I. Introduction

Judge John Johnston Parker served on the United States Court of Appeals for the Fourth Circuit for more than three decades from his appointment in 1925 to his death in 1958. The Monroe, North Carolina native achieved prominence during his tenure as a jurist, administrator, judicial reformer, and public servant. Neither Senate defeat of his nomination by President Herbert Hoover as Associate Justice of the United States Supreme Court nor personal tragedy thwarted a judicial career that caused the American Bar Association Journal to feature his portrait on its cover in 1946. That career, however inauspicious its pre-judicial beginnings, seemingly blossomed on the bench in the apparent absence of a period of adjustment or of missteps associated with the status of a newcomer.

Parker initially confessed misgivings about prospects for the life of a federal judge. "I am afraid that I am temperamentally unfit for a judgeship," he mused nine months before donning the robe of judge of the United States Court of Appeals for the Fourth Circuit. For the forty-year-old North Carolina attorney, the fundamental career change made in 1925 reflected the condition of his then extant professional and political life. A legal practice of seventeen years and extensive partisan political activities suggested neither a smooth and swift transition to the bench nor a position of leadership once on the court of appeals.

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Yet, Parker’s professional and political experiences would combine with purely fortuitous events to propel him almost immediately to a position of leadership on the court. That position, however, imposed unsuspected costs detrimental to promotion to the nation’s highest court.

During the initial period of judicial service, newcomers have long been reputed by scholars of the subject to have a minimal impact on the work of their courts. As one student of the subject has put it, their influence is diluted “as they absorb the particular expectations of the job and the folkways of group life.” Opinion and managerial leadership lie beyond their grasp; both remain in the hands of the senior judge and in those of experienced and skilled colleagues. Thus, the newly sworn judge’s typical experience includes: (1) deference to senior members; (2) rare opportunities to speak for the court; (3) indecision; and (4) protracted opinion writing efforts.

J. Woodford Howard, Jr. well described this “freshman effect” in his fine biography of Supreme Court Associate Justice Frank Murphy. Revisionists have challenged this “ice water” pattern of judicial socialization, at least for newly appointed Justices of the United States Supreme Court. Intermediate appellate courts are not identical to the Supreme Court. They are, as Howard noted in his seminal work on the federal courts of appeals, tribunals distinguished by their fragmented and permissive nature and by relatively low levels of internal conflict.

These courts were and remain characterized by geographical separation of their members who assemble for scheduled periods of collegiality at the regional courts’ seats. Since 1866, the Fourth Circuit has comprised the states of Maryland, West Virginia, Virginia, North Carolina, and South Carolina. Its primary seat is at Richmond and, since 1916, during Parker’s judgeship, it also held a summer term at Asheville in the North Carolina mountains. The three judges of the court were dispersed from 1925 to 1931, residing in Baltimore to 1927, Richmond, Huntington after 1927, and Charlotte. Telephone, telegraph, and, especially, fast overnight railway mail linked them. Onto this appellate court came ex-politician and practicing lawyer, John J. Parker. Would his adjustment to the robe in his initial years accord with the conventional wisdom that views judicial novitiates as bewildered, uncertain, and disoriented?
Or, would he prove the exception to the rule and manifest confidence, decisiveness, and professionalism from his first days on the court? In short, did his “freshman” experience bestow only benefits or did it impose costs, even high and unanticipated costs? Or did it confer some of both?

II. Anticipatory Socialization

A. Legal Practice

Parker's professional career began at the University of North Carolina in Chapel Hill where the penurious undergraduate had arrived in 1903 to commence what turned out to be an educational experience marked by outstanding academic achievements and campus leadership positions.18 “He came,” one contemporary recalled, “as a poor boy who didn’t even have a trunk, but he graduated with a trunkful of medals.”19 With “no influential connections”20 and armed only with a law degree earned at the University in a year of post-graduate work, Parker made an inauspicious entry into the profession, one accompanied by the “usual years of starvation as a beginning lawyer.”21 But oratorical abilities apparent in college won him recognition as a courtroom advocate in the classic nineteenth century legal tradition.22 Peers at the bar regarded him as a “zealous, able and even brilliant lawyer” whose courtroom skills made him an adversary at once “dangerous and formidable.”23 Natural gifts were enhanced by “daily and nightly painstaking, accurate study of the law, and of the facts of his cases.”24

A varied civil and criminal practice grew and carried Parker to trial and appellate federal and state courts as well as to the Supreme Court of the United States.25 His move from a rural county seat to the city of Charlotte26 was accompanied by a rising net worth as estimated by Martindale's American Law Directory.27 Although a remunerative practice, it was one that drew clients “from all classes of the people, including laboring people and farmers, white people and colored people.”28 Predictably, few notable cases came to the young practitioner. One that did come his way gave him national visibility within the legal profession. In the “Par Clearance” Case, he represented 300 state-chartered “country” banks in their battle against hegemonic banking policies pursued by the Federal Reserve Bank.
of Richmond, Virginia. Ultimate victory for his clients came in the United States Supreme Court, where he prevailed against the Bank's battery of prominent attorneys including Wall Street lawyer and soon-to-be 1924 Democratic presidential nominee, John W. Davis.

B. Politician

Notwithstanding success at the bar and general satisfaction with lawyering, Parker found the peripatetic role of a litigator a "wearing" one. Since the inception of his law practice, Parker had been deeply involved in politics. He early associated with the Republican Party and warmly embraced its national industrial policy founded on a protective tariff seemingly beneficial to an aspiring "New South." Political activism led to party recognition, and an alternate career path beckoned. In 1910, at age twenty-five, he became a G.O.P. congressional candidate; in 1916, he received the state attorney generalship nomination; and in 1920, he won the party's gubernatorial nomination. But during the early twentieth century, North Carolina remained firmly entrenched in the "Solid South," and Parker's energetic partisan efforts bore no fruit on that state's political terrain so barren for Republicans. Politics could admittedly clothe him with "great prestige" in the state and nation. Nevertheless, the three-time loser also recognized that "there is nothing so disappointing and heartbreaking as politics."

C. Political Lawyer

Parker's dual careers in law and politics paved the way for a critical transformation into a political lawyer. Appointment as Special Assistant to the Attorney General of the United States in the War Transactions Section of the Department of Justice thrust the North Carolina attorney into the turbulent world of political law and, more significantly, into association with public officials capable of influencing the course of his life. Parker's assignment involved the prosecution of former high-ranking officials of the Wilson Administration for alleged frauds associated with World War I demobilization. Neither his efforts to secure indictments of those who allegedly conspired to dispose of surplus leather goods nor his courtroom prosecution of defendants accused of defrauding the government in lumber
transactions succeeded. If favorable outcomes in the politically charged cases eluded him, favorable comments did not. "I have never known a case to be more thoroughly prepared, more studiously arranged for trial or more ably presented to the court on the law and to the jury on the facts than was the lumber fraud case by Mr. Parker," one opposing counsel subsequently declared. Favorable too were impressions made on colleagues in the department, including then Attorney General and future Supreme Court Justice Harlan Fiske Stone.

III. To the Bench

When the summer of 1925 carried off presiding Fourth Circuit Judge Charles A. Woods of South Carolina, Parker's self-doubts about a judicial career dissolved. North Carolina Republican party politics spawned two key Washington-based sponsors in the Coolidge administration. Both were important officeholders in Andrew Mellon's Treasury Department. At the same time, former Justice Department associates, most a full generation older than Parker, rallied to his cause, one hailing him as "an Adonis in robes, a Mansfield in exposition." Justice Stone wrote Department officials that he had "formed a very favorable opinion of Mr. Parker [because of] his attitude as prosecutor in the Phillips [sic] Lumber Fraud case."

If Tar Heel Republicans and government lawyers knew all about Parker, his future colleagues on the court of appeals were hard pressed to identify one without much public visibility and largely devoid of a "paper trail." Presiding (Senior Circuit) Judge Edmund Waddill, Jr., when queried by Chief Justice William Howard Taft, reported that "a lawyer by the name of J.J. Parker, . . . I do not know." A Department of Justice probe evoked a slightly more positive identification from the elderly presiding judge. "I have seen his name mentioned," Waddill wrote Coolidge's Attorney General, "and I have no doubt I know him, but for the soul of me I cannot recall anything about him at this time." Waddill's worldly colleague, John Carter Rose, contacted by the Department while sojourning in London, replied in similar fashion. "At the moment I cannot place Mr. John J. Parker," he wrote, adding that "it is highly probable that if something was said which would identify him, I would find that I did know him or at all events knew something about him."
Judge John J. Parker (left) following his appointment in 1925 by President Calvin Coolidge to the U.S. Court of Appeals for the Fourth Circuit holding a cane given to him by former Monroe, North Carolina law partner, Amos M. Stack, met with his undergraduate mentor at the University of North Carolina, Philosophy Professor Henry Horace Williams (right).

Source: Francis I. Parker, copy in possession of the author.
On receipt of a recess appointment, Parker took the judicial oath on the opening day of the circuit court's regular October term. Present were colleagues Rose, age sixty-one, and Waddill, age seventy. The latter had recently been elevated to presiding judge status by the death of predecessor Woods, thereby creating the vacancy filled by Parker. Both veteran jurists must have looked askance at their newest member. Had this general practitioner from a decidedly rural state, a jury-oriented courtroom orator in the tradition of the previous century, and above all, a partisan warrior fresh from political and legal wars acquired the skills, interests, and values essential for performance of the judicial role?

Parker's previous experience in both politics and the law only marginally reassured his more experienced colleagues.

IV. Court of Appeals

A. Caseloads and Colleagues

The court that Parker joined in the autumn of 1925 suffered serious internal problems. An excessive caseload, however, was not among them. The tribunal basked in a near golden age; "the strictly appellate work of the Circuit Court of Appeals for this Circuit is [not] too heavy or too exhausting," one colleague frankly admitted. Caseloads from 1926 through 1930 averaged 186 cases per fiscal year or, divided equally among three judges, 34.3 to 49.3 terminated cases per judge per fiscal year or an average of 41.8 such cases. Caseloads from 1926 through 1930 averaged 186 cases per fiscal year or, divided equally among three judges, 34.3 to 49.3 terminated cases per judge per fiscal year or an average of 41.8 such cases. As compared to other regional circuits, the Fourth consistently occupied the case-filing basement in company with the First and Seventh Circuits and, after 1928, the sprawling Tenth Circuit in the West. Once docketed, appeals in the Fourth Circuit flowed expeditiously; less than nine months elapsed between the filing of the record and issuance of the court's final mandate in the average case. The bench typically acted whenever the attorneys signaled their readiness for oral arguments as suggested by the time span between filing of the last brief and oral argument, a period which ranged from one to 192 days and averaged 19.5 days.

