

Judge Joseph Raymond Jackson: Article III Judge or Not?

By David McCarthy

Why did Judge Joseph Jackson, a judge on the U.S. Court of Customs and Patent Appeals, appear in two official photographs of the U.S. District Court for the District of Columbia?

After retiring from the Court of Customs and Patent Appeals (CCPA) in 1952, Jackson asked to sit by designation on the U.S. District Court for the District of Columbia. His request was granted; hence his presence in the photographs.

Who was Judge Jackson?

To say that Judge Jackson had a varied life and career would not be an exaggeration. Born in 1880 in Albany, New York and graduated from Manhattan College in 1900, he worked in the copper mines in Montana, became a high school math teacher, football coach (winning the Montana state championship) and head of the Butte Industrial School. When he decided to become a lawyer, he had to borrow books and read law with local lawyers since there was no law school in the State. He was admitted to the Montana bar in 1907.

John Ringling (of circus fame) owned a ranch in Montana and became friends with Jackson. He persuaded Jackson to move to New York and become his personal counsel. Jackson engaged in private practice until 1934 when he became assistant attorney general for the New York City Customs Division. He served in that position until 1937.

Jackson was appointed to the U.S. Court of Customs and Patent Appeals (CCPA) in 1937 by President Franklin D. Roosevelt. The CCPA (originally the U.S. Court of Customs Appeals) was created by the Payne-Aldrich Tariff Act of 1909 (36 Stat. 11, 105). The Court heard appeals from the Board of General Appraisers, which later became the U.S. Customs Court. The judges were appointed by the president with the advice and consent of the Senate. The Act made no mention of their tenure or the means of removal.

Later, by Act of August 25, 1958 (28 U.S.C. 293), Congress addressed the problem of providing judges to substitute for other judges who were ill or had recused themselves. The Act provided that judges from the circuit courts could sit on the CCPA and judges from the CCPA could sit by designation on the district and circuit courts. Additionally the Act provided in §1 that the CCPA was an Article III court.

Judge Jackson took advantage of the 1958 legislation to sit by designation on the District Court for the District of Columbia. He was known as a tough judge in criminal cases, some of which were controversial. Perhaps his most famous district court case was *United States v. Lurk*, decided in 1959. Benny Lurk was convicted of a \$58.31 robbery; Jackson sentenced him to a term of four to fourteen years. The case was appealed with Lurk's lawyer arguing that Jackson was not an Article III judge. In a 1929 case, *Ex Parte Bakelite Corporation*, the Supreme Court had held that the CCPA was an Article I court constituted under Congress's authority to lay and collect duties on imports. The U.S. Court of Appeals for the D.C. Circuit heard Lurk's appeal en banc and

unanimously rejected the challenge to Judge Jackson's status as an Article III judge, affirming Lurk's conviction. *Benny Lurk v. United States*, 296 F.2d 360 (1961).

The Supreme Court granted certiorari, and in *Glidden v. Zdanok*, 370 U.S. 530 (1962), with which Lurk's case was consolidated, a divided Court overruled the *Bakelite* decision. The plurality opinion, written by Justice Harlan and joined by Justices Stewart and Brennan, noted that the CCPA had the appearance of a court and was staffed by judges who were given life tenure with undiminished salaries. However, Justice Harlan found these attributes insufficient to constitute the CCPA as an Article III Court. Nonetheless, he concluded that since the CCPA was a court created under Article III, its judges, including retired judges, here Judge Jackson, had been constitutionally protected in tenure and compensation all along. Justice Clark, joined by Chief Justice Warren, concurred in the result, but felt it unnecessary to overrule *Bakelite* since the CCPA had been expressly designated an Article III court in legislation enacted in 1958. Justice Douglas was joined by Justice Black in dissent. Justices Frankfurter and White did not participate. They argued that the CCPA was created as an Article I court and that factors such as life tenure and undiminished compensation were a result of the congressional statute and not the Constitution.

Thus, Judge Jackson was an Article III judge since first appointed to the CCPA and could sit in the United States District Court with full Article III powers.

Judge Jackson completely retired from the bench in 1965 and passed away in 1969, just short of his 89th birthday. The Court of Customs and Patent Appeals was eventually merged into the newly created Court of Appeals for the Federal Circuit.

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