

# The Justice on Vacation, “Shop Closed” (Summer 1951)

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On June 4, 1951, the Supreme Court of the United States announced its final decisions of the term and then began its summer recess.

The most notable decision that day was *Dennis, et al v. United States*.<sup>1</sup> The Court, by a 6-2 vote, affirmed the criminal convictions and prison sentences of eleven leaders of the Communist Party of the U.S.A., for conspiring to teach and advocate the overthrow of the U.S. government.

In a related matter, the Court also announced that day that, by the same vote, it would not review *Sacher, et al v. United States*, the cases of six attorneys who had represented *Dennis* defendants during their long, contentious 1949 trial in New York City.<sup>2</sup> Following the trial, the judge had convicted these attorneys of criminal contempt for misconduct during the trial and sentenced them to prison terms.

Justice Robert H. Jackson was one of the six justices who comprised the *Dennis* and *Sacher* majorities.

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By order of the Chief Justice, Fred M. Vinson, acting pursuant to a federal law, Justice Jackson served as Circuit Justice for the Second Circuit (New York, Connecticut and Vermont). This meant that during a Supreme Court recess, emergency matters from the Second Circuit would be Jackson’s initial responsibility. In the *Dennis* case itself, for example, Jackson as Circuit Justice had the previous September—i.e., during the

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For an archive of selected Jackson List posts, many of which include document images, visit <http://thejacksonlist.com>. This essay is posted there as a PDF file with “live” hyperlinks.

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<sup>1</sup> 341 U.S. 494 (1951).

<sup>2</sup> 341 U.S. 952 (1951).

Court’s 1950 summer recess—granted defendants’ motion for continuation of their bail through the duration of their appeals.<sup>3</sup>

During the Court “recess” weeks of June 1951, Justice Jackson remained mostly in Washington, working in his chambers. In the *Dennis* and *Sacher* cases, the Supreme Court’s mandates—certified copies of its judgments and opinions—were scheduled to issue in late June. Those actions would formally return the cases to the lower courts for proceedings consistent with the Supreme Court’s judgments. For defendants in each group, that soon would lead, very predictably, to the trial judge directing them to report to federal prison to begin serving their sentences.

The *Dennis* and *Sacher* defendants sought to stay the Court’s issuance of its mandates. The *Dennis* defendants, who had filed separately a petition asking the full Court to rehear the case and reconsider the lawfulness of their criminal convictions, sought to stay issuance of the Court’s mandate and continue each defendant’s bail until the Court decided whether to rehear the case. The *Sacher* defendants, who also were seeking the full Court’s reconsideration of its decision not to review their convictions, sought to stay issuance of the mandate as well.

Because the full Court was in recess, these matters were presented to the Second Circuit Justice, Robert Jackson. He heard oral arguments from counsel in his chambers on June 21, 1951. The next day, he issued his decisions. In *Dennis*, Jackson denied the stay request and continuation of bail.<sup>4</sup> In *Sacher*, he granted the stay.<sup>5</sup> Among his reasons: to insure that the *Dennis* defendants would have the full assistance of counsel as their cases returned to the trial court and they surrendered for incarceration.

Then, in July 1951, Justice Jackson went on vacation. He traveled by train from Washington to San Francisco, and from there north to the Bohemian Club’s summer encampment—the Bohemian Grove—in Monte Rio, California.

Jackson first visited the Bohemian Grove in summer 1948 as the guest of San Francisco lawyer Arthur Kent, a close friend and former government colleague. The next year, the Club elected Jackson to honorary membership, and he returned to the Bohemian Grove every

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<sup>3</sup> *Williamson v. United States*, 1 Rapp 40 (1950) (Jackson, J., in chambers).

<sup>4</sup> *Dennis v. United States*, 1 Rapp 57 (1951) (Jackson, J., in chambers).

