

The Honorable
Will M. Sparks

In Respect to the Memory

of

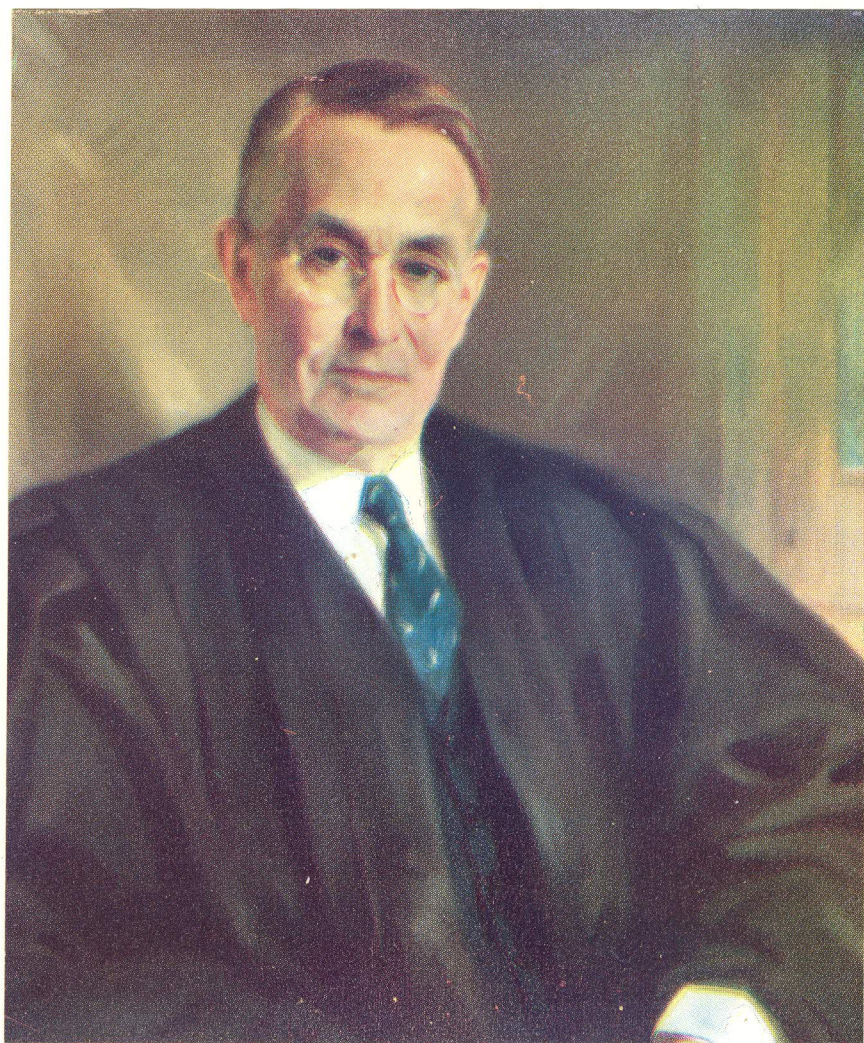
The Honorable
Will M. Sparks



Proceedings had on the Tenth Day of April
One Thousand Nine Hundred and Fifty-one

Before the

United States Court of Appeals
for the Seventh Circuit



Hon. Will M. Sparks
Painted by Fritz Werner

Memorial Ceremony for
Judge Will M. Sparks
Held in the United States Court of Appeals,
Seventh Circuit,
on Tuesday, April 10, 1951,
at 2:00 o'clock p. m.

Present Circuit Judges:

Honorable J. Earl Major, Chief Judge,
Honorable Otto Kerner,
Honorable F. Ryan Duffy,
Honorable Philip J. Finnegan,
Honorable Walter C. Lindley, and
Honorable H. Nathan Swaim.

Mr. George I. Haight, of Chicago, Illinois
Addressed the Court.

MAY IT PLEASE THE COURT:

The Bar of this Seventh Circuit comes to do honor to the Memory of Judge Will M. Sparks. We present the following resolution:

Memorial Resolution

“WHEREAS, the Honorable Will M. Sparks retired from this Bench on November 15, 1948, and departed this life on January 7, 1950; and,

“WHEREAS, the Bar wishes to express and record its debt to him;

“NOW, THEREFORE, BE IT RESOLVED: That Judge Will M. Sparks served upon this Circuit Court of Appeals for the Seventh Circuit with honor and distinction. Because of his high personal qualities, his education, his outstanding career at the Bar of Indiana, his service in the Indiana Legislature, and his rich experience upon the Sixteenth Judicial Circuit Court of Indiana, he came to this Bench highly qualified to bear his full share of its duties and responsibilities.

