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THE INTERIM PROVISIONS OF THE SPEEDY TRIAL ACT: AN INVITATION TO FLEE?

I. INTRODUCTION

The Speedy Trial Act of 1974 (Act)[1] was passed by Congress to effectuate the sixth amendment right of federal criminal defendants to a speedy trial[2] and to "assist in reducing crime and the danger of recidivism."[3] The Act mandates the commencement of trial of federal criminal defendants within a maximum of one hundred days of the date of arrest or service of summons,[4] and seeks to accomplish this goal by setting out time limits within which indictments must be filed,[5] arraignments must be held,[6] and trials must commence.[7]

Despite the years of work leading up to the passage of the Act,[8] it is inartfully drawn. Portions of its text are ambiguous, giving rise to conflicting interpretations.[9] A conflict in the circuits has already arisen over the proper interpretation to be given to the "interim limits" section. The Ninth Circuit, utilizing a plain-meaning approach to its construction of the section, has reached a result which is questionable.[10] The District of Columbia Circuit has reached a contrary result after examining the legislative history of the Act.[11]

This Note will focus on the current state of the controversy over the interpretation of the "interim limits" section of the Act. It will propose an

1. Pub. L. No. 93-619, 88 Stat. 2076 (codified at 18 U.S.C. §§ 3161-3174 (Supp. V 1975)).

2. The sixth amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." U.S. Const. amend. VI.

3. Pub. L. No. 93-619, 88 Stat. 2076. The Act was passed by Congress under the power conferred by the necessary and proper clause as well as under its article III power to enact legislation implementing the speedy trial requirement of the sixth amendment. S. Rep. No. 1021, 93d Cong., 2d Sess. 20 (1974) [hereinafter cited as S. Rep.]. Congress noted a 1970 National Bureau of Standards study which showed an 11% recidivism, or rearrest, rate for defendants released while awaiting trial. H. Rep. No. 1508, 93d Cong., 2d Sess., *reprinted in* [1974] U.S. Code Cong. & Ad. News 7401, 7409 [hereinafter cited as H. Rep.]; *see* S. Rep., *supra* at 7. The study also showed an increased propensity to be rearrested after release of more than 280 days and an increased propensity of persons classified as dangerous to be rearrested in the 8- to 24-week period before trial. H. Rep., *supra* at 7409. See 6 Harv. Civ. Rights–Civ. Lib. L. Rev. No. 2 (1971) for more on the National Bureau of Standards Study.

4. *See* 18 U.S.C. § 3161 (Supp. V 1975). This figure is arrived at by adding up the time limits set out in § 3161(b), (c).

5. *Id.* § 3161(b).

6. *Id.* § 3161(c).

7. *Id.*

8. Speedy trial legislation had been introduced regularly since the 88th Congress. S. Rep., *supra* note 3, at 3. The Act represents over three years of work by the Senate Subcommittee on Constitutional Rights. *Id.*

9. *See generally* Frase, *The Speedy Trial Act of 1974*, 43 U. Chi. L. Rev. 667, 676-722 (1976). One court has found the Act unconstitutional as a "legislative encroachment on the judiciary." (Judge Joseph H. Young, D.C. Md.). N.Y. Times, Nov. 19, 1977, at 10, col. 3.

10. United States v. Tirasso, 532 F.2d 1298 (9th Cir. 1976).

11. United States v. Corley, 548 F.2d 1043 (D.C. Cir. 1976).

appropriate resolution of the controversy through a consideration of general rules of statutory construction and through an examination of the legislative history of the Act. It will also consider whether judicial council approval of district court speedy trial plans might have an effect on the judicial resolution of the issue in the circuits.

