A really rotten judge: James Clark McReynolds

By Geoffrey Watson SC

Justice James Clark McReynolds must have been the most vile character to serve on the United States Supreme Court during the twentieth century, perhaps ever.

In 1939, while McReynolds was still sitting on the Supreme Court, *Time Magazine* described him as 'intolerably rude, anti-Semitic, savagely sarcastic, incredibly reactionary, Puritanical, prejudiced'. His fellow judges held similarly strong views. Justice Oliver Wendell Holmes Jr served alongside McReynolds for 18 years and described him as 'a savage, with all the irrational impulses of a savage'. Justice Louis Brandeis described him as 'an infantile moron'. Chief Justice Taft described him as 'selfish to the last degree … fuller of prejudice than any man I have ever known'. Justice Bill Douglas (a pretty nasty piece of work himself) invented a card game, which he named 'Son of a Bitch' after McReynolds. The British political economist Harold Laski said that the existence of 'McReynolds and the theory of a beneficent deity are incompatible'. While Laski may have gone too far, the other opinions are supportable.

McReynolds was a Southerner, born in 1862 in Kentucky. He was raised in a straight-laced Protestant household – no smoking, drinking or swearing. His autocratic father, a doctor, was locally known as 'the Pope', because he believed himself infallible. McReynolds graduated in 1882 as valedictorian in science from Vanderbilt University, Tennessee, and after only a further 14 months study, from the University of Virginia Law School in 1884.

For a short period McReynolds worked for Senator Jackson of Tennessee, and then spent a few years in private practice in Nashville during which time he made an unsuccessful run at politics on a right wing Democrat ticket associated with maintenance of the gold standard. In 1903 he was drafted into the Justice Department in Washington, successfully prosecuting monopolies, especially in the tobacco industry – a role which he seems to have injected a moral quality, believing monopolies 'essentially wicked'.

Apparently impressed with his work as a 'trust-buster', Woodrow Wilson appointed McReynolds attorney-general in his first government of 1913. Almost immediately the most dislikeable aspects of McReynolds's personality emerged, and his rudeness, blunt speech and arrogance disrupted the business of Cabinet, his own department and antagonised Congress. Wilson took advantage of an unfilled space on the Supreme Court bench, which had been created by the death of another Southerner, Justice Harold Lurton, to promote McReynolds out of his hair.

McReynolds sat as an associate justice of the Supreme Court for 26 years, from 1914 at the age of 56 until he retired (reluctantly) in 1941, aged 79.

McReynolds' performance as a judge was at its best undistinguished, and at worst seriously marred by racial, religious and political prejudices.

McReynolds's whole life was overwhelmed by an unusually widespread and even creative range of prejudices. He regarded smokers and smoking as 'filthy', and would not employ a smoker. In fact, he would not employ smokers, drinkers, Jews, or men who were married or engaged. He dismissed men with wristwatches, or who wore red ties, as 'effeminate'. A life-long bachelor and misogynist, McReynolds refused to employ women because 'they ultimately become possessive and wish to run the whole show'. He resented the appearance of female advocates, muttering audibly from the bench on one occasion 'I see the female is here again', and would usually leave the bench if a woman presented the argument. He especially despised women who used 'vulgar' red nail polish. He even created a new type of prejudice – McReynolds loathed pencils which left 'a weak-looking mark' because, he said, they 'are just like some people who are never quite able to accomplish what they set out to do'.

