

PROCEEDINGS IN THE
SUPREME COURT OF THE UNITED STATES
*In Memory of Mr. Justice McReynolds*¹

WEDNESDAY, MARCH 31, 1948.

Present: MR. CHIEF JUSTICE VINSON, MR. JUSTICE BLACK, MR. JUSTICE REED, MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS, MR. JUSTICE JACKSON, MR. JUSTICE RUTLEDGE, and MR. JUSTICE BURTON.

MR. SOLICITOR GENERAL PERLMAN addressed the Court as follows:

May it please this Honorable Court:

At a meeting of members of the Bar of the Supreme Court, held on November 12th, 1947,² resolutions expressing their profound sorrow at the death of Associate Justice James Clark McReynolds were offered by a committee, of which the Honorable James F. Byrnes, former Associate Justice of the Supreme Court, was chairman.³

¹ MR. JUSTICE McREYNOLDS, who had retired from active service on February 1, 1941 (312 U. S. III, n. 1), died in Washington, D. C., on August 24, 1946 (329 U. S. VII), and was buried at Elkton, Kentucky.

² The Committee on Arrangements for the meeting of the Bar consisted of Solicitor General Philip B. Perlman, Chairman, Mr. John Lord O'Brian, Mr. Pierce Butler, Mr. John S. Flannery, and Mr. Roger Robb.

³ The other members of the Committee on Resolutions were Mr. Sidney S. Alderman, Judge Florence E. Allen, Mr. T. Ellis Allison, Mr. Henry W. Anderson, Mr. William Douglas Arant, Mr. John E. Benton, Mr. Francis Biddle, Mr. James Crawford Biggs, Mr. William

Addresses on the resolutions were made by the Honorable John W. Davis, the Honorable George Wharton Pepper and the Honorable R. V. Fletcher.⁴

The resolutions, adopted unanimously, are as follows:

RESOLUTIONS

At a meeting of the Bar of the Supreme Court of the United States held on November 12, 1947, to take appropriate action in memory of the late Mr. Justice McReynolds, the Committee appointed by the Solicitor General reported this Minute for submission and action:

Although he was a native of Kentucky, the career of James Clark McReynolds was more closely identified with the State of Tennessee, where he received his academic training and first practiced law. For many years he was the only representative of the South on the Supreme Court of the United States. Preeminently he represented the philosophy which has come to be known as that of the

Marshall Bullitt, Miss Helen R. Carloss, Mr. Henry P. Chandler, Mr. Duane R. Dills, Mr. Robert G. Dodge, Mr. Charles D. Drayton, Mr. Henry S. Drinker, Mr. Charles Fahy, Mr. Robert V. Fletcher, Mr. John T. Fowler, Mr. William L. Frierson, Mr. Norman Frost, Mr. S. Price Gilbert, Chief Justice D. Lawrence Groner, Mr. P. F. Henderson, Mr. Robert H. Kelley, Mr. Francis R. Kirkham, Mr. Daniel W. Knowlton, Mr. William P. MacCracken, Jr., Mr. Maurice J. Mahoney, Mr. Blaine Mallan, Mr. William Clarke Mason, Mr. J. Howard McGrath, Mr. John T. McHale, Mr. Earl C. Michener, Mr. J. Blanc Monroe, Mr. George Maurice Morris, Mr. Hugh H. Obear, Judge David A. Pine, Mr. William Jennings Price, Mr. Seth W. Richardson, Mr. George Rublee, Mr. Morrison Shafroth, Mr. J. Allan Sherier, Mr. S. Milton Simpson, Mr. Robert Stone, Mr. Hatton W. Sumners, Mr. William A. Sutherland, Judge Thomas D. Thacher, Mr. Huston Thompson, Mr. G. Carroll Todd, Mr. William R. Vallance, Mr. Arthur T. Vanderbilt, Mr. George T. Washington, Mr. William R. Watkins, Mr. Alexander Wiley, and Mrs. Mabel Walker Willebrandt.

