KENTUCKY'S IRASCIBLE CONSERVATIVE: SUPREME COURT JUSTICE JAMES CLARK McREYNOLDS

BY CALVIN P. JONES*

Kentucky has been properly called, by at least one notable author, "the mother of governors."[1] This appellation was given because so many early territorial and state governors had at one time been citizens of the commonwealth. It is also interesting to note that Kentucky has produced several justices of the United States Supreme Court.[2] One of the most colorful of these was James Clark McReynolds. A member of the Supreme Court from his appointment by President Woodrow Wilson in 1914 until his retirement at the age of seventy-eight in 1941, Justice McReynolds was known as a "radical conservative" and was one of the leading judicial opponents of Franklin D. Roosevelt's New Deal.[3]

It is interesting to note that the former home of Justice Mc-

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1 John Wilson Townsend, *Kentucky: Mother of Governors* (Frankfort: Kentucky Historical Society, 1910).

2 Woodford L. Gardener, Jr., "Kentucky Justices on the United States Supreme Court," *Register of the Kentucky Historical Society*, 70 (April, 1972), 139.

KENTUCKIANS ON THE UNITED STATES SUPREME COURT

Justice Appointed from Kentucky	*Birthplace*	*State From Which App't.*	*Pres. Nom.*	*Chief Justice at App't.*	*Years Served*
Thomas Todd	King and Queen County, Virginia	Kentucky	Jefferson	Marshall	1807-26
Robert Trimble	Berkley County, Virginia	Kentucky	J. Q. Adams	Marshall	1826-28
John Marshall Harlan	Boyle County	Kentucky	Hayes	White	1877-1911
Stanley F. Reed	Maysville	Kentucky	F. D. Roosevelt	Hughes	1938-57
Frederick M. Vinson	Louisa	Kentucky	Truman	None	1946-53
Born in Kentucky But App't. From Other States					
Samuel F. Miller	Richmond	Iowa	Lincoln	Taney	1862-90
Horace H. Lurton	Newport	Tennessee	Taft	White	1910-14
James C. McReynolds	Elkton	Tennessee	Wilson	White	1914-41
Louis D. Brandeis	Louisville	Mass.	Wilson	White	1916-39
Wiley B. Rutledge	Cloverport	Iowa	F. D. Roosevelt	Stone	1943-49

3 William E. Leuchtenburg, "James Clark McReynolds," *Dictionary of American Biography* (New York: Charles Scribner's Sons, 1974), Supplement Four, 1946-1950, pp. 536-38. Also see Anna Rothe, ed., "James Clark McReynolds," *Current Biography: Who's News and Why, 1946* (New York: The H. W. Wilson Co., 1946), p. 374; and "James Clark McReynolds," *The National Cyclopaedia of American Biography* (New York: James T. White Co., 1947), XXXIII, 1-2. For those interested in a more detailed explanation of the actions and judicial philosophy of Justice McReynolds the following studies are recommended: Doris A. Blaisdell, "The Constitutional Law of Mr. Justice McReynolds" (Ph.D. diss., University of Wisconsin, 1952); Stephen Tyree Early, Jr., "James Clark McReynolds and the Judicial Process" (Ph.D. diss., University of Virginia, 1954); and J. B. McCraw, "James Clark McReynolds and the Supreme Court, 1914-1941" (Ph.D. diss., University of Texas, 1951). Also see S. Price Gilbert, *James Clark McReynolds, 1862-1946* (pp.: n.p., 1946). There is a small collection of McReynold Papers at the University of Virginia Library.

Reynolds, located on the west side of South Main Street, Elkton in Todd County is still occupied as a residence. This substantial brick house was built in 1860 by Dr. John Oliver McReynolds, town physician and father of the Supreme Court justice.[4] An extremely irascible man, sometimes nicknamed "The Pope" because of his firm belief that virtually all of his opinions were correct, Dr. McReynolds practiced medicine in Elkton for more than half a century. He was the physician for almost every family in Elkton. Justice McReynolds was born in the house, spent his youth there, returned often during summers throughout his life, and is said always to have considered the house his home. After Justice McReynolds died in 1946, this interesting old house became the property of his sister, Mrs. Mary Belle McReynolds Zaricore. She lived there the remainder of her life and bequeathed it to another brother, Dr. Robert Phillips McReynolds who lived in California. After his death the house was sold in 1964 to Eugene Luck, the present owner, who is a merchant farmer and trader in Elkton. It was placed on the National Register of Historic Places on October 22, 1976.[5]

James Clark McReynolds was born on February 3, 1862.[6] Todd County, of which Elkton is the county seat, was also the birthplace of Jefferson Davis although at the time that Davis was born in 1808, it had not yet been created by the General Assembly but was still part of Christian County.[7] To this day, Todd County retains its sympathy with the south and reflects the culture of Tennessee which it borders.

