SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners, *v.* United States of America.	On Motion to Postpone Argument.

[November —, 1950.]

Memorandum by The Chief Justice.

This is a motion submitted on November 17, 1950, by petitioners in this case, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument be postponed from the assigned date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare and also would have opportunity to fill a court engagement in India prior to that time.

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the order of its own docket. Rule 20 (1). The United States has submitted a memorandum in opposition. In the ordinary course of events proper administration would require that the motion be denied.

This is not a case where petitioners do not have access to counsel competent to present their position. If that were so, we would consider it our duty to assure their

adequate representation in this Court. But the five lawyers whose names appear on the brief on the merits representing all the petitioners already submitted (two of whom have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months of trial in the District Court, helping prepare a record of 20 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari, and in the brief on the merits here. These lawyers have not withdrawn from the case nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. In their appearances both here and in the Court of Appeals they have made able, concise and lawyerly argument. Four of their number are members of the Bar of this Court and several have participated in oral arguments before this Bar. This is not a case which presents a request to appoint counsel for a litigant who cannot obtain competent professional assistance; it is rather a case where we are asked to postpone argument so that a sixth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.*

---

*Two of the petitioners, Dennis and Davis, at the close of their trial in the District Court, undertook their own defense. This *pro se* representation continued through November 17, 1950, when they joined the instant motion. However, on November 20, 1950, a brief on the merits, consisting of 280 pages, was filed on behalf of all the petitioners by the same five lawyers heretofore mentioned. We must assume that these members of the bar are representing Dennis and Davis at this time. Accordingly we treat their motion as one for additional counsel and postponement of argument.

Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in his hands—the briefs submitted by present counsel have already shaped his course. They propose only that he will appear and participate in oral argument. We will be glad to hear him in this case. Whether we will wait for him is another question.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly declined to participate in the case. We assume the implication is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the papers before us fall far short of establishing this charge. The request made to each of the twenty-four attorneys was that he "*associate himself as counsel* for petitioners on this appeal." It is further stated that "*Several* of these [leaders of the Bar] expressed the opinion" that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, *some* saying they did so out of fear that . . . such participation might adversely affect their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, but quite another to ask him to share time with, and follow the line of other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the course of that argument. Eminent counsel may not be willing to become associated on a basis where they would either have to loan their name to a litigation policy and to tactics which they would disapprove, or break with the counsel who dominate the case.

The second reason advanced for the requested delay is that the member of the English Bar petitioners desire must go to India to fill a court engagement there during

December and January. We need not set forth at great length the problems an unqualified grant of this motion would raise, for, from the standpoint of our procedure, this case presents no different problem than might any case where a party with a battery of counsel at the last moment seeks to add to a cause other counsel who is not prepared or available on the date already set by this Court for argument of the cause.

Despite the apparent failure of the motion to state a substantial ground for the relief requested we recognize the substantiality of the issues claimed to be involved in the merits of this case. We therefore treat this motion so as to afford the maximum to the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation *pro hac vice* in oral argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners, *v.* United States of America.	On Motion to Postpone Argument.

[November —, 1950.]

Memorandum by The Chief Justice.

This is a motion submitted on November 17, 1950, by petitioners in this case, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument be postponed from the assigned date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare and also would have opportunity to fill a court engagement in India prior to that time.

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the order of its own docket. Rule 20 (1). The United States has not concurred in this motion, but has submitted a memorandum in opposition, impugning petitioners' motives. In the ordinary course of events proper administration would require that the motion be denied.

This is not a case where petitioners do not have access to able counsel. If that were so, we would consider it

our duty to assure their adequate representation in this Court. But the five able lawyers whose names appear on the brief on the merits already submitted (two of whom have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months of trial in the District Court, helping prepare a record of some 20 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari, in the brief on the merits here. These lawyers have not withdrawn from the case nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. In their appearances both here and in the Court of Appeals they have made able, concise and lawyerly argument. Four of their number are members of the Bar of this Court and several have participated in oral arguments before this Bar. Whatever else the petitioners' counsel table may lack, it is not short of talent, zeal or learning. We emphasize that this is not a case which presents a request to appoint counsel for a litigant who cannot obtain competent professional assistance; it is rather a case where we are asked to postpone argument so that a sixth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.

Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in his hands—the briefs submitted by present counsel have already shaped his course. They propose only that he will appear and participate in oral argument. We will be glad to hear a member of our

parent Bar in this case. Whether we will wait for him is another question.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly declined to participate in the case. The implication sought to be created is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the papers before us fall far short of establishing this charge. The request made to each of the twenty-four attorneys was that he "*associate himself as counsel* for petitioners on this appeal." It is further stated that "*Several* of these [leaders of the Bar] expressed the opinion" that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, *some* saying they did so out of fear that . . . such participation might adversely affect their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, but quite another to ask him to share time with, and follow the line of other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the couse of that argument.* course

The second reason advanced for the requested delay is that the member of the English Bar petitioners desire must go to India to fill a court engagement there during December and January. We need not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any

*Eminent counsel may not be willing to become associated on a basis where they would either have to loan their name to a litigation policy and to tactics which they would disapprove, or break with the counsel who dominate the case.

case where a party with a battery of counsel seeks to add to a cause other counsel ~~prepared or available~~ who are not on the date already set by this Court for argument of the cause.

Despite this apparent failure of the motion to state a substantial ground for the relief requested, and the aura of dilatory tactics pervading it, we recognize the substantial issues involved in the merits of this case and will take no action which might lend color to the claim that these petitioners are being deprived of an opportunity to present their case properly in this Court. We therefore treat this motion so as to afford the maximum to the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation *pro hac vice* in oral argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 336.--October Term, 1950

RUSH. !!

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners, v. United States of America.	)	✓ On Motion to Postpone Argument.

( )

Memorandum by the Chief Justice.

This is a motion submitted on November 17, 1950, by petitioners in this case, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument be postponed from the assigned date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare and also would have opportunity to fill a court engagement in India prior to that time.

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the order of its own docket. Rule 20(1). The United States has not concurred in this motion,

but has submitted a memorandum in opposition, impugning petitioners' motives. In the ordinary course of events proper administration would require that the motion be denied.

This is not a case where petitioners do not have access to able counsel. If that were so, we would consider it our duty to assure their adequate representation in this Court. But the five able lawyers whose names appear on the brief on the merits already submitted, (two of whom have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months of trial in the District Court, helping prepare a record of some ~~23~~ 20 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari, in the brief on the merits here ~~and in the instant motion.~~ These lawyers have not withdrawn from the case nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. In their

appearances both here and in the Court of Appeals they have made able, concise and lawyerly argument. Four of their number are members of the Bar of this Court and several have participated in oral arguments before this Bar. Whatever else the petitioners' counsel table may lack, it is not short of talent, zeal or learning. We emphasize that this is not a case which presents a request to appoint counsel for a litigant who cannot obtain competent professional assistance; it is rather a case where we are asked to postpone argument so that a sixth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.

Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in his hands--the briefs submitted by present counsel have already shaped his course. They propose only that he will appear and participate in oral argument. ~~Petitioners are, of course, free to have counsel of their choice in oral argument and~~ We will be glad to hear a member of our parent Bar in this case. Whether we will wait for him is another question.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly

declined to participate in the case. The implication sought to be created is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the papers before us fall far short of establishing this charge. The request made to each of the twenty-four attorneys was that he "associate himself as counsel for petitioners on this appeal." It is further stated that "Several of these [leaders of the Bar] expressed the opinion" that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, some saying they did so out of fear that...such participation might adversely affect their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, but quite another to ask him to share time with, and follow the line of other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the course of that argument. #

The second reason advanced for the requested delay is that the member of the English Bar petitioners desire must go to India to fill a court engagement there during December and January. We need

Eminent Counsel may not be willing to become associated on a basis where they would either have to lend their name to a litigation policy and to tactics which they would disapprove or break with the Counsel who domenate the case.

not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any case where a party to a cause ~~would like to be represented by particular~~ counsel ~~and that counsel purportedly cannot be~~ prepared or available on the date set by this Court for argument of the cause.

Despite this apparent failure of the motion to state a substantial ground for the relief requested, we recognize the substantial issues involved in the merits of this case and ~~hesitate~~ to take ~~any~~ action which might lend color to the claim that these petitioners are being deprived of an opportunity to present their case properly in this Court. We therefore treat this motion so as to afford the maximum to the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation pro hac vice in oral argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.

336 - Red & other suggestions

NOV 22 1950

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners, *v.* United States of America.

On Motion to Postpone Argument.

[November —, 1950.]

Memorandum by The Chief Justice.

This is a motion submitted on November 17, 1950, by petitioners in this case, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument be postponed from the assigned date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare and also would have opportunity to fill a court engagement in India prior to that time.

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the order of its own docket. Rule 20 (1). The United States has not concurred in this motion, but has submitted a memorandum in opposition, impugning petitioners' motives. In the ordinary course of events proper administration would require that the motion be denied.

This is not a case where petitioners do not have access to able counsel. If that were so, we would consider it

In criminal cases particularly, prompt hearings are desirable from the public standpoint, and in

Counsel competent to present their position.

our duty to assure their adequate representation in this Court. But the five ~~able~~ lawyers whose names appear on the brief on the merits already submitted (two of whom have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months of trial in the District Court, helping prepare a record of ~~some~~ 20 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari and the brief on the merits here. These lawyers have not withdrawn from the case nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. In their appearances both here and in the Court of Appeals they have made able, concise and lawyerly argument. Four of their number are members of the Bar of this Court and several have participated in oral arguments before this Bar. ~~Whatever else the petitioners' counsel table may lack, it is not short of talent, zeal or learning. We emphasize that~~ This is not a case which presents a request to appoint counsel for a litigant who cannot obtain competent professional assistance; it is rather a case where we are asked to postpone argument so that a sixth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.

Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in his hands—the briefs submitted by present counsel have already shaped his course. They propose only that he will appear and participate in oral argument. We will be glad to hear a member of our

parent Bar in this case. Whether we will wait for him is another question.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly declined to participate in the case. The implication sought to be created is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the papers before us fall far short of establishing this charge. The request made to each of the twenty-four attorneys was that he "*associate himself as counsel* for petitioners on this appeal." It is further stated that "*Several* of these [leaders of the Bar] expressed the opinion" that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, *some* saying they did so out of fear that . . . such participation might adversely affect their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, but quite another to ask him to share time with, and follow the line of other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the couse of that argument.

The second reason advanced for the requested delay is that the member of the English Bar petitioners desire must go to India to fill a court engagement there during December and January. We need not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any

*Eminent counsel may not be willing to become associated on a basis where they would either have to loan their name to a litigation policy and to tactics which they would disapprove, or break with the counsel who dominate the case.

case where a party with a battery of counsel seeks to add other counsel prepared or available on the date already set by this Court for argument of the cause.

Despite the apparent failure of the motion to state a substantial ground for the relief requested, we recognize the substantiality of the issues involved in the merits of this case and will take no action which might lend color to the claim that these petitioners are being deprived of an opportunity to present their case properly in this Court. We therefore treat this motion so as to afford the maximum to the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation *pro hac vice* in oral argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.

1/ Two of the petitioners at the close of their trial attempted to undertake their own defense. This pro se representation continued through the Court of Appeals and, with the possible exception of the brief on the merits which has been submitted by the five attorneys on behalf of all the petitioners, in the various proceedings in this Court. They have joined in the instant motion, requesting that English counsel be ~~appointed~~ permitted to represent them. We see no reason to treat these petitioners differently from the other nine. Up until two weeks before oral argument in this Court they were satisfied with the arrangement whereby their position was advanced by themselves and, at least indirectly, by the five counsel already mentioned. We are not persuaded that at this late date they should be permitted to alter this arrangement in a manner which necessitates postponement of the argument.

Jackson memo

A short statement of reasons for our denial of a postponement to enable foreign counsel to argue the case of the Communist leaders seems advisable, to prevent so far as possible its misuse or misunderstanding.

If they were without able counsel, I should consider it the duty of the Court to see that they have it. But these men have counsel. Lawyers of their choice have defended them in two courts below; they have brought the case here and already filed the briefs which fix their position. These lawyers have not withdrawn and do not ask leave to do so. They are thoroughly prepared, know the record from beginning to end of its twenty-eight volumes, and are conversant with the Constitution, statutes, and all decisions that are relevant. These attorneys have appeared before me in matters connected with this case. They have made able, concise and lawyerly arguments. Whatever else the defendants' counsel table may lack, it is not short of talent, zeal or learning.

Defendants now ask several weeks' delay to add British counsel to their staff. They do not propose to put their case in the hands of the learned barrister - he can have no part in shaping the brief already filed. They propose only that he will "appear and participate" in oral argument. Of course, I would welcome to our bar any member of our parent profession in any case. If the

questions here were of common law, cradled and perfected in England, I should hear him not only willingly but with deference. But the questions are peculiarly American and concern our constitutional law. England has no written constitution and no practice of judicial review of constitutionality of legislation. It is difficult to believe that experience at his great bar or learning in the tradition of that freedom-loving, but very differently organized, society will avail us or his clients much on this parochial American issue. Nonetheless, I should be happy to hear him, but not to wait for him.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have been solicited and have declined to participate in the case. The implication sought to be created by the application is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. I should regard this as a grave reproach to the American Bar if it were established, ~~and what they seek from us is a decision that will sustain this charge to the world.~~

The application does not establish the charge, ~~and what it omits is so significant as to raise doubts in my mind whether any "leader of the American Bar" has in good faith been asked to take~~

charge of the argument of this case on terms consistent with his self-respect. The application, carefully worded, says they have sought "in addition to their present counsel, the services of one or more leaders of the American Bar," and addressed separate requests to each of twenty-four attorneys "to associate himself as counsel." (Emphasis supplied.) It is one thing to ask a lawyer to take a case, and another thing to ask him to associate himself with another lawyer who has taken the case. Whatever duty a lawyer is under to give his services, he is under no duty to associate himself with others, especially with those already convicted of contempt in the very case and whose conviction has been sustained by the Court of Appeals. Nothing in the papers before us shows that any lawyer has been offered any position in this case except in subordination to the general control by present counsel. Moreover, we are not advised just who was solicited or been given a copy of the terms of the request. Could it be that the offer was made only to those likely to refuse? Can it be that all of the "left-wing" lawyers, some of whom have distinguished records of success in this Court, have refused to associate themselves with present counsel?

