. Wilson successfully defended and maintained the constitutionality of the act establishing the Sanitary District of Chicago.

Perhaps I should mention one other case involving an application for a writ of habeas corpus.

Herman Billik was sentenced in April, 1908, to hang for the murder by poisoning of Mary Vrzal. He was accused of having poisoned a man named Vrzal and four of his children. It was claimed that the poison had been administered by Vrzal's wife, Jerry Vrzal, a son, was one of the state's principal witnesses. He recanted and declared that nearly all the substantial parts of his testimony were false. The judgment was affirmed in the Supreme Court and rehearing denied. Father P. J. O'Callaghan, of the Paulists, had become interested in the case and, after the judgment had been affirmed in the Supreme Court, asked Mr. Gregory to act with Mr. Hinckley in trying to save the life of the condemned man—without compensation, I am sure. On Easter Saturday they appeared before Governor Deneen and the Pardon Board. The execution was deferred to Friday, June 12.

Application was made to the Supreme Court to grant a new trial on the ground of newly discovered evidence. It was rejected. Early in the week before Billik was to die, the Pardon Board considered his case again but refused to recommend commutation of the sentence. Further postponement was also refused.

On the day before the sentence was to be carried out an application for a writ of habeas corpus was presented before Judge Landis. It was denied.

An appeal to the Supreme Court of the United States was prayed on the ground of infringement of constitutional rights. Judge Landis at first announced that he would not grant an appeal. But it was argued that Billik was entitled to it as a matter of right. At the end of the day the judge was still in some doubt and adjourned court without announcing his decision. Mr. Gregory described what followed in these words: "As he was about to leave the bench I suggested to him, taking the district attorney into our counsel, that he could communicate by telephone or otherwise with Chief Justice Melville W. Fuller, who happened to be on a visit to Chicago, on the subject of our right of appeal. Judge Landis looked at me for a moment in thoughtful silence, and then left the bench."

By the next morning the scaffold had been erected and the rope made ready. Judge Landis first secured assurance from the district attorney that he would have time to give his decision before the hanging and then announced that he had decided that Billik was entitled to an appeal and that the appeal stayed all proceedings until it was disposed of, which could not be until the following October.

Not long afterward my father met the Chief Justice and was told that "in order to prevent gross abuses in the way of applying to the federal courts on frivolous grounds to interfere with the execution of capital sentences imposed by the state," Congress in the preceding March had passed a statute taking away the right to appeal, which had before been absolute, except where the judge who had heard the application or a Justice of the Supreme Court should certify that there was reasonable doubt as to the merits of the application. Neither Judge Landis nor counsel for the defense nor for the prosecution knew of this statute. Had the judge communicated with the Chief Justice, he would have been
advised of the new statute, the application would have been
denied, and Billik would have been hanged.

As it was, although the appeal was dismissed under the
new statute, and Billik was resentenced to hang, the sen-
tence was, by the clemency of the governor, commuted to
life imprisonment.

One of my father's later cases in the Supreme Court of
the United States was Donnell v. Herring-Hall-Marvin Safe
Co., et al., decided in his favor in the fall of 1906. It was a
rather complicated matter, decided for the other side in
the Court of Appeals for the Seventh Circuit. The Supreme
Court granted certiorari and then reversed the court below.
My father had written his brief with that "grace of style and
literary touch," the absence of which in those days he depre-
cated, and later the Chief Justice complimented him on his
presentation.

These few cases typify the character of professional en-
deavor that occupied much of Mr. Gregory's time. He ar-
gued, of course, many cases in the Supreme Court of Illi-
nois and in the Appellate Court, in addition to those in the
United States Supreme Court and the hundreds he tried
in the courts of first instance. His cases reflect to some ex-
tent his character and his ideals. But this is also true of much
that he expressed publicly or in private correspondence,
which never became a part of litigated matters.

In his correspondence with Samuel Gompers, for ex-
ample, he said that it was his belief that "the ideal State
should interfere as little as possible with personal liberty."
He believed that "men and nations develop most rapidly
and along the highest lines under a condition of just as little
state interference in these matters as is possible." And he
added:

Certainly in our system of government, and particularly under
the provisions of the Fourteenth Amendment to the Federal
Constitution it is impossible, without changing the organic law, to
enforce the natural obligation of men to work. This has always been
a feature not apparently clearly appreciated by the advocates of
compulsory arbitration in labor and industrial disputes. To compel
men to work, even under the most liberal conditions prescribed by
law, would be to establish involuntary servitude contrary to the
prohibition of that Amendment. This was decided by the Federal
Circuit Court of Appeals in the Seventh Circuit in the Northern
Pacific strike case.

