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THE SUCCESSES OF JUSTICE

JUDGE EWING COCKRELL.

Warrensburg, Mo.

Mr. Chairman Lewis and Gentlemen: I am here unwittingly, probably under false pretenses. I am not here as Mr. Lawrence wrote me, as a person of prominence, nor am I distinguished. I am a country judge and lawyer, specially interested in certain work, chiefly on account of my own ignorance. There are two things of which I am particularly ignorant and, that ignorance has led me to the successes of justice and to the United States Federation of Justice.

The U. S. Federation of Justice

This Federation of Justice is a federation of people interested in justice, the administrators of the law—police, sheriffs, county attorneys, attorney generals, lawyers, judges, prison keepers, social workers and the legislators who make the administrative law. It is an organization of the workers themselves. It is not a lot of high-brows telling us how to run our jobs. It is we ourselves getting together to find out certain things. An invitation was intended to be sent to every lawyer in this state and each judge, and every official, to participate in and join this Federation, everybody doing in the Federation what he wants to do.

The things that we are going to do are this:

First, to make a survey, you might call it, of the successes of justice, the methods and practices and principles of administering justice that have proved successful. Second, to put these in concentrated form in manuals and books for the officials to use—for the lawyers, judges, prison-keepers, et al. Each one of these officials is to get a copy of that manual without charge to him. It is wholly a work of service.

My secretary has informed me, by the way, that out of the replies that we received to these invitations, a larger percentage was received from North Dakota lawyers than from the lawyers of any other state in proportion to the population.

The Successes of Justice

The foundation of this work is a very novel foundation—the successes of justice. That may sound strange and unfamiliar to you gentlemen, accustomed as you are to hearing about the failure of the lawyers, and the failures of the prisons and the failures of all these people that make and administer the law. We are going to deal with the successes.

Now the first thing and the best thing of all is that there are great successes in administering the law in this country—successes in every department. That is what the Federation of Justice is dealing with, and that is what I like to talk about—the things that succeed; the things that are getting results; the men and institutions that are

delivering the goods. What we are going to do is to learn those things, those facts, those successful methods and practices, and get them together, and give them to other people.

Police Successes

Here are some of these successes. Your distinguished colleague and apparently a friend of every one of you, Judge John Burke, comes from the state where in 1920 there were 56 country bank robberies in a year, with a loss of \$258,000. The Bankers Association down there organized Vigilance Committees. They equipped certain farmers and others who lived on the main roads with shotguns, and they made gates to put across the highways to stop fugitives. They provided burglar alarms in the banks and other effective devices. In 1924, country bank robberies in Iowa had decreased to four with losses of only \$2,000. Next year they were still lower. They had no new laws but a particularly successful way of enforcing the law. We can all do likewise.

In Berkeley, Calif., crimes in general, instead of increasing, have decreased. There they have equipped every patrolman with a Ford automobile. Instead of covering five or ten miles on the beat, he can cover four or five times as much in his Ford. That is simply a different practice—having the patrolman equipped with an automobile. It doesn't take any new law nor much money to do it. (And there also, the people are cooperating with the police to prevent crime.)

In New York City they had great trouble in getting cases tried because they couldn't get enough Grand Juries to meet quickly enough to bring indictments. The district attorney went to work and he didn't have any new law but he did a practical thing. He got a lot more grand jury rooms, had more grand juries to sit and has increased the efficiency of prosecution in New York City by doing this plain simple thing.

In Chicago, the big Chicago Municipal Court there, the largest court in the world, disposes of over a thousand cases a day and enters judgments of over two million dollars a month. An organization provided by the legislature enables them to do all that business efficiently. They keep books that tell what each case costs, and all about the business side of that court.

In Cleveland, a man can go into the Municipal Court and sue for three or four dollars. He can have the suit filed, defendant summoned, have a trial in four or five days by a high class judge, and I think the total cost is 87 cents. They have good judges for poor people as well as for the rich people. They have no special new laws, just a simple court procedure.