II. THE ACT

The basic provisions of the Act are set out in section 3161 which establishes time limits for the filing of informations or indictments and for holding arraignments and trials.[12] The Act requires an information or indictment charging an individual with a federal offense to be filed not more than thirty days after he has been arrested or served with a summons.[13] Arraignment must be held within ten days of the filing date,[14] and trial must be held within sixty days of the arraignment.[15]

In recognition of the strain which the immediate imposition of these time limits would place upon the judicial system, Congress provided for a transitional period during which longer deadlines are initially imposed.[16] The transitional period deadlines are gradually shortened until the one hundred-day limit, embodied in section 3161, takes effect on July 1, 1979.[17] After that date, the primary sanction of dismissal of the complaint, information, or indictment will be imposed for failure to meet applicable deadlines.[18]

To provide for some flexibility, and to ensure that "the time limits do not fall too harshly upon either the defendant or the Government,"[19] the Act provides in section 3161(h) for the exclusion of certain periods of delay in computing the time to trial.[20] Excludable time includes delay resulting from hearings on pretrial motions, examinations and hearings on the mental competency or physical incapacity of the defendant, interlocutory appeals,

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12. 18 U.S.C. § 3161 (Supp. V 1975).
13. *Id.* § 3161(b).
14. *Id.* § 3161(c).
15. *Id.*
16. *Id.* §§ 3161(f), (g), 3163(a), (b).
17. *Id.* The effect of the transitional period is that until July 1, 1976, no time limits are imposed. From July 1, 1976, to July 1, 1977, the maximum allowable time between arrest or service of summons and trial is 250 days. From July 1, 1977, to July 1, 1978, the maximum allowable time is 175 days, and from July 1, 1978, to July 1, 1979, it is 125 days. Finally, on July 1, 1979, the § 3161 time limits take effect and the maximum allowable time between arrest or service of summons and trial will be 100 days. *Id.*
18. *Id.* §§ 3162, 3163(c). The court may also discipline counsel for the defendant or the attorney for the Government for knowingly allowing the case to be set for trial without disclosing that a necessary witness will be unavailable, filing a motion which he knows is totally frivolous and without merit solely for the purpose of delay, making a statement which he knows to be false and which is material to the granting of a continuance for the purpose of obtaining a continuance, or otherwise willfully failing to proceed to trial without justification. *Id.* § 3162(b).
19. S. Rep., *supra* note 3, at 35; *see* H. Rep., *supra* note 3, at 7415.
20. 18 U.S.C. § 3161(h) (Supp. V 1975).

transfer proceedings, and absence or unavailability of the defendant or an essential witness.[21]

In section 3164 of the Act, Congress designated two classes of defendants whose cases are to receive priority during the transitional period.[22] Detained persons who are being held solely because they are awaiting trial and released persons awaiting trial who have been designated "high-risk"[23] by the attorney for the Government must come to trial no later than ninety days following the beginning of continuous detention or designation of high risk.[24] Failure to commence trial of a detained defendant within this ninety-day limit, through no fault of the accused or his counsel, will result in the release of the defendant.[25]

III. THE CONTROVERSY AND THE JUDICIAL SOLUTIONS

It is the applicability of section 3161(h)'s excludable periods of delay to the ninety-day interim limit applicable to detained defendants and high-risk releasees during the transitional period which is the source of the controversy in the circuits. If the delay exclusions do apply to the interim limit, they will toll the running of the ninety-day period. If they do not apply, a strict ninety-day limit will be enforced, after which detainees awaiting trial *must* be released. This last interpretation could have serious consequences since it could lead to the early release of dangerous felons who might then leave the jurisdiction of the court.

A. *The Ninth Circuit*

In *United States v. Tirasso*,[26] two foreign nationals were indicted on charges of conspiracy stemming from an alleged attempt to smuggle cocaine.

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21. *Id.*

22. *Id.* § 3164(a).

23. A "high-risk" defendant was defined by the Committee on the Administration of the Criminal Law of the Judicial Conference of the United States as "(1) one whose chances of appearing at his trial or other court proceedings have been judicially determined to be poor; or (2) one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community." Committee on the Administration of the Criminal Law of the Judicial Conference of the United States, Model Statement of Time Limits and Procedures for Achieving Prompt Disposition of Criminal Cases, *quoted in* Appellant's Memorandum of Law and Fact at Appendix A, United States v. Corley, 548 F.2d 1043 (D.C. Cir. 1976). As a practical matter, few courts actually use designations of "high-risk " Administrative Office of the United States Courts, Report on the Implementation of Title I and Title II of the Speedy Trial Act of 1974, at 18 (Sept. 30, 1976).

24. 18 U.S.C. § 3164(b) (Supp. V 1975).