A key driver was McReynolds' deep-seated anti-Semitism. McReynolds refused to acknowledge the presence of the Jewish judges on the court. He served alongside Justice Louis Brandeis from 1916 to 1939 and Justice Benjamin Cardozo from 1932 to 1938 without acknowledging their existence. In 1922 McReynolds declined to attend a court ceremony which Brandeis would attend, writing to Chief Justice Taft 'As you know, I am not always to be found when there is a Hebrew abroad'. There is no photograph of the Supreme Court bench for 1924 because seniority would have required McReynolds to sit next to Brandeis, which McReynolds refused to do. During the swearing in of Cardozo in 1932 McReynolds sat, but read a newspaper during the proceedings, muttering audibly 'Another one'. McReynolds marked the appointment of Felix Frankfurter with 'My God, another Jew on the Court', and did not take his place at Frankfurter's robing ceremony. At one gathering of the members of the Supreme Court, McReynolds said aloud, in the hearing of Brandeis and Cardozo, that the only way to secure a federal appointment 'is to be the son of crook, a Jew, or both'. This would have been designed particularly to hurt Cardozo, whose father had stood down as a judge to avoid impeachment over a political corruption scandal. He could be petty – McReynolds declined to sign the court's customary valedictory letters on the retirements of Cardozo and Brandeis, and did not take his place on the bench during a ceremony to mark Cardozo's death in 1938.

The anti-Semitism interfered with McReynolds' judicial work. He refused to join in a judgment written by a Jewish judge even when he agreed with reasons, preferring to file a separate note agreeing with the orders. When McReynolds wrote a decision of his own, some have suggested that it would be prepared so to avoid favourable citation of any precedent decided by a Jewish judge from any jurisdiction.

McReynolds' prejudice against blacks was just as bad or worse.

He commonly, publicly, used the words 'nigger' and 'darky'. When McReynolds defended himself against an allegation of racism he demonstrated a disarming lack of insight by saying that he set out to protect 'the poorest darky in the Georgia backwoods as well as the man of wealth in a mansion on Fifth Avenue'. If he had to send a letter addressed to a black man, he insisted the word 'colored' be placed after the name, because this, he said, would assist the mailman.

It was in this corner of his judicial work where McReynolds' prejudices were most obvious. It seems that there is only one occasion in 26 years on the Supreme Court that McReynolds accepted an argument which would have resulted in an outcome favourable to a black litigant. This result cannot be supported by an innocent interpretation. On issues involving whites, McReynolds was supportive of civil liberties: *Carroll v United States* 267 US 132 (1925), *Casey v United States* 276 US 413 (1928); and freedom of speech: *Farrington v Tokushiga* 273 US 284 (1927), *Meyer v Nebraska* 262 US 390 (1923); and the education of white children: *Pierce v Society of Sisters* 268 US 510 (1924). But comparable rights did not accrue to the benefit of blacks. In this respect McReynolds often found himself in dissent, often in lone dissent. Examples demonstrate his perversity.

In *Aldridge v United States* 283 US 308 (1931), McReynolds dissented alone, unable to accept that race prejudice against a black accused – 'whatever that may be' – on the part of a juror in a murder trial warranted a review of the case. It is hard to imagine that McReynolds did not know what race prejudice was. In the appalling 'Scottsboro Case' – *Powell v Alabama* 287 US 45 (1932) – nine young, unemployed, illiterate black men were convicted of rape in a string of one day trials in Alabama in which they were unrepresented. The majority of the Supreme Court found the 'due process' clause as the basis for the right to the aid of counsel, but McReynolds dissented, unable to see that the constitutional question of due process arose. In *Moore v Dempsey* 261 US 86 (1923) five black men were convicted of the murder of a white man following a 45 minute trial during which their counsel never spoke to them, and while a large crowd audibly cried for their conviction outside the courtroom. The jury, from which any black man had improperly been excluded, brought in a verdict of guilty in five minutes, and death sentences were passed. The majority of the Supreme Court, not surprisingly, found the accused to have been denied due process, but McReynolds dissented, praising the role of counsel, although he noted that 'the trial was unusually short'. McReynolds found that the verdict could not be successfully impeached by affidavits sworn by the accused, whom he described as 'ignorant men whose lives were at stake' and thus, apparently, unreliable witnesses. In *Nixon v Condon* 286 US 73 (1923) he dissented upholding the validity of a Texas law denying franchise to black voters in a Democratic primary election on the basis of skin colour, because this was a private matter for the Democratic Party. In *Missouri ex rel; Gaines v Canada* 305 US 337 (1938) he dissented alone when upholding the University of Missouri's decision to deny admission to a black law student because mixing colours would 'damnify both races' – and, in doing so, questioned the applicant's sincerity in making the application, even although this was not in issue.