Jury Successes

We hear a lot about the jury system. I believe in the jury. But the whole essence of the jury system is the jurors. It is the men who are jurors who chiefly determine its excellence—or lack of it.

Judge Hallzer of California, who is director of the California Judicial Survey, visited Milwaukee. He there found they have a list made up of all the jurors who are going to serve on the regular panel;

this list has their history, occupation and much information about each juror. So when they impanel a jury the lawyers, in five minutes, can pick a jury to try the case, and they know more about the jurors than they could know in two or three hours of ordinary questioning. It is a simple practice, just doing a successful thing.

In Baltimore City, they have gotten so far that a jury is optional there. They do not have to try a case without a jury; but they do try ninety per cent of the civil cases without a jury. Congestion of the docket is practically unknown for that reason alone—the short time necessary in trying cases before a judge.

Court Successes

Consider appellate procedure. In Missouri, our Supreme Court some years ago was three years behind. They tell me here that your Supreme Court disposes of a case in the average time of two months. Now it may be that your business is so small in amount that your appellate methods do not make much difference. But to me that is an apparent great success. And from what I have heard from other states, I do have the feeling that when a Supreme Court disposes of a case in that short time, it is a success.

The Ohio Legislature provided that the people of Detroit could reorganize their criminal court. They did. Within six months, felony cases that used to take months and months to try, were tried in average time of three weeks. This with the same judges, the same people; same courts, same fundamentals and laws, simply a different system of administering justice.

Lawyers Who Are All Judges

You heard the address of Prof. Sturges last night on Arbitration. You heard him speak of trials before a judge without a jury and the success of this. In my little circuit at home I think we have something even far ahead of that, especially in one court.

We have trials by lawyers—literally speaking. All the lawyers in Cass County are judges. They have apparently taken my job away from me. They settle nine out of ten of all the contested civil cases and they do it in an average of a little over two months after the day the case is triable.

Now that does not merely mean compromise. Those men are literally *trying* those cases. The two lawyers get together and they investigate the law and they investigate the facts. They are acting as judge and jurors and they are in a better position to make a better job of their investigation than I am on the bench and a jury of twelve men. They are lawyers doing court work.

That number of settlements is on the increase and I am mighty proud to have helped a little in finding out the different practices that promote these settlements. Another thing about it, they are making more money than they did before, and making it faster.

Bad Boys Made Good Boys

In Boston, William Healy, who is in Juvenile Court there, studies boys and girls—chiefly boys, because more boys get into devilment. Into that court come boys who are said to be confirmed criminals.

"They are bad—no good; they steal and do everything else bad; the sooner they get into the penitentiary, the better off they will be." So say the police.

But in six months those boys are steady, law-abiding, industrious boys. All Dr. Healy has done is to find out what the trouble was, find out the cause of the boy's stealing, and remove that cause by some simple training. Sometimes just put him into a new home, and that boy is changed from a confirmed criminal into a good boy.

Successful Jails

In Westchester County, New York, there is a local jail—the worst penal institutions of this country are said to be our local jails. In most jails, the inmates are put in there in idleness and forced to lie around in idleness. But in this jail they put them to work. And at the end of three or four months those men are said to go out practically cured and go to work and relatively speaking are good citizens. I do not know how they do it but I do know that the reports show that is a fact—a definite success amid much failure.

Successes Scattered and Unknown

Now there are these successes all over the country. But they are scattered here and there and we know comparatively little about them. Now just think what would be done, what would happen, if in Chicago or New York or Chicago or Bismarck, there were established all these successes, and there were put in practice all the things that brought these successes about. In any such community, we would have our justice improved probably several hundred per cent. You wouldn't have changed the law necessarily. You might have largely the same men and the same laws but you would simply have learned the practical things that bring success. We would simply be using what we already have.

In connection with these successes, quite frequently there will be a success in a community and the people in that community do not know they have a success. You and your Supreme Court may think it is nothing out of the way because they dispose of their cases in two months. It may be they are using simple common sense things and those may be the very things we need in Missouri. We are still behind there.

Not only may a community not know what are successes, but the truth is that the popular ideas of the workings of justice are extremely mixed and unfair, as a rule.