Among his many comments on various aspects of the
administration of justice was a condemnation of the practi-
ce of some judges of criticizing the verdicts of juries be-
fore them in criminal cases.

Mr. Gregory was always opposed to capital punishment,
characterizing it as a "barbaric survival of the bloody crim-
nal code of Great Britain, under which in the beginning of
the last century it was possible to send to the gallows a poor
young woman who started to steal a few shillings worth of
calico," and said that in his judgment this method of punishment would be ultimately abandoned in all civilized and enlightened communities.

Were I to express an opinion as to what principles lay closest to his heart, I should say that these certainly included the perfecting of the administration of justice for the benefit of all and the maintenance of liberty for the whole human race.

On these standards there was for him no compromise; and he was possessed of that degree of courage and integrity that prompted him to stand fast and speak out without fear or favor.

He thought in 1888 that we should have a Code of Civil Procedure. His reasoning, as it appears in an item in the Albany Law Journal, is interesting, his exposition forthright and vigorous. He is quoted in these words:

With a singular but perverted conservatism, we have retained the very husks and refuse of the common law, which have been abandoned by every other jurisdiction where that system obtains, including England, and upon this system grafted innovations of our own, thus destroying those features of the common law which in other governments have survived the existence of its forms and been approved as enduring institutions of their jurisprudence.

He spoke feelingly on procedural reform:

Too much time is wasted in endeavoring to fix some difficult and strained interpretation on the language of the last decision of the Supreme Court. . . All hope for the future is founded upon the vitality of truth and the mortality of error. In so far as the lawyer fortified by mussy precedent and hoary tradition wars with this principle he is untrue to himself and to his profession; he cumbers the ground and justifies the reproaches of our critics. . . And to the necessities for the intelligent amendment of the law relating to legal procedure, we must be keenly alive. We must not adhere to venerable forms at the expense of substance and the sacrifice of justice.

He also said:

It has been often remarked and frequently demonstrated, that nothing paralyzes a reformer like giving him an office. A milder form of paralysis seems to follow appointment to a committee.

It is also true that nothing appeases a body of lawyers like appointing Committees to regulate everything under the sun. For these Committees we commonly select those who have most vociferously denounced the wrongs which we aim to redress, but who, having thus roared in most lionine fashion to an admiring audience, suddenly relapse into oppressive and lamblike silence, when assigned to duty.

His experience in the activities of the organized bar was extensive, for he was elected president of the Chicago Bar Association in 1899 and of the Illinois State Bar Association in 1904, as well as holding the same high office in the American Bar Association from 1911 to 1912. He was also president of the Law Club of Chicago, where lawyers met periodically and exchanged ideas.

In February, 1920, he wrote:

All men were undoubtedly created equal before the law, and there should be a struggle for this. There should not, however, be any attempt to insist that stupidity is the equal of intellectual power, that mediocrity is on a par with genius, that the rank and file of society should necessarily and in all things move in the same orbit as its great leaders.

In politics he was a Democrat. He served in 1886 as president of the Iroquois Club, which in those days was probably the leading Democratic club in the West.

His interest in politics and good government was lively and sustained, even extending at times to participation from the hustings in local campaigns. It never included any ambition on his part to hold office, but there was no limit to what he would do to help a deserving friend who was really worthy of recognition. He always kept up a continuing correspondence with leaders of his party in various parts of the country and with those holding high office not only in Washington but in the different states. He had definite, comprehensive ideas as to how the success of campaigns for important office could be best promoted, which subjects should be developed and what let alone, and his views, which he never hesitated to express, always seemed to receive respectful consideration. Not infrequently he was consulted by attorneys-general, solicitors-general, and Presidents of the United States as to the qualifications of lawyers in this part of the country for high judicial office. Among those asking his judgment were Wickersham, McReynolds, T. W. Gregory, Theodore Roosevelt, Taft, and Wilson.