Not caseloads but rather physical disabilities, death, and turnover confused court administration and sapped the court's
strength during Parker’s freshman years. Its experienced intellectual leader, John Carter Rose of Baltimore, fell ill in 1926 and died early in 1927, the elderly Waddill died in April 1931, after suffering crippling periodic illnesses and enduring the distress and distractions caused by his son’s drug addiction. Rose’s replacement, fifty-eight-year-old Elliott Northcott of West Virginia, proved neither to be his predecessor’s intellectual equal nor to enjoy especially good health. Absenteeism meant that the court’s trio of appellate jurists sat together in less than one-third of all cases heard. Thus, the court was in reality a mixed tribunal composed of visiting trial and resident appellate judges in nearly seventy percent of all cases heard. Among the latter, the relatively youthful Parker enjoyed the best health and, consequently, sat more than the others. His participation rate exceeded that of all district judges combined and of Rose-Northcott and Waddill. Available to him was the power to influence judicial decision-making denied his nonsitting, though senior, colleagues.

B. “Freshman” Workhorse

Oral arguments and signed opinions were the order of the day in the Fourth Circuit of the 1920s. Slightly less than one-quarter of all appeals would be terminated by means of unsigned per curiam opinions. The balance received full court opinions. The writing was assigned disproportionately to the three circuit judges who, although sitting together in little more than thirty percent of the cases, individually wrote opinions in 79.2 percent of those arguments they heard. Fellowship and “low seniority in assignments” might mark the freshman experience on the Supreme Court, as Howard noted in his celebrated article “On the Fluidity of Judicial Choice,” but neither characterized Parker’s experience. The Fourth Circuit freshman proved to be the court’s “workhorse.” He received more than his share of opinions assigned to appellate judges, 44.3 percent. Rose-Northcott followed with 35.7 percent, while Senior Circuit Judge Waddill received, presumably from himself, only 20.1 percent of all such assignments. Of the assignments made to both circuit judges and visiting trial judges, Parker similarly led [Table D].

Although the presiding judge traditionally assigned opinions,
Waddill’s low participation rate meant that factors other than formal status played a role in appellate court opinion assignments. So too, in assigning opinions in three-judge district court cases, custom gave way. In such cases, often involving important public policy-laden issues testing the limits of national and state regulation of economic life, prevailing custom prescribed assignment and authorship by the resident district judge within whose jurisdiction the case had originated. The putative tradition proved tenuous in practice because Parker performed the task in one-third of such three-judge court cases in which he sat. “You are beyond controversy the presiding elder,” Judge Henry Clay McDowell of the Western District of Virginia informed Parker, twenty-four years McDowell’s junior with six months judicial experience behind him. “It is for you,” the nisi prius judge told him, “to assign the case.”

Reputation and ascribed expertise routed cases to those judges who could best enhance the authority of the court’s opinions. Professional considerations usually meant an assignment to Parker, the freshman judge who authored either the majority or plurality opinions in complex cases. Opinions in more than three-fifths of all appeals involving patent law and the government’s regulation of business fell to Parker. Diversity-based contract disputes comprised the largest single component of the court’s docket [Table E], and Parker wrote nearly twice as many opinions in such cases than did any one of his colleagues [Table F]. Parker similarly outdistanced his colleagues in opinions involving tax questions. Only in cases raising typically straightforward issues of criminal law and procedure, including civil actions for violations of federal law (e.g., forfeitures) and of torts, admiralty, and corporate law did he author less than one-third of the court’s full opinions [Table F].

Parker’s enthusiasm, energy, and intellectual prowess contributed to the frequency of opinions that he authored in cases heard by all three appellate judges. Sometimes, however, the assignments merely reflected Waddill’s managerial shortcomings; the indifferent performance of this function by the senior judge occasionally left unclear whether or not an assignment had actually been made. Parker provided clarity by volunteering. In the midst of work on several cases raising jurisdictional issues, he reported to the senior judge that “these have not been assigned
to me, but I assumed from what you said after the argument that you wanted me to prepare the opinions."²⁷⁶ Skillful post-conference legal analysis also won Parker opinion-writing duties that included authoring both of the court’s two Sherman Act cases decided in the last half of the 1920s. In the cool of the Carolina mountains during the summer of 1926, he studied the 2,000-page record of an antitrust suit between Union Carbide and one of its hard-pressed competitors.²⁷⁷ His conclusions won favorable comment from the Senior Circuit Judge.²⁷⁸ “I was considerably impressed with the comprehensiveness of the views set forth,” Waddill declared, and promptly suggested that his junior colleague pen the opinion.²⁷⁹

Parker, the eager volunteer, subsequently mailed out another detailed memorandum.²⁸⁰ Ten typed pages long, it critiqued a case that involved one more application of the antitrust act, this time to the United Mine Workers of America then attempting to unionize the bituminous coalfields of southern West Virginia. Whether to affirm District Judge George W. McClintic’s sweeping injunction decree against the union and in favor of operators of 316 coal companies confronted the court of appeals in *International Organization, United Mine Workers of America v. Red Jacket Consolidated Coal & Coke Co.*²⁸¹ Who would write the court’s opinion? Parker recommended to Waddill that the task go to Rose because the primary issues related to federal procedure and jurisdiction, subjects on which the scholarly Marylander had written a treatise, then published in its third edition.²⁸² But Waddill declined the advice.²⁸³ Impressed with Parker as a “quick worker,” with his apparent fidelity to stare decisis,²⁸⁴ and with his “comprehensive” ten-page *Red Jacket* memorandum in hand, Waddill felt that the freshman judge “had gotten the strike case where we will all agree.”²⁸⁵ No assignment from 1925 to 1930 proved so fateful for its recipient as did that of *Red Jacket*, the full consequences of which did not become evident until 1930 when President Hoover named Parker to the United States Supreme Court.²⁸⁶

C. Short-lived Mentor

Parker’s deference to Rose in the *Red Jacket* opinion assignment suggested a traditional “freshman” syndrome reflecting inexperience and feelings of inadequacy, as Howard
A "Freshman" Takes Charge

John Carter Rose (1861-1927) of Baltimore, Maryland had been appointed in 1910 by President William Howard Taft to the U.S. Court for the District of Maryland and in 1922 by President Warren Harding to the U.S. Court of Appeals for the Fourth Circuit. Nearing death, the intellectual leader of the court warned of pitfalls associated with the Red Jacket case. Source: Proceedings of the Thirty-ninth Annual Meeting, the Virginia State Bar Association held at Chamberlin-Vanderbilt Hotel, Old Point Comfort: August 1, 2 and 3, 1928 (n.p., n.p., n.d.), opp. 177.

noted. And, in fact, the self-conscious newcomer did look for assistance and support, especially from the veteran jurist and former journalist whom he regarded as a master of "clarity" and a writer possessed of an exceptional "power of expression." Rose's critiques of opinion drafts were warmly welcomed. The judicial neophyte confessed that "the writing of opinions is new business to me and I want to do the best I can." Consequently he invited the senior judge's "criticism of the grammar and the forms of expression as well as any mistakes in the law." Similar solicitation went out to Waddill. But the increasingly infirm presiding judge found it difficult to keep up with his own
assignments, much less contribute to Parker’s. In fact, with his youngest colleague delving deeply into cases, Waddill begged off, in one instance stating that “I have not given the thought to it I ought to have done, and which your letter will, in large measure, relieve me from the necessity of doing.”

Rose’s tutelage made a difference, notwithstanding its brief duration. In a way that the inexperienced Parker did not, his colleague from Maryland keenly perceived fluidity in judicial choice. His suggestions “radically changed” one of Parker’s opinions, involving an unfamiliar area of admiralty law. Even in a war profiteering case, about which ex-war frauds prosecutor Parker entertained sympathies running strongly with the government, Rose’s arguments turned Parker’s vote against the government and in favor of wool dealers charged with making “excess profits” from sales to the military. Advice proffered less than three weeks before his death by an ailing Rose fundamentally affected the freshman’s perception of a critical issue in the labor injunction case. PARKER’s opinion in the Red Jacket case would figure importantly in his 1930 confirmation defeat as a Supreme Court nominee.

D. Red Jacket

The American Federation of Labor, in its opposition to the Parker Supreme Court nomination, perceived his opinion in Red Jacket as clear evidence of anti-labor proclivities. Such unfavorable judicial attitudes toward labor would only serve in the eyes of A.F.L. President William Green and his compatriots to reinforce those then prevailing on the High Court. Predictably, labor focused its attention on the injunction against the United Mine Workers of America affirmed by Parker in Red Jacket. At issue was the scope of that injunction. It constituted, after the paramount issue of federal jurisdiction, the pivotal substantive question in a case against the union brought by coal companies including the Red Jacket Consolidated Coal and Coke Company working the West Virginia coalfields. The Mingo County-based enterprise became the named complainant, winning a favorable decree from Judge George W. McClintic of the Southern District of West Virginia. That decree had swept broadly, barring the union “from counseling or advising that [the mine operators] should in any way or manner be injured in the conduct and
management of their business and in the enjoyment of their property and property rights."

Parker would not adopt in full the lower court’s decree, but, busy as he was, neither would he abandon well-established precedent—*Hitchman Coal & Coke Co. v. Mitchell*. That landmark opinion, penned by Associate Justice Mahlon Pitney, had originated in West Virginia's Panhandle and within the Fourth Circuit. The High Court's reversal of appeals court Judge Jeter C. Pritchard's pro-labor opinion cast a shield of constitutional protection around “yellow-dog” contracts safeguarded by the then ascendant “liberty of contract” doctrine spawned by substantive due process jurisprudence. The constitutionality of such contracts barring or ousting from employment those employees who joined a union had ever since been deemed so settled an area of law that neither the UMWA briefs nor the arguments of its counsel raised the question in *Red Jacket*.