Dr. McReynolds believed that every man should be able to work with his hands so he apprenticed young James to a carpenter.[8] The younger McReynolds demonstrated his proficiency by building the picket fence that stood for many years in front of the house. Dr. McReynolds also did not neglect his son's formal education; he sent him to Vanderbilt University in Nashville where he graduated in

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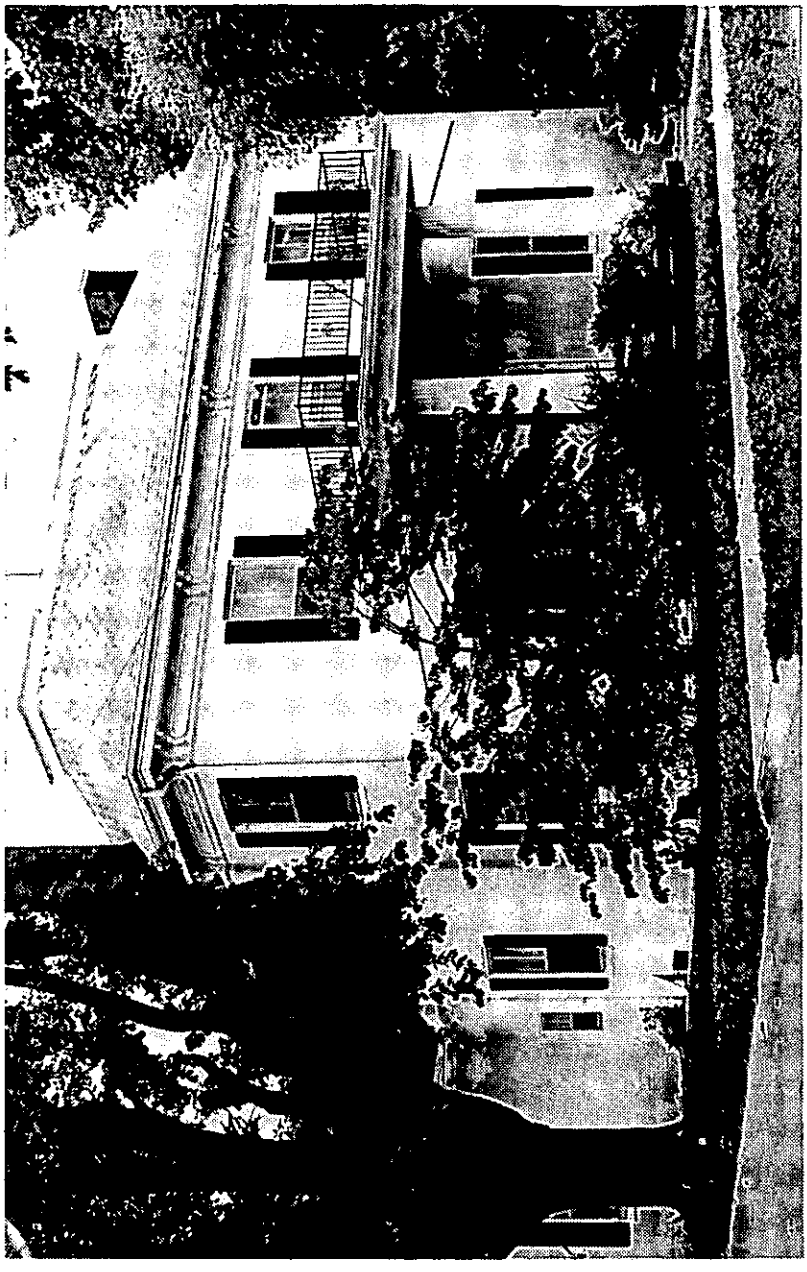
4 Marion Williams, *The Story of Todd County, Kentucky, 1820-1970* (Nashville, Tennessee: Parthenon Press, 1972), p. 424. Also information was obtained from Elkton attorney George Boone, by letter dated August 2, 1974; "The McReynolds House File, National Register Entries" (Frankfort: Kentucky Heritage Commission); and *Dictionary of American Biography*, Supplement four, p. 536.