25. *Id.* § 3164(c).

26. 532 F.2d 1298 (9th Cir. 1976). The first case to touch upon the relationship between §§ 3164 and 3161(h) was Moore v. United States Dist. Court, 525 F.2d 328 (9th Cir. 1975). In *Moore* the defendant petitioned for a writ of mandamus to set aside certain pretrial proceedings, including her arraignment. The Ninth Circuit noted that the district court was faced with a problem of statutory time limits under § 3164. The court denied the petition and held that, in computing the ninety-day

They had been arrested on November 19, 1975, but the trial was delayed until April 13, 1976, because of a lengthy government investigation.[27] Defendants, confined since their arrest, moved in the district court for release from custody. The motion was denied.[28] On appeal, they argued that the wording of section 3164 of the Act unconditionally mandated their release, even though the pretrial delay was caused by a lengthy government investigation and there was a high probability that they would flee to a foreign country if released.[29] The Ninth Circuit agreed.[30]

The *Tirasso* court first looked to the language of the statute, found section 3164 straightforward and unambiguous, and concluded that, under the clear wording of the statute, defendants continuously detained for more than ninety days solely because they are awaiting trial *must* be released.[31] The court next looked to the House report[32] and, citing a portion which, in effect, paraphrased the language of 3164, found that the legislative history of the Act supported its interpretation.[33] The court noted that the Act explicitly provides that section 3161(h)'s exclusions are applicable to the permanent and transitional periods, but that it is silent in this regard with respect to the interim

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limit, a district court has discretion to exclude periods of time during which a defendant is undergoing study of his mental competency pursuant to a court order under 18 U.S.C. § 4244 and during which hearings on the issue of competency are being held. *Id.* at 329. The court reasoned that during such periods a person is not a defendant detained "solely because he is awaiting trial . . . ." *Id.*

The *Moore* court based its decision on the language of § 3164(a)(1) and ignored the fact that the delay caused by examination and hearings on the defendant's competency was one of the categories of excludable delay under § 3161(h). Since the court could have decided the case by holding that the provisions of § 3161(h) are incorporated into § 3164, its failure to do so raised the inference that the Ninth Circuit did not consider the exclusions applicable to § 3164. Such an inference was drawn from the *Moore* decision by the Eastern District of California in United States v. Soliah, Crim. No. 75-523 (E.D. Cal. January 14, 1976). In that case the Government moved for a thirty-day continuance because of the unavailability, due to pregnancy, of one of its witnesses. In reaching its finding that the continuance could not be granted without releasing the defendant, the court relied upon *Moore* and found that, by implication, the Ninth Circuit had rejected the contention that § 3161(h) exclusions apply to § 3164. *Id.*; *accord*, United States v. Bigelow, 544 F.2d 904 (6th Cir. 1976).

27. 532 F.2d at 1299.

28. *Id.*

29. The court noted that arrest of the defendants prior to the conclusion of the Government's investigation was necessary because the defendants were foreign nationals, only recently arrived from abroad, who were likely to flee the country at any time. *Id.*

30. *Id.* at 1299. The result in *Tirasso* was reached although the court questioned the wisdom of the statute and despite the court's recognition of the dangers inherent in its decision. The court noted that there was virtually no way to ensure the defendants' appearance for trial, and defense counsel had all but admitted that, if the defendants were released, their appearance could not be counted on. *Id.* at 1300.

31. *Id.* at 1299-1300.

32. *Id.* at 1300. Although the opinion quotes a segment from the congressional reports and attributes it to the Senate report, the quoted segment actually appears in the House report.