The decade-old decision in *Hitchman* prevented unlawful interference with labor relations founded on “yellow-dog” contracts. Interfering unionization strategies might include either or both unlawful purposes and unlawful means. The former existed whenever a third party not composed of employees of the targeted business sought to organize that business's employees in order to strike, and win collective bargaining rights, and thereby impair the constitutionally protected liberty of contract enjoyed by the owner and his individual employees. Malicious organizing strategies such as deception, misrepresentation, and threats of pecuniary loss, apparent in the facts of *Hitchman*, were deemed to be unlawful means. The Fourth Circuit court, in an opinion authored by Waddill and concurred in by Rose and neophyte Judge Parker, had addressed both the “yellow-dog” contract issue and the equity power of courts to protect such contracts when applying the *Hitchman* doctrine to a case with similar facts. Argued during Parker's first term on the appellate court and published a year later, in 1926, the case was styled as *Bittner v. West Virginia–Pittsburgh Coal Co.*

The fortuitous assignment to Parker of the opinion in *Red Jacket* left the freshman to draft the court's opinion in a legal conflict that challenged the judiciary's capacity to effect social and economic change. The author had initially embraced *Hitchman*’s twin prongs, unlawful purpose and unlawful means,
although only the unlawful purpose test related to the facts of Red Jacket. That test remained undisturbed by intervening, but in his view, either supportive or distinguishable Supreme Court cases. In reaching this conclusion, “freshman” Parker had “reached into pigeon holes,” as Howard so aptly put it, and predictably pulled out Hitchman. The precedent with its Fourth Circuit progeny appeared to neatly fit the facts of Red Jacket. Rose disagreed with his junior colleague’s assessment. He challenged the view that a third-party union interloper in pursuit of an unlawful purpose enjoyed absolutely no right to persuade employees under “yellow-dog” contracts even to “stop work” as Parker had stated in his memorandum. Admittedly Hitchman controlled and, Rose wrote, “you are quite possibly right that it requires an injunction against even . . . persuasion to join the Union when the persuaders know that those they seek to persuade have bargained not to do so.” He added: “I frankly do not like the Hitchman case and I think the subsequent decisions of the Supreme Court show that it is conscious that it went a little too far . . . . I would like to limit, as far as the Hitchman case . . . will let us, injunctions against peaceful persuasion to join the union.”

Senior Judge Waddill entertained no such doubts. Hitchman, he recalled, had been “perfectly clear” on the very point troubling Rose. Perhaps the High Court had emitted signals of impending modification of the labor law precedent, but that was of no concern to an intermediate court. “If the Supreme Court wants to qualify it, they should do it, not us,” Waddill advised.

Caught between the clashing views advanced by his senior colleagues, Parker equivocated. “Judicial flux” unexpectedly confronted him. He tightly grasped onto his professed Blackstonian approach (“not delegated to pronounce a new law, but to expound and maintain the old one”) and to a preferred formal opinion style. The latter favored exposition that was “clear and concise and, while not overburdened with quotations, given a sufficient citation of authority to show that the conclusions are well-sustained and in line with the current of judicial decisions.” To be avoided were dicta and explanatory statements that might illuminate underlying public policy, yet partake of the legislative function. Labor cases in particular called for a parsimonious style. He had asserted six months earlier in
a case arising out of the 1922 railway shopmen’s strike\textsuperscript{117} that the court should eschew making “observations in fields so fraught with controversy where anything said is likely to be misinterpreted.”\textsuperscript{118} Wisdom dictated that the judges “say nothing except what the decision of the case necessitates.”\textsuperscript{119} The opinion in \textit{Red Jacket}, consisting of eighteen typed pages, largely conformed with its author’s perception of the ideal opinion.\textsuperscript{120}

The draft opinion underwent a transformation in response to the now deceased Rose’s glimpse of a judicial choice. Parker retreated from his initial reliance on the unadulterated \textit{Hitchman} doctrine. While at first he had viewed that doctrine as one which barred a union’s mere “interference with the contract,”\textsuperscript{121} he came to approve union efforts “to extend its membership throughout the industry”\textsuperscript{122} by using what Rose had termed “peaceful persuasion to join the union.”\textsuperscript{123} Rose apparently remembered, even if Waddill had not, the presiding judge’s opinion in the case of \textit{West Virginia-Pittsburgh Coal Co}. In it, Waddill had heeded arguments advanced by UMWA counsel for a proviso permitting peaceful “advocacy of union membership” so long as they remained free “from attempts to persuade the complainant’s employees or any of them to violate their contracts with it.”\textsuperscript{124} Inclusion of the proviso had struck a decidedly discordant note in an opinion that largely echoed \textit{Hitchman} and replicated the language of the injunctive decree affirmed by Justice Pitney.\textsuperscript{125}

Influenced by Rose and having reconsidered Waddill’s confusing 1926 opinion, Parker’s final draft represented a revision in his thinking initially advanced in the memorandum. \textit{Red Jacket} permitted pro-union speech directed to “employees of complainants who are under contract not to join the union while remaining in complainant’s service.”\textsuperscript{126} It also permitted speech aimed at persuading such employees to leave their employment and join the union in order to strike or to refrain from entering the employer’s work place for the same purpose. What the union could not do was to approach employees working under “yellow dog” contracts “and induce them, in violation of their contracts, to join the union and go on a strike for the purpose of forcing the company to recognize the union or of impairing its power of production.”\textsuperscript{127} The subtlety of Parker’s spartan language veiled its essence in 1927 and especially
in 1930.

In the best Blackstonian tradition, the freshman jurist necessarily relied on the prevailing Hitchman doctrine as "conclusive of the point involved here." But he would contend that his decree, as distinguished from the trial court's, was "certainly not as broad as that of the decree approved by the Supreme Court in Hitchman Coal & Coke Co. v. Mitchell." Red Jacket drew narrower bounds for restraints on pro-union speech because Parker drew a fine distinction between peaceful persuasion to break and thus violate "yellow-dog" contracts and such speech intended merely to interfere with them. Only the former was prohibited in that it incorporated Hitchman's unlawful means test. Shed was that landmark decision's ban on even undefined hampering of the operations of businesses using constitutionally protected indeterminate employment contracts. And so, in the end, a wavering Parker adopted the advice advanced by Rose and discounted that which emanated from the elderly presiding judge of his bench. The freshman's Blackstonian tendencies and his opinion craftsmanship that allowed no room for overt criticism of Hitchman would provide little protection when his opinion came under fire three years later in the political cauldrons on the brink of a sea change in national life.

Untoward political events lay in Parker's future as he labored on during his freshman years. The author of Red Jacket had previously assumed a de facto leadership role on a court handicapped by physical disabilities and the death of one of its members. The opinion then became for a fleeting moment a faint memory for a recently appointed and busy judge.

E. Praise and Job Satisfaction

Prior to his work on Red Jacket and before the eclipse of Rose, who died three weeks before the issuance of that opinion, Parker's industry and apparent professional expertise made a profound impact on both bench and bar. Senior Judge Waddill could hardly restrain his enthusiasm for the "freshman" colleague whom he praised as "our crack man" only two months after the North Carolinian had ascended the bench. When the October 1925 term in Richmond ended and Parker's opinion assignments were completed, the elderly presiding judge allayed Chief Justice Taft's initial trepidation over the appointment.
"He is a first class judge," Waddill effused,

[a] sure-enough find, and dispatches business with greater ease and facility than any new judge with whom it has been my privilege to be thrown . . . . [H]e sat in forty out of forty-two cases, was fully prepared and ready for conference every time, and we found him to be a really helpful co-worker.134

Parker similarly impressed members of the court’s bar with “his wide-awake, analytic, and comprehensive intellect.”135 He was “perfectly fair and courteous to all counsel,” one attorney reported, and “his questions went squarely and fearlessly to the heart of each case and presented the issue in such simplicity as perhaps the lawyers themselves had not previously grasped.”136

If the newcomer enjoyed a favorable reputation among colleagues on the bench and at the bar, he derived great personal satisfaction from his new office. Parker relished the tasks associated with it. The work itself was admittedly “quite a change from the practice of law,”137 yet after less than a month on the court, he boasted of having gotten “the hang of things” while puzzling over cases “in the main of an important nature.”138 Impressive, too, was the quality of argumentation; cases presented to the court struck him as “well argued by lawyers who stand . . . at the forefront of the bar.”139

V. Freshman Achievements

Parker’s acknowledged leadership traits were mobilized to promote the administration of justice in the Fourth Circuit. Notwithstanding his youth and lack of seniority, the freshman judge (1) nurtured harmonious intra-circuit law, thereby guiding the Circuit’s district judges; (2) promoted simple and efficient legal procedures; and (3) labored to systematize court administration.

A. Substantive Law

The development of the law in the circuit concerned Parker, as had been evident in his work on the opinion in Red Jacket. He worked to shape and to harmonize this body of regional law. One strategy involved avoiding dissenting opinions. Unanimity in fact marked 95.8 percent of the opinions handed down by the Fourth Circuit from 1925 to mid-1930.140 But the low 4.2
percent dissent rate masked the extent of intra-court conflict. The spectrum of judicial choice was broad indeed, clearer in other cases than had initially seemed true in the labor case. Subordinating intra-court conflict and thereby avoiding overt dissent rested on professional strategies of self-effacement and public silence. Parker suggested the former in omitting from a draft opinion "a number of matters which I advanced in conference." Included now were "only such matters as I considered necessary to the decision of the case, thinking that if Judge McDowell should decide to concur in the opinion, he would prefer that I omit the matters about which he was doubtful."

A strategy of omission might ultimately result in laconic per curiam opinions, thereby disposing of cases efficiently while also muting intra-court conflicts. Thus, in a wrongful death case the circuit court affirmed the trial judge's directed verdict for the defendant railroad. Silence enveloped the deeply divisive and critical jurisdictional issue: Was the deceased "kitchen flunky," a member of a masonry repair crew hired by the railroad, actually involved in interstate commerce at the time of death in the railroad yards? To avoid time-consuming reargument of that point, Parker formulated a "per curiam so as to show the conclusion at which all of us arrived, namely, that there was no actionable negligence on the part of the defendant, and so as not to say anything about the question of jurisdiction."