5 Letter of Transmittal from Gary Everhardt, the Director of the National Park Service, United States Department of the Interior, Washington, D.C., 20240, dated October 22, 1976, designating the McReynolds House as an entry in the National Register of Historic Places. ("The McReynolds House File, National Register Entries," Frankfort: Kentucky Heritage Commission).

6 Gardener, "Kentucky Justices," 135.

7 Williams, *Todd County*, pp. 383-84.

8 George Street Boone, unpublished manuscript, dated September 11, 1972 ("The McReynolds House File, National Register Entries," Frankfort: Kentucky Heritage Commission).



The McReynolds Home, Elkton

Todd County Standard

The McReynolds Home, Elkton

Todd County Standard

1882 as valedictorian of his class, an honor graduate, and a recipient of the Founder's Medal for scholarship.[9] He completed his professional training at the law school of the University of Virginia where in 1884 he finished the requirements for a law degree in two years instead of the prescribed three.

After practicing law in Nashville for two years McReynolds in 1886 spent some time in Washington, D.C., as a private secretary to Senator Howell Jackson of Tennessee. Then he returned to private practice in Nashville, and from 1899 to 1903 he served as a professor in the Vanderbilt School of Law. In 1903, Philander C. Knox, Attorney General in the cabinet of President Theodore Roosevelt, named him an Assistant Attorney General even though he had never become a member of the Republican Party. In that capacity until 1907 he attacked several monopolies, including a tobacco monopoly.[10] Following this service he again resumed his law practice until 1913 in New York City. As a private attorney, he continued to assist both the Roosevelt and Taft administrations in their prosecution of anti-trust suits.

When Woodrow Wilson became president in 1913, he wanted for Attorney General of the United States an able lawyer who had no corporate leanings and who would be guided by the philosophy of the law rather than solely by precedent. This led him to appoint McReynolds. As Attorney General for only a year, McReynolds disturbed several senators who charged that he was using secret agents to spy on federal judges and to influence their decisions. He also defied them by refusing in the public interest to supply information that was demanded of him.[11]

McReynolds reached the high point of his career in August, 1914, when Wilson appointed him an Associate Justice of the Supreme Court to succeed Horace H. Lurton. He was quickly confirmed by the Senate, despite the strenuous objections of George W. Norris of Nebraska and others, and at the opening of the ensuing fall term (October 12, 1914) he took his seat on the supreme bench. At this point in his career, despite the objections of Norris and his colleagues, he appeared to be a liberal. He had come to the highest court of the land abundantly equipped with the attributes which make for judicial distinction. He had legal scholarship, the courage of his convictions, intelligent integrity, and lu-

9 Williams, *Todd County*, p. 424.
10 *Ibid.*, p. 425.
11 *National Cyclopaedia of American Biography*, XXXIII, 1; also see Josephus Daniels, *The Life of Woodrow Wilson* (Chicago: John C. Winston Co., 1924), p. 137; and *Dictionary of American Biography*, Supplement four, p. 536.

cidity of expression; it appeared that he had a clear understanding of the principles and purposes of the Constitution. Among the representative majority opinions which he wrote was that in Meyer v. State of Nebraska (262 U.S. 390) which voided a Nebraska statute prohibiting the teaching of German in the public grade schools and affirmed the right of parents to direct the education of their children under the Fourteenth Amendment. He also wrote the majority opinions in Gilchrist et al., Constituting the Transit Commission et al. v. Interborough Rapid Transit Co. et al. (279 U.S. 159), which preserved the five-cent subway fare in New York City, and in the celebrated case of St. Louis & O'Fallon Railroad Co. et al. v. United States et al. (279 U.S. 461). In this last case the decree directed the Interstate Commerce Commission to give weight to current prices (for rolling stock, rails, ties, shops, etc.) in determining the value of railroad properties as authorized by the Transportation Act of 1918. The Commission had adopted the 1914 price level as its guide in the revaluation survey, the purpose of which was to enable the government to share in the railroads' earnings in excess of six percent on the determined value of their properties.