I am very confident that there is much more to this business than meets the eye, and that a good faith effort really to put this

case in the hands of distinguished, experienced and faithful counsel would have met with success. But such counsel are not willing to become associated on a basis where they would either have to loan their names to a litigation policy and to tactics which they would disapprove, or to break with the counsel who dominate the case.

Of course, there are lawyers who would fear the effect on their practice of appearing in any left-wing case. But more and much better ones would take whatever risks there are and would, regardless of fee, accept a case involving questions fundamental to our liberties. The claim of inability to get American counsel is so ill-supported and the full facts so little disclosed in the moving papers that it could not be expected to move action by the Court, though it may be sufficient for other purposes. I concur in extending permission to the British barrister named to argue, and in rejecting the plea for delay.

SUPREME COURT OF THE UNITED STATES

No. 336.- October Term, 1950

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners,

v.

United States of America.

On Motion to Postpone Argument.

[November , 1950]

Mr. Justice Black, concurring and dissenting.

I agree, of course, that petitioner's motion to allow British counsel to appear should be granted, but fail to understand why this simple action requires any explanation. And absent some showing of possible public or private injury, I see no reason why the short postponement of oral argument here asked should not be granted almost as a matter of routine. But although disagreeing with the Court's denial of postponement, I again deem it inappropriate for the Court to adopt the extraordinary procedure of writing a formal opinion to defend its action. The unwisdom of such a course is emphasized, I think, by the strained attempts to justify the Court's position.

The five lawyers who represented some of the defendants in the District Court may deserve the praise bestowed on them by the Court -- that is, they may have "talent, zeal [and] learning" which has been demonstrated by their "able, concise and lawyerly argument," here and in the Court of Appeals. Perhaps some individual members of the Court may have sufficient knowledge thus to appraise these lawyers, but I do not. But whatever their legal skills, the District Court has held these same lawyers guilty of contempt of court for the manner in which they tried these very cases. The Court of Appeals has affirmed, and their application for certiorari is now pending here.

Under these circumstances, it seems entirely reasonable that these lawyers and their clients should desire to have additional counsel in this Court. The Court, nevertheless, appears to decide without proof of any kind, that desire for delay, for delay's sake, is the real object of the motion. I am unwilling to join in such an unnecessary, and unsupported invidious implication with reference to parties whose cases we are called on to decide.

Moreover, the motion asserts that the five lawyers are not counsel for two of the petitioners, Dennis and Davis, that these two petitioners have heretofore been acting as their own lawyers. Dennis and Davis join, however, in asking for delay long enough to assure their representation by the British counsel. In the absence of counsel of their choice, I assume the Court does not intend to force Dennis and Davis to accept the five lawyers. If not, we should either grant the requested postponement or permit them to argue their own cases. But Dennis is in jail serving another sentence. And were he not, I think it would be far better judicial procedure to postpone the arguments until January so that Dennis and Davis could have counsel of their choice rather than have the two argue their own appeals here.

November 24, 1950

Dear Brethren:

To my other sins I do not wish to add that of mutilating Gilbert and Sullivan. I will trouble you therefore to change the phrase "a nice how do you do" on page 3 of my memorandum to the classic "pretty how-de-do."

F. F.

Supreme Court of the United States
Washington, D. C.

November 20, 1950

Dear Chief: Confidential

Here are my ideas as to the handling of Dennis' motion.

No showing appears that timely steps were taken to supplement defendants' counsel in the District and Court of Appeals for the argument here.

There is no sufficient showing that suitable counsel of this Bar are not available to defendants for retainer.

If petitioners can make such a showing and if they will then indicate to the Court one or three counsel of this Bar whom they would prefer to t ake charge of their case in this Court, this Court will invite those counsel to appear as amici curiae.

Yours,

Reed

The Chief Justice.

RECEIVED
NOV 21 8 39 AM '50
CHAMBERS OF THE
CHIEF JUSTICE

From Justice Reed - #336 - Reed Suggestions

NOV 22 1950

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners, *v.* United States of America.

On Motion to Postpone Argument.

[November —, 1950.]

Memorandum by The Chief Justice.

This is a motion submitted on November 17, 1950, by petitioners in this case, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument be postponed from the assigned date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare and also would have opportunity to fill a court engagement in India prior to that time.

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the order of its own docket. Rule 20 (1). The United States ~~has not concurred in this motion, but~~ has submitted a memorandum in opposition, ~~impugning petitioners' motives~~. In the ordinary course of events proper administration would require that the motion be denied.

In criminal cases prompt hearings are desirable from the public standpoint.

This is not a case where petitioners do not have access to ~~able~~ counsel. If that were so, we would consider it

competent to present their position.

our duty to assure their adequate representation in this Court. But the five able lawyers whose names appear on the brief on the merits already submitted (two of whom have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months of trial in the District Court, helping prepare a record of some 20 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari, in the brief on the merits here. These lawyers have not withdrawn from the case nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. In their appearances both here and in the Court of Appeals they have made able, concise and lawyerly argument. Four of their number are members of the Bar of this Court and several have participated in oral arguments before this Bar. Whatever else the petitioners' counsel table may lack, it is not short of talent, zeal or learning. We emphasize that this is not a case which presents a request to appoint counsel for a litigant who cannot obtain competent professional assistance; it is rather a case where we are asked to postpone argument so that a sixth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.

Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in his hands—the briefs submitted by present counsel have already shaped his course. They propose only that he will appear and participate in oral argument. We will be glad to hear a member of our

parent Bar in this case. Whether we will wait for him is another question.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly declined to participate in the case. The implication sought to be created is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the papers before us fall far short of establishing this charge. The request made to each of the twenty-four attorneys was that he "*associate himself as counsel* for petitioners on this appeal." It is further stated that "*Several* of these [leaders of the Bar] expressed the opinion" that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, *some* saying they did so out of fear that . . . such participation might adversely affect their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, but quite another to ask him to share time with, and follow the line of other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the couse of that argument.*

The second reason advanced for the requested delay is that the member of the English Bar petitioners desire must go to India to fill a court engagement there during December and January. We need not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any

*Eminent counsel may not be willing to become associated on a basis where they would either have to loan their name to a litigation policy and to tactics which they would disapprove, or break with the counsel who dominate the case.

case where a party with a battery of counsel seeks to add to a cause other counsel prepared or available on the date already set by this Court for argument of the cause.

