The Honorable
Sherman Minton

Presentation of the Portrait

of

Justice Sherman Minton

Proceedings had on the Fifteenth Day of June
One Thousand Nine Hundred and Fifty-one

Before the

United States Court of Appeals
for the Seventh Circuit

Hon. Sherman Minton

Painted by Wayman Adams

Resolution of The Bar Association

of the

United States Court of Appeals, Seventh Circuit,

Submitted at Presentation of Portrait of

Mr. Justice Sherman Minton

JUNE 15, 1951.

By Telford B. Orbison.

MAY IT PLEASE THE COURT:

I appear for The Bar Association of the United States Court of Appeals, Seventh Circuit, and its Committee on Portraits, to present a resolution which we respectfully request be spread upon the records of this Court. It is as follows:

"WHEREAS, the Honorable Sherman Minton resigned as a member of this Court on the 12th day of October, 1949, to accept a deserved promotion to the Supreme Court of the United States—the first member of this Court so to be honored, and

WHEREAS, it is appropriate for the Bar of this Court to acknowledge its appreciation of the more than eight years of honorable and distinguished service Mr. Justice Minton rendered while a member of this

Court, and to commemorate the honor that has come to him, to this Court and the Bar thereof:

NOW, THEREFORE, BE IT RESOLVED, that The Bar Association of the United States Court of Appeals, Seventh Circuit, present to this Court a portrait of Mr. Justice Sherman Minton and respectfully request that it be kept here so that all who serve or visit here may be reminded that Mr. Justice Minton was a member of this Bar and a member of this Court, and that during such membership he carried on the great traditions of this Bar and Court with such industry, intellectual honesty, high sense of justice and exceptional devotion to duty that he won the admiration and respect of the Bar and Bench of this Circuit and merited advancement to the highest Court of this land."

THE BAR ASSOCIATION OF THE UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT,

By: TELFORD B. ORBISON,
Chairman.

(At this point the portrait of Mr. Justice Minton was unveiled.)

Our Bar Association, in making this presentation, is continuing the custom of placing in this Court House, portraits of those who have served upon this Bench. In fact, one of the purposes of our Association is to perpetuate this custom because we know full well the deep significance of, and the many benefits to be derived from, this long and honorable practice.

It is fitting that we honor those who have sat on

this Bench in this fashion because, as has been well said, "painting is the art of expressing all the conceptions of the soul." Portraiture is one of the highest branches of art in which only the greatest artists have excelled. Nothing is more difficult than to obtain the expression of intelligent life. Profoundly personal characteristics must be profoundly treated if unison between the visible form and the hidden spirit is to be achieved, and the portrait is to glow and speak to us, though silent.

It is also fitting that the portrait of Indiana's most distinguished jurist and the man whom we honor today should have been painted by Indiana's most distinguished painter—Wayman Adams. Born in Muncie, Indiana, in 1883, Mr. Adams is widely known as one of the great painters of portraits of eminent men. He is a member of the American National Academy, Society of Portrait Painters, Allied Artists Association, National Arts Club, and many other art organizations. Beginning in 1914 when he won the Procter portrait prize of the National Academy of Design and continuing down to the present, he has a long series of awards and prizes to his credit. His portrait of Mr. Justice Minton justifies his reputation as one of America's outstanding portrait painters. Not only is it an excellent likeness but also, and more important, it reveals his strength of character—his courage, simplicity, warmth and sympathetic nature. In short, it is a true work of art.

It is interesting to note that the portraits of only two judges have been presented to this Court while they were living—that of Judge Albert B. Anderson and that of Judge George T. Page. In each instance,

the presentation was made shortly after the Judge's retirement. Mr. Justice Minton is the third living judge whose portrait will be given to the Court, and the first whose elevation to the Supreme Court of the United States we are privileged thus to honor.

Two distinguished members of our Association will pay tribute to this man whom we honor today. They are Mr. Kurt F. Pantzer, of the Indianapolis Bar, who will speak on the subject "Sherman Minton, Son of Indiana", and Mr. Casper W. Ooms, of the Chicago Bar, whose subject will be "Honorable Sherman Minton, Judge".

Sherman Minton,
Son of Indiana

Address of Kurt F. Pantzer.

MEMBERS OF THE BENCH AND BAR OF THE
SEVENTH CIRCUIT, AND FRIENDS OF
MR. JUSTICE MINTON:

Careers of great members of our profession are constituted one-third of Heredity, one-third of Industry, and one-third of Destiny. Those three stars, if we have the good fortune to be born under them, can vouchsafe magnificent achievement.