<sup>5</sup> *Sacher v. United States*, 1 Rapp 55 (1951) (Jackson, J., in chambers).

summer for the rest of his life. The Grove offered two-plus weeks of relaxation, in high-powered and professionally diverse male company, in a setting of great natural beauty. On July 20<sup>th</sup>, Jackson described some of this in a letter to his daughter, at her home in McLean, Virginia:

Dear Mary –

Just a note to let you know  
I am in the land of the living and feel  
fine. Really never felt better – lots of fruit[,]  
swimming, canoeing and walking.

...

The [Bohemian Grove] program I was to appear  
on went over fine. Quite by accident  
I ran upon a yarn by H.L. Mencken  
about judges and booze – a most  
ably written and amusing story.  
With a few side remarks I read it [to the group]  
and it seemed to be most acceptable.

Since I have already told you all that  
can be told about this place I simply say  
it seems more relaxing than ever before –  
probably because I am better acquainted.  
I sleep until 8:30 or 9 every morning  
and once until 10. College Presidents  
are a dime a dozen [here] and Herbert  
Hoover, mellow with age and experience[,]  
has been very companionable. A list  
of those who are Who's Who material  
would fill a book. The weather has  
been perfect – hot days and cold  
nights.

...Will send a few  
post card views just to refresh your  
memories on what it is like out  
here.

More at some later time. Love  
and good wishes

Dad.<sup>6</sup>

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<sup>6</sup> Letter from Robert H. Jackson to Mary J. Loftus, "Friday" [July 20, 1951] (original), in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C. ("RHJ LOC"), Box 2, Folder 4.

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In the *Dennis* case, following Justice Jackson's June 22, 1951, denial of the motion for a stay, the Supreme Court's mandate issued and the defendants were ordered to surrender for incarceration on July 2<sup>nd</sup>. Seven of the Communist Party officials did surrender but four (Gus Hall, Henry Winston, Robert Thompson, and Gilbert Green) did not—they jumped bail and became fugitives.

In Manhattan, U.S. District Court Judge Sylvester J. Ryan, to whom the *Dennis* case was newly assigned because the trial judge had just been appointed to the Court of Appeals, ordered the bail of the four men—\$20,000 apiece—forfeited. Judge Ryan then commenced an inquiry to determine whether any of the bail-providers had information that could lead to the fugitives.

The *Dennis* defendants had been beneficiaries of a bail bond fund collected and administered by an organization called the Civil Rights Congress. The U.S. Attorney General, J. Howard McGrath, had designated this organization a Communist subversive front.

Judge Ryan ordered the bail fund trustees to appear in his court and answer questions. On July 3<sup>rd</sup>, Frederick Vanderbilt Field, the fund's secretary, appeared in court but refused, claiming a constitutional privilege against self-incrimination, to name the persons who had provided financial assets for the Congress to use as bail collateral. On July 5<sup>th</sup>, Field reiterated this refusal and also refused to produce the bail fund's books. The next day, Judge Ryan, determining that Field's privilege claim was unfounded, judged him guilty of criminal contempt and sentenced him to ninety days in prison.<sup>7</sup>

On July 9<sup>th</sup>, Judge Ryan ordered two more bail fund trustees to testify. Dashiell Hammett, acclaimed writer of *The Thin Man*, *The Maltese Falcon* and many other works, was the fund's chairman. Dr. W. Alphaeus Hunton, formerly an English professor at Howard University and then a Council on African Affairs official, was another bail fund trustee. Each refused to answer questions about the bail fund or to produce its records,

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<sup>7</sup> See Russell Porter, *Field, Bail Trustee for Missing Reds, Is Ordered Jailed*, N.Y. TIMES, July 6, 1951, at 1, 7.

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*THE JUSTICE ON VACATION, "SHOP CLOSED" (SUMMER 1951)*

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claiming a constitutional privilege against self-incrimination.<sup>8</sup> Judge Ryan rejected these claims and, as with Field, convicted Hammett and Hunton of criminal contempt. The Judge sentenced each to six months in prison. They promptly were taken into custody by U.S. Marshals.<sup>9</sup>



L-R: Hunton, Hammett and Field being taken to jail, July 9, 1951 (The Bettman Archive).

