

JACKSON, VINSON, REED, AND “REDS”

THE SECOND CIRCUIT JUSTICES’ DENIALS OF BAIL TO THE BAIL FUND TRUSTEES (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*.¹ 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 trial in New York City.² Following the trial, the judge had summarily convicted those attorneys of criminal contempt for misconduct during the trial and sentenced them to prison terms.

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¹ 341 U.S. 494 (1951).

² 341 U.S. 952 (1951).

Chief Justice Fred M. Vinson, Justice Stanley Reed, and Justice Robert H. Jackson were three of the six Supreme Court justices who comprised the *Dennis* and *Sacher* majorities.

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Under an allotment order issued by the Court in 1946 pursuant to a federal law, Justice Jackson served as Circuit Justice for the Second Circuit (New York, Connecticut and Vermont).³ This meant that emergency matters from the Second Circuit would be Jackson's initial responsibility. In the *Dennis* case itself, for example, Jackson as Circuit Justice had in September 1950 – *i.e.*, during the Court's 1950 summer recess – granted defendants' motion for continuation of their bail through the duration of their appeals.⁴

During the June 1951 first weeks of the Court's summer recess, 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 late that month. Those actions would formally return the cases to the lower courts for proceedings consistent with the Court's judgments. For each defendant, that soon would lead, very predictably, to the trial judge directing him to report to federal prison to begin serving his sentence.

The *Dennis* and *Sacher* defendants sought to stay the Supreme 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 the convictions, sought to stay issuance of the mandate and to 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 in their cases as well.

These matters were presented to the Second Circuit Justice, Robert Jackson. He heard oral arguments from counsel, including defendants' counsel and U.S. Solicitor General Philip B. Perlman, in chambers on June 21, 1951.

³ See Allotment of Justices, 329 U.S. iv (Oct. 14, 1946).

⁴ *Williamson v. United States*, 184 F.2d 480, 1 Rapp 40 (1950) (Jackson, J., in chambers).

The next day, Justice Jackson issued his decisions. In *Dennis*, Jackson denied the stay request and continuation of bail.⁵ In *Sacher*, he granted the stay.⁶ 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.

By this point in the Supreme Court's second full week of summer recess, Justice Felix Frankfurter had left Washington on vacation. He thus was not in the building when Jackson, his colleague and close friend, as Second Circuit Justice, decided the *Dennis* and *Sacher* post-decision matters (and otherwise surely would have discussed them with Frankfurter). A month later, when Jackson was on his own vacation, he wrote to Frankfurter about what he had missed at the Court in late June:

I had a mess of bail applications. I refused the defendants in *Dennis* a stay pending rehearing – it seemed so absurd after the time we took on the case. But I gave the [*Sacher*] lawyers a stay to press their contempt case on rehearing. At the argument Pearlman [sic] made a bitter attack on them for their contempt [during the trial]. I cut him off, but refrained from saying anything about the pot and the kettle. But the effort at self restraint almost overcame me.⁷

On July 9, 1951, Justice Jackson embarked on his vacation. He traveled by train from Washington to San Francisco. He stayed briefly at the Bohemian Club there and then was driven north to the Club's summer encampment – the Bohemian Grove – in Monte Rio, California.

Three years earlier, Jackson had visited the Bohemian Grove for the first time, as the guest of San Francisco lawyer Arthur H. Kent, his friend and former Treasury Department deputy. In 1949, the Club elected Jackson to honorary membership. He returned to the Bohemian Grove every summer in his six remaining years.

The Bohemian Grove offered two-plus weeks of relaxation, with high-powered and professionally diverse male company, in a setting of great natural beauty. On July 20, 1951, Jackson described some of this in a letter to his daughter at her home in McLean, Virginia:

⁵ *Dennis v. United States*, 1 Rapp 57 (1951) (Jackson, J., in chambers).

⁶ *Sacher v. United States*, 1 Rapp 55 (1951) (Jackson, J., in chambers).

⁷ Letter from Robert H. Jackson to Felix Frankfurter, undated [est. July 23, 1951], at 4-5, in Felix Frankfurter Papers, Library of Congress, Manuscript Division, Washington, D.C. ("FF LOC"), Box 70.

