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Commissioner GARRETSON. The consequence was that you, being both the checkweighman and mine committeeman, when you found the contract unobserved, you took it up directly there and then with the officers of the company?

Mr. KOBYLAK. No, sir; I was mine committeeman, but that day I was elected checkweighman; when I was elected checkweighman another miner took my place as mine committeeman.

Commissioner GARRETSON. You ceased to be a mine committeeman?

Mr. KOBYLAK. Yes, sir.

Commissioner GARRETSON. Do you know of any other checkweighman being objected to by the company?

Mr. KOBYLAK. Oh, yes.

Commissioner GARRETSON. They usually quit when they were objected to?

Mr. KOBYLAK. Quitting, or they were so strong, the company, that they have removed him.

Commissioner GARRETSON. They laid down, in other words?

Mr. KOBYLAK. Yes, sir.

Commissioner GARRETSON. You stayed, and the company went after you?

Mr. KOBYLAK. Yes, sir.

Commissioner GARRETSON. That is all.

Chairman WALSH. That is all, Mr. Kobylak; you will be excused permanently.

Mr. KOBYLAK. I have here a newspaper report about the end of the strike I desire to read to you.

Chairman WALSH. Is it a short statement?

Mr. KOBYLAK. Yes, sir [reads]:

"International Secretary-Treasurer Billy Greene, author of the anthracite bill, briefly reviewed the strike for the News. He said, 'This agreement brings to an end a strike that in many respects is most remarkable. For 14 months 12,000 miners have been engaged in a most intense industrial struggle. Altogether, counting the striking miners and their families, more than 60,000 men, women, and children have been directly involved. During all that time not a single violation of the law has taken place nor has one dollar's worth of property been either damaged or destroyed.'"

Chairman WALSH. All right, Mr. Kobylak, you will be excused.

Mr. Gregory, will you please take the chair?

TESTIMONY OF MR. STEPHEN S. GREGORY.

Chairman WALSH. Please state your name to the commission.

Mr. GREGORY. Stephen S. Gregory.

Chairman WALSH. And your residence.

Mr. GREGORY. Chicago.

Chairman WALSH. And you profession?

Mr. GREGORY. I am a lawyer.

Chairman WALSH. How long have you practiced the legal profession, please?

Mr. GREGORY. Forty-three years.

Chairman WALSH. Have you held any official position in the city of Chicago or the State of Illinois?

Mr. GREGORY. Not literally; except many years ago I was elected commissioner for a year or two. I have been president of the Chicago Bar Association, the State Bar Association of Illinois, and the American Bar Association.

Chairman WALSH. Have you been arbitrator in any cases under Federal arbitration acts, Mr. Gregory?

Mr. GREGORY. Yes, sir; under the Erdman Act, in reference to wages of switchmen in the Chicago district.

Chairman WALSH. Would you briefly give us the circumstances under which that arbitration was had, and the result of the decision?

Mr. GREGORY. The company—the railroad company—had chosen their arbitrator, Mr. Grey, now president of the Western Maryland, and the switchmen had Mr. Heberling as their arbitrator, and I think under the provisions of the act, Dr. Neill and Mr. Knapp, then with the Interstate Commerce Commission, Judge Knapp suggested me, and it was agreed that I should act with those gentlemen. We heard the evidence for some time, and the result was an increase in wages, I think, of 3 cents an hour.

Chairman WALSH. And the report was adopted and carried out?

Mr. GREGORY. Yes, sir.

Chairman WALSH. Now, Mr. Gregory, I believe you have been given a few questions, or more properly speaking, a list of points that we would be glad

to have you address yourself to, and the first is calling for your opinion on constitutional guaranties, personal rights, for example, trial by jury?

Mr. GREGORY. Yes, sir. I have not prepared anything definitely, but I have examined this and made some notes. Of course, we have in the Federal, and in almost all the State constitutions, in fact, with particular unanimity, certain guaranties that were taken very largely from the Magna Charta, and the Bill of Rights, in England, by which it is sought to secure to the individual the great essential rights to life, to liberty, and property, and I will speak presently as to the difference, as it seems to me, between the Federal and State constitutions in the efficacy of those provisions. The trial by jury is, of course, perhaps in a way related to procedure, but after all it is a great essential right, in my judgment, without which none of the rights can be regarded as secured. So far as habeas corpus is concerned, that is an element available in cases of unlawful arrenst. It might perhaps have been resorted to by the last witness when held upon what would appear to be like an absurd and untenable charge of high treason. It is the only remedy known to the law by which the cause of a man's detention, where he complains of illegal restraint, can be summarily and forthwith examined judiciously. I think under the provisions of the Federal and State constitutions, the statutes of both jurisdictions, that right is reasonably secured. Now, the right of free speech——

Chairman WALSH. One minute, Mr. Gregory. Has your attention been called to the decision in West Virginia and probably the Moyer case in Colorado, where it is suspended during the reign of what might be called military law, or what they call modified military law in Colorado?

Mr. GREGORY. Yes, sir; that, of course, illustrates the old maxim that in the crush of resounding arms laws are silent, but a great chief justice once said that was a statement of fact and not a principle of law. The fundamental principle of this country is that the civil is superior to the military power. Of course, there is an inherent right in an executive commander in chief, vested with military authority in times of disturbances to establish military law. He does so at his peril, and his exercise of power is to a large extent subject to review by the authorities or by the judiciary. Shortly after the Civil War, as you probably all remember in Indiana military courts condemned to death two men, Milligan and Bowles, and they were discharged by the Supreme Court of the United States on the ground that the exercise of authority of such courts, although the country was at war, in jurisdiction where the courts, the civil courts, were sitting and their proceedings were undisturbed, it was unlawful and unconstitutional.

They were charged with virtually treason and were sentenced to death. Jeremiah Black, formerly an Attorney General of the United States, and one of the greatest lawyers of this country, made an historic argument in that case, in the course of which he says, and I hesitate to quote it lest it might be attributed to me: In the palladium of trial by jury, that King Alfred was the greatest King that ever sat upon a throne; that he promised his subjects trial by jury, and that he secured it to them, although it was necessary for him in one year to hang 44 judges to do it. I have not verified the accuracy of that statement, but it will be found in the report of that case in the Supreme Court of the United States.

The right to free press is absolutely vital, and free speech. Here in this District a most remarkable statement was made by a gentleman whom I think is not now on the bench, Judge Wright, where he indicated that it might be possible, and strongly that it was probable, that a man might be enjoined from libelous statements. Of course, if he was enjoined, as I shall presently state in speaking of injunctions, and there tried for breach of that injunction by process of contempt of court, he would not be entitled to trial by jury, and would be deprived of all the constitutional guaranties, which were the subjects of a long historical contest in England, and which has been thought vital to this invaluable right in this country; but there is the fundamental error that lies at the foundation of this discussion in the minds of many estimable men, and some of my own profession, and it has been elaborately discussed recently by a committee of the National Civic Federation, and it was pointed out to those gentlemen in a very clear way by Mr. Choate, jr., that our system did not contemplate any method by which a man could be restrained in advance from speaking his sentiments.

The constitution of Illinois and most of the other States secures the right to speak freely the truth for good purposes, subject only to the right to prose-

cute for an abuse of that right, but that it is not possible in advance to stifle free speech; and one of the highly objectionable methods by which that is accomplished is to make the policeman the censor of public discussions. In times of great excitement, or where people publicly protest and have been aroused and sentiment runs strongly against a certain class or certain individuals in a community, there are instances of that kind which the public condone. The right to speak freely is an essential right; it is secured by our constitutions; and if a man speaks libelously—I would not say slanderously—or incites to violence, he might be answerable for that, but he nevertheless has the right to speak, and, of course, that extends to the ladies now also as well as the men. The right to freedom of the press stands on a secure foundation because the newspapers have so much power and so much influence that they are hardly likely to be very much oppressed in that regard. And possibly some may think that they at times abuse their privilege; they certainly treat us all with great freedom in discussing our conduct; but, after all, I believe with Jefferson that it would be better to have newspapers without government than government without newspapers. I feel that they secure publicity, which is invaluable.