Between 1920 and 1925, however, the favorable opinion of Justice McReynolds as a Supreme Court justice had changed. In the opinion of former Secretary of State Dean Acheson, who was a friend of Justice McReynolds and was employed for some time by the Court, President Wilson had appointed him to the Supreme Court "with evident relief and a disregard for the interests of the country."[12] His description of Justice McReynolds is particularly interesting and expresses well many of McReynolds' quirks, foibles, and eccentricities:

> Justice McReynolds' views were rigid and ultraconservative, his temperament was passionate . . . and as he himself put it, "an amorphous dummy unspotted by human emotion" is not "a becoming receptacle for judicial power."[13]

His prejudices extended to female lawyers.[14] Whenever a woman rose to address the Court, he pushed back his chair and departed. Conversely, he had a penchant for gallant remarks to ladies but sometimes his remarks missed the mark which puzzled but rarely bothered him. This happened once when he was dining with the

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12 Dean Acheson, *Morning and Noon* (Boston: Houghton Mifflin Co., 1965), pp. 71-72; also see *The National Cyclopaedia*, XXXIII, 1-2.
13 Acheson, *Morning*, p. 73.
14 Williams, *Todd County*, p. 425; also see Acheson, *Morning*, p. 75.

Achesons. Being the ranking guest at the Achesons' house, McReynolds made a gallant gesture toward one of the ladies present. Turning to Miss Laura Harlan, an elderly lady who was the aunt of the future Justice John Harlan, he asked for the pleasure of escorting her home. When the old lady responded jokingly by asking those present whether it would be proper for her to go off with so handsome a bachelor, Justice McReynolds, intending a compliment to the well-known blamelessness of her character, replied with a bow, "Miss Laura, a lady like you would be safe with anyone." Evidently his statement was not necessarily taken exactly as he had meant it.[15]

McReynolds was evidently a man of many moods. He was often pleasant and very much enjoyed social relations in congenial company. He could be kindly and amusing and was always courtly. His Sunday morning breakfasts for young people became famous. They were jovial unless some absent-minded student forgot and smoked a cigarette in McReynolds' presence. That would be an extremely unfortunate case of forgetfulness because McReynolds' attitudes toward tobacco were well known and such an act would change his mood dramatically for the worst. He organized and paid for annual trips to the circus for the pages of the Supreme Court. He also gave to national charities and to local charities in Elkton such as contributions to the American Red Cross, the Negro schools, a gift of land to Glenwood Cemetery, and a $5,000.00 legacy to the Christian Church. He also contributed generously to benevolent societies. Although he never married, he loved children, and during World War II he supported thirty-three British orphans and personally corresponded with each of them.[16] He was a member of Phi Delta Theta, the University of New York City, and the Chevy Chase Golf Club, Washington, D.C. His religious affiliation was with the Christian Church (Disciples of Christ). He enjoyed outdoor sports, especially golf and duck hunting. Centre College in Danville awarded him an honorary Doctor of Laws (LL.D.) degree in 1941. Such varied activities illustrated the many-sided nature of his colorful personality.

McReynolds' chief claim to fame undoubtedly rests on his opposition to Roosevelt's New Deal. As one of the conservative "Four Horsemen" on the Court during 1935-1936, he helped to declare unconstitutional several important pieces of New Deal legislation.[17]

15 Acheson, *Morning*, p. 75.
16 Gardener, "Kentucky Justices," 135; also see *The National Cyclopaedia*, XXXIII, 2
17 William E. Leuchtenburg, *Franklin D. Roosevelt and the New Deal* (New York: Harper Torchbooks, 1963), pp. 143-44; also see *The National Cyclopaedia*, XXXIII, 2.

Never before in American history had the Supreme Court worked such havoc with a legislative program as it did in 1935 and 1936 nor in so short a time invalidated so many acts of Congress.[18] In the few cases when the Court upheld legislation, McReynolds took an adamant stand against the majority, dissenting with tremendous invective. He became famous for such laments as "the end of the Constitution," "An Alien influence has prevailed," and "As for the Constitution, it does not seem too much to say that it is gone. Shame and humiliation are upon us now."[19]

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18 Samuel Eliot Morison, Henry Steele Commager, and William E. Leuchtenburg, *The Growth of the American Republic* (6th ed., 2 vols.; New York: Oxford University Press, 1969), II, 512.

19 Acheson, *Morning*, pp. 73-74. The following is a list of McReynolds dissents in cases involving New Deal legislation.

In 1935, in opposing the majority decision in the gold clause cases (Norman v. Baltimore & Ohio R. R. Co., 294 U.S. 240; Nortz v. U.S., 294 U.S. 317; Perry v. U.S., 294 U.S. 330), which held that gold payments of private bonds could not be enforced, Justice McReynolds denounced the majority opinion of the court as a "repudiation of national obligations" and declared that the Constitution "is gone."

In 1936, in Ashwander et al. v. Tennessee Valley Authority et al. (297 U.S. 288), McReynolds was the lone dissenter. He refused to join the rest of the court in upholding the act in a suit over a contract for energy generated at Wilson Dam, but which did not test the act on broad grounds. McReynolds emphatically declared the entire TVA project unconstitutional.