It is only too tragic that the second star, Industry, is so commonly outshone by the other two—Heredity and Destiny. The constant light of Industry is further beclouded and diminished by the all-too-frequent lack of opportunity to exercise the particular capacity or capacities each individual lawyer brings to his task. There are the capacities of the student and teacher, the legal philosopher, the trial advocate, the appellate advocate, the negotiator, the draftsman, the expert at research and legal planning, the administrator, the legislator, and the judge. Unfortunately, if a lawyer is endowed with several capacities, the opportunity to develop one, generally means lack of opportunity to develop the others. Law is, indeed, a jealous mistress.

The career of the man whose portrait we present to this Court today is a typical example of the interplay of Heredity, Industry, and Destiny—of gifts, perseverance, and luck, both good and bad—in fashioning a great legal career. Because he is and always will be one of the people, and because that half of his biography assigned to this presentation is "Sherman Minton, Son of Indiana," he will be referred to as he was in Indiana before his elevation to this Bench—as Sherman, as Shay, as Minton, and as Senator.

Heredity did not bestow upon Sherman Minton early advantages of wealth and position. He was born in Georgetown, Indiana, a hamlet eight miles distant from New Albany, on October 20, 1890, the son of John Evan and Emma Livers Minton. His father, an employee of the Southern Railroad, found it a struggle to rear and educate four children, of whom the eldest was a girl and the other three boys; and that struggle became the more difficult when in 1900 his wife died, Sherman being then only nine years old.

He received his famous nickname "Shay" when his younger brother, Roscoe, pronounced "Sherman" as "Shayman," which forthwith was shortened to "Shay."

But although Minton's heritage included little of the goods of this world, he derived from his parents, both of whom were of early Indiana Pioneer stock, ambition, high character, rugged determination, and love of the conflict and conquest that is life; and in the four-room frame cottage, in which he was born and reared, he first felt the mighty force of his Heredity.

Industry began to play its part in Minton's life in the one-room country school at Georgetown, where he completed his grade school education in the spring of 1904. Thereafter, his father took the motherless children to Texas in the spring of 1905, where Shay worked for Swift and Company, packers, until the fall of 1906. He was on the production line trimming neckbones, cutting beef and trucking. The money he earned helped support the family. Together with earnings made at many odd jobs, it also helped send him to High School when he returned to Georgetown in the fall of 1906. He attended the Township High School for its all-too-short six-months first-year course. Then he transferred to New Albany High School, where he was graduated in 1910. He played on the football, baseball and track teams; but it was perhaps more indicative of his Heredity and Industry that he stood at the top of his class in his studies, and that he helped organize, and was the Captain of, the first Debating Team which had ever represented the School.

It was doubtless his connection with debating, and a dislike of mathematics (which latter disaffection was to continue throughout life) that helped determine the profession he was to follow. Previous to his Junior year, his ambition was to be a Civil Engineer. However, his keen interest in debate and oratory at this time turned him to law.

Upon the completion of his High School career, Minton spent another year and a half in Texas with his former employer, Swift and Company. This time, he was engaged as a traveling salesman. With the

money thus earned, he found he had sufficient funds for entering Indiana University in the fall of 1911. He kept himself in college by waiting table and firing the furnace at his fraternity—the Phi Delta Theta House—and doing other chores.

While in college, he played fullback and end on the Varsity Football Team, and center field on the Varsity Baseball Team. Six feet tall and 175 pounds in weight, he was a star in both sports. In many a baseball game, his arm cut down runners at the plate by rifling "strikes" from the outfield to the plate, or by means of a relay, famous throughout Big Ten Competition—Minton to Schlemmer, to Johnson. But the activity, which received his greatest interest, was still debating. He became a member of the Varsity Debating Team his Freshman year, and further developed a gift which was as eloquent as it was natural.

In the curriculum of today, it requires seven years of study to acquire a legal education. In those days, it was possible to combine the academic course with the law course in five years, two of which were devoted primarily to undergraduate work, and the latter three of which were devoted to law. It is significant, because in a way it foreshadows the emphasis which his later career was to place upon his activities as protagonist and debater, as opposed to his activities as a judge, that when he had to make the choice as to whether he should devote his time to studies, to football, or to debating, he first cut off debating; and then football. Studies, however, were given full-speed-ahead throughout his course. It is also significant

that he became, in his Junior year, one of the series of future members of our profession, who held the office of President of the Indiana Union. All members of the Bar of this Court, they were, during his years in college,

1912—Paul V. McNutt
1913—Hubert Hickam
1914—Sherman Minton
1915—Albert Stump.

His activities in the Union developed his interest in politics and his ability as an administrator.

By dint of much Industry at Indiana University, he managed to complete his five-year course in four years, being graduated in 1915 with the degree of Bachelor of Laws, *summa cum laude,* at the head of his class. He had a straight "A" record, except for one course—Negotiable Instruments—in which he received a "B." He was given the William Jennings Bryan award as the graduate showing the greatest proficiency in Public Speaking. This prize, plus the only $500 scholarship which the American Association of Law Schools had it within its power to give, paved the way for a year at the Yale Law School.