As to free assemblage, there is, of course, this difficulty: The place of assemblage. Sometimes men desire to meet, and they desire to meet on the streets and other public places. Now, it is necessary that the control of these public places should be in the hands of public authorities, and the right to speak freely gives a man no right contrary to law or reasonable regulations to go either upon—or consent of the proper party to go either upon public or private property, and sometimes, no doubt, the authorities act partially and unfairly in giving leave to one class of men to hold meetings in public grounds or public parks and refusing it to others. That is probably, after all, one of those errors of administration which the law can not always redress.

As to freedom, free search, and unwarranted arrest, I think all our constitutions and statutes have necessary principles or provisions upon that subject. There is one thing, however, which seems like a minor matter to call to the attention of this commission, and yet I think it would relieve a great deal of hardship if everywhere for petty offenses, instead of making the first process a warrant, by which the defendant was arrested, he was summoned, as I understand, where there is no particular danger that he would run away; for instance, a teamster gets into a controversy with a policeman on the streets of a city, and I have seen it that the policeman would get on the box and drive him to the station. He is employed by a well-known employer, and there is no difficulty whatever in getting him, and he could be summoned the next day instead of him being locked up overnight and his employer having to go and give bond. There is a good deal of opposition in that way. That is a mere minor change, which I understand exists in some of the States, and certainly in England.

Commissioner O'CONNELL. That is done now in violations of speed laws, a man running an automobile; they take his number and summon him for the next day.

Mr. GREGORY. Yes, sir; that has become common; and one question which I was not going to discuss is—and that illustrates that sometimes it is a doubtful thing in our entire government—these wrongs that are practiced at the expense of the humble don't direct the public attention, but when men get so they own automobiles they have a way of making their complaints heard, and possibly that has done more in opening the eyes of the people to an age-old practice than much discussion on the subject would have. The law contemplates adequate protection against the exaction of excessive bail. That is frequently abused. I remember a case of my own experience, where a man was indicted on five indictments, which were never brought to trial and was discontinued without prosecution, but he was held, a stranger in Chicago, to $50,000 bail. He was not a laboring man or a miner or a victim of any prejudice at all; it was one of those miscarriages of justice which we have.

Now, the constitutional basis for these arrests is founded, of course, upon our Federal and State Constitutions, and the conditions under which they are denied are very largely cases of unwarranted and illegal interference by police and others in public authority. I am not aware of much that could be done in legislation in that regard. I was quite impressed with the statement of this witness that just left the stand as illustrating how, without any apparent—how no legislation apparently would be needed to correct everything of which he complains here. Of course, the attitude of the courts in labor and nonlabor cases is largely a matter of the temperament of the judge, which is certainly a very uncertain factor in a science which is supposed to-day to approximate the existence of a law; nevertheless, it exists. It was charged against the English judges in the time of Mansfield, and it will be found so stated in Sir Philip Mahon's History of English Law, that they were all alike to power, and that they were hostile to individual rights and to liberty. That may have been so to some extent, and I am inclined to think the charge was justified.

In many labor cases I feel, and I presume you gentlemen are fully conscious of that, that the excesses that are imputed to men on strikes, sometimes probably justly, have the effect to prejudice all sober-minded men, including judges. Crimes of violence can never become popular by any possibility. A man who strikes down another with murderous hand is not apt to be a popular man in the community, nor is murder going to be popular. But more insidious wrongs, wrongs that are hidden, that are covered up, and yet work great injury to large numbers of people, are not so striking; they do not make that impression. And I think judges sometimes are impressed by violence, and that they are prejudiced against labor on that account—against labor leaders—because they impute to every leader of a strike everything that is unlawful that is done in it. In the case of Debs, it was distinctly held by a distinguished Federal judge, for whom I have the highest respect and regard, that it was not necessary to show that he had been actually advising any violence or counseling any violence; that if he were the leader of the strike he must be held for all lawlessness in the course of it. I think that was a mistake; I think that was a mistake in principle.

Of course, as to the social and legal aspect, the consequences of the denial of these rights, they are most serious. It is a serious thing for people or any large class of people to feel they are not treated with justice by the government under which they live. Therefore I think, and I think the people of this country realize—I think the appointment and the existence of this commission recognizes the fact that these complaints must be looked into, and that if there is wrong, if there is denial of rights it ought to be corrected, so that every man in this country shall feel that he is entitled to the full measure of his rights, however humble his position, or how small and trivial may seem to be that charge, when compared with larger issues.

The Federal Constitution furnishes but limited authority for the enforcement of constitutionally guaranteed rights for the reason that the provisions in the Federal Constitution have been regarded as mostly in this regard limitations upon the power of Federal agents; and therefore they do not apply to proceedings in the State courts, where almost all these questions really arise, except in some instances of injunctions; and now, under the antitrust law, more and more they are coming under the Federal laws. But the fourteenth amendment is all that attempts to restrict the power of the States, particularly; and that has in it a provision that no State shall deprive any person of life, liberty, or property without due process of law. But owing partly to the very exigencies of the situation, which would enormously burden the Federal judiciary, the Supreme Court of the United States has so limited its definition of "due process of law," and have gone so far as to hold that a man may be even tried with due process of law without trial by jury, which is certainly contrary to the common law, in my judgment, and without indictment by a grand jury; and in a very able decision by Mr. Justice Harlan, they have practically held that almost anything that was directed by general law in the way of procedure in a State must be regarded as due process of law under that constitutional provision.

The State constitutions contain the most ample guaranties, but the trouble is they are not self-enforcing, and the trouble is frequently with the masses of men that work hard; they are perhaps of limited education, and they have not much influence perhaps except as they get it through organization, and frequently it seems as if public authority was more accessible to the influence of large and consolidated interests. Certainly the provisions of the State constitutions ought to be enforced by the governors and other public officers—sheriffs who are sworn to see that the laws are faithfully executed. But they are all very much burdened in our large cities and large States and large communities. They have no adequate appropriations for this. As an illustration, the supreme court of my own State, the State of Illinois, seven years ago decided that a certain corporation was an illegal trust operating in that State, and it or its successor has continued to operate still, and there has been no effort made by the public authorities to drive them from the State.

I don't know that there is any particular remedy by legislation in this regard, but it is rather a trite remark to say that we should elect no one but capable,

upright, and efficient public officers; but that is the best security for the effective administration of the law in any aspect.

The status of trade-unions and labor organizations under the law is somewhat peculiar. Of course there is no doubt that it might, if they saw fit, incorporate, and I can well understand why they would object to doing that, and they would, I think, object to that for the same reason that the American Bar Association and most associations of lawyers, which certainly ought to have, and no doubt do have, a very high degree of confidence in the courts, object to incorporating. Almost all of these organizations, I suppose—these lawyers' associations—are voluntary associations. Now, the difficulty about incorporating, for instance, in the American Bar Association is that they have 10,000 members. I don't think that there would be 10,000 lawsuits if they were incorporated; but if they were incorporated, they would be liable any time to have some discontented member filing a bill and trying to have a receiver appointed and trying to regulate this—this is an age of regulation—to regulate the association. Therefore whenever it has been discussed I have always opposed it, and we have never done it—as I think, wisely. Now, I think probably a good many members of the labor unions feel the same way. I think they are wise about that.