Despite this apparent failure of the motion to state a substantial ground for the relief requested, and the aura of dilatory tactics pervading it, we recognize the substantial issues involved in the merits of this case and will take no action which might lend color to the claim that these petitioners are being deprived of an opportunity to present their case properly in this Court. We therefore treat this motion so as to afford the maximum to the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation *pro hac vice* in oral argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.

To: Mr. Justice Jackson

From: Black, J.

Circulated: .....

Recirculated: NOV 25 1950

SUPREME COURT OF THE UNITED STATES

Changes mkd.

No. 336.—October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners,
v.
United States of America.

On Motion to Postpone Argument.

[November —, 1950.]

Mr. Justice Black, concurring and dissenting.

I agree, of course, that petitioners' motion to allow British counsel to appear should be granted, but fail to understand why this simple action requires any explanation. Furthermore, absent some showing of possible public or private injury, I see no reason why the short postponement of oral argument here asked should not be granted almost as a matter of routine. But regardless of the disposition made of this portion of the motion, I deem it inappropriate for the Court to adopt the extraordinary procedure of writing a formal opinion to defend its action. Equally inappropriate and unnecessary is the Court's resort to its own surmise to make a gratuitous defense of unnamed members of the American Bar. The unwisdom of such a course is emphasized, I think, by the strained attempts to justify the Court's position.

The five lawyers who represented some of the defendants in the District Court may deserve the praise bestowed on them by the Court—that is, they may have made "able, concise and lawyerly argument," here and in the Court of Appeals. Perhaps some individual members

omission

of the Court may have sufficient knowledge thus to appraise these lawyers; I do not. But whatever their legal skills, the District Court has sentenced these same lawyers to imprisonment for contempt of court for the manner in which they tried these very cases. The Court of Appeals has affirmed, and their application for certiorari to review their prison sentences is now pending here. Under these circumstances, it seems entirely reasonable that their clients should desire to have additional counsel in this Court. It seems equally reasonable that these lawyers whose prison sentences are before us for review would desire the association of other attorneys over whose heads no such threat of punishment hangs.

omission

Moreover, the motion asserts that the five lawyers are not counsel for two of the petitioners, Dennis and Davis; and that these two have heretofore been acting as their own lawyers. Dennis and Davis join, however, in asking for delay long enough to assure their representation by the British counsel. In the absence of counsel of their choice, I assume the Court does not intend to force Dennis and Davis to accept the five lawyers. If not, we should either grant the requested postponement or permit them to argue their own cases. But Dennis is in jail serving another sentence. And were he not, rather than have Dennis and Davis attempt to argue their own appeals here, I think it would be far better judicial procedure to postpone the arguments until January so that they could have counsel of their choice.

#336 - F.F. Mimeo

RECEIVED
Nov 24 12 22 PM '50
CHAMBERS OF THE
CHIEF JUSTICE

To: The Chief Justice

From: Frankfurter, J.

Circulated: Nov. 24, 1950

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners,
v.
United States of America.

On Motion to Postpone Argument.

[November —, 1950.]

Memorandum by Mr. Justice Frankfurter.

Brother Minton wisely cautioned us against a statement that may expose the Court to a riposte. It is worse than useless to make even the best of debating points against the lawyers for the petitioners if thereby we promote the propaganda in which we believe them to be engaged. Any statement we make should stifle debate and not stimulate it.

For us to engage in controversy regarding the claim of petitioners as to their inability to secure counsel from among leading members of our bar is to involve ourselves in a controversy which at best we cannot control. It is not improbable that the Solicitor General did not join issue on this charge in the petitioners' motion and left it unheeded because he did not know where it would land him. For all we know, he may have had knowledge that if he controverted the vague allegations now made by the petitioners, he may be met by a rejoinder giving particular proof, or at least sufficiently particularizing the charge to lend confusing color to it. It is not hard

to believe that some lawyers of standing have expressed themselves adversely to the conclusions reached by the Court of Appeals on the constitutional issues. Nor is it unlikely that some of them have expressed unwillingness to be associated with the petitioners' case on any terms. Even eminent counsel have been known to say foolish or imprudent things. It is therefore not at all unlikely that an argumentative rejection by the Court of this claim of the petitioners will be promptly met by another motion supported by an affidavit giving the names of one or two lawyers, by way of illustration, who, when asked to represent the petitioners here, would have none of it because of the odium attaching to the case. It would only intensify the controversy if such an affidavit were met by a counter-affidavit of the named lawyers giving a different version. Since by hypothesis we are dealing with men who are engaged in propaganda for purposes beyond the merits of this case, they would not miss such an opportunity for propaganda as is here invited.

Again, to charge these lawyers with dilatory tactics—always bearing in mind that propaganda is to be attributed to them—is to lay ourselves open to a retort of righteous indignation on their part that they are embarrassed in the fair presentation of their cause by manifestations of prejudice on the part of this Court. They are all the more in a position to give this turn to the affair by the fact that they are before the Court on the sentence of contempt for disregard of the respect owing to our federal judicial system by the way in which they conducted this very litigation. They might well counter any suggestion of impropriety in the making of this motion by stating it to be their duty, in fairness to their clients, to withdraw from this case so as (1) to enable their clients to get new counsel, with the inevitable necessity of postponing the argument, or (2) putting on this Court the burden of assigning counsel. It is not at all beyond the probable that these

lawyers may make a subtly polite rejoinder bordering on contempt. We might then have to take notice of their action or disregard a nose thumbing. Either alternative would present a ~~nice~~ pretty how-do-~~you~~ do. These are not bogies. We are dealing, so one is told (I have no personal knowledge of these lawyers), with extremely sophisticated tacticians, who are concerned not merely, if indeed primarily, with the legal issues of this case, but are engaged in propaganda for extraneous ends.

I have no appetite for debate with these men, and the Court should avoid giving them any opportunity for it. I am still of the opinion that a statement should accompany the denial of their motion. But the statement should not open the door to opportunity for a reply by them. Such a statement, I believe, can be drawn. In the interest of concreteness, it should take, I venture to believe, some such form as the following.

Draft of statement to accompany denial of motion.

The petition for certiorari in this case was granted on October 23, the earliest moment for acting upon the petition. For obvious reasons, the rules of this Court require that a criminal case be heard with every expedition. In view of the nature and range of the issues here involved, the case was set for argument on December 4, 1950. On November 17, the petitioners moved the Court to postpone the argument until January 22, 1951, in order to make possible participation in the argument by an English barrister.