JOHN Q. BARRETT

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 [as a speaker] 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.[⁸] 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.⁹

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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. Seven of the Communist Party officials did surrender but four – Gus Hall, Henry Win-

⁸ The story, an account of New York judges visiting Baltimore for a formal dinner and then disappearing for days of drinking and whoring there, causing some of their worried daughters to search for the missing judges, is part of Mencken's "The Judicial Arm," first serialized in a magazine and then published as a chapter in his memoir of his days as a young Baltimore reporter. See H.L. Mencken, *Days of Innocence III – The Judicial Arm*, THE NEW YORKER, Mar. 29, 1941, at 20-21; H.L. MENCKEN, *NEWSPAPER DAYS 194-199* (1941). I thank Mencken biographer and expert Marion Elizabeth Rodgers for immediately, generously guiding me from Jackson's slight description (above) to the relevant Mencken writing. See H.L. MENCKEN, *THE DAYS TRILOGY, EXPANDED EDITION* (The Library of America, 2014) (reprinting *NEWSPAPER DAYS*) (Marion Elizabeth Rodgers, ed.); see generally MARION ELIZABETH RODGERS, MENCKEN, *THE AMERICAN ICONOCLAST: THE LIFE AND TIMES OF THE BAD BOY OF BALTIMORE* (2005).

⁹ Letter from Robert H. Jackson to Mary J. Loftus, "Friday" [July 20, 1951], in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C. ("RHJ LOC"), Box 2, Folder 4.

ston, Robert Thompson, and Gilbert Green – did not. They jumped bail and became fugitives. Their fugitivity immediately was the leading news story in the United States.

During 1948 and much of 1949, Judge Harold R. Medina had presided at the lengthy trial in the Southern District of New York of the *Dennis* defendants. In 1949, following the jury's convictions of the defendants, Judge Medina had sentenced them to terms of imprisonment. He also had summarily convicted a number of their attorneys of criminal contempt for their behavior during the trial and sentenced those lawyers to prison as well. (Those persons became, in the Supreme Court, the *Sacher* petitioners.)

But in late June 1951, Judge Medina was appointed to the U.S. Court of Appeals for the Second Circuit. The *Dennis* case thus was reassigned to U.S. District Court Judge Sylvester J. Ryan; when the Supreme Court's mandate issued, it went to Judge Ryan in the District Court. On July 3, he ordered the bail of the four fugitives – \$20,000 apiece – forfeited. He 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 of New York. This fund, a successor to the 1930s International Labor Defense fund, was established to make bail available to persons whom the fund regarded as victims of politically-motivated prosecutions.¹⁰ About 4,000 depositors contributed to the Bail Fund, which in July 1951 held \$770,000.¹¹ The U.S. Attorney General, J. Howard McGrath, had designated the Civil Rights Congress a Communist subversive front organization.¹²

Judge Ryan ordered the Bail Fund trustees to appear in his court and answer questions. Frederick Vanderbilt ("Fred") Field, the fund's secretary-treasurer, appeared on July 3. He answered the Judge's questions about the fund and produced most of its books, but he refused, claiming a constitutional privilege against self-incrimination, to name the persons who had provided financial assets for the Bail Fund to use as collateral. On

¹⁰ See VICTOR RABINOWITZ, *UNREPENTANT LEFTIST: A LAWYER'S MEMOIR* 141 (1996).

¹¹ See *id.*

¹² See Russell Porter, *Bail of 14 Reds Voided Again; New Bonds Required Today*, N.Y. TIMES, July 17, 1951, at 1.

July 5, Field, newly represented by attorney Victor Rabinowitz, a member of the National Lawyers Guild, reiterated his refusal. 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.¹³

On July 9, Judge Ryan ordered additional Bail Fund trustees to testify. Dashiell ("Dash") Hammett, acclaimed writer of mysteries including *The Thin Man* and *The Maltese Falcon*, 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.¹⁴ Each refused to answer questions about the Bail Fund or to produce its records, claiming a constitutional privilege against self-incrimination.¹⁵ 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.¹⁶

Field, Hammett, and Hunton, through counsel, appealed their contempt convictions and sought bail while their appeals were pending. Judge Ryan denied their bail motions.

¹³ See Russell Porter, *Field, Bail Trustee for Missing Reds, Is Ordered Jailed*, N.Y. TIMES, July 6, 1951, at 1, 7.