Of course, at common law it is rather interesting at times to read the encomiums of Blackstone and Hale and others upon the common law. But it was, after all, not quite as humane as we regard it now and then. At common law an association for the purpose of increasing wages among laboring men or for the purpose of shortening the hours of labor was illegal. I know that a very learned judge, Chief Justice Daley, in New York, who had the respect and confidence and affection of the bar in his day, in one of his opinions stated the contrary; but with all due deference he was in error in that point. And in Chitty, which is a work classic among lawyers—Chitty on Criminal Law—will be found a precedent of an indictment for conspiracy among certain workers to shorten a day to less than 13 hours, which shows we have progressed some in our views on these subjects since that time. That was concluded "against the peace and dignity of the King," and not against the statutes, showing that it was a common-law indictment—an indictment on the common law. Now, of course, we have progressed so that these organizations are not now per se illegal, and under the Clayton Act, lately passed by the National Congress, that is distinctly provided.

Of course, the liability of members of a voluntary association is probably very much like that of partners or of principal and agent; and that presents a difficult question, as in the Danbury hatters' case the members of certain labor associations were held to be liable for a large sum, as I think, upon—if I may be permitted to differ from that exalted tribunal—some, I won't say unsound legal theory, but an unsound decision—from a standpoint of sociology. I will refer to that in a moment in speaking of boycotts.

Now, of course, injunctions in labor cases have been very frequently granted, and I think that probably the provisions of the Clayton bill in that regard now, if they could be followed in the States and made effective, would be about as good as anything we could get. The newspapers, and even the judges, have much to say when an employer files a bill and obtains an injunction against workmen on strike from interfering with his men that he has hired in the place of these workmen, and acts of violence, and so forth, about that injunction being granted in order to protect the right of every man to work for whom he chooses. There is really no just relation there, and no lawyer could justify it upon any such theory. I have no right to go out and file a bill to be permitted to work for whom I choose; and if I did, any one of these judges, who sometimes use that language incautiously, would laugh me out of court. Equity deals only with the rights of property. Jurisdiction of the Federal courts in equity, the exercise of which has been particularly criticized in these questions, is derived, not from the Consttution itself, but originally from the judiciary act of 1879; and by that act they invested our Federal courts, and such is also the effect of the present act of Congress in that regard, with all the jurisdiction which the English high court of chancery possessed, among those was this principle of elementary law that equity dealt only with property rights, and that a bill in equity for injunction would not be entertained except for the protection of property rights. Therefore this class of bill exhibited in the case of the United States *v.* Debs, which was a bill filed by the Government, and I don't think any bill has ever been filed like it since, and I think it would be exceedingly unlikely that there will be any more like it, for some time, at least. These injunctions are based upon the theory that the man carrying on a business has a certain sort of property right in the good will or the successful conduct of that business; and that when several hundred or several thousand excited men gather around his premises, where he carries his business on, and threaten everybody that comes in there to work, and possibly use violence, that that is such an unlawful interference of property right as may be the subject of protection in equity. And that view of the law has been sustained by the courts of practically all the States.

But the great difficulty about that was this, that having enjoined defendants, namely, striking workmen, perhaps from unlawful interference with the business of the employer, and that unlawful interference consisted in an attack or an assault and battery upon another man, to wit, perhaps a strike breaker, so called, or one who was hired to take the place of one of the striking workmen, that thereafter the judge who had ordered the injunction and whose authority had been thus defied was permitted to put the person charged with the breach of that injunction upon trial upon a charge of contempt really for having committed an unlawful and criminal act.

Now, the Constitution has thrown around the prosecution of criminals—the constitutions, State and Federal—a number of securities. They are entitled to trial by jury; they are entitled to be confronted by the witnesses who are to testify against them; they are entitled to be heard by counsel.

But none of those guaranties, except, perhaps, the right to be hard by counsel, is secured in contempt proceedings; and the obvious wisdom of permitting 12 men drawn from the body of the people to pass on questions of fact—men who are supposed to be prejudiced neither for nor against the parties, who know nothing about the case until they are sworn in the jury box, has so far commended itself to the wisdom of legislators and jurists to such a degree that it has become a permanent feature of our jurisprudence; and to provide that the court may proceed against them for contempt, where the conduct charged against them is criminal, is really an evasion of the constitutional guaranties and a plain attempt to commit to equity jurisdiction over matters which it has been decided over and over again by all the courts that it has no jurisdiction with respect to, namely, the administration of the criminal law.

For instance, I might receive, as I leave the room of this tribunal to-day, a threatening letter from somebody saying they were going to kill me for something I had said or had not said, in a court of equity. Now, that involves personal loss possible to my wife or those dependent upon me; but no court of equity would listen for a moment to a bill I should file, saying "A B" or some other black-hand gentleman had threatened to kill me, or if filed by anybody dependent upon me, and therefore there should be an injunction to prevent him from killing me. That would be an absurdity, a legal absurdity; and none the less is it so where a man is enjoined from committing acts of violence in a strike to try him for contempt without a trial by jury. And that has been an injustice that has rankled in the minds of everybody that has been a victim of it, and justly so.

Sir Charles Napier says: "People talk about agitators, but the only real agitator is injustice; and the only way is to correct the injustice and withdraw the agitation."

Now, that has been attempted by the Congress of the United States in Judge Clayton's bill. So that in every such case the accused, where the conduct with which he is charged under the guise of an information for contempt is criminal under the laws of the State or of the United States, he is entitled to trial by jury; and that is, I think, the best we can do.

Of course, the procedure—requiring notice now in the Federal courts particularly and in most State courts—in the Federal courts they may issue a restraining order, but they must set down the application for an injunction, and that gives notice. In the State courts the court granting the injunction may grant it in a labor case or another case without notice, but I don't think the procedure requires much modification. If you will pardon me, Mr. Chairman, I am running over this——

Chairman WALSH. Would it be asking too much of you, Mr. Gregory, to stay here until morning?

Mr. GREGORY. No.

Chairman WALSH. Well, we are all very much interested in this and would like you to take the time to go into it thoroughly. It is past our adjournment hour, and to accommodate you we will run later, but we would prefer if you will return in the morning——

Mr. GREGORY. I will be very willing to do so.

Chairman WALSH. Thank you very much.

At this point, then, we will adjourn until 10 o'clock to-morrow morning.

(Thereupon, at 4.35 p. m., Tuesday, May 11, 1915, an adjournment was had until Wednesday, May 12, 1915, at 10 a. m.)

WASHINGTON, D. C.,
Wednesday, May 12, 1915—10 a. m.

Present: Chairman Walsh, Commissioners Weinstock, O'Connell, Lennon, and Garretson.

Chairman WALSH. Is Mr. Gregory here?

Mr. GREGORY. Yes, sir.

Chairman WALSH. Now, Mr. Gregory, if you will be kind enough to resume where you left off yesterday evening?

Mr. GREGORY. Much more might be said on the subject, Mr. Chairman and gentlemen, but I had not purposed at present to discuss further the question of injunctions. The next topic that I had in mind was the subject of picketing. In its essentials, without violence and disorder, it should be, I think, and generally is, considered lawful. In Chicago very recently one of our local judges, however, has enjoined picketing by waitresses of a line of restaurants. I have no familiarity with the circumstances of the case, and no knowledge as to the legal theories upon which that injunction was ordered. Of course, in the large communities, if they engage in picketing, or in any other occupation or matter that is essentially lawful, yet if they crowd the sidewalks and obstruct their free use by passers-by, there may be something in the necessity of police regulation, in the nature of police regulation, which renders that, which would not be in itself illegal, inadmissible because of these collateral consequences; but picketing without violence, which if it consists, as I understand it, merely in endeavoring by persuasion, not threats, to induce persons intending to take the place of strikers not to take them, I think it is undoubtedly lawful, and has generally been so recognized.