“The importance of the work of this Court is suggested by the wide range of the proceedings which come here for review. There is brought here for consideration many appeals including those from the District Courts and from a large number of Federal Commissions. Save for a very small percentage of causes taken to the Supreme Court of the United States by its writ of certiorari, this is a court of last resort. To serve upon it well requires broad abilities, a high sense of justice, and facility in understanding complicated facts in many fields of human activity. There is also required that supreme mental quality of the sound thinker—intellectual honesty. All of these qualities Judge Sparks possessed in full meas-

ure. With them went an attractive personality and invariable good manners, both in his public and in his private relations.

“His going from us is deeply regretted. His colleagues, the Bar, and the public, all of whom he served so faithfully and so well, are grateful for his important labors here performed in their behalf.”

THE BAR ASSOCIATION OF THE UNITED STATES
COURT OF APPEALS, SEVENTH CIRCUIT,
By Its Officers and Board of Governors.

It is requested that this resolution and the addresses given at this Memorial Service be suitably preserved on this Court's records so that those who survive him and those who follow us may be reminded of the merited esteem in which Judge Sparks was held.

We have two speakers for this occasion—the first an outstanding lawyer of the Indiana Bar—Mr. Richard P. Tinkham, of Hammond, Indiana.



Address by
Richard P. Tinkham of Hammond, Indiana

MAY IT PLEASE YOUR HONORS, MEMBERS OF THE BAR,
AND FRIENDS:

There are few men who have occupied this Bench, or for that matter, any Bench, who have exemplified the ideal judicial temperament as well as William Morris Sparks of Indiana. When we, on this side of the Bench, attempt to analyze the worth of a judge, we ask ourselves these questions: Is he honest? Is he intelligent? Is he courageous? Is he patient? Is he industrious? Does he follow the law? I am happy and honored to say on behalf of the Bar of Indiana that when we ask these questions about Judge Sparks, they each must be answered emphatically in the affirmative.

A review of Judge Sparks' opinions in this Court over the period of the nineteen years he sat on this Bench reveals that perhaps his most outstanding characteristic was his staunch adherence to the salutary principle that this is and should be a government of laws and not of men. Time after time, we find him adhering to this principle in the face of great popular pressure to the contrary.

An interesting illustration of his adherence to this principle is found in 1938. We recall that in that year, the country was in the midst of what may be known in the future as the "labor union revolution." There were strikes accompanied by great violence. Novel methods were utilized by unions to persuade employers

to do their bidding. Among these was the sit-down strike. When the famous *Fansteel* case¹ came to this Court, the philosophy that labor was entitled to a high place, no matter how attained, had pervaded the country to such an extent that riot and destruction of property were permitted and even encouraged by public authorities of a number of states, notably Michigan. This new philosophy was one which prescribed certain desirable ends and advocated the achievement of those ends by any means. Judge Sparks would have none of it. In the *Fansteel* case, he described this new philosophy and tersely rejected it in these terms:

“The employees, however, spurned this legal remedy, disregarding all law on this subject, and essayed to settle the difficulty according to their own sense of right and justice, and contrary to the better thought of those who really have at heart the best interests of all laborers.”

In view of the times, this decision took courage. Another decision which aptly illustrates the courage of Judge Sparks was rendered before he came to the Bench of this Court. As a trial judge in the Rush Circuit Court of Indiana, he was called upon to try the notorious *Stephenson* case². At that time, Stephenson was a political power in the State of Indiana. It will be recalled that he had frequently proclaimed himself to be the law. The trial resulted in the conviction and sentencing of Stephenson.

Judge Sparks was the nemesis of many criminals, in addition to D. C. Stephenson. Falling before his sharp-pointed pen were such notorious ones as Al

¹ *Fansteel Metallurgical Corp. v. National Labor Relations Board* (1938), 98 F. (2) 375.

² *State v. Stephenson* (1932), 205 Ind. 141, 179 N. E. 633.

Capone³, Billy Skidmore⁴, and in his fleeting day, Public Enemy Number One James Dalhover⁵. Where substantial justice had been done, Judge Sparks gave little consideration to technical errors which could not have affected the result.

