

December 21, 1942

Honorable Sherman Minton
U.S. Circuit Court of Appeals
New Albany, Ind.

Dear Shea:

I am glad to have your letter and sorry that we did not have a chance to chat longer when you were here.

You are right in criticizing the sentence in my opinion in the Wickard case. Of course what I meant to refer to was exclusive of the competition theory which I dealt with later under the general discussion of the Shreveport doctrine.

If we were to be brutally frank, as you suggest, I suspect what we would say is that in any case where Congress thinks there is an effect on interstate commerce, the Court will accept that judgment. All of the efforts to set up formulae to confine the commerce power have failed. When we admit that it is an economic matter, we pretty nearly admit that it is not a matter which courts may judge.

However, in the Wickard case the effect is easily apparent, although whether the effect is good or ill might be difficult to say. There is probably a good deal of wisdom in the policy of our earlier judges in going only so far as the immediate case requires in making a constitutional decision. I admit, however, that if I could have found a more satisfactory formula, I would have come out with it, and I know that the Wickard case is by no means a simple or satisfactory solution. I really know of no place where we can bound the doctrine of competition as expounded in the Shreveport, the Wrightwood, and the Wickard cases. I suppose that soy beans compete with wheat, and buckwheat competes with soy beans, and a man who spends his money for corn liquor affects the interstate commerce in corn because he withdraws that much purchasing power from that market. The Shreveport case and those that follow seem to me to be best understood as a sort of strategic retreat by the courts from the effort to control the action of Congress in the field of interstate commerce.

I always read your opinions with interest, and from them I gather, although it is only from between the lines, that you are really enjoying judicial work. It is quite a violent change from the kind of life you and I had been leading, but it certainly has its compensations.

When you are in town, I hope you will come in and see me.

Sincerely yours,