Of course, the only method of regulation is police regulation now, and then those injunctions, such as I spoke of. The law in itself, it would seem to me, looked at as a question of law, needs no particular amendment, but like so many other topics that we discussed here, the whole question is as to the administration of the law.

The next topic, and substantially the last one on which I intend to say anything, involves what is commonly called boycotts, and the question of how far they are legal and collateral questions. Now, I think that the spirit and genius of American institutions is founded upon the idea of liberty, just as much liberty and freedom as is possible for the individual, consistent with the general welfare, and I have never been able to satisfy myself, notwithstanding legal authorities to the contrary, that a boycott, as we understand it, in and of itself either was or ought to be illegal. A few years since I lived on a little, short street in Chicago running down to the lake, on which there were only private residences. No such incident as I am about to suppose ever occurred, but I have often thought in this connection—it was a beautiful street, shaded with trees, beautiful homes upon it—I didn't own my own home, and therefore did not have that interest, but suppose as the law then stood that a man had desired to establish a saloon in that district; there was vacant property that he might have purchased, there were no restrictions, nothing to prevent him from establishing a saloon. Without criticizing that institution in our community, at least that would have been a very undesirable adjunct to our neighborhood. Assume that my neighbors and myself, this saloon having been established there, property had depreciated, and the usual incidents following it, agreed together that we would not patronize this gentlemen, that if we bought a drink that we would buy it elsewhere, and would not buy anything at his saloon, and done so with the express purpose of driving him out of business. Now, I have never been able to understand on what theory that could be regarded as an illegal combination, and when I have presented that question I have never heard any intelligent answer to it from any source. If that is true, the object of the boycott seems to be not that it is an illegal agreement in itself, but it is an agreement to do something which the court or other body passing upon the validity of that agreement don't think ought to be done. That is another matter. If you agree to commit murder, that crime is illegal, whether it is two or two thousand. If you agree to do any other unlawful act, that agreement is illegal and constitutes

in itself an illegal act. But if men combine to do that which they, each one severally, have a right to do, if after all the combined act is essentially the same as the act of the single individual, then it is very difficult to establish on any logical, legal principle that such a combination in and of itself is illegal.

Now, it is my opinion that the law should be changed by statutes, State and Federal. Some of the States hold the boycott to be, as we understand the term, illegal. So that it should be provided that a combination or agreement by two or more persons not to trade with a third person should not be unlawful nor actionable.

I know very well that portentious pictures can be drawn of these terrible possible consequences that are likely to follow if such a principle of law were adopted; but, in my judgment, none of them would follow. There are thousands of offenses—minor offenses against society—which are punished without the law; that is, not by any principle of law. There is no rule that requires a man to be a gentleman; yet if he persistently prove wanting in courtesy and consideration for others, by a kind of common consent, though not by any formal law, he will suffer from that; and it would be idle for the law to attempt to deal with those cases.

Now, while there may be occasional instances where this principle would be resorted to to the great injury and damage to people, yet in the long run, speaking largely, I believe in the interests of freedom that it ought to be admitted into our law.

Chairman WALSH. Say, Mr. Gregory, I suppose it will be somewhat disconcerting, but Commissioner Weinstock would like to ask you a few questions right there.

Mr. GREGORY. Well, it might me, but I prefer that he should do it that way.

Commissioner WEINSTOCK. I will be very glad to wait until you are through with what you have to say.

Mr. GREGORY. I think I have finished with that subject, and I would really prefer to be interrogated upon it right now.

Commissioner WEINSTOCK. I suppose you are more or less familiar, Mr. Gregory, with the report on the anthracite coal strike in 1902?

Mr. GREGORY. Well, yes; but rather less than more, Mr. Weinstock.

Commissioner WEINSTOCK. Do you recall having read it at any time, Mr. Gregory?

Mr. GREGORY. Not in extenso; largely as it appeared in the papers at the time.

Commissioner WEINSTOCK. The commission, as I recall it, consisted of seven men, including labor representatives, officials, and employers generally. I think the labor men on the commission were the present Secretary of Labor, Mr. Wilson, and I think Mr. Clark, who is a railroad man now connected with the Interstate Commerce Commission, and possibly one other laboring man. The report was signed unanimously, and among other things, in dealing with the question of boycott, this is what the report has to say, and I would like to see how far you are in harmony with the position taken on boycotts by this commission. It says——

Commissioner GARRETSON. Let me interrupt here to make the point that the "Wilson" on that commission was a general of the Regular Army and not the Secretary of Labor at this time.

Commissioner WEINSTOCK. What laboring men were on that commission?

Commissioner GARRETSON. None.

Mr. GREGORY. Perhaps the names are in there.

Commissioner GARRETSON. There was one man on the commission not appointed as a labor man, but as an eminent sociologist.

Commissioner WEINSTOCK. Well, here is a list. You are probably more familiar with their callings than I am (addressing Commissioner Garretson).

Chairman WALSH. Let me suggest that in order to let Mr. Gregory get through, suppose we drop the personnel of that board as being immaterial, and let us ask Mr. Gregory the questions——

Commissioner WEINSTOCK. Well, it might be material to see whether there were any laboring men on that commission. I think that would have its bearing. It says here, Carroll D. Wright.

Commissioner GARRETSON. Commissioner of Labor.

Commissioner WEINSTOCK. John M. Wilson.

Commissioner GARRETSON. A general in the Regular Army.

Commissioner WEINSTOCK. John L. Spaulding.

Commissioner GARRETSON. Bishop of Peoria, in the Catholic Church.

Commissioner WEINSTOCK. Edgar E. Clark.

Commissioner GARRETSON. An eminent sociologist. He was the grand chief conductor of the Order of Railway Conductors.

Commissioner WEINSTOCK. Thomas H. Watkins.

Commissioner GARRETSON. A coal operator of Scranton, Pa.

Commissioner WEINSTOCK. Edward W. Parker, Washington, D. C.

Sommissioner GARRETSON. I have forgotten his pursuit, but he was not a labor man.

Commissioner WEINSTOCK. Well, he is one of them.

Commissioner O'CONNELL. He was a college professor.

Commissioner LENNON. He was a college professor, if I remember correctly.

Commissioner GARRETSON. Well, I have forgotten his pursuit, but he was no labor man. There was only one man who might be referred to as a labor man, but he was on for another reason.

Commissioner WEINSTOCK. I thought that this Mr. Wilson was the Commissioner of Labor.

Commissioner GARRETSON. No; he was a general in the Regular Army.

Commissioner WEINSTOCK. This is what that commission had to say on the subject of boycotts, the very subject you have been telling us about, Mr. Gregory [reading]:

"In social disturbances of the kind with which we are dealing the temptation to resort to this weapon," referring to boycott; perhaps I had better read a paragraph preceding that, which will make it till clearer. [Reading:]

"To say this is not to deny the legal right of any man or set of men voluntarily to refrain from social intercourse or business relations with any persons who he or they, with or without good reason, dislike. This may sometimes be unchristian, but it is not illegal. But when it is a concerted purpose of a number of persons, not only to abstain themselves from such intercourse, but to render the life of their victim miserable by persuading and intimidating others so to refrain, such purpose is a malicious one, and the concerted attempt to accomplish it is a conspiracy at common law and should receive the punishment due to such a crime.