Many labor cases fell to his attention. Perhaps the most famous of all was that of *Lauf v. Shinner*⁶. You will recall that in this case, which came up during the turbulent thirties when unions were engaged in wholesale organizing campaigns, the union involved had picketed an employer with whose employees the union had no relationship whatsoever. In his opinion, Judge Sparks affirmed an order of the District Court enjoining the activities of the union. A divided Supreme Court reversed⁷. It is encouraging to note that later legislation brought about by public sentiment tends to agree with the philosophy expressed by Judge Sparks in this case.

The turbulent thirties were dark days for employers. Everyone seemed against them—the National Government, state governments, a majority of the voting public, and many of the courts. A gleam of hope came from Judge Sparks in the *Columbian Enameling and Stamping Company* case⁸, decided in 1938. Here, a divided Court of Appeals refused enforcement to an order of the National Labor Relations Board reinstating employees who had been on strike in violation of

³ *Capone v. United States* (1932), 56 F. (2) 927.

⁴ *United States v. Skidmore* (1941), 123 F. (2) 604.

⁵ *United States v. Dalhover* (1938), 96 F. (2) 355.

⁶ *Lauf v. Shinner* (1936), 82 F. (2) 68.

⁷ *Lauf v. Shinner* (1938), 303 U. S. 323.

⁸ *National Labor Relations Board v. Columbian Enameling, etc., Co.* (1938), 96 F. (2) 948.

a no-strike clause in their labor agreement. This decision was subsequently affirmed by the Supreme Court⁹.

Judge Sparks was a lawyer's judge. He attempted to adhere to the principle of *stare decisis*. He believed in the stability of the law, and consistently refused to incorporate into his opinions the evanescent and popular philosophies of the hour. A striking illustration of his adherence to the principle of *stare decisis* is found in the famous case of *Pokora v. Wabash*¹⁰. That appeal, coming shortly after the landmark opinion of Mr. Justice Holmes in the *Goodman* case¹¹, was held by Judge Sparks to be controlled by that decision. All of us now recognize that Mr. Justice Holmes' love of brevity and the pithy phrase extended the "stop, get out, look, and listen" rule beyond the intention of the Court. Fortunately for plaintiffs' lawyers, the Supreme Court reversed the *Pokora* case¹² in an opinion by Mr. Justice Cardozo which limited the application of the *Goodman* case to the particular facts involved.

Among the popular slogans which grew into pseudo-philosophies in the turbulence of the thirties was that of the superiority of human rights over property rights. Great emphasis was placed by many courts upon the balancing of so-called "human interests" as against so-called "property interests," and, in fact, the doctrine persists in many decisions today. Fortunately, Judge Sparks was one of those who recognized the fallacy in this philosophy, and who pointed out in his opinions that one of the foremost and fundamental

⁹ *National Labor Relations Board v. Columbian Enameling, etc. Co.* (1939), 306 U. S. 292.

¹⁰ *Pokora v. Wabash Ry. Co.* (1933), 66 F. (2) 166.

¹¹ *Baltimore and Ohio R. Co. v. Goodman* (1927), 275 U. S. 66.

¹² *Pokora v. Wabash Ry. Co.* (1934), 292 U. S. 98.

of the human rights entitled to protection under our system was the right to own and enjoy property.

He likewise pierced the fog of the philosophy which sanctioned the use of any means as long as the end in sight was good. Time after time his opinions recognize that the use of illegal or immoral means to attain an end, no matter how desirable that end may seem, is not consistent with the principles of due process and fair play upon which this nation was founded. Time after time, as in the *Fansteel* case, he sternly denounced the use of improper means. He was a stable and beneficial influence in time of chaos.

There are encouraging signs today that we are returning to Judge Sparks' thinking. This specious philosophy was denounced in emphatic, but alarming language only last week in the United States Senate by Senator Fulbright. He said:

“I wonder whether in recent years we have unwittingly come to accept the totalitarian concept that the end justifies the means, a concept which is fundamentally and completely antagonistic to a true democratic society. Democracy is, I believe, more likely to be destroyed by the perversion of, or abandonment of, its true moral principles than by armed attack from Russia.”