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<sup>8</sup> For a complete transcript of Hammett's July 9, 1951 testimony before Judge Ryan, see RICHARD LAYMAN, *SHADOW MAN: THE LIFE OF DASHIELL HAMMETT* (1981), at Appendix pp. 248-62.

<sup>9</sup> See, e.g., Russell Porter, *Dashiell Hammett and Hunton Jailed in Red Bail Inquiry*, N.Y. TIMES, July 10, 1951, at 1, 3.

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*THE JUSTICE ON VACATION, "SHOP CLOSED" (SUMMER 1951)*

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(New York Daily News photograph)



(The Bettman Archive)

Field, Hammett and Hunton, through counsel, appealed their convictions and sought bail while their appeals were pending. After Judge Ryan and then Court of Appeals judge Learned Hand denied bail, the lawyers filed emergency applications for bail at the Supreme Court. When the lawyers learned from the Court Clerk's office that the Second Circuit Justice, Jackson, was on vacation in California, the lawyers offered to travel to Jackson and make their arguments there. Jackson, apprised of this offer, declined to make himself available. The lawyers, informed of this, then told the Clerk's office that they would take their applications to Justice Hugo L. Black (who had dissented in *Dennis*). The Clerk's office reported this to Jackson and he passed the information to Chief Justice Vinson, who happened also to be at the Bohemian Grove.

Chief Justice Vinson, not wanting to handle this matter himself, arranged for Justice Stanley Reed to act as Second Circuit Justice in Jackson's absence and hear the bail applications of Field, Hammett and Hunton. Justice Reed did so, convening a hearing in his hometown, Maysville, Kentucky, where he was vacationing.

Back at the Bohemian Grove, Justice Jackson on July 24<sup>th</sup> wrote to his son, daughter-in-law, young granddaughter and wife, together in Cold Spring Harbor, New York. Jackson described some of how he had ducked, and how Justice Reed now came to be handling, these bail applications:

Dear Bill and Nancy + Miranda  
+ Mother: -

....

I have had a lot of bother with  
the Communists trying to reach me  
for bail and stays from [Judge] Ryan orders.  
I flatly refused to be "available"  
when they wanted to fly out here – with  
a lot of publicity – to present application.  
Then they wanted the cases sent to Black.  
I said let them go to the C.J. Well, he  
is up at Joe Davies[’s Adirondack] camp and didn’t  
want any hot stuff so he sent them  
to Reed. I haven’t heard what he  
did. But I suppose they are apt to

renew the effort to get at me  
anytime. Not if I can help it!<sup>10</sup>

On July 25, 1951, Justice Reed denied the Field, Hammett and Hunton applications for bail pending appeal. He found that Judge Ryan had legal authority to issue bench warrants for the *Dennis* fugitives, and to call witnesses to execute their judgments of imprisonment. This was especially true of the bail fund trustees, who by providing bail had become part of the court control process that was responsible for the defendants' required appearances. Justice Reed also affirmed that Judge Ryan had legal power to protect court work from obstruction by refusals to answer inquiries, including by holding persons in criminal contempt. And with regard to the bail fund records, Justice Reed held that the applicants had no constitutional privilege to withhold them, because the records were Civil Rights Congress property that they held as trustees, not their personal records. Justice Reed held that the refusals to provide the records had been contemptuous, and he affirmed the denials of bail pending appeal.<sup>11</sup>

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Justice Jackson continued to vacation, giving some thought to *Dennis* case-related matters but not handling them.

On July 26<sup>th</sup>, for example, Jackson, probably unaware of Justice Reed's decision the previous day, wrote again to his daughter:

Dear Mariska:

...  
Well, it was true that I was being  
heckled by all sorts of things from the office.  
But I told the Clerk's office to lay off, that  
I am simply not available out here and  
someone else could look after the stuff,  
that my shop is closed until after Labor Day.  
They then tried to switch some of my stuff to  
the C.J. but he sidestepped and let it  
fall on Reed. Anyway I'm out from under.

...  
Am getting a daily swim and sun

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<sup>10</sup> Letter from Robert H. Jackson to William E. Jackson, et al., no date [est. July 24, 1951].