⁴ It is regretted that limitations of space prevent the publication of these addresses in this volume. They have been published privately in a memorial volume prepared under the supervision of Mr. Charles Elmore Cropley, Clerk of the Court.

constitutional Democrat. He characterized his own ideas as those "of an old-time Cleveland Democrat" and "of a gold Democrat."

He was the supreme type of the rugged individualist. Ruggedness was his outstanding characteristic. He was a large, six-foot frame of a man, with erect, military bearing and the aspect of an early Roman senator. He had a face of great strength, which might have seemed carved from Tennessee granite, but for the illumination of steel-blue eyes and a suddenly flashing smile. It was a face which could express every shade of feeling, from genuine graciousness and generosity of spirit, through flashing wit and humor, to the most satiric scorn.

As an individualist he believed in the individual and his rights. He believed also in the reserved powers of the States. He resented and resisted the growing exercise of power by the Federal Government in fields formerly conceived to have been reserved to the States. He was a strict constructionist, who felt an impelling conviction that the Federal Government ought to be held within the framework of its field of action as delegated to it by the people in the written Constitution and who resisted what he felt to be a tendency to amend the Constitution and to expand Federal power by judicial interpretation. And yet, likewise as an individualist, he was strongly opposed to monopoly and was a vigorous supporter of the antitrust laws.

He served over a quarter of a century on the Supreme Court: through World War I, through the following great depression, through the era of the vast expansion of Federal power, through the dramatic and historic attack by the Executive on the Judiciary, and through a period in which, ironically enough, he succeeded Louis Dembitz Brandeis as "the Great Dissenter." He held on with grim determination after the times had turned against his views and retired just two days before his seventy-ninth birthday. He presents the paradox of having come

to the Court as a much-vaunted, antitrust liberal and of having left it as the most die-hard representative of the conservative wing. Yet a careful study of his opinions throughout the quarter-century will disclose a pattern of inflexible and unyielding consistency. It was not James Clark McReynolds who changed. It was the times, the country, the prevailing constitutional views and the Supreme Court that changed. Justice McReynolds remained standing in his place, like a granite mountain.

Two illustrations will suffice to show his immovability. They are both in the field of his opposition to what he deemed to be encroachments of the Federal Government upon the reserved powers of the States.

One of his most famous dissents was a short one of three paragraphs in the *Oregon-Washington Railway and Navigation Company* case, in 1926. The Court, in an opinion by Chief Justice Taft, held that an act of Congress covered the whole field of plant disease control, so far as its spread by interstate transportation could be affected and restrained, and that consequently a statute of the State of Washington attempting quarantine against the interstate importation of alfalfa weevil was invalid. Justice McReynolds delivered a characteristically vigorous dissent, joined in by Justice Sutherland, in which he took the position that the act of Congress did not by its own terms conflict with the State statute, that the Secretary of Agriculture had taken no action under the powers delegated to him by Congress which conflicted with the State statute, and in which he concluded: "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." Congress promptly amended the Federal act interpreted in that case and made it clear that the views of the McReynolds dissent should prevail.

His last official action, on January 20, 1941, was to join with Chief Justice Hughes in concurrence in a dissent written by Mr. Justice Stone in the *Davidowitz* case. The majority, in an opinion by Mr. Justice Black, held that a Pennsylvania alien-registration statute was invalid as in conflict with the Federal Alien Registration Act, which was held to have occupied the field to the exclusion of state legislation. The dissenters saw no conflict between the two acts and warned: "At a time when the exercise of the federal power is being rapidly expanded through Congressional action, it is difficult to overstate the importance of safeguarding against such diminution of state power by vague inferences as to what Congress might have intended if it had considered the matter or by reference to our own conceptions of a policy which Congress has not expressed and which is not plainly to be inferred from the legislation which it has enacted. . . . Little aid can be derived from the vague and illusory but often repeated formula that Congress 'by occupying the field' has excluded from it all state legislation. Every Act of Congress occupies some field, but we must know the boundaries of that field before we can say that it has precluded a state from the exercise of any power reserved to it by the Constitution."