Judge Sparks was industrious. In his nineteen years upon this Bench, he wrote some nine hundred opinions, or approximately fifty each year. He was not spectacular. He was no dissenter for the purpose of drawing attention to himself or his own views. As a matter of fact, during his tenure on this Bench, he dissented less than thirty times, and many of these were without opinion. One of his most noteworthy dissents was in

the *Loomis* case¹³, where the constitutionality of the Home Owners' Loan Act was under scrutiny. A majority of this Court sustained the Act under the power of Congress to establish government fiscal agencies and under the General Welfare Clause of the Constitution. In a vigorous and, for him, a lengthy dissent, Judge Sparks denounced as a pretext the bringing of the Act under the federal power to create government fiscal agencies; but the most revealing part of his dissent was his scholarly review of the history of the drafting of the Constitution, and his discussion of the question as to whether the General Welfare Clause was to be considered a grant of power, or, as Madison viewed it, merely a flowery prelude to the specifically enumerated powers. This dissent marked the Judge as strongly opposed to the trend toward transfer of power to Washington and the weakening of the powers of the states. Having established that Madison's interpretation prevailed and was influential in securing the adoption of the Constitution, Judge Sparks said:

“Having acquiesced in Madison's interpretation when the adoption was in issue, Mr. Hamilton's views to the contrary ought not to be controlling after the adoption. When construing ambiguous language, we are primarily concerned with the intention of the parties who used it, rather than the interpretation of those who subsequently read it. It is not a question of modern thought nor of progressive vision,”

This dissent reveals as much, if not more, of Judge Sparks' judicial philosophy and character than most of his opinions. Here we find the industrious student

¹³ *Loomis v. First Federal Savings and Loan Association* (1938), 97 F. (2) 831.

of the law, a believer in the stability of the law, a courageous judge willing to dissent in the face of a popular trend, and a firm believer in the sacredness of our fundamental law until changed in the manner provided therein.

If you will but read his opinions, you will find a judge who had not vanity, nor self-depreciation; who had not vain ostentation of learning, nor intellectual laziness; neither blind worship for the past, nor appetite for radical change; but one whose serenity of spirit and steadfast adherence to the moral and legal principles to which we owe our birth and growth marked him well as a judge to whom great honor is due.

Our second speaker is a distinguished lawyer of the Indiana Bar—Mr. Frank C. Dailey of Indianapolis.



Address by
Frank C. Dailey of Indianapolis, Indiana

It shall be my purpose not to attempt a portrait of Judge Sparks after he reached this exalted place, but merely a sketch of him during the period when he was on the way here.

He came into this court as a country judge from an Indiana county which is not large, but nationally known, not only from the eminence attained by him, but because it was also the home of Senator "Jim" Watson, known by or to many people in 48 states, and contains the much publicized 1500 rich acres owned and farmed by Wendell Willkie. The county seat, Rushville, is of modest size, but the Judge was raised in a hamlet bearing the historic name of Carthage, where he was graduated from high school.

If you asked a person who knew him then, whether he was an "A" student, you might not get the answer, but you would learn that he played a cornet in the high school band. He was a lover of music and continued a musician throughout his life. He played the piano for the amusement of himself and others and he was the pipe organist in the church to which he belonged.

You would also be informed that he was the pitcher on the high school baseball team. He continued in after-life to take an interest in boys' sports, particularly in high school basketball. He was an ardent fan. In arranging his trial calendar one term, he overlooked the fact that a basketball tournament was scheduled for Rushville, and set a cause for trial on a date that

conflicted. There were two good lawyers in the case, one who had distinguished himself as a member of the Indiana Supreme Court, and thought well of the principles of law, and not so well of school principals who encouraged their pupils to play games. The other's view was similar to that of Judge Sparks.

When he discovered his error, he ignored the Supreme Court Justice, called the other to the bench, explained his predicament, and the two entered into a conspiracy. The Judge said: "You have accommodated your opponent often—and he will reciprocate. Bring him in and ask for a continuance." Later in the day the contending lawyers appeared before the bench, and the co-conspirator committed another overt act. He requested a continuance, and the court, pretending reluctance, finally said he would grant it, but told the mover that was the last time a continuance would be granted in that case, fixed another date, and said, "Come prepared at that time for trial."

The Supreme Court Judge passed to his reward without ever knowing of the hoax, and Judge Sparks witnessed the tournament.

The first time I met him socially was at a dinner at Indiana University, given by fraternity boys in honor of their fathers. He made a happy and appropriate speech, at which he was singularly adept, and later made a request in that college atmosphere which had nothing to do with the training of the head, but dealt with the education of the feet. He asked a boy whom he knew to execute a tap dance. My time was divided between the skilled feet and the skilled judge, and his expression was one of pleasure and delight.

He had a good library and was very studious and busy; but he also participated in the social life of the community.