"Examples of such 'secondary boycotts' are not wanting in the record of the case before the commission. A young schoolmistress of intelligence, character, and attainments was so boycotted and her dismissal from employment compelled for no other reason than that a brother, not living in her immediate family, chose to work contrary to the wishes and will of the striking miners. A lad about 15 years old, employed in a drug store, was discharged owing to threats made to his employer by a delegation of the strikers, on behalf of their organization, for the reason that his father had chosen to return to work before the strike was ended. In several instances tradesmen were threatened with a boycott—that is, that all connected with the strikers would withhold from them their custom and persuade others to do so if they continued to furnish the necessaries of life to the families of certain workmen who had come under the ban of the displeasure of the striking organizations. This was carrying the boycott to an extent which was condemned by Mr. Mitchell, president of the United Mine Workers of America, in his testimony before the commission, and which certainly deserves the reprobation of all thoughtful and law-abiding citizens. Many other instances of boycott are disclosed in the record of this case.

"In social disturbances of this kind with which we are dealing the temptation to resort to this weapon oftentimes becomes strong, but is none the less to be resisted. It is an attempt of many, by concerted action, to work their will upon another who has exercised his legal right to differ with them in opinion and in conduct. It is tyranny pure and simple, and as such is hateful, no matter whether attempted to be exercised by few or by many, by operators or by workmen, and no society that tolerates or condones it can justly call itself free.

"Some weak attempt was made at the hearings to justify the boycotts we have been describing by confusing them with what might be called, for convenience sake, the primary boycott, which consists merely in the voluntary abstention of one or many persons from social or business relations with one whom they dislike. This, indeed, might amount to a conspiracy at law if the ingredient of malicious purpose and concerted action to accomplish it were present, but whether this be so or not, the practical distinction between such a boycott and the one we have been reprobating is clear.

"It was attempted to defend the boycott by calling the contest between employers and employees a war between capital and labor, and, pusuing the analogies of the word, to justify thereby the cruelty and illegality of conduct on

the part of those conducting a strike. The analogy is not apt, and the argument founded upon it is fallacious. There is only one war-making power recognized by our institutions, and that is the Government of the United States and of the States in subordination thereto, when repelling invasion or suppressing domestic violence. War between citizens is not to be tolerated, and can not, in the proper sense, exist. If attempted it is unlawful, and is to be put down by the sovereign power of the State and Nation."

Now, in how far, Mr. Gregory, are your views in harmony with the views expressed in this report?

Mr. GREGORY. Not in the slightest respect.

Commissioner WEINSTOCK. Will you point out where, in your opinion, this judgment is in error?

Mr. GREGORY. In the first place it was Sir Fitz James Stephens, the great authority on the English criminal law, who afterwards went crazy, after he had been a judge and acquired a reputation by presiding at the trial of Mrs. Maybrick, who said, in his monumental work on the criminal law of England, that industrial strife of this character was war.

In the next place, I have the highest respect for the personnel of that commission, several of whom I have met. Mr. Wright, a very excellent, painstaking man, who, however, is not a lawyer, and I should not at all be disposed to subordinate my views of the law to his judgment upon it. The chairman of that commission was a very excellent judge, but hardly entitled perhaps to such a commanding place in jurisprudence as those who happen to agree with his utterances on this occasion might be supposed to assign to him.

In the next place, the commission begins by laying down the principle and then denying its application. They were dealing, of course, in this instance with something as to which I have not said anything particularly, and that is what they classify as a "secondary boycott" and not a primary one. Now, it is very common, as lawyers always know, when courts are hard pressed with an argument that is difficult to answer, to concede the principle and deny its application, and that is exactly what, it seems to me, this commission did in this case. In addition to that——

Commissioner WEINSTOCK (interrupting). At what point did this concede the principle and deny its application?

Mr. GREGORY. In the first paragraph you read.

Commissioner WEINSTOCK. May I repeat it?

Mr. GREGORY. Certainly.

Commissioner WEINSTOCK (reading): "To say this is not to deny the legal right of any man or set of men voluntarily to refrain from social intercourse or business relations with any persons whom he, or they, with or without good reasons, dislike."

That is then laying down the principle?

Mr. GREGORY. That is the principle for which I contend, and the logical application of it would have led to directly the contrary conclusion to what the commission reached.

Commissioner WEINSTOCK. Let us see what they say afterwards:

"This may sometimes be unchristian, but it is not illegal, but when it is a concerted purpose of a number of persons not only to abstain themselves from such intercourse, but to render the life of their victim miserable by persuading and intimidating others so to refrain, such purpose is a malicious one, and a concerted attempt to accomplish it is a conspiracy under common law, and merits and should receive the punishment due such a crime."

Otherwise, if we meet and decide not to patronize a saloon and we do it negatively we are within our rights; but if we go out aggressively and by concerted action intimidate others and do all we can to ruin the individual saloon keeper, that is in the nature of a conspiracy?

Mr. GREGORY. Undoubtedly, if we intimidate others; but the commission does not make such distinction; they do not say anything about it being negatively, but they say doing it "voluntarily," and that is what I say.

It reminds me of a story they tell in the West of an embarrassed politician out in Iowa, about a controversy which is still raging there as to the liquor question; and his constituents were demanding that he declare himself, and he hesitated a good deal. He did not want to lose the votes of liquor men and he wanted the votes of the temperance people, and they pressed him pretty hard, and he finally said he would meet the committee and make an announcement, and he did so; and stated that he had considered the matter carefully, and that he was thoroughly in favor of the enactment of a prohibition law, but absolutely opposed to its enforcement.

Now, these gentlemen lay down a principle which, if they had followed out logically and fearlessly, and which of course is often embarrassing for judges and other public officials to do, because sometimes to be logical is to be impractical, would have led directly to the opposite conclusion. I believe they were right in the principle and wrong in their conclusion.

Commissioner WEINSTOCK. Now, the whole thing evidently hinges on the meaning of the word "voluntarily," and it might be well to clearly define what that word really means. I take it that if this group assembled in this room at this moment would agree among themselves not to patronize a certain concern or hotel, that that would be regarded as voluntary action, would it not?

Mr. GREGORY. It would be by me.

Commissioner WEINSTOCK. And suppose this group went further and sent out letters and published statements in the press that others should not patronize that certain enterprise at the risk of gaining the displeasure and the antagonism of all that are present here, and that we would use our influence to injure others that did patronize that enterprise, would that be still called voluntary?

Mr. GREGORY. I should have to see the papers first. It would be voluntary. Suppose they say: "Gentlemen, here is a man who is a disgrace to Washington City; he is a great scamp, and he is harming the city every day, and we think he is guilty of all sorts of things, but we can not prove anything; he is a neighbor of ours, but let us agree that we will not patronize him." Then suppose we should say, just stating the facts and nothing except what we can prove—nothing that is perhaps libelous—suppose we invite others to cooperate with us, the thing does not become involuntary because some one suggests to you that you should take a certain course of action; but you introduce at one time in your discussion another proposition, intimidation, by which I understand unlawful intimidation. If you say: "Here, if you do that, we will do something which the law prohibits," then you introduce another element, and that is an element so often relied upon in strike-injunction cases.

Commissioner WEINSTOCK. What would you call this illustration, given in this report, of the lad employed in a drug store, who was discharged owing to threats made to the employer by a delegation of strikers, for the reason that his father had chosen to return to work before the strike ended, or the case of the young schoolmistress stated here, who was dismissed for no other reason than that her brother, not living in her immediate family, chose to work contrary to the wishes and will of striking miners; what would you call that?