After the election of Woodrow Wilson, a number of Mr. Gregory's friends, individually but unsuccessfully, sought leave from him to urge the President to appoint him Attorney-General or Solicitor-General. He had been more or less prominently mentioned in the public press in connection with the office of Attorney-General. Some wrote to the President without Mr. Gregory's leave or knowledge, and his name was also suggested on occasion for the Su-
preme Court and sometimes for the Court of Appeals. He did not believe in a third term for the President of the United States. Speaking of Theodore Roosevelt, he made this significant statement:

Again, he seeks a Third Term. . . . But if a third term, why not a fourth? Can anyone who appreciates the doughty Colonel’s imperious and ruthless nature suppose for a moment that if in 1916 the notion of running again appeals to him, he will not discover some great public emergency, some irresistible popular demand which will again compel him to a sacrifice similar to those now forced upon him?

Writing to J. M. Dickinson, former Secretary of War, in December of 1916, he said:

The great thing in government is liberty. I am against all these restrictions which so many statesmen seem to think it necessary to impose upon all our essential rights, and I believe sincerely,—not in personal equality, for there is no such thing,—but I do believe in the equality of men and women too before the law.

On July 9, 1905, he stated unequivocally, “I want no office.”

But when Joseph E. Davies, chairman of the Federal Trade Commission, offered him a retainer as special counsel to the Commission for a few months, he accepted and for a year or so spent about half his time in assisting in the establishment of the Commission and the organization of its procedures.

Perhaps partly at least because he never held public office, except for two years as election commissioner, he was able to render many services pro bono publico which would otherwise have been impossible; and these services were not always in litigated matters.

Typical of such matters was what he did to inspire the following letter from Mother Frances X. Cabrini, superior-general of the Missionary Sisters of the Sacred Heart, dated February 27, 1905. She wrote:

Allow me to thank you for the most interesting and kind remarks made during the exercises yesterday afternoon. I am sensible that your talents were very necessary in promoting and perfecting the success of the program. I feel confident that you are wholly deserving of the many expressions of appreciation that it is possible for the sisters and myself to give utterance to. It is safe to state that the guests present on the occasion referred to, were pleased beyond measure. That you will lend every energy toward the success of the hospital is already a foregone conclusion.

The sisters and myself feel all the gratitude that it is possible for this short letter to express, giving it the most flattering construction.

The occasion referred to was the dedication of the Columbus Hospital. Later Mother Cabrini asked him for a copy of his remarks, but he was unable to comply with her request because what he had said was entirely contemporaneous. After her death she was canonized—a great and good woman.

Throughout his life my father maintained a lively and sympathetic interest in young people, their troubles, and their problems. He taught in the John Marshall Law School in Chicago from the time of its foundation until he died, about twenty years later. He did this without compensation and because he thought it would help some young people to secure a legal education which would otherwise be beyond their slender resources.

His views on many problems were positive, and they were his own, however unconventional they might be; and they were arrived at only after careful and thoughtful consideration.

He believed that the Sherman Antitrust Law and similar state statutes should be repealed. In his view monopolies resulting in the production of better goods at lower cost were salutary unless they became oppressive and injurious by failing to give to the public the benefit of lower costs in lower prices. If some sort of regulation by government should then become necessary, it was his opinion that it should be accomplished by regulation of rate or price as in the case of public utilities.

He thought that judges in Cook County should be appointed for life with power in the legislature after a short period of years to provide by law for the recall of judges by popular vote in the county. Basically this is not very different from the system now in operation in Missouri—the American Bar Association plan.

He deprecated the tendency of the courts to annul or sustain legislation theoretically upon constitutional considerations but actually because they consider it wise or unwise, thus substituting judicial for legislative wisdom, not altogether consistent with the principles of popular government.

In the first World War he himself did what he could as a member of the Chicago Bar Association War Service Committee and of the Cook County Fuel Commission, and before I left for France he said he thought my chance of surviving the close of hostilities better than his because of his age. How nearly right he was is demonstrated by the fact that he survived my return by little more than sixteen months.

He was exceedingly patriotic—proud of the strength and spirit and power of this peace-loving nation when once aroused and committed to the conflict; bitter toward the German government and leaders; scornful of the pronouncements of those who would offer to negotiate for peace before we were fairly launched in combat. To him the idea that a nation should not defend itself when threatened was like telling a man not to defend himself when under assault or threat of murder.