¹⁴ Hunton's great-nephew Stephen L. Carter, a professor at Yale Law School and a noted nonfiction and fiction writer, currently is writing a biography of his grandmother Eunice Roberta Hunton Carter. She was one of New York's first African American women lawyers and, in the 1930s, a prosecutor in the office of Manhattan District Attorney Thomas E. Dewey. The book will include material on her brother W. Alphaeus Hunton. A preview is Stephen L. Carter, *Why I Support Dissent: My Great-Uncle Who Wouldn't Name Names*, BLOOMBERGVIEW, Aug. 12, 2016, available at www.bloomberg.com/view/articles/2016-08-12/why-i-support-dissent-my-great-uncle-who-wouldn-t-name-names. I thank Professor Carter for generously emailing with me about his family and the Bail Fund litigation.

¹⁵ 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.

¹⁶ See, e.g., Russell Porter, *Dashiell Hammett and Hunton Jailed in Red Bail Inquiry*, N.Y. TIMES, July 10, 1951, at 1, 3. Later in the month, a fourth Bail Fund trustee, Abner Green, who Judge Ryan had held in contempt but not ordered sent to prison, was convicted twice of criminal contempt and sent to prison for concurrent six month sentences, first for his refusal to produce to a federal grand jury the records of another organization, the American Committee for the Protection of the Foreign Born, which the Attorney General had found, like the Civil Rights Congress, to be a Communist front, and then for refusing to try to locate Bail Fund records. See Russell Porter, *Red Bail Trustee Joins Three in Jail*, N.Y. TIMES, July 28, 1951, at 1, 5; Russell Porter, *Field, Green Ruled in Contempt Again; Get 6 Months More*, N.Y. TIMES, July 31, 1951, at 1, 12.

Field's lawyer Victor Rabinowitz and his colleague, attorney Mary M. Kaufman, then took an emergency appeal to U.S. Court of Appeals Chief Judge Thomas W. Swan. Chief Judge Swan, based in New Haven, Connecticut, heard oral argument on the afternoon of Friday, July 6, in an office at Yale Law School (where he had been a professor and, for a time, the dean).¹⁷ After Rabinowitz and Irving H. Saypol, the United States Attorney for the Southern District of New York, had argued their positions, Chief Judge Swan granted bail to Field. In a separate proceeding, Swan's colleague Judge Learned Hand granted bail to Hammett and Hunton. But within days each Judge reversed course and revoked his bail order.¹⁸

The lawyers then filed emergency applications for bail at the Supreme Court. When Clerk's office informed the lawyers that the Second Circuit Justice, Jackson, was on vacation in California at the Bohemian Grove, 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. The Clerk's office reported this to Jackson and he passed the information to Chief Justice Vinson. It appears that Vinson did not like the idea of the attorneys appearing before Justice Black (who had dissented in *Dennis*). But Vinson, himself on vacation in New York State, also was not interested in handling these applications personally. So he designated Justice Stanley Reed to act as Second Circuit Justice in Jackson's absence, and thus to hear the bail applications of Field, Hammett, and Hunton.

At this time, Justice Reed was vacationing at his home in Maysville, Kentucky. Victor Rabinowitz, representing the three applicants, traveled from New York to Maysville. U.S. Government attorney Oscar H. Davis, an assistant to the Solicitor General, also traveled to Maysville. They argued before Justice Reed in a hearing that he convened in his house.¹⁹

¹⁷ See *Field Release Due Today; In Jail Over Weekend*, DAILY WORKER, July 9, 1951, at 3.

¹⁸ See *United States v. Field*, 190 F.2d 554 (2d Cir. 1951) (Swan, C.J.); *United States v. Hunton, et al.*, 190 F.2d 556 (2d Cir. 1951) (L. Hand, J.).

¹⁹ See Associated Press report, *Justice Reed Studies Briefs on Communist Bail Fund Trustees*, July 22, 1951. Reed's house, which he purchased around 1910, began as an eighteenth century log building on a ridge overlooking Maysville. See JOHN D. FASSETT, *NEW DEAL JUSTICE: THE LIFE OF STANLEY REED OF KENTUCKY* 20 (1994). Today it is called the Newdigate-Reed House, and it is on the National Register of Historic Places. See *id.*; npgallery.nps.gov/NRHP/AssetDetail?assetID=d0c053f5-7898-4c30-8129-07a843aaa544 (visited Apr. 28, 2017).