33. *Id.* The report states: "Failure to commence the trial of a detained person under this section [§ 3164] results in the automatic review of the terms of release by the court and, in the case of a person already under detention, release from custody." H. Rep., *supra* note 3, at 7416.

period.[34] Although acknowledging in a footnote that the difference might be the result of a drafting error or a misunderstanding of the requirements of criminal administration,[35] the court determined that the Act's silence with respect to the relationship between sections 3161(h) and 3164 required it "to find that the clearly expressed congressional intent is to provide no periods of exclusion for the ninety-day trial requirement applicable during the interim period."[36] Although the court questioned the wisdom[37] of the statute, it believed itself constrained to enforce its plain terms, noting: "It is discouraging that our highly refined and complex system of criminal justice is suddenly faced with implementing a statute that is so inartfully drawn as this one. But this is the law, and we are bound to give it effect."[38]

B. *The District of Columbia Circuit*

In *United States v. Corley*[39] the District of Columbia Circuit expressly declined to follow the Ninth Circuit's decision in *Tirasso*.[40] In *Corley*, the defendant was arrested on September 8, 1976, but delay in filing pretrial motions and illness of the trial judge resulted in a continuance of the trial to January 17, 1977.[41] Defendant moved for release from custody pursuant to section 3164. The district court denied defendant's motion and held that section 3161(h) delay should be excluded in computing section 3164's ninety-day limit to trial. The District of Columbia Circuit affirmed,[42] relying on the reasoning of two earlier district court decisions, *United States v. Masko*[43] and *United States v. Mejias*.[44]

In *Masko*[45] the Western District of Wisconsin rejected the *Tirasso* court's

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34. 532 F.2d at 1299-1300.

35. *Id.* at 1300 n.1.

36. *Id.*

37. *Id.* at 1300.

38. *Id.* at 1301. *Tirasso* was relied on by the United States District Court for the District of Colorado in United States v. Orman, 417 F. Supp. 1126 (D. Colo. 1976). In that case the defendant had been arrested in Paris on February 4, 1976, but, because France insisted on long extradition proceedings, the defendant was not returned to the United States until May 10, 1976. The defendant moved for release from custody, claiming that § 3164 of the Act mandated her release. Although admitting that the result was illogical, the district court followed *Tirasso* and held that the clear language of the Act supported defendant's claim. *Id.* at 1127.

39. 548 F.2d 1043 (D.C. Cir. 1976).

40. *Id.* at 1044.

41. *Id.* at 1043-44.

42. *Id.* at 1044.

43. 415 F. Supp. 1317 (W.D. Wis. 1976).

44. 417 F. Supp. 579 (S.D.N.Y.), *aff'd on other grounds sub nom.* United States v. Martinez, 538 F.2d 921 (2d Cir. 1976).

45. In *Masko* a warrant for the arrest of two defendants (Cutting and Masko) was issued on February 6, 1976, on the basis of a complaint charging them with the armed robbery of a bank. On February 20, 1976, a single-count indictment was returned against both defendants, and Cutting, in custody since February 11, 1976, was released on bail. Trial was set for June 14, 1976. Masko was not apprehended until April 27, 1976, and because he was not able to make

reasoning and, instead, chose to consider the "grand scheme of the Act."[46] The court noted that section 3164 limits would expire on July 1, 1979, when the permanent provisions of the Act would take effect, and it thus found that the purpose of section 3164's ninety-day limit was to ensure that, during the transitional period, continuous detention of defendants awaiting trial would end at some time before the longer transitional time limits ran.[47] The court found nothing to indicate that Congress intended to deal with the problem of pretrial detention more strictly during the transitional period than after the Act's permanent time limits became effective. In sharp contrast to the literal approach of *Tirasso*, the *Masko* court stated that it was "bound to choose a reasonable statutory construction rather than an unreasonable construction when the choice [was] open to [it], as it [was] here."[48]

In *United States v. Mejias*[49] the Southern District of New York also

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bail, he remained in custody pending trial. On May 27, 1976, a six-count indictment was returned against the defendants. On June 1, 1976, the attorney for the Government told the court that the sixth count was intended to supersede the February 20, 1976, indictment and requested a delay of trial because the charges in the May 27, 1976, indictment were more complex. Trial was set for July 16, 1976. Cutting moved for a change in the trial date to any date after August 18, 1976, because his attorney was otherwise engaged.

On June 4, 1976, the court, on its own motion, directed the parties to show cause: 1) why the court should delay the trial by granting a continuance, and 2) why the court should not exclude from its calculation of § 3164's ninety-day limit, with respect to Masko, any delay defined in § 3161(h). The court noted that its approved "plan for prompt disposition of criminal cases," adopted pursuant to the Act and scheduled to go into effect on July 1, 1976, provided for the application of § 3161(h) exclusions to cases involving defendants detained solely because they were awaiting trial. 415 F. Supp. at 1319-20.