<sup>11</sup> *Field v. United States*, 1 Rapp 58 (1951) (Reed, J., in chambers).



bath, walk more miles each day than in  
a month at home, sleep 9 hours a night[,]  
eat like a horse and am lazy as hell.  
Really have not felt better in God knows when.

.... It might be a good thing for you  
to change scene a little while.... You seem  
to be about the only one in the family who  
does not get a vacation.

Anyway love and good wishes.

Daddy.<sup>12</sup>

A few days later, Justice Jackson, still at the Bohemian Grove, wrote to his colleague and close friend, Justice Felix Frankfurter. He was vacationing with his wife in Charlemont, Massachusetts. Jackson's letter included comments on the "Communist" cases:

Dear Felix :

...

We have had [a] wonderful time in this  
unique camp. Soon have to give it  
up and go back to the job. But  
anyway I shall do so greatly  
refreshed. I have not been reading the  
Dennis record I assure you! But I  
continued their bail (the attys [Sacher, et al.] so  
another look could be taken at it. I  
suppose the Clerk sent you copy of my [June 22<sup>nd</sup>]  
memo on it. I do not know what, if  
anything[,] we should, or can[,] do about  
it at this stage. I will be interested  
in your conclusions when all considerations  
have been canvassed.

My best to Marion and

As ever

Bob<sup>13</sup>

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<sup>12</sup> Letter from Robert H. Jackson to Mary J. Loftus, "Thursday" [July 26, 1951] (original), in RHJ LOC, Box 2, Folder 4.

<sup>13</sup> Letter from Robert H. Jackson to Felix Frankfurter, n.d. [est. July 29, 1951], in Felix Frankfurter Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 70.

Justice Jackson remained in northern California through most of August 1951. His wife joined him there and they traveled around, visiting friends including Jackson’s former law clerk Phil Neal, then a professor at Stanford Law School. (While at Stanford, Jackson interviewed Neal’s top student, William Rehnquist, for what became his clerkship with Jackson.) On August 23<sup>rd</sup>, in San Francisco, Jackson delivered the keynote lecture at the California State Bar Association’s annual convention.

On August 28<sup>th</sup>, Justice Jackson returned to work in his Supreme Court chambers, preparing for the term that would begin in October.

On October 30<sup>th</sup>, the U.S. Court of Appeals for the Second Circuit affirmed Judge Ryan’s criminal contempt judgments against Field, Hammett and Hunton.<sup>14</sup>

They sought Supreme Court review, without success—the Court denied their petitions on December 3<sup>rd</sup>.<sup>15</sup> Justice Black and Justice William O. Douglas, the *Dennis* dissenters, noted that they were “of the opinion certiorari should be granted.”

For his crime, Field served two months in prison.

Hammett, receiving credit for good behavior in prison, was incarcerated for 155 days, first in New York City and then in Kentucky.

Hunton also received “good time” credit and served slightly less than his six month sentence.

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<sup>14</sup> *United States v. Field*, 193 F.2d 109 (2d Cir. 1951).

<sup>15</sup> 342 U.S.894 (1951).

Some links—

- Justice Jackson's September 25, 1950, in chambers opinion, *Williamson, et al. v. United States* (ordering bail pending appeal for *Dennis* defendants) – [click here](#) (pp. 40-47);
- *United States v. Dennis, et al.* (U.S. June 4, 1951), including Jackson's concurring opinion – [click here](#);
- Jackson's June 22, 1951, in chambers opinion, *Sacher, et al. v. United States* – [click here](#) (pp. 55-56);
- Jackson's June 22, 1951, in chambers opinion, *Dennis, et al. v. United States* – [click here](#) (p. 57);
- Justice Reed's July 25, 1951, in chambers opinion, *Field et al. v. United States* – [click here](#) (pp. 58-66); and
- A recent essay by Yale Law School professor Stephen L. Carter, *Why I Support Dissent: My Great-Uncle Who Wouldn't Name Names*, about W. Alphaeus Hunton – [click here](#).