Minton studied at Yale in the year when Dean Rogers was being succeeded by Dean Swann—both subsequently members of the bench of the United States Court of Appeals for the Second Circuit. He took Constitutional Law under William Howard Taft, who is reported to have stated that Minton's examination paper in that course was the finest he had ever received from one of his students. Minton was graduated *cum laude* from Yale, receiving his master's de-

gree. Once during that eventful year, Professor Taft and he engaged in a heated classroom discussion respecting a certain statute. Finally, Taft interrupted Minton with this prophetic challenge—"I'm afraid, Mr. Minton, that if you don't like the way this law has been interpreted, you will have to get on the Supreme Court and change it." Again he received the top prize open to a student studying for a master's degree—the Wayland Club Prize for Public Speaking.

After graduation from Yale, Minton was manager for a chautauqua circuit in the Middle West with Bo McMillan, who later became the famous football coach. With the $300 so earned, he opened a law office in New Albany, Indiana, in the fall of 1916, and practiced there until May 1917.

At that time, he entered the First Officers' Training Camp at Fort Benjamin Harrison, Indiana. Again, his dislike for the mathematical side of Artillery Tactics caused him to devote himself to Infantry work and he emerged from the camp with the rank of Captain.

During the summer, Minton married Gertrude Gurtz, who had been his sweetheart in High School at New Albany, Indiana. She brought to the Minton family tree its first admixture of European blood. Her great grandfather, a native of Germany, had come to this country in 1848. She owes her beauty and gracious charm to a French grandmother. In the language which Sir Walter Scott used of the *Lady of the Lake,* it may well be said of her,

> And ne'er did Grecian chisel trace
> A Nymph, a Naiad, or a Grace
> Of finer form, or lovelier face.

She has been the partner of his career throughout. In the course of the years, she bore him three children—Sherman, a graduate of the Medical School of Indiana University, and now a lecturer in Bacteriology at that institution; Mary Ann Callanan, who now resides with her husband, a dentist, in Washington, D. C.; and John Evan, also a graduate of Indiana University, presently serving with the United States Navy.

But to go back to World War I, after Minton was commissioned a Captain of Infantry, he was stationed at Camp Zachary Taylor, Kentucky, and Chillicothe, Ohio, while serving with the 84th Division. Because of his outstanding ability, he was sent to Europe in July 1918 as a member of the Advance Element of that Division. When it was split up for purposes of replacement, he was assigned to the 33rd Division as a member of its Headquarters Staff, and served with distinction north of Verdun during the last month of the War. In the Spring of 1919, he again accepted an opportunity for study in some of the more difficult elements of our profession—a course in International Law, Roman Law, Civil Law, and Jurisprudence in the Faculté de Droit at the Sorbonne in Paris.

When he returned from France, he announced his candidacy for Congress in the Democratic primary of 1920 from the old Third Indiana District. He was convinced that his future lay in development of his heredity along forensic and adversary lines. And then for the first time Destiny took a hand in his career. He was defeated!

Undaunted, he reopened his law office in New Al-

bany, and practiced alone until 1922. In that year, he had occasion to try a damage suit for a client against the firm of Stotsenburg and Weathers, the members of which had written their names high in the annals of Indiana law and politics. The story goes he won such a large verdict, that the firm of Stotsenburg, Weathers and Minton was formed the next day.

Minton continued his membership in this partnership until 1925, when he went to Miami, Florida, during the days of the boom, to join the firm of Shutts and Bowen. But finance and allied activities were not among his predilections, and in 1928 he again returned to his native state to rejoin the Stotsenburg firm.

Then Destiny's influence was exerted a second time. Again, he was defeated for the Democratic nomination for Congress.

Thereafter, things happened more rapidly. The hour of portent was drawing nigh. Always a loyal member of the American Legion, Minton became head of the Veterans Committee, which backed Paul V. McNutt for Governor of Indiana. When the latter was elected in the 1932 Roosevelt landslide, Minton was appointed Public Counsellor for the Public Service Commission of Indiana, the position having been created in order to give his capacities at advocacy and oratory their full sway. He rendered an excellent account of his stewardship, slashing millions of dollars from the utility rates of that day. His record as a tribune of the people made it natural for him again to submit his candidacy for the Congress—this

time, however, for the United States Senate. For some reason, Destiny took no notice of the contest, and he was successful both in the convention and in the election. He entered the Senate in 1935 with Harry S. Truman, and the two were seatmates throughout Senator Minton's term. He was appointed Assistant Whip on the Democratic side in 1936, serving under Senator Hamilton Lewis, of Illinois; and in 1938, when the latter died, became Whip. Despite his youth and lack of seniority, his ability as a protagonist and debater made him one of the leaders of the Upper Chamber.