Even in cases on which he had not sat, Parker scrutinized the work of associates to assure a harmonious law of the circuit to guide its bench and bar. "I congratulate you particularly upon the fine way in which you have handled case no. 2851," he wrote District Judge Duncan Lawrence Groner of the Eastern District of Virginia. "I was very much worried about it because of its effect as a precedent in this circuit." Especially pleasing was the Virginia judge's skillful restriction of the court's equity power to reform insurance contracts in light of a "greatly criticized expansive Supreme Court decision subsequently extended by some lower federal courts." Less complimentary was his evaluation of colleague Northcott's handiwork. Of the West Virginian's draft opinion, Parker worried that "there are some expressions in it which I am inclined to think might cause trouble in the future, as they do not coincide with what I understand to be the North Carolina law with respect to chattel

mortgages and their effect against trustees in bankruptcy." A five-page argument followed. It construed state law as found in a then-recent Fourth Circuit decision penned by resident expert Parker and later cited with approval by the United States Supreme Court. Similarly, circuit law might be reinforced by circulation of an unpublished memorandum authored by one district judge and approved by another. To a wavering trial judge on intra-circuit
A "FRESHMAN" TAKES CHARGE

assignment, Parker invoked the authority of nisi prius brethren. He noted:

[S]ome two years ago Judge [Ernest F.] Cochran [E.D.S.C.] and Judge [Morris A.] Soper [D. Md.], whom I know you agree with me in regarding as among the ablest judges in the Circuit, sat with me in the hearing of the Lottie Cochran case. We decided in that case that the error complained of was not harmless, but Judge Cochran prepared and submitted a memorandum on the doctrine of harmless error, which all of us agreed to as being the law. A copy of Judge Cochran's memorandum accompanied the letter.

When dissents occurred, Parker acknowledged to one dissident that it was "entirely possible that we are wrong about the matter and that you are right; but we have done the best that we could." In the end, the Supreme Court would measure his professional judgment and that of his colleagues. Should he err, Parker confidently asserted that "the Supreme Court will probably straighten me out." His confidence was misplaced because even in the 1920s, the High Court's supervision was intermittent; writs of certiorari under the court's expanded discretionary power authorized by Congress in 1925 were granted in a mere 8.22 percent of all Fourth Circuit cases in which an appellant petitioned for a writ. Among those denied certiorari was Red Jacket. Denial in such cases meant to Parker that "the Court has evidently concluded that we were right in our conclusion," or that "we . . . decided the questions in accordance with the ideas of the Supreme Court." The political process would subsequently adjudge that freshman interpretation of the meaning ascribed to Supreme Court actions to be an erroneous one.

The imperative of nurturing cohesive regional law that accorded with prevailing case law, with or without specific Supreme Court intervention, fused with another demand: communicating that law to the district judges. Thus an admiralty case involving seamen's wage claims impressed Parker as "a good case in which to write an opinion and lay down the law as to waiting time." A bankruptcy case involving a lien claim presented an opportunity to educate the lower bench in "the proper practice to be followed in cases of this kind,"
personal injury case enabled the appellate court to differentiate the doctrines of contributory negligence and assumption of risk. The distinction between the two common law tort doctrines was of little consequence in the case at hand; it loomed large, however, in cases arising under the Federal Employer's Liability Act. Such upper court guidance received one federal trial judge's effusive commendation. "Allow me to congratulate you upon these opinions," Judge Cochran of South Carolina's Eastern District wrote Parker. He had "been disturbed a good deal about railroad crossing cases, and . . . your opinion in the two crossing cases will be very helpful to the District Judges in the future." William Baker, Judge of the Northern District of West Virginia, similarly welcomed Parker's ill-fated opinion in Red Jacket as helping "a great deal to let both mine operators and labor organizations know their respective rights."

B. Procedure

Improvements in legal procedure quickly claimed Parker's attention and energies. He favored an approach elevating substance over form, facts over legal categories. A conviction that "it is better to analyze the facts of the case, rather than to indulge in reasoning on legal definitions" received articulation in a government contract case. "Intricate legal arguments have been advanced with great ingenuity of reasoning and wealth of learning in support of . . . conflicting contentions." But, the freshman jurist argued:

[T]he answer to the questions involved is to be found, not in technical reasoning from legal definitions applied to the forms in which the parties have clothed their transactions, but in a careful study of the facts conducted with a view of ascertaining the real relationship which existed between the parties and the substance, not the form, of the agreements into which they entered.

Concern for facts as distinguished from form resulted in short shrift accorded legal technicalities. Parker emphatically favored the "liberal rules of practice" which prevailed in North Carolina, a code-pleading state since Reconstruction. The native Tar Heel waxed euphoric in lauding its procedural rules as an "almost ideal system of jurisprudence—one which is simple, expeditious and conducive to decisions of questions on
Parker’s treatment of an important issue of procedure raised in Red Jacket reflected his approach. The United Mine Workers of America (“UMWA”) had alleged a misjoinder of parties in the appeal of a sweeping injunctive decree against the Union’s organizing campaign in southern West Virginia’s bituminous coalfields. The UMWA asserted that as each operator sued “to protect his individual business . . . there is no common right whose protection is sought by the suits.” Each must sue separately. Parker disagreed in an extended analysis. “There is but one conspiracy and that conspiracy is directed against the business of complainants as a class, not because of any of the individual characteristics of the various businesses, but because they are operating on the nonunion basis within a certain territory.” The court’s refusal to consolidate the cases “in order to promote the convenient administration of justice” would not only be unjust but would also impose on the trial court the loss of “months or years, to the exclusion of other business.” Justice and efficiency made it, Parker declared and erudite colleague Rose agreed, “absurd for the courts to require that there be presented in 316 different cases against the same parties a question which could be determined in a single case.”

Parker’s advocacy of simplified procedure included minimizing the “distinctions between actions at law and equity.” Application to federal practice of what the North Carolina Law Review termed a “liberal and progressive tendency” manifested itself in Great American Insurance Co. v. Johnson. When counsel for the insurance company complacently introduced no testimony and serenely awaited judgment on grounds that the insured had erroneously sought a remedy at law rather than in equity, Parker fairly bristled. “Shall we,” he asked, “reverse . . . merely because the case was heard on the law side [and] . . . hark back to the outworn technicalities of a day that is dead?” Nothing required Parker to find prejudicial error and to order a new trial “where all of the evidence in the lower court is before us, where it appears that the case was fully developed, and where the relief obtained at law is exactly what . . . should have been awarded in equity.” When the Taft Court denied certiorari, this implicit affirmation of his theory of procedural law pleased Parker because he regarded Great
The same treatment of legal forms surfaced in his consideration of criminal procedure issues. It was enough that criminal indictments contained sufficient information "to fairly and reasonably inform the defendants of the character of the offense charged." The failure of indictment language "to allege that the automobile was in fact stolen when it is alleged that the defendants on receiving it knew it to have been stolen can be nothing more than a defect of form which could not possibly tend to their prejudice." In the privacy of his memorandum, however, he exclaimed: "[I]t would be a reproach to the administration of justice to allow defendants to escape conviction on such a technicality." Time and again, Parker would cut through the crust of mossy forms with the sword of "harmless error." The rationale for such sword wielding never changed. "Courts," he declared in Great American, "exist to do justice, not to furnish a forum for intellectual skill or prowess," and "to leave the parties feeling that justice has been done."

C. Court Management

Even as a freshman judge, Parker involved himself in court administration. Advocacy of executive-centered government organization had been a pronounced theme in his 1920 North Carolina gubernatorial campaign; as judge, he put theory into practice. No sooner had he joined the appellate bench than pleas from the judge of the Eastern District of North Carolina led him to hold that court's August term at Wilmington. At its close, the congested trial docket had been cleared. A committee of the local bar was appointed, Parker informed the resident judge,

to go over the docket and report to you at the next term as to the state of a lot of old cases which are pending, with recommendation as to what disposition should be made of same, and direct that the clerk place these cases on the calendar for the next term.

The strategy elated its beneficiary who marveled:

[Y]our order appointing a commission to clean house with respect to the
docket comes like a straight flush in a weary hand. I never had thought of that and perhaps never would have thought of it. I shall do the same thing at Raleigh . . . [where] there is more dead wood in old junk . . . than there was at Wilmington. 192

Imperatives of expeditious court administration moved Parker to seek methods of cutting "down frivolous petitions for re-hearing." 193 Such petitions, he complained, "take up considerable time and involve considerable delay in the disposition of cases." 194 One method involved eschewing obiter dicta in judicial opinions. "Suggesting theories upon which it might be possible to sustain the contentions of plaintiff," he wrote Rose, who sometimes favored an expansive literary style, only served to "invite petitions for rehearing and strenuous contention in future cases." 195 Thus, the safest course from an administrative perspective, if not from a political perspective as became apparent in Red Jacket, involved simply announcing "our conclusion on the facts of this case, without suggesting what we might do if the facts were not as they are." 196

Another method for improving case management involved amending the rules of court to conform with familiar procedure followed by the North Carolina Supreme Court. That court utilized a screening system for handling rehearing petitions. Parker considered the step "a good one." 197 However desirable any proposed reform in court rules, presiding Judge Waddill could be expected to object to their adoption on the grounds that they would complicate the judicial task. 198 Hurdling that obstacle might require the intervention of the Chief Justice of the United States, a strategy Parker contemplated in 1928 when preparing to attend the annual meeting of the American Law Institute in Washington. 199

The circuit court's foremost administrative problem from 1927 to early 1931 related to management of inter-court transfers of district judges to it, a task statutorily assigned to the court and construed by Waddill as empowering the Senior Circuit Judge. 200 Waddill's periodic disablements, however, caused the duty to default to Parker, notwithstanding statutory ambiguity enveloping the subject. Transfers required assessing the availability of district judges, scheduling their services on the appeals court, and seeking Waddill's approval for the assignments, approval which might or might not be forthcoming
Former Virginia Readjuster and political lawyer Edmund Waddill, Jr. (1855-1931) had been appointed in 1898 by President William McKinley to the U.S. Court for the Eastern District of Virginia and in 1921 by President Warren Harding to the U.S. Court of Appeals for the Fourth Circuit. The Senior (presiding) Circuit Judge was in the twilight of a long and tumultuous career when this portrait was made in the late 1920s. Source: Photo No. LC-USZ62: 91073, Prints and Photographs Division, Library of Congress, Washington, DC.

depending on the state of the senior judge’s mental and physical health.201

In his first years as judge, Parker became de facto court administrator. It proved a delicate position in light of Waddill’s uncertain health and the statutory silence respecting administrative powers ascribed to a judge who lacked seniority. Especially was this true when the subject at hand involved inter-court transfers to the appellate court. The senior judge’s hierarchical
sense of administration impelled him to disfavor gratuitous offers of such assistance made by trial judges. These offers “should originate in the upper house,” he reportedly told one district judge. Parker boldly questioned this policy. He also differed with Waddill over the presence on the circuit bench of Eastern Virginia’s Groner, a man whom Parker held in high esteem and devoutly wished promoted to the appellate court level. Waddill, however, had refused to invite Groner to serve on the court—personal animosity apparently precluded an invitation. When the approach of the 1929 June term in Asheville brought news of the senior judge’s indisposition, Parker mused that

Groner would really be of more help to us than any of the others except Soper, but I am afraid that Judge Waddill would feel that we were taking advantage of his absence to do something that he would not do. On the other hand, . . . Judge Waddill’s absence would enable us to bring [Groner] to the Court without causing friction.