He was a member of the Rotary Club, and attended its luncheons. At one of them he was seated next to the editor of the local paper, who was aware of the Judge's pet antipathy. The waitress placed rye bread upon the table and the newsman said, "Judge, did you ever try beer with this kind of bread?" The Judge immediately said: "No, but I have tried many fellows who did."

He taught a Bible class in the Sunday School which immediately preceded the regular church service, and did it so well that attendance in his class often outnumbered the minister's congregation. The minister complained to the district superintendent and said that 75 per cent of the class left after the class was dismissed, and were truants from his sermon. The superintendent, a man with sense and common sense, replied that when the class members spent an hour with this teacher they had had such a spiritual treat they probably thought nothing more was required for the day.

What kind of a judge was he? He was elected four times, served approximately 20 years, and people had the opportunity to find out what kind of a judge he was.

He was courteous and never learned that a judge must be cross, insulting and abusive. He was an indefatigable worker, firm, fearless, fair—great.

No outside influence could reach him. He was an active lodge member. At the conclusion of the evi-

dence in a trial where a litigant seemed to believe that membership in an order should have weight in a judicial decision, the Judge announced that he would decide the case in a few days, "but not," he said, "on any lodge signs or symbols flashed to the court from the witness stand."

An Indianapolis citizen was arrested for one of his numerous crimes, with Judge Sparks to preside at his trial. He employed a slick city lawyer, who went to Rushville to engage local counsel. He said there was nothing to the case, that it never should have been brought, that the client had not profited, that the case should be stricken from the docket, and suggested that local counsel see the Judge, and induce him to make an entry of dismissal, and he would be paid "a lot of money." The attorney pointed to the court house steeple, and said: "I would just as soon climb to the top of that and leap."

He was extremely diligent in trying to keep judicial robes unsullied on both the state and Federal benches, and he had an ardent desire to have people believe in the integrity of the courts. After the untimely death of his only son, who was an excellent lawyer with great prospects, he disqualified himself in every case in which the son's successor firms appeared, causes in which the son never had connection. He completed one opinion on a matter submitted without oral argument without noting the names of the lawyers involved, later discovered in chambers that a successor firm was in the cause, and the opinion was never handed down.

Once in a while, unfortunately, there is a lawyer who tries to practice law with loaded dice. One of these

obnoxious fellows sometimes appeared before Judge Sparks, who attempted to control the situation. The Judge had an excellent family. His wife was not only the wife of a lawyer and mother of a lawyer, but the daughter of a lawyer. She confided to a friend that she could always tell when this lawyer appeared in her husband's court; that she would know it from the excess number of dyspepsia tablets which the Judge consumed.

The Judge was in politics. Before he was circuit judge, he had served as deputy prosecutor, deputy county clerk, and as a member of the state legislature. Add this to the five times he was a candidate for circuit judge, and it is apparent he often needed more votes than his opponent could muster. This suggested diplomacy, but he had political courage. There was a time when the Klan had a strangle hold on Indiana. It controlled elections. The strength of the organization extended to the Judge's county. The Grand Dragon of the Klan lived in Indiana and his offices were there. He found himself indicted for murder, where great moral turpitude was obvious, but where a case of provable homicide seemed more or less nebulous. The alleged crime was not committed in the Judge's circuit, and the case was tried far from his bailiwick. He was chosen to sit as trial judge, and although it was optional with him, he accepted. In the end the defendant who had boasted that he was the State, became merely a number in a state institution. The manner in which he conducted this case brought Judge Sparks his first national introduction.

He had a sense of humor, sometimes displayed in court. His court was conducted with decorum. Once

in the middle of a cause, a commotion was created by a man in the section of the room reserved for spectators. He was shuffling about, raising and slamming seats. The Judge looked back, recognized the offender as one of his many acquaintances, and said: "Sam, what's the trouble?" Sam said: "I've lost my coat." The Judge replied: "A lot of people have lost a whole suit in this room, and not made as much noise about it as you have."

When he came to this court, a rural judge, who had been a country boy, he had had no experience in Federal Courts. It is probable he never appeared in one. He had little acquaintance with Federal questions. He could not have known a great deal about patents, copyrights, trademarks, or the numerous subjects in the exclusive province of the United States courts—matters he was now called on to determine. But still he came prepared. He brought natural talent, long previous experience as a judge, and a willingness to work. So, here, too, he made a most successful judge.