He believed in universal military training.

In the fall of 1919, after the race riots in Chicago, he publicly volunteered his services without compensation, “as leading counsel, to protect the legal interests of, and secure equal justice for, all colored men indicted in the Chicago Riots situation.”

Late in 1920 he was made editor-in-chief of the American Bar Association Journal in its new form as a monthly publi-
cation, but he lived only long enough to make up two
issues.
I venture to quote very briefly from addresses made at
memorial exercises for him on May 20, 1921.
Clarence Darrow said:
... The case that aroused the fiercest opposition of anything
that Chicago has ever seen ... was the Anarchists' case. One time
it was worth almost as much as a man's life to say a critical word of
the case but Mr. Gregory said it. I am not pretending to suggest
whether he was right or wrong; neither did he; but he did believe
that no man or set of men in the temper of the people at that time
could have a fair trial.

Dean Edward T. Lee of the John Marshall Law School
paid him this tribute:
He was well and accurately informed on men and events of the
day, and his observations and criticisms were always wise, funda-
mental, and considerate. His extensive and intimate acquaintance
with prominent men in local and national history during the last
thirty years gave unique value to his conversation at such times.
He was a pure-minded, clean-speaking man, who never uttered a
vulgar word or one of double meaning.
He carried himself the same way in public as in private, in the
court-room, in the class-room, in committee meetings and in
large assemblies. He was a steady, noiseless worker, a self-deter-
mining, self-contained man, with all his resources quickly available
and at his command, never hurried, never worried, never muddled,
a man Emerson would have liked to meet. "Strong and con-
tent I travel the open road" seemed his attitude towards life. He
accepted the universe and feared it not. ... He was of aristocratic
manners but of democratic principles; appreciative of merit where-
ever and whenever it appeared, neither obsequious to the rich and
powerful nor patronizing to the poor and obscure, met all on the
same level; despised class distinction and artificial passports to
recognition.
He was what he desired to be, an attorney representing at the
bar of justice those unable to plead for themselves; a counselor,
ever ready to set straight the feet of his client in the path of the law
and to teach him respect for law. But he aspired to be more than
that,—to be a useful citizen, to help mould our democratic society,
and to live the life of a generous, hospitable, upright man; and he
succeeded.

On October 23, 1920, he went to a football game. In
the car taking him home, he lost consciousness for a few
seconds. That evening his doctor called and left him com-
fortable and happy. He slept immediately upon retiring—
soundly and quietly. That was his last, long sleep; for at
one-thirty the next morning, without moving or opening
his eyes, he slipped peacefully into eternity.

This poem by Elizabeth R. Finley appealed to him
greatly:

The God of the Great Endeavor gave me a torch to bear,
I lifted it high above me in the dark and murky air,
And straightway with loud hosannas, the crowd acclaimed its light
And followed me as I carried my torch thro' the starless night;
Till mad with the people's praises and drunken with vanity
I forgot twas the torch that drew them and fancied they followed
me.

But slowly my arm grew weary, upholding the shining load,
And my tired feet went stumbling over the hilly road,
And I fell with the torch beneath me. In a moment the flame
was out!

Then, lo! from the throng a stripling sprang forth with a mighty
shout,
Caught up the torch as it smouldered and lifted it high again
Till fanned by the winds of heaven it fired the souls of men!

And as I lay in darkness, the feet of the trampling crowd
Pased over and far beyond me, its peans proclaimed aloud,
While I learned, in the deepening shadows, this glorious verity;
'Tis the torch that the people follow whoever the bearer be!

Alexander C. Castles, a British Commonwealth Fellow for 1956-57.
Mr. Castles is a graduate of the Law School of the University of Mel-
bourne. After receiving his LL.B. and LL.M. degrees, he joined the fac-
ulty at Melbourne as a Tutor in Torts and Contracts.

Brinsley D. Inglis, a British Commonwealth Fellow for 1956-57. Mr.
Inglis has received the LL.B. and LL.M. degrees from the Law Faculty
of Victoria University College in New Zealand. He lectured there on
Conflict of Laws for a year following his graduation and then entered into
practice in Wellington. Both he and Mr. Castles will spend a year at the
Law School in the study of American Law.
Levi—

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not be absolute, of course, because at some level other products would be substituted; and, given time, competitors would increase their production. He shares these deficiencies, however, with firms of greater proportionate magnitude, although the effect of his action would not be so great or so lasting. Nevertheless, such a lesser firm could be regarded, although the law has not done so, as possessing illegal monopoly power.