Getting wind of the plan to transfer Groner, Waddill unhelpfully suggested that “we can get along with any unfinished cases just as well at the October term.” Parker rejected the backlog-inducing carry-over plan, and Groner, among four district judges, arrived to expedite judicial business at the court’s Asheville term.

Having completed their assignments, travelling judges routinely submitted expense vouchers. Parker approved them in Waddill’s absence and transmitted them to the Department of Justice for payment. No provision in the Judicial Code specifically sanctioned this or other administrative acts performed by any judge other than the presiding judge. Parker acknowledged “that the statute does not expressly give me power,” but considered himself duty bound “not to let the work of the Circuit suffer by reason of Judge Waddill’s illness.”

The young judge reasoned that “Congress must have intended that in case of serious illness of the Senior Circuit Judge, resulting in his incapacity, the next Judge in order of seniority should attend to the work of the Court.” That logical thought had apparently never entered the collective mind of Congress! At most, existing law empowered the judge next in seniority to preside over the court in the senior circuit judge’s
“absence.”\textsuperscript{213} No mention was made of permanent physical disablement nor of the manifold administrative functions, other than that of presiding in open court, which formally and informally fell to the most senior appellate judge.\textsuperscript{214} Parker met this statutory lacuna by giving “a liberal interpretation” to the section which enumerated the powers of the senior circuit judge.\textsuperscript{215} Such a construction seemed justifiable because the words “senior judge” did not refer exclusively to the specific judge holding that title, but rather constituted a generic term embracing any judge who de facto performed the requisite duties of the court’s presiding officer.\textsuperscript{216}

The issue of the senior judge’s disability would come to a head at the 1931 Judicial Conference of Senior Circuit Judges, as the Judicial Conference of the United States was then titled.\textsuperscript{217} By the time the Conference convened that fall, the issue had been mooted by Waddill’s death.\textsuperscript{218} Forty-five-year-old Parker succeeded him, formally assuming Senior Circuit Judge status at what Judge Soper declared “an absurdly youthful age, in defiance of all laws of nature.”\textsuperscript{219} At the conference, Parker’s pragmatic construction of the statute astounded Chief Justice Charles Evans Hughes, who chaired the assembly of ranking jurists.\textsuperscript{220} Hughes lectured Parker on the statute’s explicitness and successfully urged its recasting to specify devolution of circuit administrative power to an appellate judge other than the senior jurist.\textsuperscript{221} Three years later, Congress resolved the Waddill-induced administrative conundrum by providing that the appellate judges in order of their commission assume the duties of a disabled presiding judge.\textsuperscript{222} Thus, Parker’s conception of effective court management, implemented by him during his initial years on the bench, became a permanent part of the Judicial Code.

VI. Conclusion

The opening years of John J. Parker’s nearly thirty-three-year career on the United States Court of Appeals for the Fourth Circuit attest to the leadership opportunities available even to a “freshman” jurist as well as to the pitfalls associated with it. His youthful energy, professional expertise, and executive qualities filled a void created by the physically infirm presiding judge, by other periodically disabled colleagues, and by the rotation throughout the appellate court of a platoon of district judges.
Members of the Conference of Senior Circuit Judges (Judicial Conference of the United States) October 1-3, 1930 gathered on the Capitol steps for the first meeting chaired by Chief Justice Charles Evans Hughes and the first, attended, in the absence of disabled Senior Circuit Judge Edmund Waddill, Jr., by a dejected Judge John J. Parker (Cir. 4) following the Senate rejection of his Supreme Court nomination the previous May. Left to right on the front row: George H. Bingham (Cir. 1), Martin T. Manton (Cir. 2), Joseph Buffington (Cir. 3), Charles E. Hughes (C.J.U.S.), Arthur C. Denison (Cir. 6), Robert E. Lewis (Cir. 10), Frank H. Rudkin (Cir. 9, substituting for William B. Gilbert); on the rear row: Samuel Alschuler (Cir. 7), Kimbrough Stone (Cir. 8), Walter P. Bryan (Cir. 5), John J. Parker (Cir. 4). Except for the appearance of Curtis D. Wilbur (Cir. 9), the membership of the 1931 Conference remained unchanged from that of 1930. Source: Photo No. LC-USZ62: 17314, Prints and Photographs Division, Library of Congress, Washington, DC.
To be sure, he deferred to colleague Rose, but that judge's tutelage faltered within a year and irrevocably terminated within sixteen months of Parker's appointment. Even before Rose's untimely death, the freshman had made material and acknowledged contributions to the work of the court. More were to come, for as an experienced federal appellate judge he would author opinions in landmark cases of regional and national importance.223

During the 1930s he achieved prominence as an advocate of national law reform224 and of rules of civil procedure developed and controlled by judges rather than by legislators or lawyers.225 Also, after the adoption of the Federal Rules of Civil Procedure in 1938,226 he would seek their implementation by federal judges through his chairmanship of the Judicial Conference Committee on Pre-Trial Procedure227 as well as their emulation by the judiciaries of the several states.228 In addition to promoting procedural codification and simplification, Parker became a national advocate of judge-centered court management. His early ventures into the administrative realm vastly multiplied after 1931 when he became Senior Circuit Judge,229 a permanent member of the Judicial Conference from 1931 through 1957,230 and Chairman of the American Bar Association's Section of Judicial Administration in 1937-38.231 In these different capacities, he helped to forge the Act of August 7, 1939, formally creating the circuit judicial councils and conferences as well as the Administrative Office of the United States Courts,232 and to develop the minimum standards of judicial administration encapsulated in Arthur T. Vanderbilt's landmark book by the same title.233

Parker's career as a "freshman" owed much to his own natural abilities and ambition as well as to anticipatory socialization, including academic and extracurricular achievements as an undergraduate, courtroom experience, and partisan politics. Purely fortuitous events opened opportunities for judicial leadership that otherwise might have remained closed during the "freshman" years on the intermediate federal appellate court bench. Yet, those same fortuitous events that thrust him at a young age into a leadership position on the Fourth Circuit court also imposed a high cost. His assignment to write the opinion in Red Jacket derived from his productive capacity and the esteem in
which he was held by the presiding judge. Blackstonian proclivities combined with a cryptic opinion style would impale him when his Supreme Court confirmation evoked politically potent and ultimately fatal opposition.\textsuperscript{234}

From 1930 until his death in 1958,\textsuperscript{235} Parker could contemplate his freshman years on the court of appeals and the wholly unanticipated cost they imposed on his ambition for a seat on the United States Supreme Court. Would greater maturity and longer experience on the bench have made a difference? Had not his phraseology in delineating the scope of the injunction traced that approved by Waddill and Rose in previously decided post-\textit{Hitchman} cases arising out of the strife-torn West Virginia coalfields?\textsuperscript{236} How, he plaintively wondered in 1930, could his senior brethren have erred? After all, “they were both veteran jurists . . . with much experience upon the bench, both in the District and the Circuit Courts.” Parker had no such background. Writing in the third person, he lamented that “he was not only the youngest judge of the three, but was junior in rank, having been appointed only a little over a year when this case was decided.”\textsuperscript{237} Upon further reflection and after the elapse of more than a decade, the opinion’s author admitted the political damage to his Supreme Court quest imposed by the “freshman” effect. Writing Harvard Law Professor Zechariah Chafee, Jr. late in 1941, Parker mused: “Had I been longer upon the bench I might have attempted some criticism of the Hitchman decision.”\textsuperscript{238} Hindsight sharpened by the then-recent entombment of the tattered \textit{Hitchman} doctrine undoubtedly emboldened him.\textsuperscript{239} Rhetorical ventures in opinion writing had been out of the question for Parker the “freshman” jurist at a moment when his apparent omnicompetence on the bench deeply impressed and gratified those who witnessed his performance.
### TABLE A

**Caseload of Fourth Circuit Court of Appeals: 1925-1930**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1925*</th>
<th>1926</th>
<th>1927</th>
<th>1928</th>
<th>1929</th>
<th>1930</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Pending</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases Docketed</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases Terminated</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percent caseload Terminated</td>
<td>70.1</td>
<td>71.9</td>
<td>73.6</td>
<td>69.8</td>
<td>59.5</td>
<td>62.5</td>
</tr>
<tr>
<td>Terminated per Judge</td>
<td>41.3</td>
<td>47.0</td>
<td>40.0</td>
<td>39.3</td>
<td>34.3</td>
<td>48.3</td>
</tr>
<tr>
<td>Cases Pending (for Decision)</td>
<td>(30)</td>
<td>(27)</td>
<td>(13)</td>
<td>(28)</td>
<td>(26)</td>
<td>(45)</td>
</tr>
<tr>
<td>(for Argument)</td>
<td>(24)</td>
<td>(28)</td>
<td>(30)</td>
<td>(23)</td>
<td>(44)</td>
<td>(42)</td>
</tr>
</tbody>
</table>

*Parker not seated.