Forthrightness then, as in his youth, was his most exceptional quality. He felt it was the obligation of a representative of the people to take his stand publicly on all public questions. And when he did so, it was without flinching, without the mealy mouth. So when he heralded his support of the Administration proposal to add one Supreme Court Justice for each member of that Court who was over the age of 70; when he protested that that Court had set itself up as a super-legislature; when he advised the people to turn to the Congress for redress of judicial abuse of power: he did not mince his words.

Courage—complete absence of fear—was another virtue, even when its exhibition cost him position and support. His controversy, at that time, with the *Chicago Tribune,* and his sponsorship of a bill to penalize newspapers for "publishing as a fact anything known to be false," brought him many powerful enemies—a circumstance in which he gloried, for he believed his cause was just.

Senator Minton, the protagonist, liked to fight things out—but Senator Minton, the lawyer, also liked to think things out. It was not unusual for him to change his mind; and when he changed it, he was not ashamed to make public announcement of the change. For Senator Minton, the lawyer, had as a youth been imbued with sportsmanship and fairness, and throughout his career he cultivated an equal and understanding mind.

He had not been long in the Senate when it became his mission to insure those overwhelming majorities by which the New Deal established its various legislative mandates. Eloquent and forceful in debate, gifted as well in satire as in humor, he carried the day on many an eventful issue. The administration considered him its Field Marshal. The rewards he might expect to receive were legion.

And then Destiny intervened for the third time. When he ran for reelection in 1940, he was defeated. His ability as an advocate was pre-empted by President Roosevelt, who immediately made him his Administrative Assistant with the special mission of liaison between the White House and both chambers of the Congress. Roosevelt said, "He will be my eyes and ears."

But this activity was not to last for long. When, on April 27, 1941, Judge Walter E. Treanor, of this Court, died, Destiny, which had all these years regarded Senator Minton's capacities as a student, as an administrator, and as a top-notch jurist, to be his paramount capacities, determined that President Roosevelt should nominate him for the vacancy thus created. On May 7, 1941, the recommendation was

sent to the Senate, and he took his oath of office as a member of this Court on the 29th day of the same month.

And there upon the threshold of his career as a Federal Jurist, the prescribed compass of this talk, namely, *Sherman Minton, Son of Indiana,* forces me to leave Circuit Judge Minton. Destiny had delivered him at these portals. The amazing capacities, which were his by Heritage and Industry, were to develop what his impress would be upon our profession. Destiny had decided against the protagonist—for the jurist.

But we of the State of Indiana can never forget the impress he left on us when he was just a plain Hoosier, when he was happy to be our champion in the lists of controversy. In the lineaments which ten years later our great Hoosier painter, Wayman Adams, found confronting him, when he painted the portrait of Mr. Justice Sherman Minton, there is present the record of his Indiana career—ambition, high character, rugged determination, love of the conflict and conquest that is life, forthrightness, manly strength, fairness, and intellectual achievement.

Sherman Minton, Son of Indiana, is every inch a man!

Honorable
Sherman Minton, Judge

Address of Casper W. Ooms.

May It Please the Court:

"When I read the book, the biography famous,
And is this, then, (said I), what the author calls a man's life?

* * *

Only a few hints—a few diffused, faint clues and indirections,

I seek, for my own use, to trace out here."*

* Walt Whitman, When I Read the Book (1867).

But a few days more than ten years ago, Honorable Sherman Minton became a member of this Court. In the eight years that followed he delivered more than 200 of its opinions. The range and variety of subject matter of those opinions, even in this specialized Court, is but a fragmentary reflection of the complex social organization into which mankind has grown.

There was a shadowy forecast of this possibility written into The Federalist (No. 78) by Alexander Hamilton. In his plea to the people of the State of New York, for support of the judiciary provision of the proposed Federal Constitution, he argued for the life tenancy of federal judges:

> "To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived from the variety of controversies which grow out of the folly and wickedness of mankind, that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge."[1]

---

[1] The Federalist, Sesquicentennial Edition, National Home Library Foundation, Washington, D. C., pp. 510-511.

Had Alexander Hamilton foreseen the growth of this government and the novelties of administrative law that would attend it, he might have phrased his text in even more exacting terms. Whatever formula he might have contrived, he would doubtless have been satisfied by a candidate who had come to the bench with excellent legal training, a term of office as counselor to an important administrative commission, a term in that great legislative assembly, the United States Senate, during that active decade in which revolution threatened and reform throve, and a term as administrative assistant to the President in the very heart of the executive establishment in this government.

When Sherman Minton came to this Court he was possessed of all of these. Yet his service on this Court was not the first judicial function he was called upon to perform.