Mr. GREGORY. I should say that was lawful if the only threat was, as to the druggist, that the parties would not patronize him if he continued to employ that boy. As to the school-teacher, I do not know what threats they made; they could very well threaten not to patronize the schools, and in that case I would not be able to form any opinion.

Commissioner WEINSTOCK. May I ask at this point, then, Mr. Gregory, whether in the eyes of the law, as you see it, both sides should be treated equally? That is, the employer on his side, and the worker on his side?

Mr. GREGORY. Absolutely.

Commissioner WEINSTOCK. There should be absolute equality before the law?

Mr. GREGORY. Absolute.

Commissioner WEINSTOCK. And one should not be given privileges denied to the other?

Mr. GREGORY. I do not know whether that means absolute equality before the law; but there should be absolute equality before the law.

Commissioner WEINSTOCK. Well, then, if it is lawful and proper for the workers for a real or fancied grievance to do the things you say they ought to be permitted to do, as a matter of self-preservation and self-protection, because they think a certain employer is unfair and his methods inimical to the interests of labor, should not the employers, on the other hand, likewise be permitted to blacklist if they think a certain worker is doing or saying things inimical to the interests of the employer?

Mr. GREGORY. I had a note there on that subject, "black list"—unfortunate and injurious. Can the practice of blacklisting be governed by law? Not adequately in my judgment. That, perhaps, answers you question.

Commissioner WEINSTOCK. Will you elucidate that a little bit more?

Mr. GREGORY. I consider the question, because it operates very harshly and very injuriously, as I believe it to have been practiced. I have not been able, consistent with my views of individual liberty, to devise any scheme of a statute which would deal adequately with that situation.

Commissioner WEINSTOCK. Then, are we to understand that you do or do not consider blacklisting justifiable?

Mr. GREGORY. If you ask my opinion as to that, I would say that I consider blacklisting in some instances justifiable. That is to say, I don't like to use either the term of blacklist or boycott, because they carry implications that are vague and uncertain; but if an employee is unworthy and unreliable, I consider it proper. For instance, a railroad engineer who has been repeatedly guilty of infractions of the rules—running by a signal and perhaps using intoxicating liquors and things of that kind—I would consider it wrong for the railroad company or the superintendent having knowledge of that quality on the part of the engineer not to advise somebody else, some other railroad officer, who is about to employ that man. I consider that that would be a legitimate act, perfectly.

Now, that boycotting may be abused I have not the slightest doubt, that there may be unjustifiable boycotts. I am not discussing that. There might be boycotts that would work great hardships; but I do say that the law as it exists to-day is, in my judgment, likely to work far more harm than it will good.

Commissioner WEINSTOCK. Then, briefly, the situation as it is from your point is this, as I see, that while, as you point out, the boycott is liable to abuse, you nevertheless think that it ought to be a weapon permitted to labor?

Mr. GREGORY. I prefer to say that combination by two or more persons not to trade with a third person ought not to be unlawful and ought not to be actionable, and I don't apply it to labor any more than the gentlemen in this room or a lawyer or anybody else; but I lay that down as a universal principle.

Commissioner WEINSTOCK. If that principle might even be subject to abuse?

Mr. GREGORY. Yes, sir; there is nothing that can not be.

Commissioner WEINSTOCK. Then, if collective action on the part of workers along the line of so-called boycott ought to be permitted despite its occasional abuse, then I take it, from following out your logic to the end, then black listing, despite the fact that it is occasionally abused, likewise ought to be permitted?

Mr. GREGORY. I have not restricted my statement to what you term boycotting to laboring people. It also extends to employers. They should have the same right. But by blacklisting you mean keeping a record of a man's delinquencies and reporting on them, and I would say that that was a practice that might be abused, might be reprehensible, where it was unfairly used; but I have been unable to think out to my own satisfaction any concrete legislative remedy for it.

Commissioner WEINSTOCK. Here is a definition, Mr. Gregory, that has been given to the boycott and the black list. Let us see if the definitions given here are correct as you see them:

"A boycott is the act of a combination of individuals who undertake to deprive another of benefits, business, or social intercourse for the purpose of compelling him to accept some demand of the combination."

Do you regard that as a fair definition of boycott, so-called boycott?

Mr. GREGORY. Possibly.

Commissioner WEINSTOCK. The definition given the black list is that—

"The black list is the effort of a combination of employers to prevent the employment of one or more individuals."

Mr. GREGORY. Perhaps, as it is generally understood, that may be regarded as a good definition.

Commissioner WEINSTOCK. Then, we see in both cases it is a question of combination, combination of workers on the one hand in the boycott and a combination of employers on the other hand under the black list, and that both involve combinations?

Mr. GREGORY. I think the employer might boycott and the labor union might blacklist under those definitions.

Commissioner WEINSTOCK. You would use those words practically as synonyms?

Mr. GREGORY. Under the definitions that you have given you will find that is not confined to one side or the other. That is to say, the laboring men, if they combine to prevent somebody being employed, they are called a black list, in accordance with that definition.

Commissioner WEINSTOCK. If there is to be absolute equality before the law on both sides, then it seems to me this remains, that either the workers ought to be permitted to boycott and the employer to blacklist; or if the employer is not to be permitted to blacklist, then the worker likewise ought not to be permitted to boycott.

Mr. GREGORY. I don't know as I understand the terms as you do; I don't know that I materially disagree with that view. You would have to judge each case by itself.

Commissioner WEINSTOCK. It becomes self-evident, does it not, that if one side is permitted to combine for the purpose of injuring another party, and the other side is not permitted to combine for the purpose of injuring another party, that there is no equality?

Mr. GREGORY. In a case—it is probably in the law, Mr. Commissioner, that a mere combination to injure may be unlawful, and I don't favor a mere combination to injure. I think it is not necessary to go to that extent; but if men, for the purpose of promoting their interests, combine to do something that may injure another person, then I think you have a different situation; at least it is one that the courts make a distinction of and make much of.

Commissioner WEINSTOCK. Then that is the purpose of blacklisting, as I understand it, the employers get together and agree that they will not employ a certain worker because he is a trouble breeder. He creates dissatisfaction and dissension in the ranks of labor, and therefore he is to them, from their point of view, a detriment and an injury, and therefore they agree not to employ him. Now, then, they have exactly the same object in mind that the worker has when he boycotts? He believes that a certain employer is unfair to him, to his labor, and doesn't give him the proper working hours or conditions, and they propose to prevent him getting labor.

Mr. GREGORY. I don't see any reason why a given number of employers should oppose a man that they regard as an agitator getting employment with other employers. You get readily in these cases the lines of distinction, but they are somewhat difficult to explain. You might readily have a kind of an illegal conspiracy, if it appears that the people engaged in this effort were not trying to promote their own interest but to injure a man against whom their activity is directed. It is a question of a good deal of difficulty, and I think myself that probably, as I said to start with, the difficulties to my mind of regulating or prohibiting what is commonly called black list are such that they seem to me inseparable, as far as suggesting any adequate legislation.

Commissioner WEINSTOCK. There has been legislation on that?

Mr. GREGORY. Oh, yes.

Commissioner WEINSTOCK. That is, there are many States of the Union that have laws against black lists?

Mr. GREGORY. Yes, sir.

Commissioner WEINSTOCK. And there have been convictions under those laws, have there not?

Mr. GREGORY. I don't happen to remember any; I don't say there have not been; probably there have been.

Commissioner WEINSTOCK. I think there have. I think we have notations here, Kitchen *v.* Chicago & North Western Railroad Co., and in Handley *v.* L. & M. Railroad Co., Kentucky, and——

Mr. GREGORY. Those, I would judge, were actions for damages.

