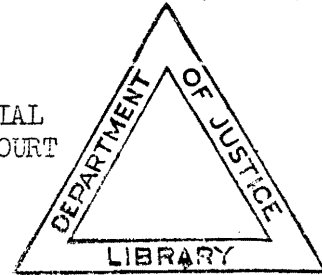


ADDRESS BY ATTORNEY GENERAL TOM C. CLARK AT THE MEMORIAL
CEREMONIES FOR JUSTICE McREYNOLDS BEFORE THE SUPREME COURT
OF THE UNITED STATES, WEDNESDAY, MARCH 31st, 1948.



Mr. Chief Justice and Associate Justices:

As we gather here today I deem it a privilege to speak in memory of the late Mr. Justice James Clark McReynolds, who passed away on August 24, 1946.

Mr. Justice McReynolds was born on February 3, 1862, at Elkton, Kentucky. He was educated in Tennessee, and received the degree of Bachelor of Science with highest honors from Vanderbilt University when barely 20 years of age. Entering the University of Virginia he was graduated from the Department of Law of that institution two years later. He thereupon entered upon the private practice in Nashville, Tennessee, serving at the same time as a member of the faculty of the Vanderbilt Law School. His competence and enthusiasm for his work soon became widely known and greatly respected.

In 1903, Attorney General Philander C. Knox recognized in McReynolds the type of lawyer he was seeking—a thirty thousand dollar a year man, as Knox himself put it, who would work for five thousand dollars a year. McReynolds was his man. He became Assistant Attorney General and was placed in charge of antitrust prosecutions.

The so-called "trust busting" era from 1903 to 1907, was the period during which McReynolds held that position. He was unstintingly active in the making of this history. Later he was destined to give completely of himself in assisting in the development of the law on the Bench of this Court.

The late Justice left the Federal service in 1907 and began the practice of law in New York City. In 1913, however, President Wilson invited him to accept the office of Attorney General of the United States and in March of that year he assumed his duties as head of the Federal Department of Justice. He served in this capacity until he was nominated as an Associate Justice of the Supreme Court.

His activity with regard to the development of antitrust law is especially worthy of note. He prosecuted most of the important antitrust cases of his time. His prosecution and presentation of the case that broke the grip of the Tobacco Trust are said to have been brilliant. He was active in the suit brought against the Reading Company to end monopolistic control of the anthracite coal industry and he vigorously conducted the New Haven Railroad case that attacked the New England transportation monopoly. He successfully fought the concentration of wire communications in the hands of the American Telephone and Telegraph Company and forced the dissolution of the combination created when the Union Pacific Railroad Company acquired control of the Southern Pacific Company.

Perhaps the best known of all the cases with which McReynolds was associated was the famous suit against the American Tobacco Company. The Tobacco Trust case, as it was called, was twice argued before the Supreme Court by some of the most eminent lawyers of the day. In its decision, rendered in 1911, this Court fixed into permanence the "rule of reason" which had first been stated in the earlier decision dissolving the Standard Oil Trust. It is not too much to say that this interpretation colored all subsequent development of the Sherman Antitrust Act, and it was certainly a basic factor in the enactment and content of the Clayton Antitrust Act and the Federal Trade Commission Act of 1914.

Mr. McReynolds' tenure as Attorney General lasted a little over a year, and terminated with his accession to the Bench of this Court. He was nominated by President Wilson in August of 1914, to fill the vacancy left by the death of Justice Horace Harmon Lurton on July 12 of that year. He took his seat on this Bench at the opening of the October 1914 term. He sat as a member of the Court from that time until February 1, 1941, when by retirement he ended twenty-seven years service as an Associate Justice of the Supreme Court of the United States. After retiring he remained in Washington where he died on August 24, 1946.

I should like to refer, Mr. Chief Justice and Associate Justices, to the character and philosophy of the late Mr. Justice McReynolds.

I suppose that the salient points in his character and philosophy were a rigid righteousness, an unyielding determination and unshakable stability. When he felt deeply on a question, his view absorbed him so completely that he had the greatest difficulty in moderating his expression, or in tolerating sustained argument by those who opposed him. Those who were present when this Court rendered its decision in the Gold Clause cases report that Justice McReynolds was almost beside himself with feeling as he spoke extemporaneously in dissent. He could not be tolerant on an issue which seemed to him so deeply of the essence of our national honesty and honor. He could not be cool and detached in the face of what he considered to be a repudiation of right conduct on the part of our Government.

Justice McReynolds' judicial philosophy always limited him to the naked question at bar. It prevented him from unnecessarily expressing an opinion on related issues in obiter dicta, and it made his style terse and direct. A well known manifestation of this characteristic was his three-paragraph dissenting opinion in the case of Oregon-Washington Railroad & Navigation Company v. State of Washington, in 270 U.S. 87, 103 (1926). There, in discussing the validity of a state statute of Washington, where the Congress had legislated on the broad subject by delegating authority to the Secretary of Agriculture, but where the Secretary had not acted, Justice McReynolds disagreed with the view of the majority of the Court that the State statute was unconstitutional. His style and his philosophy are both illustrated by the concluding paragraph of that short dissent, where he stated that "It is a serious thing to paralyze the efforts of a state to protect her people against impending calamity, and leave them to the slow charity of a far-off and perhaps supine Federal bureau. No such purpose should be attributed to Congress unless indicated beyond reasonable doubt."

Justice McReynolds was persevering and stable in his character and in his views.

Philosophically, morally, professionally, Justice McReynolds remained constant - changing but little, if any. When he began his career he was thought to be rather radical in his views, particularly on public business; when his active life ended in retirement, his position was considered conservative. But Justice McReynolds himself was neither liberal nor conservative. It was simply that the nation was more conservative than he at the beginning of his career, and more liberal at its end. It was the times -- the public, popular political preferences, the world situation--that changed, and not he. During history's shifting of scenes on the stage of political

and social movement, this man remained an enduring rock of fixed location, a philosophical bench-mark from which a historian might survey the past or future temper of the nation.

Justice McReynolds could not have been otherwise. His code of honor was inflexible and unyielding. He could no more yield at the end of his career to the proponents of a progressivism with which he disagreed than he could have given way at the beginning of his career to those who upheld the older order. He was strong in his beliefs, and his feeling endured that those beliefs were right.

The late Justice was the prototype of the rugged individualist, believing firmly in man living independently and untrammelled by restrictions. He opposed monopoly and power, whether such power was exercised by private interest or by public, whether it arose from the concentration of wealth and strength in the hands of individual citizens, or whether it resulted from an expansion by the Federal Government whose authority he feared as overflowing the banks formed by the Constitution.

Contrary to public belief Mr. Justice McReynolds was not a lonely man. He loved the company of those who shared his views and his principles. He had a big heart for the young and for education. While he was in truth unbending in his political and judicial views, he had all of the human qualities that endeared him to all who knew him. At his death he left large bequests to Centre College for educational and religious purposes. During his life he followed the practice of giving generously -- and anonymously -- to charity.

On his daily walks one would hear him inquiring as to the welfare of his neighbors and particularly the youngsters. On some occasions his walks

would be interrupted by an unkempt, hurt child. He was never too engrossed or self-contained to stop and bend down on such occasion to console the tot and assuage the pain, and place a coin or two into its little hand.

May it please this Honorable Court: In the name of the lawyers of this nation, and particularly of the Bar of this Court, I respectfully request that the resolution presented to you in memory of the late Justice James Clark McReynolds be accepted by you, and that it, together with the chronicle of these proceedings, be ordered kept for all time in the records of this Court.