Years ago there was a celebrated cause in this Court which twice reached the Supreme Court of the United States and had its repercussions in many other courts in this country, in Canada, and even the House of Lords. It was known as the *Carter* case. Senator Sherman Minton sat as Chairman of the Sub-Committee of the Military Affairs Committee of the United States Senate to hear the claims of Carter that all of the courts which had dealt with his affairs, the Court-Martial of the United States, the President's review of the Court-Martial, and this Court had been corrupted and politically influenced against him. The charges were as reckless and brazen as any ever heard. Nevertheless, Senator Minton conducted the hearings as that of a dignified court, prepared to hear

patiently the most violent and extravagant claims ever uttered and to pass judgment only when the record was complete. In that hearing, to accommodate the bold claimants, his committee sat, at the Senator's suggestion, late into the night and heard to the end the fantastic charges of the late Captain Carter. The record contains no expression of impatience, only a probing question here and there, that all the facts might be before the committee.

When the record was complete it spoke for itself. The committee found it unnecessary to render any judgment in the cause.

When Sherman Minton came to this Court, there was the usual speculation as to the kind of judge he would prove to be. He was known as an advocate and as a legislator. He was known for his vigor in both roles. Only the thoughtful foresaw that the judge is not merely the projection of a man, and a good judge not necessarily the projection of the zealous advocate.

The transition from legislator to judge has probably never been more realistically described than by Judge Minton in his letter to the Committee on the Judiciary of the United States Senate when it was considering his appointment to the Supreme Court of the United States. I quote but briefly from a document that deserves a full and studied reading:

> "When I was a young man playing baseball and football I strongly supported my team. I was then a partisan. But later when I refereed games I had no team. I had no side. The same is true when I left the political arena and assumed the bench. Cases must be decided under

applicable law and upon the record as to where the right lies. I have never approached a case except to try to find the answer in the law to the question presented on the record before me."[2]

It is impossible in the few minutes we have here today to attempt any but the most cursory mention of Circuit Judge Minton's work on this bench. He came here on May 29, 1941. While here he sat in every type of case that came before this Court. His share of the burden of this Court's labor he carried throughout his term of service. His opinions are marked by their brevity, their simplicity, the orderliness in which they approach and dispose of a problem, and a lucidity that betokens great labor in the author but that lightens the labor of all who work in the field of precedents.

Any expectation of tendentiousness by those who were to observe the work of Justice Minton on this Court soon became, to use his own phrase, "an anemic suspicion." He had served as counsel of an administrative board, so he was fully aware of the fundamental philosophy of an administrative agency, born to perform the task of expert factual analysis, but never suffered to write its own law or to become a law unto itself.

His service in the legislature had given him a profound respect for the legislative enactment, and the need to dissect it with a precision that would neither thwart the legislative intent nor engraft upon it unexpressed embellishments that might appeal to the court.

---

[2] Letter of Judge Minton to Committee on the Judiciary of the United States Senate, October 1, 1949.

He knew the limits of executive power and the dangers which lurked beyond its limits, dangers of oppression where it is extended beyond its necessary reach, and dangers of its emasculation where it is reduced to a feeble echo of the legislature and the courts.

These are not merely the neat things one must say on an occasion of this kind. These are the facts that speak from every opinion of his authorship while he was here. I can refer to but a few of them, taken at random from the fifty volumes which measured his work here.

In *National Labor Relations Board* v. *Sheboygan Chair Co.*, 125 F. 2d 436, 439, the Court denied an application of the Board for enforcement of its order requiring an employer to restate a single employee with back pay. The facts disclose anything but an unfair labor practice. Judge Minton wrote:

> "(2, 3) Moegenburg was the only witness the Board had. The Board did not believe him or anyone else who testified directly in the case. It not only disregarded all the direct testimony in the case but also disregarded the trial examiner's findings and report, even though he had seen and heard all the witnesses and had made an adverse finding and observation as to the employee, Moegenburg. The Board should not discard the positive credible testimony of witnesses in favor of an inference drawn from tenuous circumstances that at best could have supported only an anemic suspicion. Such an inference does not meet the test of substantial evidence."[3]

[3] *National Labor Relations Bd.* v. *Sheboygan Chair Co.*, 125 Fed. 2d 436, 439.

Many years later during the argument in this Court of a labor case involving the Taft-Hartley Act and its requirement of affidavits of officers of labor unions concerning membership in the Communist party, he said from this bench with a prescience of what only last week has been restated by the Supreme Court in the *Dennis* case, "Communism is not only a political belief but a course of action. * * * It is common knowledge that Communists join unions to cause trouble, not to help the union, and Congress had a right to legislate against this."

