

*The Forgotten Justice:*

*James Clark McReynolds*

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**By Judge James G. Adams, Jr.**

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We shall begin tonight with a test. How many justices of the United States Supreme Court were either born in Kentucky or appointed while a resident of Kentucky? If you answered "ten" you would be correct.

Thomas Todd was appointed from Kentucky and served from 1807-1826. Robert Trimble was appointed from Kentucky and served from 1826-1828. Samuel F. Miller was born in Kentucky, appointed from Iowa and served 1862-1890. The great John Marshall Harlan was both born in and appointed from Kentucky and served from 1877-1911. Horace H. Lurton was born in Kentucky and appointed from Tennessee and served from 1909-1914.

The revered Louis D. Brandeis was born in Kentucky, appointed from Massachusetts and served from 1916-1939. He was the first Jewish justice and bigotry raised its ugly head which led to a protracted confirmation battle. He was an intellectual giant and it is a flip of a coin as to whether he or Oliver Wendell Holmes, Jr. is the greatest legal mind to ever sit upon the high court. He is buried under the steps of the law school that now bears his name at the University of Louisville.

Stanley F. Reed was born in and appointed from Kentucky. He served from 1938-1957. Wiley B. Rutledge was born in Kentucky, appointed from Iowa (I do not know why Kentucky lost two great legal minds to Iowa) and served from 1943-1949.

Frederick M. Vinson was born in and appointed from Kentucky. He is the only Kentuckian to ever be named Chief Justice. He served from 1946-1953. Vinson was a graduate of Centre College and son Will, who is a student there tells me that at athletic events students parade a portrait of Vinson, known as "Dead Fred," in the stands to fire up the fans and student body.

Let's see, if I count correctly that is nine. The justice that I have left out is the subject of tonight's paper, which I have entitled, *The Forgotten Justice: James Clark McReynolds*.

James Clark McReynolds was born in Elkton, Todd County, Kentucky, on February 3, 1862. His father was a surgeon and the owner of a tobacco plantation. The family was a member of a fundamentalist sect of the Disciples of Christ (Church of Christ?)

One source said that his upbringing, in what at that time was an isolated area, the religious and political conservatism of his father and the strict moral code to which he was subjected profoundly influenced him. (However, I would report that the same source described Elkton as a "mountain community").

McReynolds at age seventeen, entered Vanderbilt University in Nashville, where he excelled in science, edited the school newspaper and graduated first in his class of 1882. He began postgraduate work in science at Vanderbilt, but soon decided to study law at the University of Virginia. McReynolds was such a diligent and enthusiastic student that he graduated from law school in only fourteen months in 1884.

Following graduation from law school, he spent two years in Washington, D.C. as a staff assistant to Senator Howell E. Jackson of Tennessee (who would himself be appointed to the Supreme Court in 1893). In 1886, McReynolds established a law practice in Nashville. In 1896, he made an unsuccessful bid for Congress and it was said that his arrogance and his aloofness contributed to his defeat.

In 1900, McReynolds became a professor of law at Vanderbilt and one of his colleagues was the Kentucky-born Horace H. Lurton, previously mentioned as a justice of

the Supreme Court, and whose seat McReynolds would ultimately occupy. In 1903, McReynolds was appointed assistant Attorney General by President Theodore Roosevelt and quickly made a name for himself as a zealous and effective "trust buster." ✓

In 1907, McReynolds left government service to practice law in New York City. After a few years, he left New York and returned to Tennessee where he resumed the practice of law and his involvement in Democratic politics. In 1912, McReynolds supported Woodrow Wilson in his successful bid for the Presidency and was appointed Attorney General of the United States when Wilson took office. Though he was eminently qualified to be Attorney General, McReynolds' violent temper and abrasive personality soon began to create problems for the president. When fellow Tennessean and former colleague, Justice Horace Lurton died in 1914, Wilson seized the opportunity to solve two problems at once and nominated McReynolds to the Supreme Court. His confirmation was not easy, however because it was disclosed that McReynolds, as Attorney General, had been lax in prosecuting the son of a prominent politician under the Mann Act.