Confusion About Justice

I have a letter from one of your attorneys in this state who joined the Federation of Justice and he speaks of an editorial in a religious paper, which gave an account of the conviction of a man for stealing 37 cents during a holdup. The man had three times previously been convicted of a felony and under the law was sent up for life. The editor then made the statement that Mr. Sinclair while under a jail sentence was about to take a trip to Europe, and concluded with an item something like this: A man steals thirty cents and gets life imprisonment. Steal a million dollars and get a trip to Europe.

This superficial injustice the editor charges to the law, instead of his own confusion. He reminds me of the old darkey who was examined for entry into the ministry. He was asked to give the parable of the good Samaritan. He said:

"The good Samaritan started from Jerusalem down to Jericho. And he fell among thieves, and the thorns grew up and choked him. And he went on and he met the Queen of Sheba and she done give him a hundred changes of raiment and a thousand talents of gold. And he went on and got cotched in the forks of a tree by his long hair, and his wife Delilah cut him down. And he fell on stony ground. And he got up and he went on, and he saw Jezebel sitting high up in a window, and the men cried 'Throw her down.' And they threw her down seventy times seven, and pickel up twelve baskets of the fragments, and whose wife shall she be in the resurrection?"

I have heard many a layman talk about what goes on in the courts, who has about as clear an idea of them as the darkey had about the parable of the good Samaritan.

Two Fundamental Facts

Now there are two fundamental facts that underline all our law, and all our successes in it or failures. These two facts are:

- (1) The difference between law and law administration;
- (2) The difference between the laws about property and the laws about people.

I am presumed to know something about the law but my primary job in the courts is not law—it is *administering* the law. Of course, I have to know what it is to administer it. That is the first part of it, but that is only one part. And if I do not know that part there are higher courts whose job it is to correct me. But besides knowing how, I have to administer it and that is something very different.

Law and Law Administration

Administering the law, involves setting the dockets, so as to avoid too many or too few cases coming at one time—saving time to lawyers, parties and witnesses and also to jurors and the county—passing on preliminary motions systematically and promptly, so as to expedite cases instead of delay them, passing on objections in trials, promptly but with full opportunity to counsel to present them, helping counsel agree as far as possible and to narrow the issues and avoid unnecessary testimony, helping jurors to understand their duties and to realize the importance of them, assisting lawyers and parties to settle their cases themselves (which can be done in many ways). And one especially great field of administration is in investigating cases of defendants in criminal cases who have pleaded guilty and determining what their sentence shall be and how it shall be executed.

All this is not law at all. It is *executive* work. We judges and lawyers must deal not only with *law*, but also with *justice*.

Justice has been defined as "rendering to every man his due." "Law" is what is a man's due. "Justice" is "rendering" him his due.

Law is a science. Justice is an art—the *administering* of the law. In law schools we learn law, but besides that we judges have to administer law and lawyers have to practice it.

And we come out of the law schools, none of us having been taught hardly a thing about administering law or practicing it. Here is a big gap. (Yet neither we nor the law schools are to be blamed for it.)

Now, gentlemen, our primary business, administering the law, we learn only by picking it up. We get it catch-as-catch-can. And where we fall down, where people complain about us, is in administering the law.

Our great troubles are in the administration of the law in this country and not the law itself.

Legal Cases and Social Cases

Our second fundamental fact is the difference between cases that deal with people and those that deal with property.

These cases about people comprise the big field of criminal cases—and also all juvenile, domestic relations and “family” cases of all kinds.

These require not legal knowledge but knowledge of human nature—psychology, sociology, everything that deals with human beings.

Consider one group of these cases—the criminals who plead guilty. Statistics show that probably 75 to 80 per cent of all convicted criminals are never tried at all, they plead guilty. They come into court and say to me, “Here I am, Judge, I am guilty. What are you going to do with me?”

