Maurer School of Law: Indiana University
Digital Repository @ Maurer Law

Indiana Law Journal

Volume 41 | Issue 1 Article 1

10-1-1965

Sherman Minton

Tom C. Clark
United States Supreme Court

Follow this and additional works at: http://www.repository.law.indiana.edu/ilj

Part of the Biography Commons, Courts Commons, and the Judges Commons

Recommended Citation
Clark, Tom C. (1965) "Sherman Minton," *Indiana Law Journal*: Vol. 41: Iss. 1, Article 1.
Available at: http://www.repository.law.indiana.edu/ilj/vol41/iss1/1

This Tribute is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.

LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

INDIANA LAW JOURNAL

Volume 41 FALL 1965 Number 1

We respectfully dedicate this issue of the Indiana Law Journal to the memory of Sherman Minton, distinguished graduate of Indiana University School of Law and Associate Justice of the Supreme Court of the United States 1949-1956.—The Editors.

SHERMAN MINTON

TOM C. CLARK†

Sherman Minton was one of those rare Americans who distinguished himself in each of the three branches of the Federal Government: Executive, Legislative and Judicial. For almost a quarter of a century, beginning with his election as United States Senator from Indiana, he contributed much to the change in national spirit that President Roosevelt brought to the country in the early thirties. He was one of FDR's right-hand men in the Senate in the fight against the depression of those years. One of his most important assignments while a Senator was on the famous Truman Committee. Failing of re-election in 1938, his faithful and effective work for the New Deal rewarded him by appointment as Presidential Assistant at the White House where he served behind the scenes as one of the President's top lieutenants "with a passion for anonymity." Some two years later the President appointed him as Judge for the Seventh Circuit Court of Appeals. In 1949, after eight years of experience on that Court, President Truman elevated him to the Supreme Court as Associate Justice, where he served for seven years.

It was my high privilege to know him during most of this period. He followed me on the Court by forty-five days and we, being the Junior Justices, became the more intimately associated. He brought a fresh breeze to the Court not only by his ready wit but his distinguished service on the Court of Appeals, he being at that time the only Justice with that background.

Justice Minton was a most quick-witted and practical man. He always had an appropriate story, joke or witticism for all occasions. A story that he often told on himself illustrates this attribute. He and his

† Associate Justice, Supreme Court of the United States.

lovely wife, Gertrude, were driving to Florida. In the outskirts of Atlanta they were speeding along with the Justice at the wheel when a motorcycle officer pulled up and motioned them to the side of the road. When the officer asked the Justice his name the quick reply was "*Sherman* Minton." The officer, a native of Atlanta and hardly believing what he heard, said, "What's that?" The Justice in more deliberate diction, without even a smile or a twinkle, replied: "*Herman* Minton." After a lecture the officer let them proceed. General Sherman's "march to the sea" did not rub off on Sherman Minton.

Justice Minton's opinions began with *Commissioner v. Connelly,* 338 U.S. 258 (1949), and extended into Volume 351 of the United States Report with *Reed v. Pennsylvania R. Co.,* 351 U.S. 502 (1956). Perhaps his most far-reaching one was *Phillips Petroleum Co. v. Wisconsin,* 347 U.S. 672 (1954). In a five to three vote (Jackson, J., abstaining because he had not heard the argument), the Court held that the Natural Gas Act contemplated regulation by the Federal Power Commission of "rates of all wholesalers of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during or after transmission by an interstate pipeline company." At 682. This brought producers of gas under the Act.

At one time we dissenters had hopes that the Justice might change his mind after studying the case and before writing the opinion. This would make the vote 4-4 and would, we hoped, require a reargument with Justice Jackson taking part. One morning Justice Minton dropped by my chambers while on the way to his, stuck his head in the door and said, "Tommy, if I were a Senator I might agree with you on that gas case, but being a judge I have to declare the law, not make it. So here's the first draft. I hope you don't explode because this is just the beginning, not the end, of it." Rather than just declaring the law he had made it in the field of federal regulation of interstate gas. Moreover, his prediction that we had not heard 'the end of it' was more than prophesy. He has been off the Court nine years. I have not summed up the number of times *Phillips* has been cited to us—it would run into the hundreds—but only last month we heard arguments for three hours on the power of the Commission to fix producer rates for gas on an area basis, to require refunds and to lay down restrictions on certifications. The whole argument was that the power sprang from the opinion in *Phillips* by Mr. Justice Minton.

We on the Court have missed "old Shay" as we affectionately called him. He was a great justice, a powerful friend and a warm associate. We never had a better! Nor will the country ever see a more devoted

and loyal servant. It is fitting that his law school which he honored so much now honors him with this dedicatory issue of the *Indiana Law Journal.*