### TABLE B

**Case Filings in Regional Courts of Appeals by Fiscal Year: 1926-1930**

<table>
<thead>
<tr>
<th>1926 (Cir)</th>
<th>1927 (Cir)</th>
<th>1928 (Cir)</th>
<th>1929 (Cir)</th>
<th>1930 (Cir)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47 (2)</td>
<td>413 (2)</td>
<td>405 (2)</td>
<td>451 (2)</td>
<td>463 (2)</td>
</tr>
<tr>
<td>48 (8)</td>
<td>401 (8)</td>
<td>377 (8)</td>
<td>405 (8)</td>
<td>318 (8)</td>
</tr>
<tr>
<td>49 (9)</td>
<td>306 (9)</td>
<td>329 (9)</td>
<td>338 (9)</td>
<td>314 (8)</td>
</tr>
<tr>
<td>50 (6)</td>
<td>291 (5)</td>
<td>251 (3)</td>
<td>274 (6)</td>
<td>307 (9)</td>
</tr>
<tr>
<td>51 (5)</td>
<td>291 (6)</td>
<td>242 (5)</td>
<td>271 (3)</td>
<td>263 (3)</td>
</tr>
<tr>
<td>52 (7)</td>
<td>150 (3)</td>
<td>229 (6)</td>
<td>253 (5)</td>
<td>233 (6)</td>
</tr>
<tr>
<td>53 (1)</td>
<td>144 (7)</td>
<td>126 (4)</td>
<td>150 (7)</td>
<td>201 (7)</td>
</tr>
<tr>
<td>54 (3)</td>
<td>108 (1)</td>
<td>123 (1)</td>
<td>128 (10)</td>
<td>187 (10)</td>
</tr>
<tr>
<td>55 (4)</td>
<td>108 (4)</td>
<td>122 (7)</td>
<td>122 (4)</td>
<td>162 (4)</td>
</tr>
</tbody>
</table>

TABLE C

Caseflow in Fourth Circuit Court of Appeals, 1925-1930

<table>
<thead>
<tr>
<th>Events Consummated</th>
<th>Mean # Days</th>
<th>Min. # Days</th>
<th>Max. # Days</th>
<th>Standard Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing of Record to Issuing of Mandate (n=451)</td>
<td>253.7</td>
<td>37.0</td>
<td>2479.0</td>
<td>142.7</td>
</tr>
<tr>
<td>Filing of Record to Filing of Last Brief (n=50)</td>
<td>96.2</td>
<td>9.0</td>
<td>558.0</td>
<td>48.7</td>
</tr>
<tr>
<td>Filing of Last Brief to Duel Argument (n=452)</td>
<td>9.5</td>
<td>1.0</td>
<td>192.0</td>
<td>29.9</td>
</tr>
<tr>
<td>Oral Argument to Reargument (n=15)</td>
<td>199.3</td>
<td>45.0</td>
<td>366.0</td>
<td>97.3</td>
</tr>
<tr>
<td>Argument or Reargument to Issuing of Opinion (n=488)</td>
<td>83.9</td>
<td>1.0</td>
<td>396.0</td>
<td>54.7</td>
</tr>
<tr>
<td>Issuing of Opinion to Issuing of Mandate (n=434)</td>
<td>56.5</td>
<td>1.0</td>
<td>1247.0</td>
<td>72.3</td>
</tr>
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</table>

Source: 6-8 Clerk's Official Term Dockets (Office of the Clerk, U.S. Court of Appeals for the Fourth Circuit, Richmond, Va.)

TABLE D

Authorship of Full Court Opinions, 1925-1930

<table>
<thead>
<tr>
<th>Judge</th>
<th>No. Opinions</th>
<th>Percent of Total Opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parker</td>
<td>159</td>
<td>35.1</td>
</tr>
<tr>
<td>Rose-Northcott</td>
<td>128</td>
<td>28.3</td>
</tr>
<tr>
<td>Waddill</td>
<td>72</td>
<td>15.9</td>
</tr>
<tr>
<td>District Judges</td>
<td>94</td>
<td>20.7</td>
</tr>
<tr>
<td>TOTAL</td>
<td>453</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: 8-42 Federal Reporter, Second Series (1925-1930)
TABLE E

Business of the Fourth Circuit Oct. 1925 through April 1930
(n = 604)

<table>
<thead>
<tr>
<th>Rank</th>
<th>Subject</th>
<th>Number</th>
<th>Percent of Docket</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Contracts</td>
<td>104</td>
<td>17.3</td>
</tr>
<tr>
<td>2.</td>
<td>Criminal Law &amp; Proc.</td>
<td>85</td>
<td>14.2</td>
</tr>
<tr>
<td></td>
<td>(Crim Law)</td>
<td>(52)</td>
<td>(8.7)</td>
</tr>
<tr>
<td></td>
<td>(Crim Proc)</td>
<td>(33)</td>
<td>(5.5)</td>
</tr>
<tr>
<td>3.</td>
<td>Bankruptcy</td>
<td>79</td>
<td>13.1</td>
</tr>
<tr>
<td>4.</td>
<td>Admiralty</td>
<td>67</td>
<td>11.1</td>
</tr>
<tr>
<td>5.</td>
<td>Taxation</td>
<td>49</td>
<td>8.2</td>
</tr>
<tr>
<td>6.</td>
<td>Torts</td>
<td>45</td>
<td>7.5</td>
</tr>
<tr>
<td>7.</td>
<td>Commercial Law</td>
<td>35</td>
<td>5.8</td>
</tr>
<tr>
<td>8.</td>
<td>Property</td>
<td>24</td>
<td>4.0</td>
</tr>
<tr>
<td>9.</td>
<td>Corporate Law</td>
<td>18</td>
<td>3.0</td>
</tr>
<tr>
<td>10.</td>
<td>Patents</td>
<td>16</td>
<td>2.6</td>
</tr>
<tr>
<td>11.</td>
<td>Business Regulation</td>
<td>8</td>
<td>1.3</td>
</tr>
<tr>
<td>12.</td>
<td>Other</td>
<td>32</td>
<td>5.3</td>
</tr>
<tr>
<td>13.</td>
<td>Unidentified per curiam</td>
<td>40</td>
<td>6.6</td>
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</table>

Source: 8-42 Federal Reporter, Second Series (1925-1930)
### TABLE F

Full Signed Opinion Authorship By Subject-Matter (n=449)

<table>
<thead>
<tr>
<th>Authors</th>
<th>Parker</th>
<th>Rose-Northcott</th>
<th>Waddill</th>
<th>District judges</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Patents (14)</td>
<td>64.3</td>
<td>(9)</td>
<td>21.3</td>
<td>(3)</td>
</tr>
<tr>
<td>Gov't Reg.</td>
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*N- No. of Cases authored by District Judges

*J- No. of District Judges Participating

Source: 8-42 Federal Reporter, Second Series (1925-1930)
ENDNOTES


2. Id. at 17-19.

3. 72 Cong. Rec. 6, 5849 (1930) (nominated on Mar. 21, 1930; 72 Cong. Rec. 8, 8487 (1930) (not confirmed on May 7, 1930).

4. “Parker,” supra note 1, at 17 (death of John, Jr. on July 4, 1941).


10. Id.


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15. Act of Mar. 3, 1891, ch. 517, § 3, 26 Stat. 826, 827 (fixing seat of the Fourth Circuit Court of Appeals at Richmond, Virginia for regular terms, the dates to be designated by the court); Act of July 17, 1916, ch. 246, 39 Stat. 385 (authorizing the Fourth Circuit Court of Appeals to hold a term at Asheville, North Carolina on dates designated by the court). See Act of Feb. 28, 1929, ch. 363, § 3, 45 Stat. 1346, 1347. Regular Richmond terms were: Jan. and Apr. (second Tue.), Oct. (third Tue.); Special Richmond terms were in months other than Jan., Apr., June and Oct. (second Tue.); Annual Asheville term: June (second Tue.), reported in U.S. Register of the Department of Justice and the Courts of the United States (33d ed. 1928), 18.


25. "Biographical Data," supra note 20; Letter from John J. Parker to Lee S. Overman (Apr. 1, 1930), reprinted in U.S. Congress, Senate Subcommittee of the Committee on the Judiciary, Hearing on the
Confirmation of Hon. John J. Parker to be Associate Justice of the Supreme Court of the United States, 71st Cong., 2d Sess. (1930), at 1 [hereinafter Hearing].


30. *Id.* at 651. See Hearing, supra note 25, at 2.


35. Parker opposed Cameron Morrison; he polled 230,175 votes (42.76%) to Morrison's 308,151 (57.24%), *North Carolina Manual, 1921* (Raleigh, NC: Edwards & Broughton Printing Co., 1921), 315-16.


38. *Id.*


40. U.S. Congress, House Select Committee on Expenditures in the War Department, Hearings on War Expenditures, 66th Cong., 1st & 2d Sess. (1919-1921); U.S. Annual Report of the Attorney General of the
United States, 1922, at 4 (1922).

41. See Richard L. Merrick, "Memorandum for the Attorney General, Subject: The Harness Case," (Feb. 2, 1924), in War Transactions Section Advisory Council Files, box 21, Records of the Department of Justice, Record Group 60, National Archives, Washington, D.C.


43. Letter from Thomas C. Bradley to Herbert Hoover (Mar. 14, 1930), in Parker Papers, supra note 6, box 3.


45. Memorial Proceedings, Charles Albert Woods, died June 21, 1925 (Richmond, VA, United States Circuit Court of Appeals for the 4th Cir. 1925).

46. Letter from John J. Parker to Iredell Meares (July 28, 1924), in Parker Papers, supra note 6, box 2; Letter from Parker to William G. Bramham (Aug. 6, 1925), in Parker Papers, supra note 6, box 2.


48. Letter from Charles Kerr to John J. Parker (June 29, 1925), in Parker Papers, supra note 6, box 2.

49. Letter from Plummer Stewart to Harlan Fiske Stone (June 27, 1925), in Parker Personnel File, supra note 24, P-624:2 (handwritten comment by Stone).

51. Letter from Edmund Waddill, Jr. to John G. Sargent (July 4, 1925), in Appointment Files for Judges of the Circuit Courts of Appeals: 1903-1929, Circuit 4, box 334, Department of Justice Records, Record Group 60, National Archives, Washington, D.C.

52. Letter from John C. Rose to John Marshall (July 15, 1925), in Appointment Files for Judges of the Circuit Courts of Appeals: 1903-1929, Circuit 4, box 332, Department of Justice Records, Record Group 60, National Archives, Washington, D.C.

53. “Minutes No. 10, United States Court of Appeals, Fourth Circuit, 1923 to 1925,” at 455-56 (on file with Office of the Clerk, U.S. Court of Appeals for the Fourth Circuit, Richmond, Va.).


55. Memorial Proceedings, supra note 45.

56. Howard, Courts of Appeals, supra note 8, at 107.

57. Memorial Proceedings, supra note 45, at 64 (remarks of John C. Rose).


60. Recess appointment on Apr. 6, 1927, reported in U.S. Register of the Department of Justice and the Courts of the United States, 1928, at 8 (1928); nominated on Dec. 9, 1927, reported in 69 Cong. Rec., pt. 1, 70th Cong., 1st Sess., 359 (1927); confirmed on Dec. 15, 1927. Id. at 692.


63. Id. A bench composed of one circuit and two district judges heard 12% of all appeals. Another 57.8% (359/621) were heard by two circuit judges and one district judge. Id.

64. Id. Parker sat on 76.2% of all cases (473/621), followed by Rose-Northcott (439/621) and trailed by Waddill who sat in little more than half of all cases heard (335/621). Id.