One of the delights of a lawyer in working with case law is to find a simple expression of a controlling principle. Judge Minton has been the author of many of these. In the field of unfair competition his definition of secondary meaning is almost classic:

> "To acquire a secondary meaning in the minds of the buying public, an article of merchandise when shown to a prospective customer must prompt the affirmation, 'That is the article I want because I know its source,' and not the negative inquiry as to, 'Who makes that article?' In other words, the article must proclaim its identification with its source, and not simply stimulate inquiry about it."[4]

Judge Minton's deference to the statutory law has nowhere been better expressed than in his dissent in the case of *Adler* v. *Northern Hotel Co.*, in which this Court held there was federal jurisdiction for treble damage suits under the Housing and Rent Act. Judge Minton said:

"I am sorry that I cannot agree with the

[4] *Zangerle & Peterson Co.* v. *Venice Furn. Novelty Mfg. Co.*, 133 F. 2d 266, 270.

majority in this case. I have no quarrel with the general rules of statutory construction cited by the majority. It is because it seems to me the majority is not giving effect to 'every word' of the statute but seeks to ignore and treat as surplusage the very important limiting words 'competent jurisdiction' employed in the statute that I believe the wrong result has been reached.

"The statute is plain and unambiguous, and the words eliminated by the majority are purposeful and full of meaning. As I understand it, it is not the business of courts to seek conflicts or ambiguities in statutes *in order that we may rewrite a statute to our liking.* It is our business to apply the statute as written if that may be done without defeating the clearly expressed purposes of Congress contained in a perfectly unambiguous statute."[5] (Emphasis added.)

I shall not tax you with the score of Judge Minton's work upon this bench, for the records of this Court are open to all. If a judge's acceptability is to be determined by the fortunes of his opinions on further review, few would escape this invidious process. Nor has Judge Minton escaped. As a Justice of the Supreme Court, he must have looked with bewilderment at his associates when they recently reversed his opinion for this Court in the *Standard Oil* case (340 U. S. 231), in which Judge Minton had followed the earlier decision of the Supreme Court, reversing this Court's opinion, also by Judge Minton, in the *Staley* case (324 U. S. 746); even the statement of the finesse is bewildering. Whatever his bewilderment, it is widely shared.

What was forecast in Judge Minton's work upon

[5] *Adler* v. *Northern Hotel Co.*, 175 Fed. 2d 619, 622.

this Court has been completely realized by his work on the Supreme Court of the United States where he became Associate Justice on October 12, 1949. Although only two terms of that Court have passed since he was seated there, he has written his full share of the opinions of that Court, ranking with two or three other Associate Justices in the number of opinions written for the Court. His dissenting opinions have been few and his dissenting votes infrequent. The opinions he has written have been marked by the same brevity and lucidity which have characterized the opinions he wrote for this Court.

The subject matter of Associate Justice Minton's opinions has been as varied as the encyclopedic jurisdiction of that Court. Among his first ten opinions he was called upon to deal with problems on taxation, labor, immigration, criminal appellate procedure, veteran's insurance law, the law of substantive crimes, the constitutional question of search and seizure, and the difficult field of interstate commerce. The catalog could be continued. The content is more interesting.

When Associate Justice Minton was appointed to the Supreme Court, one of the legal publications, reviewing the opinions he had written for this Court in taxation, wrote:

> "Justice Minton's direct Hoosier logic is a new factor to be reckoned with on the nation's highest court."[6]

That prediction was completely fulfilled in his first opinion in the case of *Commissioner of Internal Revenue* v. *Connelly,* in which he wrote the unanimous

[6] The Tax Magazine, October 1949, pp. 873-874.

opinion for the Court (two Justices not participating) denying to a civil service employee of the Coast Guard an income tax exemption provided for compensation received "for active service as a commissioned officer" in the military or naval services. He wrote for the Court:

> "It is apparent that taxpayer had a dual status. He had a limited military status with the rank of lieutenant commander and later that of commander. He had also the status of a civil service employee, carefully so limited and with all the privileges incident to such status. He was given just enough military status to enable him effectively to carry out his duties. All considerations of an economic character pertaining to his employment by the Government were related to his civil service status.
>
> * * *
>
> "The Court of Appeals ignored the status in which taxpayer was compensated and gave effect to his military status which was provided only to facilitate the performance of his duties in wartime. Taxpayer's rank was for the purpose of getting the job done, and not for the purpose of receiving compensation.
>
> "The judgment of the Court of Appeals is Reversed."[7]

Justice Minton next wrote a labor opinion reversing both the United States Court of Appeals for the Ninth Circuit and the National Labor Relations Board in the case of *Colgate-Palmolive-Peet Co.* v. *NLRB et al.*, 338 U. S. 355. The opinion dealt with the difficult question raised under the National Labor Relations Act where a closed shop agreement re-

[7] *Commissioner* v. *Connelly*, 338 U. S. 258, 260-262.

quired the employer to discharge employees who had been expelled from the union because of their activity on behalf of a rival organization. The disposition of the case is precisely summarized in this brief passage from the opinion:

> "It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute. That policy cannot be defeated by the Board's policy, which would make an unfair labor practice out of that which is authorized by the Act. * * * Shorn of embellishment, the Board's policy makes interference and discrimination by fellow-employees an unfair labor practice of the employer. Yet the legislative history conclusively shows that Congress, by rejecting the proposed Tydings amendment to the Act, refused to word Sec. 7 so as to hamper coercion of employees by fellow-employees. The emasculation of the contract pressed for by the Board in order to achieve that which Congress refused to enact into law cannot be sustained."[8]

One of the most interesting of the decisions written by Mr. Justice Minton is that of *United States* v. *Alpers,* 338 U. S. 680, holding that obscene phonograph records were embraced by the statute prohibiting the interstate transportation of any "obscene * * * book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character." Indifferent to the emotional aspects of this question, Mr. Justice Minton laid down briefly the relationship of the Court to criminal statutes:

> "We are aware that this is a criminal statute and must be strictly construed. This means that

[8] *Colgate Co.* v. *Labor Board,* 338 U. S. 355, 363-364.

no offense may be created except by the words of Congress used in their usual and ordinary sense. There are no constructive offenses. *United States* v. *Resnick,* 299 U. S. 207, 210. The most important thing to be determined is the intent of Congress. The language of the statute may not be distorted under the guise of construction, or so limited by construction as to defeat the manifest intent of Congress.''[9]

It was inevitable that even the youngest Justice on the Supreme Court should be engaged with the problem of civil rights within his first term: In *United States* v. *Rabinowitz,* 339 U. S. 56, one of the earliest cases in which the vote of Associate Justice Minton was a decisive vote upon the Court, the Court sustained the legality of a search made during the service of a warrant of arrest. The applicable principles Mr. Justice Minton stated for the Court:

''What is a reasonable search is not to be determined by any fixed formula. The Constitution does not define what are 'unreasonable' searches and, regrettably, in our discipline we have no ready litmus-paper test. The recurring questions of the reasonableness of searches must find resolution in the facts and circumstances of each case. (Citing cases.) Reasonableness is in the first instance for the District Court to determine. We think the District Court's conclusion that here the search and seizure were reasonable should be sustained because:

* * *

''A rule of thumb requiring that a search warrant always be procured whenever practicable may be appealing from the vantage point of easy administration. But we cannot agree that this

[9] *United States* v. *Alpers,* 338 U. S. 680, 681-682, 684-685.

requirement should be crystallized into a *sine qua non* to the reasonableness of a search. * * * Some flexibility will be accorded law officers engaged in daily battle with criminals for whose restraint criminal laws are essential.''[10]

One of the interesting aspects of this case is that there is a dissenting opinion which begins with a statement of the issue in almost Minton-like simplicity:

> ''The clear-cut issue before us is this: in making a lawful arrest, may arresting officers search without a search warrant not merely the person under arrest or things under his immediate physical control, but the premises where the arrest is made, although there was ample time to secure such a warrant and no danger that the 'papers and effects' for which a search warrant could be issued would be despoiled or destroyed?''[11]

This beguiling introduction is followed by a dissenting opinion twice the length of that of the opinion for the Court.

That his consciousness of the vital problem of civil rights would not blind him to the problem of the residual rights of the public at large, so clearly stated in the *Rabinowitz* case, is also manifest in Justice Minton's dissent in *Teamsters Union* v. *Hanke,* 339 U. S. 470, 484.

> ''Because the decrees here are not directed at any abuse of picketing but at all picketing, I think to sustain them is contrary to our prior holdings, founded as they are in the doctrine that 'peace-

[10] *United States* v. *Rabinowitz,* 339 U. S. 56, 63-64, 65.

[11] *United States* v. *Rabinowitz,* 339 U. S. 56, 68.

ful picketing and truthful publicity' is protected by the constitutional guaranty of the right of free speech. *I recognize that picketing is more than speech.* That is why I think an abuse of picketing may lead to a forfeiture of the protection of free speech. Tested by the philosophy of prior decisions, no such forfeiture is justified here." (Emphasis supplied.)[12]

The orderliness which appears throughout Justice Minton's opinions is no technical formalism, but the realistic recognition that without the procedural framework of our legal system its substantial principles would be without support. Here is Justice Minton's brief statement of the doctrine:

> "Thus the case was decided not only upon what was alleged in the pleadings but upon other allegations as well, as to which no clear inkling appears in the record. Because the Court of Claims considered these additional allegations, it is urged that we should also consider them. But we cannot consider such allegations in determining the sufficiency of the cause stated. After all, pleadings and the making of a proper record have not been dispensed with. They still have a function to perform. This case points up that function. We will not review questions not clearly raised on the record."[13]

In the famous case of *Dennis* v. *U. S.*, 339 U. S. 162, 172, in which the Supreme Court held that employment by the federal government did not disqualify petit jurors in the District of Columbia, Justice Minton closed his opinion with this succinct statement:

"In this case, no more than the trial court can

12 *Teamsters Union* v. *Hanke*, 339 U. S. 470, 484.