We of the Bar now present a portrait of Judge Sparks to this Court. It is the work of one of our country's best portrait painters, Fritz Werner of New York. It is thought that Mr. Werner has succeeded in depicting on this canvas an excellent likeness, revealing the kindness and the strengths displayed by Judge Sparks in life.

Response by
Judge J. Carl Major, Chief Judge

By Judge Major:

This court is grateful to those who have arranged this service in honor of our recently departed friend and colleague, Judge Will M. Sparks. It appreciates those who have spoken so kindly, affectionately and sincerely of his life, particularly those years during which he occupied this bench. Also appreciated is the presence of district judges, members of the bar, and other friends and acquaintances who by their presence pay eloquent, though silent, tribute to one whom they loved and admired as a man and as a judge.

No feeble words of mine can express the personal loss which this court and each of its members sustained at the time of his retirement. But even so, we indulged in the fond hope that he might have many years of happiness and good health, to enjoy a rest which he had so abundantly earned. And such hope carried with it the anticipation that we would yet have him with us, at least on special occasions, and that he might return to the bench if he so desired. This hope, born of a friendship which was cemented by an association of many years, was shattered by the sad news of his death, which occurred only a little more than a year after his retirement.

His charming and unpretentious personality, his intellectual and moral qualities, his close adherence to the admonition of the Golden Rule, gained for him a

position in life attained by few men. His knowledge of the law, interpreted and administered in connection with a storehouse of common sense, and his nobility of purpose, coupled with an energy and industry which knew no bounds, made him a great and good judge. He brought to this court honor and dignity. For almost twenty years he served it devotedly, faithfully and unselfishly, and he left it the better for his service.

The innumerable opinions which he authored are recorded in the books and will endure perhaps as long as time itself. For those who had the good fortune to come within the sphere of his life, whether as a friend, as a lawyer who argued before him or as an associate who sat at his side, the memory of this loved and lovable man will always be retained with a most affectionate regard. We can do him no greater honor on the occasion of this last farewell than by firmly resolving that the high reputation of this court, to which he contributed so much, be maintained and passed on to those who follow, untarnished and unsullied.

The proposed resolution is accepted and it is ordered that it be spread upon the permanent record of the court.

This court presently and in the past has been the recipient of many favors extended by bar associations of the Circuit. And this presentation of the portraits of our late colleagues, Judges Evan A. Evans and Will M. Sparks, is a further demonstration of your esteem. The court is honored to receive them and is grateful to those whose generous contributions of time, energy and substance have made possible such

presentations. This court is fortunate in the character and caliber of lawyers who practice before it. It can be asserted with confidence that they constitute a bar which compares favorably with any in the land.

Again we express our satisfaction and gratitude for these portraits. They will be appropriately placed with those of other departed colleagues, to serve as a continuing reminder of their devoted and faithful service and as an inspiration to those who follow.



SUPREME COURT OF THE UNITED STATES

Washington 13, D. C.

CHAMBERS OF JUSTICE SHERMAN MINTON.

April 5, 1951.

My dear Judge:

I regret that I cannot be with you as you gather to do honor to the memory of our friend and former colleague, Judge Will Sparks.

I shall leave to the speakers of the occasion, who are far abler than I, the task of interpreting his life and work. To me, he was all that a good judge should be. However, I like to think of him not so much as the fine judge that he was, but as a friend, colleague, and gentleman.

If I were asked to name from among his many fine qualities the most outstanding, I would unhesitatingly say integrity. That was the touchstone of his life.

Permit me to join you in an affectionate salute to the memory of Judge Sparks.

Sincerely yours,

/s/ SHERMAN MINTON.
Sherman Minton.

The Honorable J. Earl Major, Chief Judge
United States Court of Appeals,
1212 Lake Shore Drive,
Chicago 10, Illinois.

UNITED STATES DISTRICT COURT

Chicago 4.

CHAMBERS OF JUDGE WILLIAM H. HOLLY.

4140 E. Monte Vista Ave.,
Tucson, Arizona.

Honorable J. Earl Major,
1212 N. Lake Shore Drive,
Chicago, Illinois.

Dear Judge Major :

I greatly regret I cannot attend the Memorial Services for Judge Sparks.

When I first went on the bench his chambers were across the hall from mine in the U. S. Court House downtown and he became a good friend of mine, a friendship I shall always cherish. His qualities of mind and heart made him a great Judge and he will long be remembered with respect and affection by the members of the bench and bar of the 7th Circuit.

Most Sincerely,

WILLIAM H. HOLLY.