65. See Howard, Courts of Appeals, supra note 8, at 239.


67. Id. (n=356/453).


69. Id. (n=159/359).

70. Id. (n=128/359).

71. Id. (n=72/359).

72. Letter from John J. Parker to Johnson J. Hayes (June 27, 1929), in Parker Papers, supra note 6, box 19; John J. Parker to Edmund Waddill, Jr., June 19, 1929, in Parker Papers, supra note 6, box 19; Letter from John J. Parker to Elliott Northcott (Dec. 6, 1930), in Parker Papers, supra note 6, box 20. See Act of Mar. 3, 1891, ch. 517, § 3, 26
Stat. 827 (codified in Act of Mar. 3, 1911, ch. 231, § 120, 36 Stat. 1132) (stating that "the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions").


75. Letter from Henry Clay McDowell to John J. Parker (Mar. 30, 1926), in Parker Papers, supra note 6, box 16.

76. Letter from John J. Parker to Edmund Waddill, Jr. (Feb. 8, 1930), in Parker Papers, supra note 6, box 19.

77. Letter from John J. Parker to Edmund Waddill, Jr., and Ernest F. Cochran (Sept. 6, 1926), in Parker Papers, supra note 6, box 16; see Alexander Milburn Co. v. Union Carbide & Carbon Corp., 15 F.2d 678 (4th Cir. 1926).

78. Letter from Edmund Waddill, Jr. to John J. Parker and Ernest F. Cochran (Sept. 24, 1926), in Parker Papers, supra note 6, box 16.

79. Id.


81. 18 F.2d 839 (4th Cir. 1927).


83. Letter from Edmund Waddill, Jr. to John J. Parker (Mar. 12, 1927), in Parker Papers, supra note 6, box 17.

84. Letter from Edmund Waddill, Jr. to John C. Rose (Mar. 19, 1927), in Parker Papers, supra note 6, box 17.

85. Waddill to Parker, in Parker Papers, supra note 6, box 17; Letter from Waddill to Parker (Mar. 16, 1927), in id.

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87. See Howard, "On the Fluidity," supra note 68, at 45; Howard, Mr. Justice Murphy, supra note 11, at 236.

88. Letter from John J. Parker to John C. Rose (Dec. 2, 1925), in Parker Papers, supra note 6, box 16.

89. Letter from John J. Parker to John C. Rose (Dec. 15, 1925), in Parker Papers, supra note 6, box 16.

90. Id.

91. Letter from Edmund Waddill, Jr. to John J. Parker (Feb. 19, 1926), in Parker Papers, supra note 6, box 18 (regarding case no. 2456, United States v. Neptune Lines, 12 F.2d 568 (4th Cir. 1926)). See also Letter from Edmund Waddill, Jr. to John J. Parker (Dec. 26, 1929), in Parker Papers, supra note 6, box 19 (regarding case no. 2875, Massachusetts Bonding & Ins. Co. v. Concrete Steel Bridge Co., 37 F.2d 693 (4th Cir. 1930)).

92. Letter from John J. Parker to Henry H. Watkins (Jan. 13, 1926), in Parker Papers, supra note 6, box 16; Letter from Parker to John C. Rose (Jan. 9, 1926), in Parker Papers, supra note 6, box 16 (regarding case no. 2412, Berwind-White Coal Mining Co. v. Solleveld, Van DerMeer & T.G. Van Huttem's Stoomvaart Maatschappij, 11 F.2d 80 (4th Cir. 1926)).

93. United States v. McFarland, 15 F.2d 823 (4th Cir. 1926); Letter from John J. Parker to John C. Rose (Sept. 18, 1926), in Parker Papers, supra note 6, box 16.


96. See an excellent recent analysis of the fight on Judge Parker and the role played in it by the labor and race issues by John Anthony Maltese, The Selling of Supreme Court Nominees (Baltimore, MD: Johns Hopkins University Press, 1995), 56-69.
97. Parker regarded the jurisdictional issue as "the most serious question in the case," Memorandum by John J. Parker on nos. 2493-2503, in Parker Papers, supra note 6, box 48, as did counsel for United Mine Workers of America who devoted 119 of 169 papers (70%) to the subject in arguments contained in the appellant's brief, Brief for Appellants, Int'l Union, United Mine Workers of Am. v. Red Jacket Consol. Coal & Coke Co., 18 F.2d 83 (4th Cir. 1927), at 66-185. Federal court jurisdiction depended on a finding that the union and its officers engaged in a conspiracy under the Sherman Anti-Trust Act (26 Stat. 209) to restrain interstate commerce in coal produced in non-union West Virginia mines, Red Jacket, 18 F.2d at 843. Should the complainants fail to link the union activities to interstate commerce, the defendant union would effectively win under the prevailing doctrine of "dual federalism," a legacy of United States v. E.C. Knight Co., 15 U.S. 1 (1895) and Hammer v. Dagenhart, 247 U.S. 251 (1918). Parker recognized "that coal mining is not commerce, and that ordinarily interference, with coal mining could not be said to be interference with interstate commerce," although in Red Jacket the union logically "intended to interfere with the shipment of coal in interstate commerce." Memorandum by John J. Parker on nos. 2493-2503, in Parker Papers, supra note 6, box 48. The intent derived from the huge quantum of coal production interfered with at the mineheads thereby blocked interstate traffic. Under recent Supreme Court precedents, such intra-state blockage exerted a "direct effect" on interstate commerce within the Sherman Act. Red Jacket, 18 F.2d at 845 (citing Coronado Coal Co. v. UMWA (Second Coronado Case), 268 U.S. 295, 309-10 (1925)); Id. at 846 (citing United States v. Brims, 272 U.S. 549, 552 (1926)); Id. (citing Bedford Cut Stone Co. v. Journeymen Stone Cutters' Ass'n of N. Am., 274 U.S. 37, 46 (1927)).

98. Red Jacket, 18 F.2d at 842.


101. Letter of John J. Parker to Lee S. Overman (Apr. 24, 1930), reprinted in 72 Cong. Rec. 7, 7795 (1930) (also noting that "[t]his form of contract was directly upheld in 1914 [sic] in the case of Coppage v. Kansas (236 U.S. 1) . . . . It was again directly upheld in the Hitchman case." On the failure of UMWA counsel to press the validity
of such contracts, see testimony of Thomas C. Townsend, Hearing, *supra* note 25, at 61-69.


103. *Id.* at 259.

104. 15 F.2d 657-58 (4th Cir. 1926); 7 Clerk’s Official Term Dockets (Oct. term 1926), 6 (available at Office of the Clerk, U.S. Fourth Circuit Court of Appeals, Richmond, VA) (noting that case no. 2409 was argued Oct. 22, 1925, opinion filed Oct. 29, 1926, decree filed Nov. 1, 1926, and mandate issued Dec. 2, 1926).


110. *Id.*


112. *Id.*


115. Letter of John J. Parker to Elliott Northcott (May 27, 1927), in Parker Papers, *supra* note 6, box 17 (regarding case no. 2610, Globe Indemnity Co. v. Keeble, 20 F.2d 84 (4th Cir. 1927)).

116. Letter of John J. Parker to John C. Rose (Feb. 12, 1927), in Parker Papers, *supra* note 6, box 17 (regarding case no. 2553, United States v. Newport Shipbuilding Corp., 18 F.2d 556 (4th Cir. 1927)).


119. Id.

120. Letter of John J. Parker to Edmund Waddill, Jr. (Apr. 7, 1927), in Parker Papers, supra note 6, box 17.

121. Memorandum by John J. Parker on cases nos. 2492-2503, in Parker Papers, supra note 6, box 48.

122. Red Jacket, 18 F.2d at 844.

123. Letter of John C. Rose to John J. Parker (Mar. 8, 1927), in Parker Papers, supra note 6, box 17.


125. Bittner, 15 F.2d at 654.

126. Red Jacket, 18 F.2d at 849.

127. Id.

128. Id.

129. Id.

130. See Maltese, The Selling, supra note 96, at 57-58.

131. Red Jacket, 18 F.2d at 899 (issued Apr. 18, 1927); id. at 850 (reporting that Rose, J. heard the case and concurred in the decision affirming the district court, but died before reviewing the record on the jurisdictional question or the opinion of the court). Rose died March 26, 1927, 18 F.2d iv, n.9 (1927).

132. Letter from Edmund Waddill, Jr. to John J. Parker (Dec. 16, 1925), in Parker Papers, supra note 6, box 16; see also letter from Waddill to Parker (June 11, 1927), in id. box 17.

133. Letter from William Howard Taft to Edmund Waddill, Jr. (Oct. 5, 1925), in Taft Papers, supra note 51, microfilm roll 276.


135. Letter from John Jackson McSwain to Herbert Hoover (Mar. 17, 1930), in Parker Papers, supra note 6, box 3.

136. Id.

137. Letter from John J. Parker to Thomas Bragg Higdon (Oct. 31, 1926), in Parker Papers, supra note 6, box 16.

138. Id.

139. Id.

141. Letter from John J. Parker to Elliott Northcott and Henry Clay McDowell (Oct. 31, 1927), in Parker Papers, supra note 6, box 16 (regarding case no. 2807, Dunagan v. Appalachian Power Co., 33 F.2d 876 (4th Cir. 1929)).

142. Id. For a use of a similar strategy in In re Miner-Edgar Co., 32 F.2d 103 (4th Cir. 1929), see letter from John J. Parker to Henry Clay McDowell and Morris A. Soper (Mar. 26, 1929), in Parker Papers, supra note 6, box 18.


144. Letter from John J. Parker to George W. McClintic (May 28, 1927), in Parker Papers, supra note 6, box 17; Memorandum on no. 2537, in Parker Papers, supra note 6, box 48 (regarding Brown, 20 F.2d 133). See also Letter from Parker to McClintic (May 21, 1928), in Parker Papers, supra note 6, box 17.

145. Letter from John J. Parker to Duncan Lawrence Groner (Sept. 16, 1929), in Parker Papers, supra note 6, box 19.

146. Id.

147. Id. See Hutchings v. Caledonian Ins. Co. of Scotland, 35 F.2d 309, 211 (4th Cir. 1930) (distinguishing Northern Assurance Co. v. Grand View Bldg. Ass'n, 183 U.S. 308 (1902)).


149. Id. (regarding case no. 2666, Holt v. Albert Pick Co., 25 F.2d 378 (4th Cir. 1928)). Parker noted that Firestone Tire & Rubber Co. v. Cross, 17 F.2d 417 (4th Cir. 1927) had been cited with approval in Finance & Guar. Co. v. Oppenhimer, 276 U.S. 10, 12 (1928).