Adequate presentation by qualified counsel of issues relevant to a litigation is indispensable to the adjudicatory process of this Court. To that end, litigants have the unquestioned right to choose their own counsel who are members of the bar of this Court, or even to be represented by nonmembers of this bar who are given special

leave under appropriate circumstances to appear *pro hac vice*. If a party is unable to secure counsel, this Court, on cause shown, appoints qualified counsel. Intrinsic competence of counsel alone matters. The name or fame of counsel plays no part whatever in the attention paid to argument, and is wholly irrelevant to the outcome of a case.

If this were a case in which the Court were duly advised that the petitioners are without adequate legal representation and are unable to secure competent counsel, the Court would of course appoint counsel competent to press upon the Court the arguments on behalf of the petitioners on the questions before the Court. There is not the remotest suggestion that the counsel who have thus far appeared in the Court of Appeals and here are not in every way fully equipped to present the cause of the petitioners. There is no suggestion that these counsel will not in every way meet their duties to their clients as well as to the Court. Indeed it is clear that these counsel are especially qualified for this professional task. These five lawyers argued these questions at length before the Court of Appeals and submitted full briefs before that court. They are the same five lawyers who successfully presented the motion for admission to bail before Circuit Justice Jackson, and who, through their petition and brief, succeeded in having this Court grant a review of the decision of the Court of Appeals. They are the same five lawyers who on November 20 filed a brief on behalf of the petitioners constituting a volume of 280 pages, which, even on a cursory examination, is disclosed as an able piece of advocacy.

Solicitous regard for every interest of the petitioners, as part of the due administration of justice, will be fully safeguarded if the case proceeds to argument as originally set, on December 4. If, on that day, counsel for petitioners deem it desirable to associate with themselves any

other counsel, whether a member of the bar of this Court or, *pro hac vice,* a member of the bar of England or any other common-law jurisdiction,[1] the Court will of course permit such participation. Should such a contingency arise, appropriate distribution of time for argument will be made.

[1] For the information of my brethren, I mention "any other common-law jurisdiction" because I have excellent reason for believing that Dr. Evatt sounded the American Embassy in Australia about appearing in this case before us and was advised that a foreign lawyer could not appear before the Supreme Court.

LAW CLERK'S DRAFTS

REED'S SUGGESTIONS (pp. 3-4)

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly declined to participate in the case. We assume the implication is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the undocumented allegations fall far short of establishing this charge. An invitation to a lawyer to associate himself with other counsel in presentation of issues may be unacceptable for many reasons other than timidity in protecting those charged with acts, offensive to the great majority of the public. Invited counsel may disapprove of the method of presentation adopted by those in charge or feel that only counsel steeped in the details of the case can properly present the broad constitutional issues.

The second reason...already set by this Court for argument of the cause. Appearances at our bar on account of the extent of this Court's jurisdiction must be scheduled well in advance and disruption of the docket is permissible only to avoid unfairness to litigants. Despite the apparent failure of the motion to state a substantial ground for the relief requested, we recognize the substantiality of the issues claimed to be involved in this case. We therefore treat this motion.....

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners,
v.
United States of America.

On Motion to Postpone Argument.

[November —, 1950.]

Memorandum by The Chief Justice.

This is a motion submitted on November 17, 1950, by petitioners in this case, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument be postponed from the assigned date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare and also would have opportunity to fill a court engagement in India prior to that time.

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the order of its own docket. Rule 20 (1). The United States has not concurred in this motion, but has submitted a memorandum in opposition, impugning petitioners' motives. In the ordinary course of events proper administration would require that the motion be denied.

This is not a case where petitioners do not have access to able counsel. If that were so, we would consider it competent to present their position.

our duty to assure their adequate representation in this Court. But the five ~~able~~ lawyers whose names appear on the brief on the merits already submitted (two of whom have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months of trial in the District Court, helping prepare a record of ~~some~~ 20 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari, in the brief on the merits here. These lawyers have not withdrawn from the case nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. In their appearances both here and in the Court of Appeals they have made able, concise and lawyerly argument. Four of their number are members of the Bar of this Court and several have participated in oral arguments before this Bar. ~~Whatever else the petitioners' counsel table may lack, it is not short of talent, zeal or learning.~~ ~~We emphasize that~~ this is not a case which presents a request to appoint counsel for a litigant who cannot obtain competent professional assistance; it is rather a case where we are asked to postpone argument so that a sixth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.

Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in his hands—the briefs submitted by present counsel have already shaped his course. They propose only that he will appear and participate in oral argument. We will be glad to hear ~~a member of our~~

parent Bar in this case. Whether we will wait for him is another question.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly declined to participate in the case. The implication ~~sought to be created~~ is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the papers before us fall far short of establishing this charge. The request made to each of the twenty-four attorneys was that he "*associate himself as counsel* for petitioners on this appeal." It is further stated that "*Several* of these [leaders of the Bar] expressed the opinion" that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, *some* saying they did so out of fear that . . . such participation might adversely affect their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, but quite another to ask him to share time with, and follow the line of other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the ~~couse~~ course of that argument.*

The second reason advanced for the requested delay is that the member of the English Bar petitioners desire must go to India to fill a court engagement there during December and January. We need not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any

*Eminent counsel may not be willing to become associated on a basis where they would either have to loan their name to a litigation policy and to tactics which they would disapprove, or break with the counsel who dominate the case.

case where a party with a battery of counsel seeks to add to a cause other counsel prepared or available on the date already set by this Court for argument of the cause.

Despite ~~this~~ apparent failure of the motion to state a substantial ground for the relief requested, ~~and the aura of dilatory tactics pervading it,~~ we recognize the substantial issues involved in the merits of this case, ~~and will take no action which might lend color to the claim that these petitioners are being deprived of an opportunity to present their case properly in this Court.~~ We therefore treat this motion so as to afford the maximum to the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation *pro hac vice* in oral argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners,
v.
United States of America.

On Motion to Postpone Argument.

[November —, 1950.]

Memorandum by The Chief Justice.

This is a motion submitted on November 17, 1950, by petitioners in this case, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument be postponed from the assigned date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare and also would have opportunity to fill a court engagement in India prior to that time.

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the order of its own docket. Rule 20 (1). The United States has not concurred in this motion, but has submitted a memorandum in opposition, impugning petitioners' motives. In the ordinary course of events proper administration would require that the motion be denied.