Commissioner WEINSTOCK. In this latter case an employer was held liable——

Commissioner GARRETSON. Every one is an action for damages.

Commissioner WEINSTOCK. In this latter case the employer was held liable by his discharged employee for writing a letter to an association of employers containing a request that he be refused employment in all association houses in which he may apply for a position. It was a rule of this association that an employee discharged by one member should be refused employment by all others. That would indicate that there had been damages awarded.

Mr. GREGORY. I don't know whether there was any legislation there or not, and, of course, irrespective of legislation, a letter of that kind might be libelous and affect an individual cause of action without reference to combination.

Commissioner WEINSTOCK. In the case of Kitchen *v.* Chicago & North Western Railroad something like $21,000 in damages was awarded to the blacklisted individual.

Commissioner GARRETSON. You had better trace the latter part of it.

Mr. GREGORY. I am not familiar with those cases, but I might say that these laws usually are a kind of a dead letter. They are incapable of efficient enforcement in the nature of things. They kind of satisfy the public, as the old saying, "throwing the sop," they pass a law and then go to sleep over it. I have no confidence in such legislation.

Chairman WALSH. You had not concluded?

Mr. GREGORY. Not quite, and perhaps I ought to have; I have taken so much time of this commission.

Now, I come to this proposition, which to a man that has been at the bar as long as I have, is always a serious one. Suppose that we had an ideal system of law prepared with the wisdom of Plato and Socrates or Aristotle, and all the great interests in America, and these lawgivers secured everybody their rights as far as legislation or code could secure it. You have heard here on the witness stand, I have heard since I have been here, testimony of witnesses that show you absolutely how these provisions fail. There is no way of enforcing the law; the man is poor and humble and one unit in the great industrial enterprise. Now, what can be done? He can hire a lawyer that charges $50 or $100 or $500 a day, if he has the money, and vindicate his rights. It is an impracticable remedy. We have tried to remedy these questions by ancient methods that are as impracticable to modern conditions as navigation by a trireme or a stagecoach would be to modern conditions. We have made a new departure. We have attempted now to enter upon a scheme of regulation by government. Where securing the rights of the general public and of great bodies of citizens has been committed to government, the men are elected executive officers and they swear them to see that the laws are favorably executed. We have, first, the railroad, with the Interstate Commerce Commission, which has accomplished much, but much remains to be accomplished, and, in my opinion, the organization of that commission is absolutely inadequate; it is overburdened; it can not by these possibilities, under its present organization, do that which is expected of it. We have recently made a still more ambitious departure in the establishment of the Federal Trade Commission, charged with the important duty of regulating all institutions except railroads engaged in interstate commerce. It is apparent at once that the field there is too large for a single commission. We may have other commissions. Listening yesterday to the witness, it occurred to me that we might have a mines commission. We might have a commission as to manufacturing, and we may have more. In one State in the West I understand they have some 40 commissions now, and the people of that State are inclined to think that is too many, but at least 4 or 5 or a half dozen ought not to be out of proportion for this great country.

Now, I listened to testimony of Dr. McKelway as to child labor. I read that speech of Senator Beveridge and have quoted from it myself in public. It is certain that a national question can only be regulated by the National Government. It is perfectly certain that there can be no efficient child-labor regulation that does not emanate from the National Congress; that is, in a reasonable time. I think that one of the first things that should be done would be for Congress to pass a law providing a Federal incorporation act and also requiring every individual and every corporation engaged in interstate commerce, either to incorporate under that act or to take out a license from the Federal authorities to carry on such business. Of the constitutionality and validity of such legislation I have no doubt.

You at once nationalize all of these questions. Now, it would not be necessary, of course, for the Interstate Commerce Commission to attempt to meet this suggestion as to the railways, but it is different. It should be legalized throughout, and not on different branches throughout the country. There should not be a lawsuit every time a man feels the manufacturer or railroad company refuses to do something required by law. It should not be necessary to travel through the courts, up and down; it is a disgrace to our jurisprudence, but I don't know of any way of stopping it.

For years and years we tried to determine a simple and essential administrative question, and I believe that in time that such legislation as I have indicated, with the appointment of proper commissions, will be regulated. The courts under our constitutional system—there must be some appeal to the courts, but in practice, while there are not bureaus of conciliation and arbitration, there will be bureaus, so that if this miner desires to make a complaint as to the condition of the mines he goes to the commission—the mine committee—and calls attention to the fact, and they act promptly. I know it is attempted to be bone in some States, but in a way, I think, which is rather ineffective. Of course, in order to secure compliance with Federal legislation on the subject there must always be the power in the Federal Government to either suspend or cancel the license to carry on interstate business. A power sufficiently formidable in itself, if rightfully used, and not tyranically, to compel respect for its provisions; that is, one thing or the other, I think, should be carried out. Now, there is another thing that I think will be, perhaps, a little more

practical and potent, and it is in that regard that I look upon the work of this commission as of supreme importance. In the beginning God said, "Let there be light." Why do we light the streets of our cities; why is it that crime seeks darkness and not light?

This commission was constituted and, in my judgment, its most important purpose is to turn on the light, to bring the facts as to the industrial conditions in this country to the attention of the American people. The President of the United States in one of those eloquent and felicitous addresses which he knows so well how to deliver last fall stated the opinion of the world is the mistress of the world. It is speaking largely the truth. The opinion of America is mistress of America, and no unjust, oppressive, or unlawful practice can endure, law or no law, when you turn upon them the searchlight of publicity. It is undoubtedly an important duty, as I understand it, of this commission, Mr. Chairman, to report and recommend such legislation as in the judgment of its members the necessity of the situation requires. But, in my opinion, a far higher and more important duty is to lay the entire facts of the industrial situation before the American people, and to that end you have traveled to all parts of this country, you have given everyone an opportunity to be heard, and you have collected what, in my judgment, when it is adequately published, notwithstanding the fact that many of us probably have not contributed much to this discussion, an invaluable mine of information for the American people.

And now I wish to read a brief extract which recently attracted my attention, from the remarks of a distinguished Italian statesman, Señor Pasquale Flore. He said:

"On the other hand, consider for a moment that complex and ominous question, which, day by day, in all countries, grows more demonstrative, the so-called social question. It represents the undefined but unceasing movement on the part of the workmen and the proletariat clamoring for greater comfort and better treatment, greater development of the industries and commerce, so that they may more largely participate in the profit and be able to satisfy the increasing needs of life. The religious sentiment, which urged the people to tolerate privation and actual suffering in the hope of the life that is to come, has lost much of its strength and the proletariat and the working classes demand at once more comfort and more work."

That is a statement of an undenied fact. We hear in this country on the part of large employers of labor much talk of the liquidation of labor, that there will be a fluctuation in the demands of labor, and the right of its recommendation is undoubtedly true. We think there can be or there could be any such liquidation of labor by the great reduction of its share in the depreciation of profit in industries, as is indicated, but that phase is not only impossible, I hope, but is, from their standpoint, most undesirable. Wages must be higher; they must constantly tend to increase, not because the laboring man so wills, but because of prosperity and progress of this country and of every country. Oh, well, the man says, we have done pretty well in life; I don't care what he is, whether a capitalist, lawyer, laboring man, or artisan; but my children must be content or else we must go backward, and not forward, and the moment that happens that country has entered upon a condition of decadency and decay. It is the duty of every man that labors, as the great mass of people do, and I will include in that, although perhaps Mr. Commissioner Garretson seems to indicate to the contrary, professional men—I will include professional men, lawyers—it is the duty of every man that labors to desire that those who come after him in his calling shall have better profits than he had, unless he is unusually fortunate, and that means progress, and it means increased purchasing ability on the part of the masses. Why, we hear much of the burning of gasoline and the opening of champagne on the Great White Way. What does it amount to? Nothing at all as to the prosperity of this country; but it is the ability to purchase by the great masses of people that you see every day on the streets, in which the prosperity of the country, the prosperity of its railroads and every great industrial interest itself is absolutely involved. And any idea that wages must be progressively reduced means simply national degeneration and decay.