150. Letter from John J. Parker to Henry Clay McDowell (Mar. 26, 1929), in Parker Papers, supra note 6, box 18 (regarding case no. 2636, Chesapeake & Ohio Ry. Co. v. Cochran, 22 F.2d 22 (4th Cir. 1927)).

151. Id. (regarding case no. 2807, Dunagan v. Appalachian Power Co., 33 F.2d 876, 878-79 (4th Cir. 1929)).

152. Letter from John J. Parker to Henry Clay McDowell (Oct. 24, 1927), in Parker Papers, supra note 6, box 17 (regarding case no. 2908, Kelleher v. French, 22 F.2d 341 (W.D. Va. 1927)).

153. Letter from John J. Parker to Henry Horace Williams (Feb. 6, 1930), in Parker Papers, supra note 6, box 3 (regarding case no. 2908, United States v. Munson Steamship Line, 37 F.2d 681 (4th Cir. 1930), aff'd, 283 U.S. 43 (1930)).

155. N=15/133 cases; data derived from volumes 269-281 of the United States Reports (1925-1930). N=133 when all joined cases are counted as a single case; n=148 if such cases are counted separately. Twelve of the joined cases were appeals in Red Jacket, cert. denied, 275 U.S. 536 (1927).


159. *Id.* on no. 2437 (regarding Weekley v. Oil Well Supply Co., 12 F.2d 539, 541 (4th Cir. 1926)) (Parker, J., stating that "a lien claimant will have no artificial presumption of the correctness of his claim because he asserts it informally along with proof of secured claim instead of following the better practice of filing an intervening petition").


162. Letter from Ernest F. Cochran to John J. Parker (May 22, 1926), *in* id. box 16 (regarding case no. 2387, Atl. Coast Line R.R. Co. v. McLeod, 11 F.2d 22 (4th Cir. 1926); case no. 2504, Waid v. Chesapeake & Ohio Ry. Co., 14 F.2d 90 (4th Cir. 1926)).


165. Va. Shipbuilding Corp. v. United States, 22 F.2d 38, 46 (4th Cir. 1927).

166. *Id.*
167. Letter from John J. Parker to Edmund Waddill, Jr. (Dec. 8, 1926), in Parker Papers, supra note 6, box 16.


170. Red Jacket, 18 F.2d at 842.

171. Id. at 846.

172. Id.


174. See Letter from John C. Rose to John J. Parker (Mar. 8, 1927), in Parker Papers, supra note 6, box 17.

175. Red Jacket, 18 F.2d at 847.

176. Letter from John J. Parker to Edmund Waddill, Jr. and Elliott Northcott (Dec. 12, 1929), in Parker Papers, supra note 6, box 19 (regarding case no. 2905, Clarksburg Trust Co. v. Commercial Casualty Ins. Co., 40 F.2d 626 (4th Cir. 1930)).


178. 25 F.2d 847 (4th Cir. 1928).

179. Id. at 850.

180. Id., reh’g denied, 27 F.2d 71 (4th Cir. 1928); accord Nat’l Sur. Co. v. County Bd. of Educ. of McDowell County, 15 F.2d 993, 994 (4th Cir. 1926); Clarksburg Trust Co., 40 F.2d at 626.


184. Wendell v. United States, 34 F.2d 92, 94 (4th Cir. 1929). See also Lisansky v. United States, 31 F.2d 846 (4th Cir. 1929).

185. Memorandum by John J. Parker, in Parker Papers, supra note 6, box 48 (regarding case no. 2881 Wendell v. United States, 34 F.2d 92 (4th Cir. 1929)).
186. See Act of Feb. 26, 1919, ch. 48, 40 Stat. 1181 (providing that on a hearing for a new trial, "the court shall give judgment . . . without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties").

187. 25 F.2d 847, 850 (4th Cir. 1928).

188. Letter from John J. Parker to Edmund Waddill, Jr. (Feb. 10, 1926), in Parker Papers, supra note 6, box 16 (regarding case no. 2384, Jones v. Gould Steamships & Indus. Ltd., 10 F.2d 792 (4th Cir. 1926)).


190. Letter from Isaac M. Meekins to John J. Parker (June 30, 1926), in Parker Papers, supra note 6, box 16.


192. Letter from Isaac M. Meekins to John J. Parker (Aug. 17, 1926), in Parker Papers, supra note 6, box 16.


194. Id. (regarding case no. 2831, Collie v. Ferguson, 31 F.2d 1010 (4th Cir. 1929)).

195. Letter from John J. Parker to John C. Rose (Feb. 12, 1927), in Parker Papers, supra note 6, box 17 (regarding case no. 2553, United States v. Newport Shipbuilding Corp., 18 F.2d 556 (4th Cir. 1927)).

196. Id. See also letter from John J. Parker to Elliott Northcott, in Parker Papers, supra note 6, box 19.

197. Letter from John J. Parker to Edmund Waddill, Jr. and Elliott Northcott (May 30, 1929), in Parker Papers, supra note 6, box 18. See N.C. Supreme Court Rules, 44 (2), 254 N.C. 821 (1961) (originally promulgated in N.C. Supreme Court Rules, 53, 140 N.C. 672 (1906), providing that a petition for rehearing shall be accompanied with the certificate of at least two members of the bar of this court, who have not interest in the subject-matter, and have never been of counsel for either party to the suit . . . that they have carefully examined the case and the law bearing thereon and the authorities cited in the opinion; and they shall summarize succinctly in such certificate the points in which they deem the opinion erroneous.

198. Letter from John J. Parker to Ernest F. Cochran (Mar. 17, 1928), in Parker Papers, supra note 6, box 18.
199. *Id.* The issue involved implementation of the Act of Jan. 31, 1928, ch. 14, 45 Stat. 54 (abolishing the writ of error, substituting appeal for it, and establishing filing procedure); the Sixth Annual Meeting of the A.L.I. was held at the Mayflower Hotel, Washington, D.C. on Apr. 26-28, 1928, A.L.I. Proc. (1928), at 264 (Parker registered), 573, 587 (Parker quoted), 259 (Taft registered), 296-99 (address of Taft).

200. Act of Mar. 3, 1911, ch. 231, § 17, 36 Stat. 1089 (authorizing the Senior Circuit Judge to make intra-circuit transfers of district judges "to another district court" (emphasis added)); *id.* § 120, at 1132 (authorizing the transfer of district judges *to the circuit court* "according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court," in the absence of a sufficient number of judges that included the Supreme Court Justice allotted to the Circuit (the Chief Justice in the case of the Fourth Circuit) and the resident circuit judges to constitute the three-judge circuit court). *See also* Order of Allotment of Justices, 271 U.S. iv (1925) (allotting of William Howard Taft, C.J., to the Fourth Circuit); *Allotment of Justices*, 282 U.S. iv (1930) (alloting Charles Evans Hughes, C.J. to the Fourth Circuit); Act of Mar. 3, 1911, ch. 231, § 119, 36 Stat. 1089, 1131 (authorizing allotment of Justices among the circuits); Act of Mar. 3, 1891, ch. 517, § 2, 26 Stat. 826 (providing for circuit courts of appeals of three judges in each).


206. *Id.*

208. See 8 Clerk’s Docket, supra note 62 (June Term 1929) (reporting cases in which District Judges Duncan Lawrence Groner (E.D. Va.), Johnson J. Hayes (M.D.N.C.), Morris A. Soper (D. Md.), and Henry D. Watkins (W.D.S.C.) sat).

209. Letter from John J. Parker to Elliott Northcott (Sept. 26, 1930), in Parker Papers, supra note 6, box 20.

210. Letter from John J. Parker to Elliott Northcott (Nov. 29, 1927), in Parker Papers, supra note 6, box 17.

211. Letter from John J. Parker to George W. McClintic (Jan. 3, 1931), in Parker Papers, supra note 6, box 20.

212. Letter from John J. Parker to Elliott Northcott (June 22, 1929), in Parker Papers, supra note 6, box 19.

213. Act of Mar. 3, 1911, ch. 231, § 120, 36 Stat. 1132 (providing that “[i]n the absence of the Chief Justice or associate justice, the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions”) (emphasis added).


216. Id. at 354-55.


218. U.S. Staff of Senate Committee on the Judiciary, 85th Cong., 2d Sess., Legislative History of the U.S. Circuit Courts of Appeals and the Judges Who Served During the Period 1801 through March 1958, at 84 (1958) (noting Waddill’s death on April 9, 1931 and Parker’s elevation to Senior Circuit Judge).

219. “Proceedings of a Special Session of the U.S. Court of Appeals, Fourth Circuit, and of the United States District Court for Maryland, for the Purpose of Administering the Oath to Judge Morris A. Soper and
A "FRESHMAN" TAKES CHARGE

W. Calvin Chestnut, Esq., Saturday, May 9, 1931 at Baltimore, Maryland," at 5 (remarks of Morris A. Soper), in Parker Papers, supra note 6, box 20.


221. Id. at 355, 359-62.


contravened an act of Congress applicable to the same subject matter of international trade); United States v. Twin City Power Co., 215 F.2d 592 (4th Cir. 1957), cert. denied, 356 U.S. 918 (1958) (holding that a property owner is entitled to just compensation based on most profitable use of land taken); Scales v. United States, 227 F.2d 581 (4th Cir. 1955), rev'd, 355 U.S. 1 (1957); 260 F.2d 21 (4th Cir. 1958), aff'd, 367 U.S. 203 (1961) (holding membership clause of the Smith Act applicable to "active" members of the Communist party); Sch. Bd. of Charlottesville v. Allen, 240 F.2d 59 (4th Cir. 1956), cert. denied, 353 U.S. 910 (1957) (affirming injunctive decree against enforcement of racial discrimination by school boards).


225. See Fish, "Guarding the Judicial Ramparts," supra note 189, at 105-13.


229. See "Judges in the Circuit Courts of Appeals and District Courts of the United States, United States Court of Customs and Patent Appeals, Court of Claims of the United States, and Court of Appeals of the District of Columbia," 47 F.2d v, vi (noting the death of Judge Waddill on April 9, 1931 and Parker's seniority over Judge Northcott); see also Legislative History, supra note 218.


234. 72 Cong. Rec. 8, 8487 (1930) (recording roll call vote on Parker's confirmation: 41 “nays” – 39 “yeas”; with pairs, 49 “nays” and 47 “yeas” in a Senate then composed of 96 members).


238. Letter from John J. Parker to Zechariah Chafee Jr. (Nov. 25, 1941), in Parker Papers, *supra* note 6, box 10.