This is not a case where petitioners do not have access to able counsel. If that were so, we would consider it

our duty to assure their adequate representation in this Court. But the five able lawyers whose names appear on the brief on the merits already submitted (two of whom have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months of trial in the District Court, helping prepare a record of some 20 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari, in the brief on the merits here. These lawyers have not withdrawn from the case nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. In their appearances both here and in the Court of Appeals they have made able, concise and lawyerly argument. Four of their number are members of the Bar of this Court and several have participated in oral arguments before this Bar. Whatever else the petitioners' counsel table may lack, it is not short of talent, zeal or learning. We emphasize that this is not a case which presents a request to appoint counsel for a litigant who cannot obtain competent professional assistance; it is rather a case where we are asked to postpone argument so that a sixth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.

Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in his hands—the briefs submitted by present counsel have already shaped his course. They propose only that he will appear and participate in oral argument. We will be glad to hear a member of our

parent Bar in this case. Whether we will wait for him is another question.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly declined to participate in the case. The implication sought to be created is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the papers before us fall far short of establishing this charge. The request made to each of the twenty-four attorneys was that he "*associate himself as counsel* for petitioners on this appeal." It is further stated that "*Several* of these [leaders of the Bar] expressed the opinion" that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, *some* saying they did so out of fear that . . . such participation might adversely affect their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, but quite another to ask him to share time with, and follow the line of other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the couse of that argument.*

The second reason advanced for the requested delay is that the member of the English Bar petitioners desire must go to India to fill a court engagement there during December and January. We need not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any

*Eminent counsel may not be willing to become associated on a basis where they would either have to loan their name to a litigation policy and to tactics which they would disapprove, or break with the counsel who dominate the case.

case where a party with a battery of counsel seeks to add other counsel, prepared or available on the date already set by this Court for argument of the cause.

Despite this apparent failure of the motion to state a substantial ground for the relief requested, and the aura of dilatory tactics pervading it, we recognize the substantial issues involved in the merits of this case and will take no action which might lend color to the claim that these petitioners are being deprived of an opportunity to present their case properly in this Court. We therefore treat this motion so as to afford the maximum to the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation *pro hac vice* in oral argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.

Two of the petitioners, Dennis and Davis, at the close of their trial in the District Court, undertook their own defense. This pro se representation continued through November 17, 1950, when they sought the English counsel and postponemtn. However, on November 20, 1950, a brief on the merits, consisting of 280 pages, was filed on behalf of all the petitioners by the same five lawyers heretofore mentioned. We cannot assume that these members of the Bar were not representing Dennis and Davis at the time the brief was filed in this Court. On this record, Dennis and Davis are being represented by the five lawyers representing the other nine.

joined in the instant motion. Butler

must

are

at this time.

Although we treat their request as merely for additional counsel and postponement, rather than a request motion as one for additional counsel and postponement. matter of argument.

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners, *v.* United States of America.	On Motion to Postpone Argument.

[November —, 1950.]

Memorandum by The Chief Justice.

This is a motion submitted on November 17, 1950, by petitioners in this case, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument be postponed from the assigned date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare and also would have opportunity to fill a court engagement in India prior to that time.

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the order of its own docket. Rule 20 (1). The United States has submitted a memorandum in opposition. In the ordinary course of events proper administration would require that the motion be denied.

This is not a case where petitioners do not have access to counsel competent to present their position. If that

Two of the petitioners, Dennis and Davis, at the close of their trial in the District Court, undertook their own defense. This pro se representation when they joined the instant motion, continued through November 17, 1950, ~~when they sought the English counsel and postponemtnt.~~ However, on November 20, 1950, a brief on the merits, consisting of 280 pages, was filed on behalf of all the petitioners by the same five lawyers heretofore mentioned. We ~~cannot~~ must assume that these members of the Bar ~~were not~~ are representing Dennis and Davis at the time this the brief was filed in this Court. ~~On this record, Dennis and Davis are being represented by the five lawyers representing the other nine,~~ ~~and accordingly~~ Accordingly we treat their motion as one for additional counsel and postponement of argument.

were so, we would consider it our duty to assure their adequate representation in this Court. But the five lawyers whose names appear on the brief on the merits representing all the petitioners already submitted (two of whom have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months of trial in the District Court, helping prepare a record of 20 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari, and in the brief on the merits here. These lawyers have not withdrawn from the case nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. In their appearances both here and in the Court of Appeals they have made able, concise and lawyerly argument. Four of their number are members of the Bar of this Court and several have participated in oral arguments before this Bar. This is not a case which presents a request to appoint counsel for a litigant who cannot obtain competent professional assistance; it is rather a case where we are asked to postpone argument so that a sixth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.

Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in his hands—the briefs submitted by present counsel have already shaped his course. They propose only that he will appear and participate in oral argument. We will be glad to hear him in this case. Whether we will wait for him is another question.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly declined to participate in the case. We assume the implication is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the papers before us fall far short of establishing this charge. The request made to each of the twenty-four attorneys was that he "*associate himself as counsel* for petitioners on this appeal." It is further stated that "*Several* of these [leaders of the Bar] expressed the opinion" that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, *some* saying they did so out of fear that . . . such participation might adversely affect their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, but quite another to ask him to share time with, and follow the line of other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the course of that argument. Eminent counsel may not be willing to become associated on a basis where they would either have to loan their name to a litigation policy and to tactics which they would disapprove, or break with the counsel who dominate the case.

The second reason advanced for the requested delay is that the member of the English Bar petitioners desire must go to India to fill a court engagement there during December and January. We need not set forth at great length the problems an unqualified grant of this motion would raise, for, from the standpoint of our procedure, this case presents no different problem than might any case where a party with a battery of counsel at the last moment seeks to add to a cause other counsel who is not

prepared or available on the date already set by this Court for argument of the cause.

Despite the apparent failure of the motion to state a substantial ground for the relief requested we recognize the substantiality of the issues claimed to be involved in the merits of this case. We therefore treat this motion so as to afford the maximum to the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation *pro hac vice* in oral argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.

336 - Same Lead

on November 17, 1950

This is a motion submitted by petitioners in this case, ~~on December 13, 1950~~, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument ~~from~~ be postponed from the date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare ~~for the argument~~, and also would have opportunity to fill a court engagement in India prior to that time.

If petitioners were without able counsel, we would of course consider it our duty to see that they were properly represented. But five able lawyers, in this case from petitioners' arguments continuously in July, 1948, represent them here. These lawyers were active participants in the nine months

7A

INSERT A

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioner's motion, such a stipulation ~~is not binding~~ would not be controlling upon this Court, which has the responsibility for ~~its own docket~~ the care of its own docket. Rule 20(10). The United States has not opposed in this motion, but has submitted a memorandum in opposition. ~~In the~~ Several pending petitions or motions. In the ordinary course, events, proper administration would require that the motion be denied.