The US Supreme Court, 1930. Standing L to R: Justice Harlan F Stone, Justice George Sutherland, Justice Pierce Butler, Justice Owen Roberts. Seated, L to R: Justice James McReynolds, Justice Oliver Wendell Holmes J, Chief Justice Charles Evans Hughes, Justice Willis Van Devanter, Justice Louis Brandeis. Photo: Getty Images.

It was during argument in *Gaines v Canada* that McReynolds committed his most open declaration of hostility. While the distinguished lawyer and Harvard professor, Charles Hamilton Houston presented the applicant's argument, McReynolds twisted his chair away to face the curtain behind the bench. Houston – need it be said – was black.

There are more examples of his prejudices, and I do not wish to multiply them unnecessarily – except to refer to two, which now seem almost amusing. McReynolds despised Germans.

In *Berger v United States* 255 US 22 (1921) three defendants of German heritage were accused of espionage. The trial judge described the accused as having 'hearts reeking of disloyalty'. In a suit to have the trial judge disqualified McReynolds dissented alone, finding the trial judge did not fall into error in respect of dealing with (what McReynolds described as) 'German malevolents … who, unhappily had obtained citizenship here', because the trial judge's conduct only disclosed what was 'a deep detestation for all persons of German extraction' – McReynolds's point was that prejudice to a race as a whole could not constitute judicial bias in an individual case. This would be of limited comfort to the three Germans on trial. The second example is a rare case of McReynolds' enlightenment. In *Meyer v Nebraska* 262 US 390 (1923) he was able to rise above his prejudices to hold 'Mere knowledge of the German language cannot reasonably be regarded as harmful'. Many Germans would agree.

McReynolds's prejudices in political matters were equally ample. His social politics were conservative, and his economic politics right-wing, probably *laissez faire*. He came to deeply resent the politics of the New Deal. McReynolds was one of 'the Four Horsemen' – the conservative bloc of judges who consistently voted against the validity of New Deal measures. Their story is available elsewhere; it presently suffices to say that McReynolds voted against New Deal measures on every occasion and more often than any other judge. He has been described as the 'loudest, most cantankerous, sarcastic, aggressive, intemperate and reactionary' of the Four Horsemen.

McReynolds detested Roosevelt personally, describing him in private correspondence as 'utterly incompetent', 'a fool', 'a megalomaniac' and 'bad through and through'. He also suggested one New Deal programme was 'evidence of his mental infirmity and lack of stability'. At one dinner when Roosevelt entered the room and all guests stood McReynolds remained seated and (in a familiar gesture), turned his back on the president. From about 1937 he refused to attend White House receptions.

The best example of the kind of trenchant terms in which McReynolds expressed himself comes from the *Gold Clause Cases*: *Norman v Baltimore & Ohio Railroad Co* 294 US 240 (1935) which involved a test of the constitutional validity of a decision taking America off the gold standard. The argument ran that the measure denied due process by undermining contractual 'gold clauses' which provided that debts could be paid or claimed alternatively with paper money or gold. The issue was of genuine legal, political and economic consequence, and the result critical to the success of the New Deal.

By a majority of 5 to 4, the Supreme Court declared the legislation valid, the dissenters predictably comprising the Four Horsemen. McReynolds wrote the decision for the dissenters – in this instance giving real life and depth to the 'due process' clause. In accordance with the practice of the day, decisions were read from the bench, and McReynolds seems to have departed from the written text, using words so intemperate that the oral judgment was omitted from the law reports. *The Wall Street Journal*, however, recorded and reported the oral judgment. It is a cracker.

McReynolds compared the government with Nero, and described the legislation as a 'repudiation of national obligations' and 'abhorrent'. He claimed protections against 'arbitrary action have been swept away'. McReynolds feigned reticence – he said the government's actions were 'not a thing which I like to talk about, but there are some responsibilities which attach to a position upon this bench which one may not ignore'. Overcoming his reticence, McReynolds described the government's 'intent, I almost said wickedness' was to 'destroy private obligations' and declaimed 'The Constitution … that has meant so much, is gone … Horrible dishonesty! … Shame and humiliation are upon us'. He displayed little knowledge of the excesses of the Caesars when he said of the government 'This is Nero at his worst'.