In 1937, he wrote the dissenting opinion in the famous labor cases (National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1; National Labor Relations Board v. Fruehauf Trailer Co., 301 U.S. 49; National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 301 U.S. 58). The majority decisions held that the National Labor Relations (Wagner) Act was constitutional. In 1937 he again dissented from three major decisions upholding the Social Security Act (Helvering, Commissioner of Internal Revenue et al. v. Davis, 301 U.S. 619).

In 1938, Justice McReynolds dissented without opinion from a 6-1 decision (Electric Bond & Share Co. et al. v. Securities and Exchange Commission et al., 303 U.S. 419.) The majority decision held constitutional the sections of the Public Utility Holding Company Act requiring utility holding corporations to register with the SEC or lose the privileges of the mails.

McReynolds also dissented in 1939 from a 5-2 decision (Hague, Mayor, et al. v. Committee for Industrial Organization et al., 307 U.S. 496). In that case it was held that Mayor Frank Hague of Jersey City had violated the constitutional rights of citizens in refusing to permit CIO representatives to hold meetings in Jersey City.

In 1940, McReynolds alone opposed the court's dismissal of a group of seven "Little Steel" corporations against the determination by Secretary of Labor Frances Perkins of minimum wages for steel contracts under the Walsh-Healey Act (Perkins v. Lukens Steel Co., 310 U.S. 113). Again in 1940 he dissented alone in Sunshine Anthracite Coal Co. v. Adkins, Collector of Internal Revenue, 310 U.S. 381 and denied the constitutionality of the bituminous coal act. His famous one line notation held that the new law was "Beyond any power granted to Congress." In another dissenting opinion in 1940, Justice McReynolds opposed the Securities and Exchange Commission's participation in a financial adjustment.

His dissents continued throughout 1940. In an interpretation of the Chandler Act, he denied that prorating of oil by the Texas Railroad Commission for the east Texas oil field was constitutional. He also disagreed that midwest oil men had conspired to violate the Sherman Act. McReynolds also maintained during this time that once it was agreed that the anti-trust act did not except labor unions, the court had no option but to apply the Sherman Act in conformity with all its provisions.

McReynolds' final dissenting opinion was given in January, 1941. In that case, the court held the federal government paramount in its power over aliens and declared a Pennsylvania alien registration law illegal. McReynolds' objection stated that there was nothing in the federal act to show that state registration laws should be barred. See *The National Cyclopaedia*, XXXIII, 2. For copies of some of McReynolds' opinions see "James C. McReynolds: Representative Opinions," Leon Friedman & Fred L. Israel, eds., *The Justices of the United States Supreme Court, 1789-1969: Their Lives and Major Opinions* (4 vols.; New York and London: Chelsea House Publishers in association with R. R. Bowker Company, 1969), III, 2034-2040.

James Clark McReynolds

Todd County Standard

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When Roosevelt decided to move against the Court with his famous "court-packing" bill of 1937, he was delighted that the plan Attorney General Homer Cummings finally hit upon was based upon a recommendation made in 1913, although in a different form, by none other than McReynolds while he was serving as U.S. Attorney General under Wilson.[20] Roosevelt's plan, however, did not meet with the general approval of the majority of the people but the threat of it evidently had its influence on the court's "nine old men," and from 1937 on more court decisions were favorable to New Deal legislation.[21] As one commentator of the time quipped, "A switch in time saved nine," but Justice McReynolds never changed in his attitudes toward the New Deal. After 1937, when it became evident that he was doomed to be a member of the minority in Court decisions regarding the New Deal, a newspaperman reported his behavior to one of the national legislators as colorful and unique:

> Old McReynolds was sore as hell, speaking like he seldom speaks, very loud, gyrating like you Congressmen and Senators do on the floor, and poking his pencil angrily at the crowd as he shouted his opinion, without reading it, and his speech was a good deal different from the written one.[22]

Perhaps Dean Acheson has made the most succinct evaluation of McReynolds's judicial career. Despite his friendship with McReynolds, he was also critical of him. He noted that:

> Justice McReynolds was woefully miscast on the Supreme Court. He acquired a reputation from his deficiencies and became a figure with which law professors frightened their students. Abilities and talents were obscured which might have brought him substantial distinction and real regard in a less exalted position.[23]

That was not the opinion of Charles Evans Hughes, however. In announcing Justice McReynolds' retirement, the Chief Justice