This last official act is wholly reminiscent of his 1926 dissent and exemplifies the unchangeableness that was McReynolds.

His most famous dissent, one of the most dramatic ever delivered from the bench of the Supreme Court, was his dissent from the decision of the Court in the *Gold Clause Cases*. He was joined in it by Justices Van Devanter, Sutherland, and Butler. He completely departed from his written opinion and went to the country with an extemporaneous denunciation of repudiation of contracts and devaluation of the currency which electrified his auditors, sympathetic and unsympathetic alike. No stenographic transcript of what he said was taken. His

remarks were quoted only fragmentarily, in the press. It was feared that they would be lost to posterity. Justice McReynolds himself prepared a revision of his remarks, which was published by the Wall Street Journal as the most authentic version. Many who heard the utterance will remember passages that do not appear in that version and will remember differently many that do appear. He has often been quoted as saying, "The Constitution is gone." It is believed the expression he used was, "The Constitution, as we have known it, is gone."

Among the stronger expressions contained in Justice McReynolds' own revision are the following:

"Mr. Justice Van Devanter, Mr. Justice Sutherland, Mr. Justice Butler, and I do not accept the conclusions announced by the court. The record reveals clear purpose to bring about confiscation of private rights and repudiation of national obligations. To us, these things are abhorrent. We cannot believe the wise men who framed the Constitution intended to authorize them. On the contrary, adequate words of inhibition are there.

"First, the President is granted power to depreciate the dollar. He fixed sixty cents. Next, attempt is made to destroy private obligations by 'A Statute to Regulate the Currency of the United States.' Also to destroy Government obligations. The same language—the same section—covers both. Having put out five hundred million Gold Clause bonds in May, Congress declares in June that these promises so to pay in gold are illegal and contrary to existing public policy, although this had been consistently observed for many years and had been approved by the courts.

"After this effort to destroy the gold clause, the dollar is depreciated to sixty cents. Prices are to be estimated in deflated dollars. Mortgages, bank deposits, insurance funds, everything that thrifty men have accumulated, is subject to this depreciation. And we are told there is no remedy.

"We venture to say that the Constitution gives no such arbitrary power. It was not there originally; it was not there yesterday; it is not properly there today.

"It is said that the National Government has made by these transactions \$2,800,000,000 and that all gold hypothecated to the Treasury now may be used to discharge public obligations! If the dollar be depreciated to five cents or possibly one, then, through fraud, all governmental obligations could be discharged quite simply.

"Shame and humiliation are upon us now. Moral and financial chaos may confidently be expected."

This fervid dissent accords with the view he himself had expressed many years before in another dissenting opinion that "an amorphous dummy, unspotted by human emotions" is not "a becoming receptacle for judicial power."

So much discussion of his dissents should not cast doubt on his profound contribution to jurisprudence in his many majority opinions throughout his long period of service. His dissents became more and more numerous after 1933. But throughout his long judicial career he made such a continuous and constructive contribution to judicial decision, in so many fields of the law, that it would be impracticable in these resolutions to attempt a summarization. That contribution will ever stand as vitally significant in the history of the period, of the Court and of its jurisprudence.

James Clark McReynolds was born in Elkton, Kentucky, on February 3, 1862, of Scotch-Irish descent, the son of Dr. John O. and Ellen (Reeves) McReynolds. His father was determined that he should be a professional man, a doctor or a lawyer, and sent him to Vanderbilt University, where he received the degree of Bachelor of Science in 1882, completing a four-year course in three years. He took first honors in his class, received the Founder's Gold Medal, and was elected valedictorian by his classmates.

