Chairman McCandless' Address to the Kentucky Judicial Council

David A. McCandless
Kentucky Court of Appeals
Gentlemen of the Judicial Council: A revision of the substantive and procedural laws of a State is a matter of great magnitude; and one that calls for the best thought of able and experienced jurists and lawyers. The Judicial Council is designated to make recommendations for that purpose. In the selection of its membership the Legislature has manifested great confidence in the judiciary of the State and it behooves us to rise to the responsibility thus placed upon us. The judiciary possesses many qualifications for the discharge of this trust. Each of its members has had actual experience in the practice of law at the bar, in the conduct of trials and appeals, and each one has discharged the duties of the office of circuit judge. In these ways every member of the Council has come in contact with existing conditions and is more or less familiar with the defects we wish to remedy. No doubt each one has in mind some particular matter which he wishes to call to the attention of the body, thus furnishing a fertile field of suggestion as the basis for action.

Our law is not unalterable like those of the Medes and Persians, but on the contrary is a progressive science that ever keeps pace with social progress and existing conditions. In the...
infancy of our State we dropped the technical rules relating to conveyancing, and the devolution of real estate, which had grown up in a system of primogeniture and feudal tenures; and instead enacted laws for the free alienation of property and the vesting of estates. Among the many notable improvements since may be mentioned the adoption of the Code, the labor laws, including that of child labor, workmen's compensation laws, laws relating to delinquent children and scores of others too numerous to mention. But, it is well to remember that the laws of today are founded upon the experience of yesterday and the common law is the basis and framework of our present system. It has been said that "the common law is the embodiment of the wisdom of the ages; the epitome of the best thought of the best minds of the centuries." It is a system founded on principles of natural justice, and one ever expanding to meet new conditions and the changing forms of social, economic and commercial life. The judges of our courts fully appreciate these facts. By tradition, education and practice they are conservative, and while welcoming all changes for the better, they are equally as anxious to be shown before they act.

In matters relating to procedure, as you are aware, in England and some of the States of the Union where code provisions have never been adopted, it has been found advisable for the courts to adopt rules of practice and procedure, while in some of the newer states practically every procedural step is regulated by statute. Kentucky happily occupies a middle ground. Following the lead of New York, Kentucky adopted her Code more than seventy-five years ago. It was admirably conceived and prepared; and well adopted to our needs. Since then perhaps there have been fewer amendments to it than there have been to the code of any other state in the Union. Practically every one of its provisions has been elaborately construed by the Court of Appeals, until today every lawyer of average capacity and experience has ample light to intelligently practice any case in our courts. The bench and bar are thus thoroughly familiar with the code as it is, and the body of procedure as therein set forth has stood the test of time. It would now be productive of great confusion and unfortunate for the administration of justice if the bench and bar had to unlearn the tenets which have been held so long, and which for the most part are fundamentally right. However, in so large a body of law some defects must exist.
Also changed conditions and new situations call for modernized treatment. In bringing this about many of the old rules may be simplified and otherwise improved. A few may be discarded and their place taken by new ones. Also a more uniform and harmonious administration of law throughout the state may be effected by a closer association and concert of action between members of the judiciary. But gradual improvement, not radical action or startling innovation, appeals to the judiciary and is an important characteristic of the work ahead of us.

Without elaboration it may be said that this attitude applies with special force in the realm of substantive law. We should never forget that we can only recommend, and that the power of legislation rests in the general assembly. For this reason it is well to avoid controversial subjects, especially those which involve political questions and to confine ourselves strictly to judicial matters. Having mentioned some of the opportunities of the Council and the qualifications of its members, it is well to remember that it also has its handicaps. The judges of this state are busy men. Practically their entire time is taken up with the multiform duties of their offices, and it is going to require a heroic effort for them to find the necessary time for consideration of the matters of the Council, and I cannot stress this thought too strenuously.

Every member ought to have full information of each subject to be considered long enough before the meeting of the Council to have studied it and fully digested it. With this idea in view our by-laws require committee reports to be made thirty days before a meeting of the Council and for the secretary to distribute these among the members. As time goes on and the number of reports increase it will be found that every member will have his hands full of these reports, each of which demands the best of his thought and talents. If we can secure such consideration, if every member is active, alert and industrious, is filled with a consciousness of the duty imposed upon him and comes to the regular meeting informed and advised upon all matters to be considered, there is no reason why we should not achieve a great success. But if we lay the report aside and wait until a meeting, and depend upon then being advised of the merits of each of these measures, the result may be negligible.

DAVID A. MCCANDLESS

Court of Appeals of Kentucky,
Frankfort, Kentucky.