



Mr. Tappan Gregory during his lecture in Breasted Hall

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 un-

der control. With this went an extraordinarily warm heart, great kindness, 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

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-



Dean Levi with students, following the Gregory lecture

ries with it the equal power to punish for the disobedience of that order and the inquiry as to . . . disobedience . . . the special function of the court. . . . To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency . . . in brief, a court, enforcing obedience to its orders by proceedings for contempt is not executing the criminal laws of the land but only securing to suitors the rights which it has adjudged them entitled to.

The petition for the writ was denied, and this ended the case.

Debs and his associates were required to serve their jail sentences.

The Debs case was not the only one in which Mr. Gregory rendered service without compensation at the request of Mr. Darrow.

On October 28, 1893, Carter H. Harrison, genial, friendly, well-liked mayor of Chicago, was shot and killed in the doorway of his home by Patrick Eugene Prendergast, who thereupon gave himself up at the Desplaines Street Police Station. It was a dreadful deed. Immediately public feeling rose to white heat, and public clamor knew no bounds.

Prendergast was then twenty-five years old. In due course he was indicted and tried for murder. The defense was insanity. During his trial, when the jurors went out for exercise under escort, crowds swarmed about them and, thirsting for the blood of the prisoner, with threats and vituperation, exhorted them to hang him. The jury brought in a verdict of guilty.

Upon the hearing of the motion for a new trial, Mr. Darrow came into the case, and Mr. Gregory joined him at his request.

The motion was overruled by Judge Brentano and so was a motion in arrest of judgment. Then these proceedings followed as reported in the papers:

"Patrick Eugene Prendergast, stand up.

"Have you anything to say, Mr. Prendergast." . . .

"This plea of insanity, may it please the court, was set up without my consent . . . infamous plea of insanity—disreputable—careless lawyers. . . .



A scene from the student reception in the Law Lounge following the Gregory lecture.



Clay Judson and Mr. and Mrs. Robert F. Graham at the reception for members of the Faculty, the Visiting Committee, and the Alumni Board which preceded the Gregory lecture.

"The question is, if the court please, did I do right or did I do wrong at that particular time? Did I do my duty or not? Did I do the will of God or not? If I did wrong of course I ought to be condemned, if I did right I should be justified." . . .

Judge Brentano: "The solemn and painful duty now devolves upon me to impose the sentence and judgment of the law, which is that you, Patrick Eugene Prendergast, between the hours of 10 o'clock in the forenoon and 2 o'clock in the afternoon of March 23, A.D. 1894, in the manner provided by the statute of this state, be hanged by the neck until you are dead." . . .

So much for the newspaper account.

Relief was immediately asked of the Supreme Court by application for writ of error and supersedeas. It was denied. On March 21 application for a writ of habeas corpus was made to the Federal Court before Judges Harlan and Jenkins. This was denied, and Darrow immediately went to Springfield to seek, in vain, executive clemency from the lieutenant-governor, Mr. Gill.

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, the welfare 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:

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 plain white 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.



Coffee in the Law Lounge at the student reception following the Gregory lecture.

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 resented to hang, the sentence 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 deprecated, and later the Chief Justice complimented him on his presentation.

These few cases typify the character of professional endeavor that occupied much of Mr. Gregory's time. He argued, of course, many cases in the Supreme Court of Illinois 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 extent 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 practice of some judges of criticizing the verdicts of juries before them in criminal cases.

Mr. Gregory was always opposed to capital punishment, characterizing it as a "barbaric survival of the bloody criminal 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 musty 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 leonine 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 extemporaneous. 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, fundamental, 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-determining, 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 content 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 wherever 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 comfortable 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:

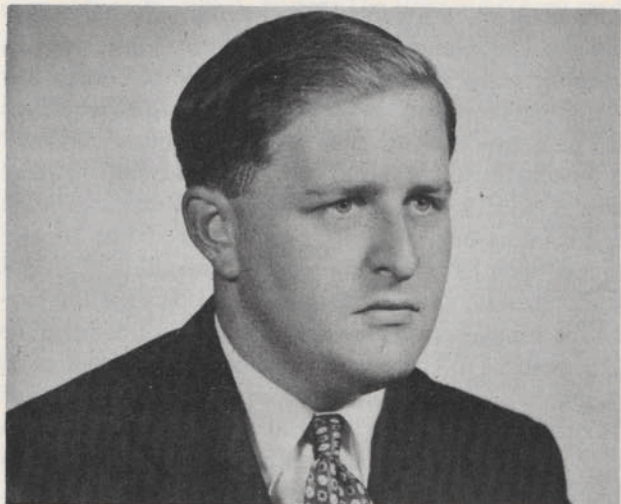
The God of the Great Endeavor gave me a torch to bear.
I lifted it high above me in the dark and murky air,
And straightway with loud hosannas, the crowd acclaimed its light
And followed me as I carried my torch thro' the starless night;
Till mad with the people's praises and drunken with vanity
I forgot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

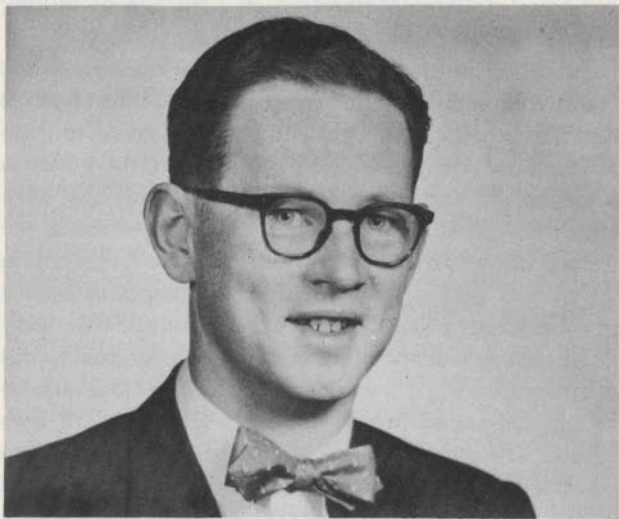
Then, lo! from the throng a stripling sprang forth with a mighty
shout,

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
Passed 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!



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