The decision of the law not to regard such lesser firms as exercising illegal monopoly power probably reflects a judgment that the law should not interfere where the magnitude of the monopoly effect is not great. I note that Dr. Stocking in his article on the Cellophane case states that “detecting monopoly is simpler than measuring it” and that he quotes Fritz Machlup as being “probably correct” in concluding that “so many different elements enter into what is called a monopolistic position and so complex are their combined effects that a measurement of ‘the’ degree of monopoly is even conceptually impossible.” But I would question whether detecting monopoly for the purpose of bringing the coercive force of law to bear upon the matter can be so easily separated from the problem of its magnitude. The problem is of course illustrated by the Cellophane case, where one can accept the fact that in some sense Cellophane had control over 75 per cent of a “market” and yet conclude that the albeit imperfect substitutability of other products may limit the magnitude of control sufficiently, so that the coercive force of law need not be applied. It would be extremely difficult, as has been suggested, to measure the magnitude of the monopoly. But a Court possibly might be forgiven for recognizing the availability of near-substitutes which it has seen by visiting the 1932 Annual Packaging Show at Atlantic City.

The choice of the law then seems to be not to interfere with all monopoly power. The magnitude of the power is taken into account, although without much precision. I am not sure how Mr. Justice Reed can know, as he writes in the Cellophane opinion, that “one can hardly say that brick competed with steel or wood or cement or stone in the meaning of Sherman Act litigation.” It seems rather that in a given case they might be thought to compete. I believe the point is rather that the Sherman Act, on the monopoly side, is reserved for the more obvious cases of monopolies with magnitude. In this sense the percentage of market control and the availability of imperfect substitutes are both relevant. The question of monopoly profits has been considered less relevant; the law’s emphasis has been on price or production control and not on the presence of rewards. It should be said that the law, through concepts of attempts to monopolize and conspiracies to monopolize, and by emphasizing intent or particular abusive acts, has reached firms with monopoly power considerably less than that of the Alcoa type. It must be said also that it has not always known what to do with them after it has reached them.

But it has never tried to reach all firms which can change the market price by curtailing their own production.

It is difficult to say that the choice should have been otherwise. For one thing we recognize and accept throughout the market many forms of minor monopoly power. The existence of minor monopoly power in the form of advantages of location or product differentiation has sometimes been used to argue the inevitability of monopoly power, both small and large. I do not see how this confusion is helpful, but it suggests that we really are not much concerned with the minor and more transient forms of monopoly of small magnitude. A more important point is that, once the law moves toward the less obvious cases of monopoly power, various difficulties arise. Not the least of these is that the law gets converted more and more into a kind of supervision of industry. This is particularly true if the industry’s cost structure, and the reasons for it, and the firm’s profits and the explanation for them are permitted or required to be an issue in the case. Presumably, the arguments of justification will become more difficult to evaluate, and the standard of application probably will be less clear than it is now. Although it would not help on the problem of market definition, a partial escape would be to suggest an arbitrary and, in this context, lower percentage rule and hold fast to it. But, even if this were feasible, the argument for this is less compelling when it has not been shown that concentration has significantly increased.

But the argument often is made that special consideration should be given to the problem of oligopoly. Hence a distinction is made between the single firm of lesser monopoly size and power which exists in an area where there are many competitive firms of small size and the single firm which exists alongside of a few other firms of somewhat similar size. In the latter case it is suggested that an inherent propensity toward joint action permits or compels the aggregation of the several units so that a level of undoubted monopoly strength is visible. The law’s approach to this special problem could be accomplished either through a doctrine of conspiracy which would permit the aggregation or, without conspiracy, by treating the existence of the other firms as one of the circumstances of the market adding to the monopoly strength of each of the firms. Both the Paramount case and the second American Tobacco case came near to adopting or did adopt the first approach. The approach through the doctrine of conspiracy is made somewhat easier for the law, because conspiracy in antitrust cases need not be based on agreement, or at least the implied agreement can be found in a common concert of action, sometimes popularly described by the somewhat discredited phrase “conscious parallelism.” But the legal relief which would follow as the result of a successful case based on this theory need not curtail the power of the individual firm. The agreement or conspiracy can be treated as an illegal act appended to a position of otherwise legitimate power. On the other hand, a successful case brought on the theory that in the circumstances of the industry the
individual firm was guilty of monopolizing presumably would have to deal directly with the question of allowable power.