Upon his confirmation by the Senate, McReynolds quickly became well known for his inflexibility, narrow constructionist views, fierce conservatism and his utter inability to get along with his colleagues on the bench. He detested Brandeis and Benjamin Cardozo, mainly because both were Jewish and McReynolds was an anti-Semite through and through. In fact, no official photograph exists for the Supreme Court for 1924, because according to seniority and tradition, McReynolds would have had to sit next to Louis Brandeis and this McReynolds refused to do. In fact he refused to even speak to either Brandeis or Cardozo during weekly conference meetings and when Brandeis spoke, McReynolds left the room. In part because of this, McReynolds is widely considered to be

one of the most unpleasant persons who have ever sat upon the High Court.

McReynolds was the author of several opinions that set the stage for subsequent decisions in the areas of privacy and personal rights. In 1923, writing for the Court, in *Meyer v. Nebraska*, he struck down a law, which made it illegal to teach a foreign language prior to the ninth grade. In 1927, in *Farrington v. T. Tokushige*, he overturned a law that banned the teaching of the Japanese language. In 1925, McReynolds penned the majority opinion in *Pierce v. Society of Sisters*, and struck down an Oregon law that required children to attend only public schools. He wrote "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Not surprising coming from the product of a father, who did not believe in public education. Both *Meyer* and *Pierce* still have strong vitality in the Court's liberty and privacy jurisprudence.

McReynolds is known most for being one of the "Nine Old Men" of the Supreme Court of the 1930's which led to Franklin D. Roosevelt's 1937 failed "Court Packing" plan. As you probably remember from history, FDR came to the presidency in 1933, while the country was in the throes of the Great Depression. FDR, unlike his predecessor, Herbert Hoover, was not going to sit and do little or nothing. Thus in his first 100 days in office, he commenced the New Deal with proposed legislation that created new agencies and programs that were designed to help deal with the struggling economy. These programs were very radical at the time and appalled many conservatives. Ultimately, some of the

New Deal programs were challenged in court and the Supreme Court led by four justices struck down the National Industrial Recovery Act, the Railroad Retirement Act, and the Agricultural Adjustment Act.

The four justices, who became known as "The Four Horsemen of the Apocalypse" or "The Four Horsemen of Reaction" were George Sutherland, Willis VanDevanter, Pierce Butler and (you guessed it,) James C. McReynolds. Roosevelt's plan was simple: for every justice over seventy years of age the proposed legislation would allow the president to appoint an additional justice to the Supreme Court. Thus Roosevelt would be allowed under the proposal to appoint up to six additional justices to the Supreme Court.

In his fireside chat to the nation on March 9, 1937, Roosevelt compared the three branches of government to a three horse team pulling a plow. Roosevelt stated that the Court was not pulling its' weight and that the recovery of the nation would not be successful unless all three horses were pulling together. This legislation died a slow death when Chief Justice Charles Evans Hughes announced his opposition and the Court upheld the Social Security Act and the National Labor Relations Act between March and May in 1937.

It was during this same period that a young man by the name of John Knox provides us with an insight as to what McReynolds innermost thoughts were. Knox was McReynolds' law clerk during the 1936 term of court and he kept a daily diary of his experiences. That diary was recently discovered and Dennis Hutchinson and David J. Garrow edited and published the diary entitled *The Forgotten Memoir of John Knox: A Year in the Life of a Supreme Court Clerk in FDR's Washington*. This book, one of only two

that I discovered in my research, that gives us any information about McReynolds. This book does not paint a very pretty picture of our subject but it does provide a look into McReynolds' mood, prejudices and personal life.

