

397 U. S.

February 24, 1970

UNITED STATES *v.* COTTON ET AL.APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

No. 1022. Decided February 24, 1970

Appeal dismissed.

Solicitor General Griswold, Assistant Attorney General Wilson, Beatrice Rosenberg, and Mervyn Hamburg for the United States.

William M. Kunstler for appellees.

PER CURIAM.

The motion of the appellees for leave to proceed *in forma pauperis* is granted. The motion to dismiss is granted and the appeal is dismissed for failure to docket the case within the time prescribed by Rule 13.

MR. JUSTICE DOUGLAS, dissenting.

The requirement for filing the record in an appeal within the time prescribed by Rule 13 is not jurisdictional. Rather it is a provision of our own Rule which we often waive in the interests of justice. We should waive it here. The appeal now dismissed was solely protective under 18 U. S. C. § 3731. The main remedy sought was mandamus in the Court of Appeals, and the record naturally went to that court, not here. The issue tendered by the appeal now dismissed is whether the District Court properly dismissed the indictment, because there could be no "fair trial" in the district at that time and that if a continuance was granted, appellees would be denied a speedy trial guaranteed by the Constitution.

That is an important question we should hear and decide.