Rabinowitz, in a 1993 draft section that ultimately did not make it into the autobiography that he published in 1996, dictated or wrote his recollection that

Reed was not the judge I would have chosen to hear the application. A Roosevelt appointee, he had shown some liberal tendencies in his first years on the bench, but by the time the 50's came along he had retreated into a dense fog of conservatism. He was clearly out of sympathy with my argument. I was vigorously and ably opposed by Oscar Davis, one of the most energetic and competent Assistant Attorneys General [sic], and it was clear to me after a very few minutes that I was not getting through to Reed.²⁰

Meanwhile, back at the Bohemian Grove, Justice Jackson wrote on about July 23 to Justice Frankfurter, who was vacationing with his wife in Charlemont, Massachusetts. Jackson included this update:

One thing I forgot. I flatly refused to make myself available to hear latest application for bail + stay in New York Commie cases. I told [U.S. Supreme Court Clerk Harold] Willey to let C.J. [Vinson] deal with them instead of their flying here – no doubt with great publicity. But C.J. was staying up at Joe Davies[’s] for the summer^[21] and said he “was just as unavailable as Jackson.” The Comies wanted the cases sent to Hugo [Black] but C.J. sent them to Reed. Have not heard what he did with them.²²

At about this same time, Jackson also wrote to his son, daughter-in-law, young granddaughter, and wife (a/k/a the visiting grandmother), who were together in Cold Spring Harbor, New York. Jackson recounted

²⁰ VICTOR RABINOWITZ, A MEMOIR, VOLUME II, THE COLD WAR: BAIL FUND [7/30/93] at 258, in Victor Rabinowitz Papers (TAM 123), Archives of the Tamiment Library, New York University, Box 13, Folder 3. Cf. RABINOWITZ, UNREPENTANT LEFTIST, *supra* note 10, at 141 (publishing only that “I traveled to Maysville, Kentucky, to make an application for bail before Justice Stanley Reed of the Supreme Court; he denied my application a few days later.”).

²¹ Chief Justice Vinson apparently was a guest of former U.S. Ambassador to the U.S.S.R. Joseph E. Davies at Camp Topridge, the large, luxurious Adirondack mountain camp that his wife Marjorie Merriweather Post – heiress to the Post cereal fortune; she also built a grand estate, Mar-a-Lago, in Palm Beach, Florida – owned on Upper St. Regis Lake near Keese Mill, New York. See generally Deena Clark, *A Visit to ‘Topridge’ – Camp’s By-Product Is Enjoyment*, WASH. POST, Sept. 20, 1953, at S6.

²² Letter from Robert H. Jackson to Felix Frankfurter, undated [est. July 23, 1951], at 6, in FF LOC, Box 70.

to them 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] 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!²³

Back in New York City, Field was transported on July 25 – before his attorney Rabinowitz had returned from his trip to Kentucky to seek bail from Justice Reed²⁴ – to testify before a federal grand jury investigating possible crimes of obstruction of justice and harboring the *Dennis* case bail-jumpers.²⁵ Before the grand jury, Field refused to answer questions about Bail Fund contributors or to produce Bail Fund records. Based on this, U.S. District Judge John F.X. McGohey convicted Field of criminal contempt and sentenced him to serve six months in prison, to run consecutively to Judge Ryan’s ninety-day sentence on Field.²⁶

Back in Kentucky, Justice Reed, after hearing the parties’ oral arguments and studying briefs they had filed, wrote in longhand a thorough opinion.²⁷ It included, just for his convenience and not for publication, numerous citations to particular pages in the record of the proceedings before Judge Ryan.²⁸

Justice Reed sent his opinion pages and ancillary material to his secre-

²³ Letter from Robert H. Jackson to William E. Jackson, et al., undated [est. July 24, 1951] (in author’s possession).

²⁴ See RABINOWITZ, UNREPENTANT LEFTIST, *supra* note 10, at 141-42.

²⁵ See Russell Porter, *Field, Green Ruled in Contempt Again; Get 6 Months More*, *supra* note 16, at 1.

²⁶ See *id.* at 12; United Press report, *Second Contempt: Field Given Six Months More in Jail*, WASH. POST, July 31, 1951, at 11.