And the law in Missouri says, for instance, that if this is a boy who pleads guilty of using an automobile of another person without his consent, I can send that boy to the penitentiary for 25 years, or any less number. I can send him to jail for a year or any number of days less—even one day. I can fine him \$1,000 or \$1.00. I have unlimited parole power and can turn him loose and tell him to walk out without any punishment whatever. To decide what should be done between those big gaps, is a great problem. And that problem is social, not legal.

As a country judge I do everything from trying murder cases to sweeping out the office and I like it all. And we have all kinds of cases. Here is one kind I had—a man who was charged with a crime for which he could be hung, and he didn't know he was committing an offense! This is statutory rape—of a girl under 16 with her consent. In Missouri if she is 15 years and 11 months old and she gets a boy to have sexual intercourse with her, he can be hung for it. Some boys and men do not know that is the law when committing that offense. When these cases come up, what am I to do? Neither in Juvenile Court nor Adult Criminal Court does my legal training help me at all.

When I think of those cases, I think of another story about an old country preacher who used to go about the country preaching from church to church. He was in the habit, before he went in, to mark his Bible for the lesson. He did this one day and left his Bible in the pulpit and went away. Some boys saw him and went in and took the marker out and got a little glue and pasted the pages together, and put the marker back.

When at service next day the old man came in and after they had sung a hymn, and he had offered a prayer, he said: "Brethren I will read the lesson for the day, 'And Moses took unto himself a wife. And she was—(turning the page)—147 cubits wide and 57 cubits long, made of gopher wood and pitched with tar within and without!'"

He laid the Bible down, and said, "Brethren, I have been preaching the gospel of Jesus Christ for thirty years, and I must confess I have never yet run across that passage of holy writ." "But," he concluded, "it all goes to prove the old saying that woman as well as man is fearfully and wonderfully made."

Now these human beings we have to deal with in the courts are wonderfully and fearfully made. Sometimes we think they are all tar and black within and without—nothing good about them. But there is some good in all of them. And some of them will go to the penitentiary rather than break their own standards of loyalty and manhood. There is good in the worst men and bad in the best men and we lawyers and judges and prosecuting attorneys have to deal with them as they really are and to do this successfully takes not only legal but social knowledge.

You well realize that while this is not the way in which we make most money, yet after all the most important end of our work deals not with property but with these human beings, with their souls and their lives and their happiness.

Blameless Ignorance

For an ignorance of how to deal best with human beings and of how best to *administer* law, as well as to *know* it, we are in a most remarkable position. That is that nobody is to blame. We are not doing bad things in this ignorance so much as simply failing, as I see it, to do good things.

The demands upon us have grown faster than our ability to supply those demands. The lawyers, judges, prison officials, police, all groups of law officials today I think are doing on the whole good work, and as a rule are doing the best they can. But none of them has ever been taught systematically how best to administer his job successfully.

The law schools with the kind of men they have in them today, able, eminent, practical, are not teaching the law students even how to make a living practicing law. You do not find a law school in the country today telling the students how to run a law practice,

how to get clients, how to keep them, how to run their office—practical things in the trial of cases. And the most remarkable thing in the whole situation is they can't well teach it.

There are lawyers in this room and all over the country who are getting rich and are successful lawyers but the schools didn't tell them how to do it. We have the remarkable situation that today we have schools for the mechanic, schools for the plumber, schools for the minister, schools for the farmer, schools for the lawyer, schools for everybody who deals in everything except for the man who deals in "justice"—we have no schools for the judges, no schools for the prosecuting attorneys, no schools for officers of justice, as *administrators*. There are not even any books for them as *administrators*.

Work of the Federation of Justice

Because nobody today is providing such a school or such books, except in a small way, and nobody is trying to do it adequate, is one reason why we have formed this Federation of Justice.

Perhaps I should speak of the basis of the work of the Federation. This work is to be done by the officials themselves. Invitations have been sent all over the country to all the chief officials of justice to join in it. It is a mutual affair. A Board of Appellate Judges will supervise the survey of successes and successful methods in appellate courts. Lawyers will do the same for law practice, prosecutors for prosecutions, prison officials for prisons, etc.