13 *Standard-Vacuum Oil Co.* v. *United States*, 339 U. S. 157, 160.

> we without injustice take judicial notice of a miasma of fear to which Government employees are claimed to be peculiarly vulnerable—and from which other citizens are by implication immune. Vague conjecture does not convince that Government employees are so intimidated that they cringe before their Government in fear of investigation and loss of employment if they do their duty as jurors, which duty this same Government has imposed upon them. There is no disclosure in this record that these jurors did not bring to bear, as is particularly the custom when personal liberty hinges on the determination, the sense of responsibility and the individual integrity by which men judge men."[14]

I have mentioned the dissents of Mr. Justice Minton. They have been few. And while I have little faith in mere arithmetic as a guide to judgment of his work on our high court, I cannot fail to observe that during his first term the dissenting votes in the Supreme Court numbered less than half the total cast in the preceding term.

His few dissents have been brief and objective, void of personal references, and unmarked by those historical excursions which now and then irrelevantly appear to reflect the erudition of the author without appreciable enlightenment of the legal question involved. His style has little of that pyrotechnical glitter that momentarily flares in the sky but leaves all behind it and all that follows submerged in deeper gloom.

Were I to seek an explanation of the Minton philosophy of dissent, since he has expressed none, I should

[14] *Dennis* v. *United States*, 339 U. S. 162, 172.

go to that wise American, Benjamin Franklin, who at the Constitutional Convention of 1787, said:

> " 'We are sent here to consult, not to contend with each other; and declarations of a fixed opinion and of determined resolution, never to change it, neither enlighten nor convince us. For having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects which I once thought right but found to be otherwise. It is, therefore, that the older I grow the more apt I am to doubt my own judgment and to pay more respect to the judgment of others.' (Carl Van Doren, *The Great Rehearsal* (1948), 76, 168)."[15]

The opinions of Mr. Justice Minton teach us much of the man, and more of the judge. They are clear and orderly, with the simple formality of an accomplished essayist. The mark of the debater appears in the opening of almost every opinion. He states the issue as simply and pointedly as it can be phrased. He proceeds directly into an examination of the arguments, answers each question in order, and summarizes the conclusion. The economy of his method is evident on every page. There are no rhetorical tricks in his composition. He is master of the short sentence. His phrasing never bewilders. His conclusions never escape even the quick reading. Nor does he permit the brevity of his opinions to spawn the puzzles that too often breed in laconic work.

I have sought with some diligence to detect and identify the philosophy of Sherman Minton. There

---

[15] The Record of the Association of the Bar of the City of New York, Volume 5, November 1950, Number 8, p. 401.

is a great temptation in this occasion to explore for hidden meanings, and to expatiate learnedly on a philosophy in his work of which even he might be innocent. He has made my task a simpler one. For every opinion I have found marked with a principle that is greater than any philosophy, a principle that has graced his every judicial utterance, the principle *that this shall ever remain a government of laws.*

Response by
Judge J. Earl Major, Chief Judge

By Judge Major:

As has been before stated, this two-day session of the Judicial Conference, held in conjunction with the first session of the newly organized Bar Association for this Circuit, has presented many novel features, none of which is so important as this presentation ceremony. This is the first time, and in all probability will be the last, when a portrait of an ex-member of this court who is now an associate member of the Supreme Court has been presented. We are grateful to those who have spoken so eloquently of the life and work of Justice Minton, and while we have long recognized that he is a mighty good man, we were hardly aware that he is as good as they have represented him to be. Ordinarily, a session of this character is a sad affair because the presentation is of a former associate who has passed into the great beyond, but today the session is a happy and pleasant one because the presentation is of one who is alive.

This court, after a consultation with the Bar, will determine where in this building the portrait of Justice Minton may be most appropriately placed, as well as those of our departed colleagues, Judges Evans and Sparks, and it has occurred to me that that place might be on the panels of this courtroom. Thus we could have a court of ex-Judges, and a great court it would be—Minton, Evans and Sparks, constantly watching over the deliberations of those who remain.

On behalf of the court and each of its members, I desire to express our appreciation to those who have made this presentation possible by the contribution of their time, energy and substance. The fact is that this Bar Association and others have conferred so many honors and favors upon this court that we must pause and think lest we get an exalted idea of our importance. There is, as the lawyers recognize, no way by which this court or its members can compensate for these many favors and honors other than a promise of our best efforts so that the high traditions of this court, established by our predecessors, may be maintained and passed on to those who will follow.

The resolution will be adopted and spread upon the records of the court, and the portrait of Justice Minton which you present will be appropriately placed. May God give him health and strength to carry on and on is the fervent prayer of his multitude of friends.