Difficulties are involved under either theory. Under the doctrine of conspiracy the best evidence would appear to be specific agreements, whereas under the rationale for giving special consideration to the problem of oligopoly the specific agreements should be irrelevant. A large jump is likely to be involved in reasoning which moves from a finding of specific agreements on some matters to the conclusion that there is a general partnership in monopolizing among the firms. Indeed, the need to have specific agreements may suggest general rivalry and not inherent common action. If there is anything to this suggestion, the case for special treatment of the oligopoly situation, with or without conspiracy, is weakened. If the approach is made on a straight monopoly theory, the presence of oligopolies fashioned as a result of decrees in monopoly cases would be an abiding embarrassment. It is not unlikely this embarrassment would multiply as new distinctions would have to be made to justify more or less competition or larger or smaller size for various industries. Of course it can be said that such distinctions are inevitable when an antimonopoly law is applied. But the problems arising out of them seem less acute when the law is applied only to the firms of quite high percentage of market control. With such firms the monopoly effects are presumably great, and the argument in favor of dispensation for them, because of the efficiencies of scale, has a greater burden to overcome. As one moves downward in the scale of market control, however, not only will there be more cases, but the balance between curbing lesser monopoly effects and yet giving due regard to the efficiency argument will be harder to strike. Since the rewards of lesser monopoly power are less certain, size is more likely to have been caused by the requirements of efficiency. And if the monopoly power in the oligopoly situation is thought to rest on an inherent propensity toward joint action, unless a somewhat doubtful economic assertion is to be converted into an irresistible assumption of law, the issue of how much joint action there has been, and how much rivalry, will be present in all these cases.

It is obvious that many of these theoretical and practical difficulties arise out of a desire to curtail economic power, even though the economic power does not flow from a full monopoly position. It is the monopoly of the single firm occupying an industry, even though there is a problem of defining the market, which is more readily detected. And there is less reason then for measuring the consequences of the firm's position, for they can be predicted theoretically. And while the firm may be allowed to justify its position because monopoly was thrust upon it, not even the rule of reason requires an inquiry into effect. When monopoly restraints, however, are thought to encompass position and behavior further removed from the status and consequences of the single firm occupying a market, the law loses its guide for action. It finds itself, as Judge Taft stated in a related situation, in a sea of doubt, caught between the prototype of monopoly and that of competition. But in the main the choice of the law has been, as I have suggested, to reserve its scope of prohibition for the cases of more assured monopoly strength. It has chosen in the main to be an anti-monopoly law and not a law in favor of all competition possible. Such a choice may leave untouched a large area of economic power, although perhaps it is somewhat difficult to know what is meant by this term.

In this situation a strong attempt has been made to change the law so as to prevent the creation of monopoly in its incipiency and so in this way to avoid for the future cases of lesser monopoly power. The attempt has been made also to curb conduct thought to be based upon and perhaps to further lesser monopoly power. I refer to the prohibition of mergers and other conduct such as price discrimination or exclusive arrangements which in the language of the Clayton Act may have the effect of substantially lessening competition or of tending to create a monopoly. The Clayton Act's prohibition of mergers has been strengthened, largely through the inclusion of asset acquisitions. The Robinson-Patman Act has jeopardized price differences. Section 3 of the Clayton Act has been interpreted to prevent, with some qualifications, exclusive dealing arrangements which cover a substantial number of outlets and a substantial amount of products. The new Automobile Dealer Franchise Act creates a new right of action to compel manufacturers to act "in good faith" in connection with dealer franchises. And there is a strong movement to have a law enacted which will require notification to the government, the furnishing of information, and a waiting period before a merger may be consummated.