²⁷ Justice Reed’s longhand draft, filling ten single-spaced, yellow legal pad pages, plus various pages of notes and a page of detailed instructions to his secretary Helen Gaylord, is preserved in his archived papers. See Stanley Forman Reed Papers, 1926-1977, 81M3, Special Collections and Digital Programs, University of Kentucky Libraries, Lexington, Box 132. I thank Matt Harris and his colleagues at the Special Collections and Research Center, Margaret I. King Library, University of Kentucky, for assistance with this research.

²⁸ Letter from “SReed” to “H.G.”, undated (headed “Directions”), in *id.*

tary, Miss Helen Gaylord, who was working in his chambers at the Supreme Court during its recess.²⁹ He instructed her to type the opinion, to save his handwritten pages (as she obviously did – they are archived in his papers), and to tell the Court’s Clerk that he (Justice Reed) would sign a typed version of the opinion – to create an official typed version, it seems – when he returned to Washington.³⁰

Justice Reed seems not to have mentioned anything about this bail application litigation when he spoke at a Maysville Rotary club meeting on the evening of July 24. According to local press, he said that past legal problems at the Supreme Court have evolved into the law of the land, and that today’s legal problems will be resolved into the law of tomorrow. He also briefly described his fellow justices and the backgrounds that led to their respective Supreme Court appointments.³¹

The Supreme Court issued Justice Reed’s opinion on July 25, 1951. It denied the Field, Hammett, and Hunton applications for bail pending appeal. Justice Reed 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 of its

²⁹ Helen Gaylord, a former upstate New Yorker, began to work for Stanley Reed as his secretary in Washington in the early 1930s. See JOHN D. FASSETT, *supra* note 19, at 210. Gaylord moved with Reed as he was appointed to new offices, working for him at the U.S. Department of Justice when he became Solicitor General of the U.S. in 1935 and then at the Supreme Court when he was appointed a justice in 1938. Jack Fassett, a Reed law clerk during 1953-54, wrote later that Gaylord, [i]n addition to typing memos, communications, and opinions, . . . maintained Reed’s docket books and his financial records, followed the status of activities of the Court, often communicated with other justices or their staffs with respect to Court matters, and, though not a lawyer, often acted as an additional law clerk, seeking requested information or research materials for Reed.

Id.; accord generally Interview with Helen K. Gaylord, Stanley F. Reed Oral History Project, Louie B. Nunn Center for Oral History, University of Kentucky (Mar. 18, 1981), available at https://nyx.uky.edu/oh/render.php?cachefile=1981OH035_Reed03_Gaylord.xml (visited Apr. 28, 2017).

³⁰ See Letter from “SReed” to “H.G.”, *supra* note 28.

³¹ See *Supreme Court Then And Now, Club Topic*, THE LEDGER INDEPENDENT, July 25, 2915, at 1. I thank Lisa Massey-Brown and her colleagues at the Kentucky Gateway Museum Center in Maysville for locating this article.

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donors' names, 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.³²

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

On July 26, 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 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.³³

A few days later, Justice Jackson, still at the Bohemian Grove, wrote again to Justice Frankfurter in Massachusetts, including these comments on the "Communist" cases:

³² See *Field v. United States*, 193 F.2d 86, 1 Rapp 58 (1951) (Reed, J., in chambers).

³³ Letter from Robert H. Jackson to Mary J. Loftus, "Thursday" [July 26, 1951], in RHJ LOC, Box 2, Folder 4.

JOHN Q. BARRETT

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] memo [opinion] 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

Bob³⁴

...

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 1952-53 clerkship with Jackson.) On August 23, in San Francisco, Jackson delivered the keynote lecture at the California State Bar Association's annual convention.

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

On September 14, a U.S. Court of Appeals for the Second Circuit panel heard oral argument on Field's, Hammett's, and Hunton's appeals from Judge Ryan's criminal contempt judgments against them, and on Field's appeal from Judge McGohey's order holding Field in criminal contempt for failure to testify and produce documents to a grand jury. At that time, the appellants applied again, this time orally, for bail pending appeal. The panel denied those bail applications.³⁵ And on October 30, it affirmed the contempt judgments.³⁶

³⁴ Letter from Robert H. Jackson to Felix Frankfurter, undated [est. July 29, 1951], in FF LOC, Box 70.