He received his law degree from the Department of Law of the University of Virginia in 1884. Returning to Nashville, Tenn., he began the practice of law and also served as a member of the faculty of the Vanderbilt Law School. He achieved a considerable reputation by his zeal, diligence and ability in the practice there. In 1903 Philander C. Knox, Republican Attorney General, was looking for a \$30,000-a-year lawyer who would work for \$5,000. A friend gave him the name of James Clark McReynolds but warned that he was a Democrat. Mr. Knox said that he wanted a lawyer, not a politician, and he made the young Tennessee lawyer Assistant Attorney General and put him in charge of antitrust prosecutions. In this position McReynolds remained from 1903 to 1907 and successfully prosecuted many important cases. Thereafter he practiced for several years in New York City.

Later he came back to the Department of Justice as Special Assistant to the Attorney General and successfully prosecuted and argued in the Supreme Court the celebrated *American Tobacco Company* case, which was argued in January 1910, reargued in January 1911, and decided on May 29, 1911, and the famous *Temple Iron Company* case, decided December 16, 1912.

He served as Attorney General in President Wilson's cabinet in 1913 and 1914, in which position he had a stormy and controversial career. He was bitterly attacked by a group of Senators led by Senator Borah and Senator Works on a charge that he maintained a corps of special agents operating a system of espionage to investigate Federal judges with a view to influencing their decisions. A Senate resolution called on him for information regarding the matters charged, "so far as not incompatible with the public interest." He made a report to the President on August 6, 1913, transmitted also to the Senate, in which he took an unyielding position. He described the kind of investigating agents he maintained. He said that the disclosure of their names would be in-

compatible with the public interest. On the same ground he refused to name any judge who had been investigated, except Judge Archbald, whose impeachment trial was public property. And he sternly declared, "The suggestion that the Department of Justice is maintaining a system of espionage over the courts and judges of the country is entirely without foundation."

He was nominated Associate Justice of the Supreme Court of the United States by President Wilson in August 1914, to succeed Justice Horace Harmon Lurton, who had died July 12, 1914. He was confirmed by the Senate on August 29, 1914. He took the oath of office September 3, 1914. The judicial oath was administered to him and he took his seat on the bench at the opening of the following October Term. His first opinion for the Court was handed down on November 30, 1914; his last on January 20, 1941, twenty-six years and almost two months later.

The personnel of the Court when he took his seat in 1914 was: Chief Justice Edward Douglass White and Associate Justices Joseph McKenna, Oliver Wendell Holmes, William R. Day, Charles Evans Hughes, Willis Van Devanter, Joseph Rucker Lamar, Mahlon Pitney, and James Clark McReynolds.

When he retired on February 1, 1941, the personnel of the Court was: Chief Justice Charles Evans Hughes (who followed him in retirement on June 2, 1941) and Associate Justices James Clark McReynolds (the senior Justice), Harlan Fiske Stone, Owen J. Roberts, Hugo L. Black, Stanley Reed, Felix Frankfurter, William O. Douglas, and Frank Murphy.

His twenty-six years of service on the bench saw the passing from the scene of every member of the Court as constituted when he took his seat, except Charles Evans Hughes, who had returned as Chief Justice after an interval of fourteen years following his resignation to run for the Presidency against Woodrow Wilson, and likewise saw the passing of such intervening famous personalities

as George Sutherland, Pierce Butler, Louis Dembitz Brandeis, and Benjamin N. Cardozo.

His career was fittingly epitomized by Chief Justice Hughes when he said, after the opening of the Court on February 3, 1941:

"On February 1, 1941, Mr. Justice James Clark McReynolds retired from active service as Associate Justice of this Court. Forthright, independent, maintaining with strength and tenacity of conviction, his conceptions of constitutional right, he has served with distinction upon this bench for upwards of twenty-six years and has left a deep impress upon the jurisprudence of the Court. It is hoped that, relieved of the burden of active service, he will long enjoy his accustomed vigor of body and mind."

After his retirement, Justice McReynolds made his home at 2400 Sixteenth Street N. W., Washington, D. C. He had never married and for many years was the only bachelor on the Court.