The attempt to have more stringent prohibition of mergers—and the pre-merger notification bill must be regarded as an attempt both to supervise and to prevent—is presumably based on two arguments. The first is that any merger reduces the number of competitors. This argument has force, of course, only if it is assumed that the reduction makes for a difference worth talking about. The second argument is that growth through merger is likely not to be the most efficient growth responding to the economies of scale. But of course there may be genuine economies of scale in growth, even though the growth is through merger. And assuming the existence of what is called a relatively few firms, the resulting capacity of the industry may be more appropriate if growth is through merger. Since it is not possible or desirable to prohibit all mergers, some standard will have to be used by the law in prohibiting particular mergers. That standard undoubtedly must relate to market control, although it might encompass questions of efficiency and capacity in the industry. The central question surely is not whether the growth takes place through merger but rather the result of the merger in terms of power and possible justification. Separate antimerger legislation must proceed upon the basis, however, that power which is allowable when obtained through internal growth may
be denied to growth through merger, because the means used create a presumption concerning motive or effect.

Actually the standard used for the prohibition of mergers in the Clayton Act is most unclear. Perhaps the most that can be said about it is that the standard is intended to go beyond the Sherman Act but not too far. The allowable limits of economic or monopoly power are to be decreased when mergers are involved. But the Clayton Act applies not only to horizontal mergers but to vertical and conglomerate as well. The inclusion of vertical integration is understandable, since there is a widely held belief that vertical integration gives a leverage for the creation of greater monopoly power. It may be suggested that this theory is usually wrong except in the unique case where vertical integration in foreclosing an outlet to a competitor happens to place a greater cost on the competitor than on the acquiring company by this maneuver. The inclusion of conglomerate mergers suggests that the antimerger legislation need be not about monopoly power at all but about size or some economic power which is hard to define or to understand and therefore will be equally hard to enforce.

But probably what is intended is a general move downward in the scale toward lesser monopoly power, although why such power should be more dangerous in the hands of a firm operating in several industries rather than in only one is not easy to explain.

The justification for special antimerger legislation is not obvious. The justification does not ring true if it is based on any special inadequacy in the relief given by courts when monopoly has been achieved through merger. On the contrary, the difficulties of obtaining adequate relief are greater when monopoly is achieved through internal growth. Nor can it be said that special legislation was required so that the law would give special scrutiny to monopoly cases to those instances where the growth was through acquisitions, for this always has been the emphasis under Section II of the Sherman Act. Perhaps it will be said that mergers should be prevented, since they lead toward concentration, although the results of the mergers do not always show up as a monopolized market, because there are countervailing tendencies. But, if this is so, then there is less need for governmental intervention. The difficulty for the law, in any event, is that antimerger legislation, while emphasizing a means of growth, attempts to infuse into the law a double standard of market control. This division of standards is not reinforced by new learning reflected in new concepts of market control. It is a different and more divergent double standard than has existed to some degree in the Sherman Act up to now. It will be difficult to maintain such a double standard. It has been said that the idea is not so much to have a double substantive standard but rather to have the courts and the Federal Trade Commission prevent individual mergers on the basis of more doubtful proof. This suggests a dubious limitation of freedom, in that generally we would not want to have courts accept doubtful proof, particularly when it has not been shown that mergers have resulted in a significant increase in the level of concentration almost since the turn of the century.

I do not wish to overemphasize the newness of the tendencies to push the antitrust laws into operation against the lesser forms of monopoly or economic power. These tendencies have existed for a long time. But it is becoming much more difficult to understand what is meant by the non-regulatory character of the antitrust laws. The antitrust laws are non-regulatory only when they are not in frequent interference with business decisions—when the laws are reserved for cases of larger monopoly power and for traditional restraints such as price-fixing thought to have the same effect as larger monopoly power. The curtailment of exclusive arrangements and the regulation of pricing policies under the Clayton and the Robinson-Patman acts, the regulation of mergers (horizontal, vertical, and conglomerate) and the suggested pre-merger notification bill, the special act requiring good faith behavior of automobile manufacturers in connection with franchises—all these reflect a movement to convert the antimonopoly laws into fair-practice regulatory statutes. Regulation exists even when there is not prohibition. It includes the continual or frequent government inspection of business practices in formal hearings, with the necessity for justification, for the submission of data and the requirement of delay. Perhaps, then, there is reason to pause before a law which has symbolized free enterprise is converted into but another congeries of regulatory statutes for the control of business.