

SUPREME COURT OF THE UNITED STATES

MONDAY, APRIL 24, 1972

ORDERED:

1. That Rules 1, 3, 4 (b) & (c), 5, 5.1, 6 (b), 7 (c), 9 (b), (c) & (d), 17 (a) & (g), 31 (e), 32 (b), 38 (a), 40, 41, 44, 46, 50, 54 and 55 of the Federal Rules of Criminal Procedure be, and they hereby are, amended effective October 1, 1972, to read as follows:

[See *infra*, pp. 983-1003.]

2. That Rule 9 (c) of the Federal Rules of Appellate Procedure be, and hereby is amended, effective October 1, 1972, to read as follows:

[See *infra*, p. 1007.]

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing amendments to Rules of Criminal and Appellate Procedure, in accordance with the provisions of Title 18, U. S. Code, § 3771 and § 3772.

MR. JUSTICE DOUGLAS, dissenting from the adoption of proposed Rule 50 (b) of the Federal Rules of Criminal Procedure.

The proposal to add subsection (b) to Rule 50 of the Federal Rules of Criminal Procedure is designed to require district courts to promulgate new procedures to break the logjam of pending criminal cases. Plans of a similar nature promulgated by the several Circuits to implement the Criminal Justice Act of 1964, 18 U. S. C. § 3006A were promulgated after Congress directed each district court to adopt plans for providing counsel for indigents. § 3006A (a).

*First.* There may be several better ways of achieving the desired result. This Court is not able to make discerning judgments between various policy choices where

the relative advantage of the several alternatives depends on extensive factfinding. That is a "legislative" determination. Under our constitutional system that function is left to the Congress with approval or veto by the President.

*Second.* The Court is in fact only a conduit for transmitting the Rule to the Congress; in practice little, if any, independent judgment is expressed on the merits of the Rules we transmit. But though we are only a conduit of the Rules, the Court's imprimatur is placed on them.

Accordingly, I do not join in transmitting this new Rule to the Congress and as Justice Black and I have done before (374 U. S. 865), I dissent.