He had an idiosyncrasy against smoking, which he applied with some rigor against his law clerks and which was generally respected by his guests. Yet he was a charming and gracious host and his Sunday morning breakfasts were famous. He loved duck hunting and golf. He was a great walker. He was a discriminating lover of books and a deep student of history.

A revealing side of his character was his gentleness and generosity to the humble and to those in need. During World War II he adopted thirty-three British children, supported them and personally corresponded with every one of them. Cartoons in the press treated the crusty old bachelor Justice as having outdone the old woman who lived in a shoe. His love of children is also shown by his many benefactions to the Children's Hospital of the District of Columbia. He made many unheralded benefactions to charities and to needy individuals during his lifetime, and in his last will and testament

he left charitable bequests totaling nearly \$190,000 and many additional individual bequests.

After several weeks of illness in Walter Reed Hospital, he died on August 24, 1946, and was buried in the family burial ground in Elkton, Kentucky.

Men will always differ in their views of James Clark McReynolds as they differ in their attitudes toward constitutional questions. But no one can doubt that he was a man of great character and power, a significant figure in a time of great change, unshakable in his devotion to the public welfare as he conceived it and to constitutional principles in which he had the sincerest and profoundest belief.

Resolved, That the foregoing Minute be adopted; that a copy of it be transmitted to the Attorney General of the United States for presentation to the Court, and that the Chairman be directed to forward copies of it to the next of kin of Mr. Justice McReynolds.

MR. ATTORNEY GENERAL CLARK addressed the Court as follows:

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, Tenn., 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 \$30,000-a-year man, as Knox himself put it, who would work for \$5,000 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 anti-trust 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.

THE CHIEF JUSTICE responded:

Mr. Attorney General: In receiving the Resolutions which you have presented, the Court expresses deep appreciation for the tribute from the Bar of this Court to the memory of this eminent lawyer, statesman, and jurist—an able and faithful member of this Court, who gave 26 years of his life in its service.

James Clark McReynolds was born in the town of Elkton, Kentucky, in the second year of the War between the States. His ancestry was of the sturdy Scotch-Irish stock which has contributed so greatly to the development of the American republic and which has produced so many distinguished figures in American public life.

James McReynolds grew to maturity during that period in our history in which the American nation was undergoing a transition from a society predominantly agricultural in interests and outlook to a society dominated by the interests and problems of an industrial civilization. He was graduated from Vanderbilt University in 1882 with highest honors, was elected valedictorian of his class and was awarded the Founder's Gold Medal. Two years later, he received his degree in law from the University of Virginia.

At the conclusion of his professional training, he entered into the practice of law in Nashville, Tennessee, where

he gained an enviable reputation for diligence, ability, and integrity. During the same period, he supplemented his activities as a practicing attorney by serving as a member of the faculty of law at Vanderbilt University.

In 1903, though a member of the Democratic party, he was appointed Assistant Attorney General in the administration of President Theodore Roosevelt and was placed in charge of antitrust prosecutions. He performed his important duties with distinction for four years, leaving his post in 1907 to undertake the practice of law in New York City. Shortly thereafter, he returned to the Department of Justice as Special Assistant to the Attorney General and participated in some of the most important antitrust litigation of the period, including the *American Tobacco Company* case.

In March 1913, he was appointed Attorney General by the newly elected President, Woodrow Wilson. He served in that capacity until August 1914 when he was appointed an Associate Justice of the Supreme Court of the United States to fill the vacancy caused by the death of Mr. Justice Lurton. He was an active member of this Court for over twenty-six years, serving until his retirement on February 1, 1941. Death came at the age of 84 on August 24, 1946. He was buried in the family burial ground in Elkton, Kentucky.

Mr. Justice McReynolds performed his judicial duties during a crucial period in American history. He entered into his office some six weeks after the outbreak of the European phase of the first World War. He left the bench while a second World War was raging overseas. In the intervening period, the nation experienced a major economic depression. Inevitably, the impact of the events of the time gave rise to issues of the highest importance, many of which this Court was called upon to resolve.