This is not a case where petitioners do not have access to able counsel, ~~and~~ if that were so, we would consider it our duty to assure their adequate representation ~~provide such counsel for them~~ in this Court. But the five able lawyers whose names appear on the brief on the merits already submitted, (two of whom ~~he~~ have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months'

of trial in the District Court, helping to ~~make~~ prepare a record of some 23 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari, in the brief on the merits here and in the instant motion. These lawyers have not withdrawn from the case, nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. By their appearances both here and in the Court of Appeals they have made a form of their number are members of the Bar of this Court and several have able counsel and lawyers of much ~~whatever else~~ participated in oral argument before this Bar. Whatever else the ~~defendant~~ petitioners' counsel table may lack,

~~—~~ it is not short of talent, zeal or learning.

We emphasize that this is not a case which presents a request to appoint counsel for a litigant who ~~cannot obtain~~ ~~is without~~ competent professional assistance; it is rather a case where we are asked to postpone argument so that a fifth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.

~~The~~ Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in ~~the hands of~~ his hands — ~~the~~ briefs submitted by present Petitioners are, of course, free to have counsel of their choice manage and counsel have already shaped his course. We would be glad to hear ~~an~~ a member of ~~the Bar~~

~~which we regret as our parent~~

in this case

our parent Bar ~~but~~ whether we will not wait for

him is another question.

The reason offered for delay to bring counsel

from overseas is that twenty-four eminent American

lawyers unexpectedly have declined to participate in the case.

The implication sought to be created is that no leading

American counsel dare or will take the case of an

admitted Communist to challenge the Smith Act as

unconstitutional. This is a grave indictment of the

American Bar, ~~but one which~~ but the papers

before us fall far short of establishing this charge.

The request made to each of the twenty-four attorneys

was that he "associate himself as counsel for

petitioners on the appeal." It is further stated that "Several [Leaders of the Bar] of these expressed the opinion "that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, some saying they did so out of fear because that ... such participation might affect adversely their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, ~~as the~~ but quite another to ask him to share time with other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the course of the argument.

part

would be the minimum we should require. We need not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any case where a party to a cause would like to be represented by particular counsel and that counsel purportedly cannot be prepared or available on the date set by this Court for argument of the cause.

We recognize, however, the substantial issues involved and hesitate to take any action which might lend color to the claim that these petitioners are deprived of an opportunity to present their case properly to this Court. We, therefore, will grant the relief requested insofar as it is consistent with the orderly processes of judicial administration. The length of time this case has already

The second reason advanced for the requested delay is that the members of the English Bar petitioners desire must go to India to fill a ~~previous~~ court engagement there during December and January next.

~~We con~~

Despite this apparent failure of the motion to state a substantial ground for the relief requested, we ~~have to~~ recognize the substantial issues involved in the merits of this case and hesitate to take any action which might lend color to the claim that these petitioners are being deprived of an opportunity to present their case properly to this Court. We therefore treat this motion as to afford the maximum of the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation pro hac vice in oral

argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 336.--October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners, v. United States of America.	On Motion to Postpone Argument.

( )

Memorandum by the Chief Justice.

Certiorari in this case was granted on October 23, 1950. Our order granting the petition for the writ set the case down for argument on December 4, 1950. On November 17, 1950, petitioners submitted a motion to this Court requesting (a) that a named member of the English Bar be permitted to participate in the oral argument, and (b) that the case be postponed until after January 22, 1951, so that said counsel would have ample opportunity to prepare for oral argument, and also would have opportunity to conclude litigation which is to take place in India prior to that time.

In disposing of this motion we think it necessary to point out the posture of the case in which ~~they are~~ it is made.

Petitioners were arraigned in July, 1948. From the date of their respective arraignments they were represented by counsel of their own choosing. These counsel represented petitioners throughout their lengthy trial. While it is true that two of the petitioners elected during the progress of the trial to proceed in their own behalf, that too was of their own choosing, there being no indication in the record that the counsel who were replaced were inadequate or not sufficiently solicitous of their clients' interest.

The five counsel whose names appear on petitioners' brief on the merits submitted to this Court on November 20, 1950, are the same five who represented them during the trial and on their appeal to the Court of Appeals. 183 F. 2d 201 (CA 2, 1950). All but one of the counsel is a member of the Bar of this Court, and we note that several have participated in oral argument in other cases before that Bar. The same five counsel represented these petitioners in successfully obtaining a grant of bail and stay of execution of the sentence in the Court of Appeals for the Second Circuit prior to its determination of their appeal. A further grant of bail and stay of execution was successfully obtained by the same counsel from an Associate

Justice of this Court pending the filing and disposition of this petition for certiorari. The two petitioners who appeared pro se in the trial and in the Court of Appeals are now represented in the brief submitted to this Court and in the present motion by the same five counsel. It is important to note that in this regard this Court is not confronted with a request to appoint counsel for an indigent party, who might not otherwise be adequately represented, but rather is being asked to postpone argument so that a sixth counsel may be permitted to join the five who have conducted this litigation up until this time.

Our rules provide that even if the United States had stipulated its willingness to pass the case in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the administration of its own docket. Rule 20(10). The United States has not concurred in this motion, but has submitted a memorandum in opposition. In the ordinary course of events, orderly administration would require that such a motion should be denied.

In the light of the facts as we have detailed them, it seems clear to us that the present motion does not present a case of pressing necessity where denial of the motion will leave these petitioners without counsel, helpless in the face of the Government's arguments. Nor does it show that due diligence on the petitioners' part in calling this Court's attention to their alleged plight which would be the minimum we should require. We need not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any case where a party to a cause would like to be represented by particular counsel and that counsel purportedly cannot be prepared or available on the date set by this Court for argument of the cause.

We recognize, however, the substantial issues involved and hesitate to take any action which might lend color to the claim that these petitioners are deprived of an opportunity to present their case properly to this Court. We, therefore, will grant the relief requested insofar as it is consistent with the orderly processes of judicial administration. The length of time this case has already

consumed, the need for prompt determination of the issues, and the failure of petitioners to explain adequately why they have moved at this late date for such an extension leads us to the conclusion that relief in the nature of a postponement is unwarranted. We accordingly deny that part of the motion which requests a postponement. We grant that part of the motion which pertains to the participation pro hac vice in oral argument by the designated member of the English Bar.

SUPREME COURT OF THE UNITED STATES

No. 336.--October Term, 1950.

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall,	)	
Petitioners,	)	On Motion to Postpone Argument.
v.	)	
United States of America.	)	

( )

Memorandum by the Chief Justice.

Certiorari in this case was granted on October 23, 1950. Our order granting the petition for the writ set the case down for argument on December 4, 1950. On November 17, 1950, petitioners submitted a motion to this Court requesting (a) that a named member of the English Bar be permitted to participate in the oral argument, and (b) that the case be postponed until after January 22, 1951, so that said counsel would have ample opportunity to prepare for oral argument, and also would have opportunity to ~~conclude litigation which is to take place in India prior to that time~~ fill a court engagement in India prior to that time.

In disposing of this motion we think it necessary to point out the posture of the case in which [they are] it is made.