Commissioner GARRETSON. Let me correct a word. I said labor men, not laboring men.

Mr. GREGORY. Perhaps there is a distinction sometimes.

Commissioner O'CONNELL. Returning to the boycott for a minute, the impression largely prevails that it is the laboring man that is constantly boycotting. He seems to be the guilty person in connection with this boycotting.

They are lawabiding citizens in the general sense of the application. A few miles away from where we are now sitting property is sold and the deed provides that the property can not again be resold or rented to a colored person. It is found, however, that that is not held good. In a certain section not far from where we are there were no black people living in the section; it was a new section. The property was all laid out with the understanding that it would be sold only to white people. Some persons who bought property there found that they could not meet the payments, and the agent who had sold the property mysteriously found a tenant and sold the property at a large profit, it is reported. One day a colored person moved into this property, into the neighborhood, and there was great excitement. You could have bought that property that day in that neighborhood at 25 to 50 per cent off. Everybody thought the neighborhood was going to turn black instantly. There was an association of the people that owned the property in that territory, formed for the purpose of holding monthly meetings, and looking after the development of that section, and things of that sort for which such associations are organized, and immediately a boycott was placed upon this real estate man, and the sabotage that was spoken about yesterday was being carried out by the white men's children in that neighborhood, not workingmen. The windows were broken in the house and the colored children had to sneak out the back way if they got out at all, and finally the agent was compelled by force of this boycott to take the black tenant out of the house and repair the house, and there has been no attempt to put black people in the neighborhood since. Now, you cited the case of the possibility of a saloon coming into the neighborhood of which you spoke. Under those circumstances the fact that in this territory there was no black person living, and if they had come in it would have had the effect of reducing the value of property, that is the general result that has occurred. Now, is a situation of that kind justified or not?

Mr. GREGORY. Well, that is another question. Legally I say it is not. It does not justify breaking windows.

Commissioner O'CONNELL. No; that was incidental.

Mr. GREGORY. Yes; but I think legally those people should be permitted, if they saw fit, to combine. Those instances happen with us, and one more aggravated than that which you speak of where a colored man had secured a lease of property just before I left Chicago, and the assistant corporation counsel of the city was one of the alleged boycotters. I don't think human nature, Mr. Commissioner, is very different in the laboring men than it is in lawyers and doctors and employers.

Commissioner O'CONNELL. In this case there were lawyers and doctors, and all very active boycotters?

Mr. GREGORY. Yes, sir.

Commissioner O'CONNELL. In the same neighborhood the property is built in a large square, and the lots do not run into each other. Consequently there is a sort of hollow square in this block that the owner or real estate men did not sell to the property owners. All at once, one day, a lot of wagons of rubbish of all kinds usually found around a barn landed in that hollow space, and a very cheap affair building was put up, and within a few days a lot of horses and a lot more wagons piled into this place. There was another boycott declared, and it was claimed that pestilence and flies and almost all kinds of diseases would come into the neighborhood, and another meeting was called and another boycott took place and that disappeared. Now, I cite this to show that the boycotting is not always the workingman who is boycotting to compel some one to grant him better wages or better conditions of employment.

Mr. GREGORY. Undoubtedly.

Commissioner O'CONNELL. We are a nation of boycotters. There is no one within the sound of my voice, so far as I know, that is not boycotting all the time. He tells somebody, my printer is a bum printer, or my shoemaker is no good, or my tailor is beastly in his designs, and so on; constantly boycotting.

Mr. GREGORY. We have the greatest dry goods stores in the world in Chicago, undoubtedly, if you will permit me to say that, perhaps knowing how much disposed Chicago people are to boast a little, and if you should hear the ladies, Mr. Commissioner, as they talk sometimes about their experiences and urge each other to cut this shop or that shop or the other shop you would think this boycotting was even more extensive than perhaps you have heretofore thought. It is a natural impulse.

Commissioner GARRETSON. Now, speaking of boycotting and blacklisting, wasn't the ostracism of the Greek law and banishment of the Roman law ex-

actly in principle boycotting culminating in an individual blacklist by the entire nation?

Mr. GREGORY. Well, I think the ostracism of the Greek was.

Commissioner GARRETSON. In form?

Mr. GREGORY. Substantially.

Commissioner GARRETSON. And we have an instance in one instance where they tolerated the application of it simply because the victim was too good, Aristides, because they got tired of hearing him called "the just"?

Mr. GREGORY. Yes; after Aristides, they got tired of hearing him called "the just."

Commissioner GARRETSON. Does not equality before the law, which has been accented quite strongly, become something of a farce or become absurd when it is considered as between a man like the one who testified yesterday and his employer, when the man has only one weapon, the right not to work, and all the arsenal is in the hands of his employer?

Mr. GREGORY. It's practical accomplishment in such cases is difficult, if not impossible, under present conditions.

Commissioner GARRETSON. In your evidence yesterday, referring to the trial by jury—well, that is not germane to the matter. I will pass the question, Mr. Chairman. That is all.

Commissioner LENNON. I want to ask one question, Mr. Chairman.

Chairman WALSH. Commissioner Lennon has a question.

Commissioner LENNON. Mr. Gregory, is the issuance of injunctions warranted where there is other adequate remedy at law to cure that which the injunction seeks to handle?

Mr. GREGORY. It is one of the canons of the law on that subject that in such cases injunction should not issue—particularly, a preliminary injunction.

Commissioner LENNON. That is all.

Chairman WALSH. That is all. You will now be excused permanently. We thank you for your attendance.

Mr. GREGORY. Thank you, sir.

Chairman WALSH. Is Mr. Arthur Woods here?

Mr. WOODS. Yes.

TESTIMONY OF MR. ARTHUR WOODS.

Chairman WALSH. State your name, please.

Mr. WOODS. Arthur Woods.

Chairman WALSH. Where do you live?

Mr. WOODS. New York City.

Chairman WALSH. And your business, please.

Mr. WOODS. Police headquarters, New York City.

Chairman WALSH. What official position do you hold?

Mr. WOODS. Police commissioner.

Chairman WALSH. How long have you held that position?

Mr. WOODS. A little over 13 months; since the 8th of April, 1914.

Chairman WALSH. What is your occupation—your general occupation, I don't mean now, Mr. Woods?

Mr. WOODS. That is hard to state, Mr. Chairman. I have done a good many things.

Chairman WALSH. I—are you a business man or a professional man?

Mr. WOODS. I have been a newspaper man, and I have been a schoolmaster, and I have been a business man. It is pretty hard to generalize from all those three.

Chairman WALSH. What police regulations are now in effect in New York with reference to free speech and free assemblage and picketing in strikes? I believe your attention has been directed to that particularly?

Mr. WOODS. May I talk a little generally on the question, sir?

Chairman WALSH. Indeed, you may. We would like to have you do so.

Mr. WOODS. Well, free speech and free assemblage are constitutional rights, and as I understand it, the local authorities have the right to regulate those locally, but not in such a way as to destroy them or abrogate them, and really, in effect, only in such a way as to preserve them. For instance, in New York, we not merely permit free speech and free assemblage and picketing, but we protect it. If an assemblage should assume such proportions as seriously to interfere with traffic—that is, if in the endeavor to preserve its own rights it seriously interfered with the rights of others, we should then