To the solution of these perplexing problems, Mr. Justice McReynolds brought a fully matured legal philoso-

phy. It was a set of principles which has been given frequent expression in American Constitutional history. It calls for strict construction of constitutionally granted powers, vigorous defense of States' rights, and for narrow confinement of governmental interference with individual freedom of action. Mr. Justice McReynolds brought to his judicial labors a deep conviction that the structure of this nation had been built on strong foundations. He believed that it was in the functioning of the judicial process that those foundations could best be preserved and strengthened; and upon that process he based his greatest hopes for our future welfare. He also believed, as he once remarked, that the power of this Court "does not lie in the army, it does not lie in the navy, nor in the militia; it lies in the faith of the people for whom it was created" For over twenty-six years Mr. Justice McReynolds consistently applied these principles with zeal, ability, and diligence, and with a conviction and intensity which could not brook compromise. "Constitutional guarantees," he wrote upon one occasion, "were intended to be immutable essences within our character Certain fundamentals have been put beyond experimentation." But, in his view, the function of the judge is not that of a mere automaton. Thus, in his dissent in *Berger v. United States*, 255 U. S. 22, 43, he remarked: "And while 'an overspeaking judge is no well-tuned cymbal' neither is an amorphous dummy unspotted by human emotions a becoming receptacle for judicial power."

During his long tenure upon the bench, Mr. Justice McReynolds expressed his views, both in majority and dissent, in a great number of cases presenting the immense variety of problems which come before this Court. His opinions reveal a conscious and continuing effort to decide no more than required by the issues of the particular case before him. His writing shows little taste

for epigram. His literary style, characteristic of the man, was terse, direct, and clear, yet capable of translating to the reader the conviction and fervor with which his views were expressed. He wrote during a period when the integration of our society through a developing industrialism and the rapid growth of transportation and communication necessitated adjustments between the roles of the federal and state governments; but he never lost sight of the place of the States in the American governmental system. He appreciated the importance of private property in our economy and recognized that the maintenance of law and order is fundamental to the national welfare. The expression that his opinions give to those views reinforces the basic constitutional theories that governed his decisions.

Mr. Justice McReynolds was a man of broad intellectual interests. He was a generous host, and greatly enjoyed the company of his friends. The welfare of children was a matter of genuine concern to him. Upon his retirement from the Court, he "adopted" and supported thirty-three British children whose homes had been destroyed by the bombings of London. His interest in these innocent victims of war was personal and profound. He gave a further practical manifestation of his concern by offering to contribute the first \$10,000 to a \$10,000,000 Save the Children Fund. His will contained numerous bequests to charities dedicated to child welfare and to others concerned with the care of the weak and the helpless. Throughout his life, Mr. Justice McReynolds was interested in the education of young people. His will contained several substantial gifts to institutions providing legal education, reflecting an interest derived from his long career as teacher of law, practitioner, and judge. But he was concerned, not only with professional training, but also with the problems of general education. Thus his will contained bequests to liberal arts colleges

such as Centre College at Danville, Kentucky, an institution which he loved, though of which he was not an alumnus.

Above all, Mr. Justice McReynolds was a man of sincerity and independence. His views on the controversial issues of his time were, to him, matters of vital moral conviction. In their defense, he dedicated the full resources of his spirit and character. It is not surprising that his views evoked strong response, both in support and opposition. But even those of a different philosophy found much to admire in his absolute integrity and his rugged forthrightness. Complete conformity in thought and opinion has never been considered a virtue in this Republic. It is a basic tenet of our political doctrine that out of the clash of opposing views we are most likely to approach truth. So long as that is our faith, we will pay tribute to the memory of a man who never deviated from the path of principles which to him were fundamental to the nation's welfare.

THE CHIEF JUSTICE directed that the resolutions be spread upon the minutes of the Court.