A board of fifty or a hundred leading officials of the country will be in each group. Our idea is that the work will be backed by so many officials and such high officials that other officials in each group will accept their reports as true. That is a fundamental basis of this work.

You lawyers when you get your manuals, which I hope will be distributed through this association, will get them with the endorsement of your own men, and backed by them, and you can rely upon them.

We also hope to have plain definite textbooks for law schools which will state these fundamental practices and principles of successful law administration, so that future lawyers will know what produces the most efficient justice.

We are making the survey nation-wide. That is the only way we can be sure of getting the different successes. There may be a success in this town or state that nobody has heard about. We shall try to learn it, put it in the appropriate manual and give that manual free of charge to every officials who needs it.

The present status of the work is that with over 65 judges of the highest state and federal courts, over 40 law school heads and college presidents and many others in all departments, we have in quantity and quality the biggest force ever back of any one movement for better administration of law in this country in this day. The preliminary organization of the survey is going ahead steadily. The money

will come from eminent, civic minded people over the country who have money and who will be glad to give it. Enough so far has already been given by such people.

The only weak spot is the election of me as president. I started out simply to try to get this thing going. I thought some of the big groups would take it up and others would follow, and put it through. I found they were all for it, but everybody was too busy with his own job to take on another. So I am acting as president by default in the absence of somebody really eminent enough to be president. Someone will ask, "When you get these books and manuals, then what? What is going to be the result? It does not mean that all officials are going to follow what is contained in these books." That is true. We do not claim that. We find all sorts of officials. Some would be too lazy to use them. Some would not know enough. Some officials that we have would not use them.

Some of us are like the old farmer who had long wanted to be a justice of the peace. Finally they elected him in the township and one day he went into the office of the county clerk, who was an old friend of his, to be sworn in. He said, "Joe, I came in to qualify for Justice of the Peace." Joe said, "Well, Bill, I will swear you in but all hell couldn't qualify you." That is exactly it. Some of us could never be qualified to use these manuals as they should be.

Another group of us reminds me of a story I heard when there were more horses than now, when they used to have these blind bridles. An old farmer got very despondent, he was sick and not getting along well financially. So he got one of these old blind bridles and tied it around his neck and then climbed up on a box, tied the other end over a rafter, and then kicked the box out from under him. He hung there until he was nearly dead but his kicking against the side of the barn attracted the attention of his son. He came running and cut his father down just in time. As the old man lay there gasping, he finally opened his eyes, and said, "Son, why did you cut me down? I thought I was walking around in heaven." The boy looked at him and said, "Huh! You would cut a hell of a figure walking around in heaven with a blind bridle on, wouldn't you." Unfortunately, gentlemen, a great many of us administer the law walking around with blind bridles on. We see one thing and can't see anything else. We adhere to the idea that we are right, and the other people are wrong, and they are the ones that must be changed.

Now here is the job for you of the North Dakota Bar Association, when the manuals are completed, which I hope will be in the course of a couple of years. That will be to get the manuals used, and to get texts into the law schools and the universities and colleges that tell how the law is actually and successfully administered by both officials and people. I have a very cheerful, optimistic feeling, gentlemen, about the whole thing, especially about the officials. I have found in my experience most people want to do their job right. I have seen politicians go on the bench that never were anything before but politicians; they went into the Circuit Courts in the big cities and tried hard to administer the law honestly and fairly.

And the worst officials, your most ignorant officials, your most politically minded officials will as a rule do the best they know how, especially if in doing it they don't have to lose anything, don't have to change any laws, don't have to do anything except follow the most successful practice and that is right before them.

In conclusion I would say that I have the idea that this world progresses by using the good things in it; that we progress more by uniting on a thing that we agree on than by fighting on the things we differ on. I have had to do some fighting in my time, politically and otherwise. Sometimes I don't mind it. But I have come to the conclusion that after all it is the uniting which gets you farthest ahead, in politics or anything else. And this work we are doing, that you are doing, is to unite on the good things, to build on the things that have succeeded. There is nothing more simple than that. It is the soundest, simplest, most conservative thing we can do, and I believe the best thing.