Speaking generally, McReynolds's judicial work was of a low standard. His judgments were short – not necessarily a bad thing – but short because they were conclusory, unencumbered by reasoning or reference to authorities. He seems to have undertaken little or no research or reflection. His associate during the October 1936 term, John Frush Knox, kept a memoir in which Knox recounts the circumstances of the preparation and delivery in an admiralty case – *P J Carlin Construction Co v Heaney* 299 US 41 (1936). Following the oral argument Chief Justice Charles Evan Hughes allocated the decision to be written by McReynolds. According to Knox all that preparation of the judgment involved was McReynolds re-reading the written submissions for about an hour; slowly dictating his draft judgment to Knox for about 25 minutes; and revising the draft judgment once only before submitting it for delivery. Less than two hours work. Maybe this was a simple case, but in Knox's experience this kind of approach was typical.

Perhaps as a consequence, McReynolds was only allocated the task of writing judgments in routine and insignificant cases. The other judges appear to have held a poor opinion as to the quality of his work. Justice Brandeis wrote to Felix Frankfurter (then still at Harvard) complaining that McReynolds's

judgments were 'simply dreadful'. Justice Harlan Fiske Stone said 'McReynolds has set the law of admiralty back a full century'. His output was small. Even then, according to Knox, he appeared to resent being allocated the task of writing judgments. Chief Justice Taft complained that McReynolds was 'always trying to escape work'. Knox recounts in his memoir that McReynolds felt very strongly on an issue of the extent of presidential powers in foreign affairs in *United States v Curtis-Wright* 299 US 304 (1936) and was determined as the sole dissenter to write a detailed dissent. Although McReynolds's workload allowed him plenty of time to do so, when the judgment was due he took off on a duck hunting party. No judgment was prepared: he simply filed a one sentence unreasoned dissent from the orders.

To top it off, McReynolds attended to all of this with appalling rudeness. This extended to his judicial brethren (even non-Jewish brethren). McReynolds refused to acknowledge the existence of Justice John Clarke – because Clarke was 'too stupid'. Clarke's retirement letter to Taft made it clear that McReynolds's harassment had adversely affected his strength and health. He was especially cruel to justices Mahlon Pitney and Harlan Stone. His rudeness to counsel was famous. He heckled Felix Frankfurter during his presentation of oral argument in two cases in 1917. He might stand and leave the bench if unsatisfied with argument, or just turn his back on counsel. Knox's memoir of his time with McReynolds makes chilling reading in respect of the treatment of his legal and court officers, and especially toward his black domestic staff. Meanwhile, McReynolds entertained within his own class with a high reputation for 'Southern manners and gentility', and he was popular in a social set comprising mainly wealthy Washington widows.

McReynolds tried to hold on to his position, determined, he said, not to retire while the 'cripple' remained in the White House. After Roosevelt won the 1940 election, McReynolds gave in. He retired in 1941 aged 79 years. Perhaps as payback, the other judges failed to send him the customary valedictory letter. He lived in Washington until his death in 1946.

The esteem in which McReynolds was held by his colleagues might be measured by the fact that (contrary to usual practice) no Supreme Court judge, past or present, attended his funeral. Compare that with the six judges who attended the 1952 funeral of Harry Parker – a black court officer, and who, for many years, had suffered while he worked as a messenger for James Clark McReynolds.

Further reading

Lawrence, *Biased justice: James C McReynolds of the Supreme Court of the United States*, 30(3) *Journal of Supreme Court History* 244 – this is an excellent article, deeply researched and supported by detailed references.

Knox, *The Forgotten Memoir of John Knox*, 2002 – this is a marvellous book, set during the controversial 1936 term: the politics, the rudeness of McReynolds, the naïveté combine to make a great read.