Knox arrived at the Court after law school to become McReynolds' clerk. He had actually contacted Justice VanDevanter about an appointment, and VanDevanter, who already had appointed a clerk for the term referred Knox to McReynolds. Through Knox, we see all of McReynolds' bias and prejudice toward both Jews and African-Americans. Knox cultivated friendships with Harry Parker, McReynolds African-American butler who catered to McReynolds' every need and with Justice Cardozo he described "a man of genius who always kept in the background...filled with tenderness, pity and infinite compassion." Knox lived in mortal fear that McReynolds would find out about his relationships with both Parker and Cardozo. According to Knox, McReynolds hated both Jews and African-Americans, whom he referred to as "darkies," and treated both Parker and his black maid Mary Diggs shamefully.

Knox describes McReynolds' mood as Justice Owen Roberts became the swing vote in the New Deals' favor and McReynolds became more and more withdrawn. When Roosevelt announced his so-called court packing plan, Knox stated that it caused McReynolds "to withdraw completely from contacts with everyone but for his most intimate friends." McReynolds despised Roosevelt and all for which he stood. During this term with Justice Roberts switching sides, not a single piece of New Deal legislation was struck down. With the ruling that the Social Security legislation was constitutional, in *Stewart Machine Company v. Davis*, McReynolds knew not only had the conservative wing lost its' grip on the Court, he also knew that his judicial life was effectively over as well.

Knox states that McReynolds' "irritability grew and smoldered and the very thought of Social Security legislation being declared constitutional was almost beyond his comprehension and endurance."

Knox also describes some of McReynolds' personal life and quirks. McReynolds never married, but had many female admirers. One of Knox's duties was to keep the various women in McReynolds' life from finding about the others. He describes a scene when one of McReynolds' lady friends called on the telephone and Knox mistook her for another. McReynolds was livid and almost fired Knox on the spot. Knox was not allowed to date himself during his tenure with McReynolds. As Henry Parker put it, "The only datin' around here is by the Justice and no one else!" Knox also had a friendship with a lady that lived on the same floor but he had to be very careful, so McReynolds would not find out. He describes an incident where he had to hide in a bedroom closet when he was at Mrs. Savage's apartment and McReynolds paid an unexpected visit.

Prior to moving to the new Supreme Court building in 1936, Justices worked at home, coming to the Capital only for weekly conferences, to hear oral arguments and to announce decisions. McReynolds continued to work at his luxurious thirteen room apartment in Washington and refused to move to the new building. Knox describes McReynolds' growing indifference to the work of the Court after the conservative defeats.

Even though McReynolds was difficult to work for, Knox planned to stay the entire year. This was not to be, as McReynolds found out that Knox was studying in preparation to take the bar exam. McReynolds issued an ultimatum: if Knox persisted in his plans to take the bar and studied for the same, he would be discharged and his salary stopped immediately. When Knox refused, the justice promptly followed through with his threat,

without so much as a "goodbye" to a person with whom he had close contact for most of a year. In 1938, Knox paid a visit to see Henry Parker and Mary Diggs and he insisted that he see the justice so they could mend fences. McReynolds greeted his former clerk, "in a cordial but distant manner," leaving Knox "feeling a bit chilled despite the warm weather." Knox never saw McReynolds again.

McReynolds finally retired from the court in 1941, the sole surviving member of the conservative bloc. He continued to reside in Washington until his death of bronchial pneumonia on August 26, 1946 at the age of 84. Not a single member of the Supreme Court attended his funeral. He was buried in Elkton, Kentucky.

After his death it was learned that he had helped support thirty-three refugee children who were victims of the Nazi Blitz in England and he was also the first major contributor to The Save the Children foundation. He was generous in his support of Centre College and what was originally a men's dining hall and dormitory is named McReynolds Hall in his honor. That building was completely renovated in 1997 and is still in use today.

And there you have it. A man born and buried in Elkton, Kentucky who ascended to the highest court in this country and who time has largely forgotten. Why? Partly because of his personality, his bigotry and his arrogance. But underneath the gruff exterior we find a man who loved and was kind to children and attracted the attention of a number of beautiful women. He was wealthy and generous in his contributions to his selected charities. He was, I think, an enigma and because so little has been written about him, we may never know the man he truly was.