Petitioners were arraigned in July, 1948. From the date of their respective arraignments they were represented by counsel of their own choosing. These counsel represented petitioners throughout their lengthy trial. While it is true that two of the petitioners elected during the progress of the trial to proceed in their own behalf, that too was of their own choosing, there being no indication in the record that the counsel who were replaced were inadequate or not sufficiently solicitous of their clients' interest.

The five counsel whose names appear on petitioners' brief on the merits submitted to this Court on November 20, 1950, are the same five who represented them during the trial and on their appeal to the Court of Appeals. 183 F. 2d 201 (CA 2, 1950). All but one of the counsel is a member of the Bar of this Court, and we note that several have participated in oral argument in other cases before ~~that~~ this Bar. The same five counsel represented these petitioners in successfully obtaining a grant of bail and stay of execution of the sentence in the Court of Appeals for the Second Circuit prior to its determination of their appeal. A further grant of bail and stay of execution was successfully obtained by the same counsel from an Associate

Justice of this Court pending the filing and disposition of this petition for certiorari. The two petitioners who appeared pro se in the trial and in the Court of Appeals are now represented in the brief submitted to this Court and in the present motion by the same five counsel. It is important to note that in this regard this Court is not confronted with a request to appoint counsel for an indigent party, who might not otherwise be adequately represented, but rather is being asked to postpone argument so that a sixth counsel may be permitted to join the five who have conducted this litigation up until this time.

Our rules provide that even if the United States had stipulated its willingness to pass the case in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the administration of its own docket. Rule 20(10). The United States has not concurred in this motion, but has submitted a memorandum in opposition. In the ordinary course of events, orderly administration would require that such a motion should be denied.

In the light of the facts as we have detailed them, it seems clear to us that the present motion does not present a case of pressing necessity where denial of the motion will leave these petitioners without counsel, helpless in the face of the Government's arguments. Nor does it show that due diligence on the petitioners' part in calling this Court's attention to their alleged plight which would be the minimum we should require. We need not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any case where a party to a cause would like to be represented by particular counsel and that counsel purportedly cannot be prepared or available on the date set by this Court for argument of the cause.

We recognize, however, the substantial issues involved and hesitate to take any action which might lend color to the claim that these petitioners are deprived of an opportunity to present their case properly to this Court. We, therefore, will grant the relief requested insofar as it is consistent with the orderly processes of judicial administration. The length of time this case has already

consumed, the need for prompt determination of the issues, and the failure of petitioners to explain adequately why they have moved at this late date for such an extension leads us to the conclusion that relief in the nature of a postponement is unwarranted. We accordingly deny that part of the motion which requests a postponement. We grant that part of the motion which pertains to the participation pro hac vice in oral argument by the designated member of the English Bar.

SUPREME COURT OF THE UNITED STATES

No. 336.--October Term, 1950

Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, Petitioners, v. United States of America.	)	On Motion to Postpone Argument.

( )

Memorandum by the Chief Justice.

This is a motion submitted on November 17, 1950, by petitioners in this case, requesting (a) that a named member of the English Bar be permitted to appear and participate in the oral argument, and (b) that the oral argument be postponed from the assigned date of December 4, 1950, until after January 22, 1951, so that said counsel would have ample opportunity to prepare and also would have opportunity to fill a court engagement in India prior to that time.

Our rules provide that even if the United States had stipulated its willingness to pass the case, in accordance with petitioners' motion, such a stipulation would not be controlling upon this Court, which has the responsibility for the order of its own docket. Rule 20(1). The United States has not concurred in this motion,

but has submitted a memorandum in opposition, impugning petitioners' motives. In the ordinary course of events proper administration would require that the motion be denied.

This is not a case where petitioners do not have access to able counsel. If that were so, we would consider it our duty to assure their adequate representation in this Court. But the five able lawyers whose names appear on the brief on the merits already submitted, (two of whom have submitted the present motion), have been in this case continuously from petitioners' arraignments in July, 1948. These lawyers were active participants in the nine months of trial in the District Court, helping prepare a record of some 23 volumes. They participated in the successful application for bail in the Court of Appeals, in the prosecution of the appeal in that court, in the successful application for bail to an Associate Justice of this Court, in the petition for certiorari, and in the brief on the merits here and in the instant motion. These lawyers have not withdrawn from the case nor do they ask leave to do so. They are intimately familiar with this case, from the details of the record to the broad constitutional questions presented. In their

appearances both here and in the Court of Appeals they have made able, concise and lawyerly argument. Four of their number are members of the Bar of this Court and several have participated in oral arguments before this Bar. Whatever else the petitioners' counsel table may lack, it is not short of talent, zeal or learning. We emphasize that this is not a case which presents a request to appoint counsel for a litigant who cannot obtain competent professional assistance; it is rather a case where we are asked to postpone argument so that a sixth counsel may be permitted to join the five lawyers who have conducted this litigation to the present time.

Petitioners have requested several weeks' delay to add British counsel to their staff. They do not propose to put their case in his hands--the briefs submitted by present counsel have already shaped his course. Petitioners are, of course, free to have counsel of their choice in oral argument and we will be glad to hear a member of our parent Bar in this case. Whether we will wait for him is another question.

The reason offered for delay to bring counsel from overseas is that twenty-four eminent American lawyers have unexpectedly

declined to participate in the case. The implication sought to be created is that no leading American counsel dare or will take the case of an admitted Communist to challenge the Smith Act as unconstitutional. This is a grave indictment of the American Bar, but the papers before us fall far short of establishing this charge. The request made to each of the twenty-four attorneys was that he "associate himself as counsel for petitioners on this appeal." It is further stated that "Several of these [leaders of the Bar] expressed the opinion" that petitioners' convictions should be reversed, and "all declined to participate in the argument of the appeal, some saying they did so out of fear that...such participation might adversely affect their professional standing and practice." It is one thing to ask a lawyer to take responsibility for handling a case, but quite another to ask him to share time with and follow the brief of other counsel, who not only have shaped the record, but whose briefs have necessarily predetermined the course of that argument. It may well be so.

The second reason advanced for the requested delay is that the member of the English Bar petitioners desire must go to India to fill a court engagement there during December and January. We need

not set forth at great length the problems an unqualified grant of this motion would cause, for, from the standpoint of our procedure, this case presents no different problem than might any case where a party to a cause would like to be represented by particular counsel and that counsel purportedly cannot be prepared or available on the date set by this Court for argument of the cause.

Despite this apparent failure of the motion to state a substantial ground for the relief requested, we recognize the substantial issues involved in the merits of this case and hesitate to take any action which might lend color to the claim that these petitioners are being deprived of an opportunity to present their case properly in this Court. We therefore treat this motion so as to afford the maximum to the petitioners consistent with the orderly processes of judicial administration. We grant that part of the motion which pertains to the participation pro hac vice in oral argument by the designated member of the English Bar. We deny that part of the motion which requests a postponement.

It is so ordered.