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20 Leuchtenburg, *Roosevelt*, p. 232. The famous "court-packing plan" was outlined by Roosevelt at an extraordinary meeting of cabinet members and congressional leaders on February 5, 1937. For every Supreme Court justice who failed to quit the bench within six months after reaching seventy, the President would be empowered to appoint a new justice up to a total of six. In the message to Congress which followed this meeting, Roosevelt talked much about judicial efficiency, congestion in the courts, the need for new blood, and the problem of injunctions. The President's bill also involved new appointments at the federal district and circuit court levels, but the crux of the proposal was that Roosevelt was asking for the power to appoint six new justices of the Supreme Court, increasing its number from nine to fifteen, in order to enable him to outflank the conservative members who had declared so many New Deal measures unconstitutional. James McGregor Burns, *Roosevelt: The Lion and the Fox* (New York: Harcourt, Brace & World, Inc., 1956), pp. 293-94.

21 Leuchtenburg, *Roosevelt*, pp. 232-36.

22 *Ibid.*, p. 236.

23 Acheson, *Morning*, pp. 75-76.

made the following evaluation of his contributions to American jurisprudence:

> 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.[24]

In late January, 1941, it was reported that Justice McReynolds was planning to retire from the Supreme Court at the age of seventy-eight, and he was welcomed back to Todd County by one of the most prominent newspapers in western Kentucky.[25] One of the reporters wished him a happy seventy-ninth birthday in his own home. McReynolds only lived a little longer than five years after he retired from the Supreme Court. He died in Washington, D.C., on August 24, 1946, after a stay in the Walter Reed Hospital.[26] He had been under treatment there for "an acute exacerbation of a chronic gastro-intestinal condition." On the day before he died, he developed indications of bronchopneumonia and a failing heart. His body was brought home to Elkton and lay in state at the Christian Church where he had attended services each summer when he made his annual visits. He was buried in the family cemetery in Elkton.[27] After his death, it was revealed that his beneficiaries included a "lovely" lady, the "mother of my lively triplet girl friends," the Kentucky Female Orphans School at Midway, now Midway College, and Centre College, "to promote instruction of girls in domestic affairs."[28] William E. Leuchtenburg characterized McReynolds, whose life spanned the years separating the Civil War from the Cold War, as "a man who long ago had outlived his times."[29] It is interesting to speculate on what caused McReynolds, without question a scholarly and gifted attorney, to change from a progressive of the Theodore Roosevelt era and a liberal of Woodrow Wilson's time to an arch-conservative during the New Deal period. Perhaps it was not he who changed but rather the spirit of the age, and he was either unwilling or unable to change with it. Perhaps changing from the executive branch to the judicial branch of government gave him a different perspective of the law.

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24 *National Cyclopaedia*, XXXIII, 2.
25 W. E. Daniel, "McReynolds to Return to Elkton Home," and James W. Douthat, "McReynolds to Quit Bench after Colorful Career," *Owensboro Messenger*, January 26, 1941.
26 Gardener, "Kentucky Justices," 135; also see his obituary in the *New York Times*, August 26, 1946.
27 David Burner, "James C. McReynolds," Friedman and Israel, eds., *The Justices of the United States Supreme Court*, III, 2023-2033.
28 *Dictionary of American Biography*, Supplement four, p. 538.
29 *Ibid.*

Perhaps as the liberal of yesterday, he became the conservative of today, and the reactionary of tomorrow. Perhaps he was simply not the right person at the right place at the right time. Perhaps his interpretations of the Constitution were correct and the so-called "reforms" brought about by New Deal legislation were really perversions of the law as it had originally been intended and as it had always been interpreted previously. Perhaps changing industrial and economic conditions had made new legal interpretations inevitable and Justice McReynolds simply was unable to understand or to accept these changing conditions.

Whatever was the case, James Clark McReynolds remains an interesting and notable figure from Kentucky's past. It is ironic that Justice McReynolds, undoubtedly the most irascibly conservative interpreter of the Constitution from Kentucky ever to serve on the Supreme Court, spent most of his years there as a colleague of Louis D. Brandeis. Brandeis, in contrast to McReynolds, was perhaps the most liberal justice to serve during that era. He had also been born in Kentucky and served on the Supreme Court from 1916 to 1939. Like McReynolds, he was also appointed by Wilson. Yet McReynolds despised Brandeis both as a Jew and as a liberal. And so Kentucky provided the Supreme Court with two justices in the 20th Century who were both appointed by the same president and who yet differed dramatically in temperament and judicial philosophy.