³⁵ See Russell Porter, *Freedom Denied 4 in Red Bail Inquiry*, N.Y. TIMES, Sept. 15, 1951, at 4.

³⁶ *United States v. Field*, 193 F.2d 92 (2d Cir. 1951). Judge Charles E. Clark wrote the panel's opinion. Judge Harrie B. Chase joined in the entirety of Judge Clark's opinion for the Court. Judge

The next day, Field, Hammett, and Hunton applied to the Court of Appeals for bail pending their filing of petitions seeking U.S. Supreme Court review. On November 5, without hearing oral argument on the applications, a Court of Appeals panel denied them.

Four days later, the three men each applied to the Supreme Court for bail pending their filing of applications for writs of certiorari in their respective cases and Court action on such petitions. By that date, Field had completed serving his two-month sentence from Judge Ryan and was serving the six-month prison sentence he had received from Judge McGohey. Hammett and Hunton still were serving the six month sentences that Judge Ryan had imposed on them. At the Supreme Court, the Clerk's office delivered these applications to the Second Circuit Justice, Jackson, for his consideration and adjudication.³⁷

Field, Hammett, and Hunton subsequently did seek Supreme Court review of their contempt convictions. On December 3, the Court denied their petitions.³⁸ Justice Black and Justice William O. Douglas, the *Dennis* dissenters, noted that they were "of the opinion certiorari should be granted."³⁹

At the same time that the full Court denied the Field, Hammett, and Hunton petition seeking review of their convictions, Justice Jackson, as Second Circuit Justice, denied their respective applications for bail, which had been filed on November 9. He wrote no opinion; on the front page of each application, he simply wrote, vertically in the left margin, "Denied," the December 3 date, and his name.⁴⁰

For his crimes of contempt, Fred Field served two prison sentences, the ninety-day sentence imposed by Judge Ryan and then the six-month

Jerome N. Frank dissented in part and wrote a separate opinion.

³⁷ See Application for an Order Admitting Appellant Field to Bail Pending a Petition for Writ of Certiorari, *United States v. Field*, filed by Victor Rabinowitz, Nov. 9, 1951; Application for an Order Admitting Appellants, Hammett and Hunton, to Bail Pending an Application for a Writ of Certiorari and Decision Thereon, *United States v. Hammett & United States v. Hunton*, filed by Charles Haydon and Mary M. Kaufman, Nov. 9, 1951. See also Memorandum for the United States in Opposition, *Field v. United States & Field* [sic], *Hammett & Hunton v. United States*, filed by Solicitor General Perlman, Nov. 9, 1951. Each of these pleadings is located in Record Group 267, Box 6762, National Archives & Records Administration, Washington, D.C. I thank Robert Ellis and his NARA colleagues for their assistance with this research.

³⁸ 342 U.S.894 (1951).

³⁹ *Id.*

⁴⁰ See *supra* note 37.

sentence imposed by Judge McGohey. Field, whose good behavior in prison earned time off his sentences, was released from the federal prison in Ashland, Kentucky, about 75 miles east of Justice Reed's home in Maysville, on February 26, 1952.⁴¹

Dash Hammett was incarcerated with Field in New York City, then in Lewisburg, Pennsylvania, then in Chillicothe, Ohio, and then in Ashland, Kentucky.⁴² Hammett was released on December 9, 1951.⁴³

Alphaeus Hunton also served slightly less than his six-month sentence. According to Field, Hunton, an African American, was sent to an all-Negro prison rather than to the Ashland federal prison (which he might have hated more because it was "Jim-Crowed" – "blacks were housed in separate cell blocks and sat at segregated tables in the mess hall"⁴⁴). Hunton also was released, it seems, on or about December 9.

⁴¹ See *F.V. Field Out of Jail*, N.Y. Times, Feb. 29, 1952, at 8; see generally FREDERICK VANDERBILT FIELD, FROM RIGHT TO LEFT: AN AUTOBIOGRAPHY 239-56 (1983) (describing his time as, according to his chapter title, a "Guest of the Government").

⁴² *Id.* at 227, 244, 247-51.

⁴³ See Associated Press report, *Hammett Freed From U.S. Prison; Field Still Held*, WASH. POST, Dec. 11, 1951, at B11.

⁴⁴ FIELD, FROM RIGHT TO LEFT, *supra* note 41, at 249.