46. *Id.* at 1321.

47. *Id.* at 1322. During the second year of the transitional period a case must come to trial within 250 days plus excludable time defined in § 3161(h). *See* note 17 *supra* and text accompanying notes 16-17. The court's interpretation would mean that a case involving a detained defendant must come to trial within 90 days plus excludable time, or a total of 160 days earlier than a case in which a defendant is not detained.

48. 415 F. Supp. at 1323.

49. 417 F. Supp. 579 (S.D.N.Y.), *aff'd on other grounds sub nom.* United States v. Martinez, 538 F.2d 921 (2d Cir. 1976). In *Mejias* a group of defendants, indicted and arrested on February 19, 1976, remained in custody pending trial. Although rule 8(B) of the Southern District Rules required that motions be made within ten days of pleading, the defendants made no motions within that time. On application of the defendants, the trial court extended the time to file motions to April 1, 1976, and hearings on pretrial motions commenced May 17, 1976. On May 20, 1976, the ninety-first day of continuous detention, the defendants moved for release from custody for failure to provide a ninety-day trial pursuant to § 3164 of the Act and rule 6 of the Rules of the Southern District's Plan for Achieving Prompt Disposition of Criminal Cases (Interim Plan). The court noted that rule 6 (Excluded Periods) of the Interim Plan was expressly applicable to rule 5 (All Cases: Trial Readiness and Effect of Non-Compliance), but that it was silent as to its relationship to rule 3 (Time Requirements for Trial of Defendants in Custody and of High Risk Defendants). Although this might have been construed as a bar to any exclusions under rule 3, an inference buttressed by a reading of the Southern District's proposed Plan for Prompt Disposition of Criminal Cases (Proposed Plan) scheduled to go into effect on July 1, 1976, (if approved), the court rejected this interpretation. Since the Proposed Plan was not yet

rejected the reasoning of *Tirasso* and read the Act in such a way as to render it a "sensible and workable whole."[50] The court noted:

> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words.[51]

Thus the *Mejias* court looked to the legislative history of the Act and concluded that Congress intended the section 3161(h) delay exclusions to apply to the section 3164 interim limits. The court noted that the Senate report explicitly stated that the Act's interim plans would be similar to the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases.[52] Since, where a defendant was detained, the Second Circuit rules required the Government to be ready for trial within ninety days, and allowed a number of exclusions in computing this time limit, the court concluded that Congress intended section 3161(h) delay exclusions to be applied in computing section 3164's ninety-day limit.[53] Additionally, the court found it doubtful that Congress had provided a speedier trial for detained and high-risk defendants

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operative, and since the Interim Plan did not compel the conclusion that hearing time on pretrial motions could not be excluded, the court gave the Interim Plan a reading consistent with its understanding of the Act. The court conceded that the group responsible for formulating the Proposed Plan intended not to exclude time devoted to pretrial hearings. However, it was not convinced that the Board of Judges was fully aware of the implications of the Proposed Plan. *Id.* at 579-85. In this regard, it is noteworthy that the plan, as adopted, expressly makes § 3161(h) exclusions applicable to defendants in custody and high-risk defendants. *See* Southern District's Plan for Prompt Disposition of Criminal Cases, *published in* McKinney's Consolidated Laws of New York Annotated, 1976 New York Court Rules, Plan for Achieving Prompt Disposition of Criminal Cases.

50. 417 F. Supp. at 583.

51. *Id.* (quoting United States v. American Trucking Ass'ns, 310 U.S. 534, 543 (1940)).

52. *Id.* at 582. The Second Circuit plan referred to was the Second Circuit Rules Regarding Prompt Disposition of Criminal Cases. U.S. Ct. of App. 2d Circuit Rules Regarding Prompt Disposition of Criminal Cases, 28 U.S.C.A. appendix (West Supp. 1977) [hereinafter cited as 2d Circuit Rules]. This plan was superseded by plans adopted pursuant to the Speedy Trial Act.

53. 417 F. Supp. at 582. On appeal, the Second Circuit affirmed on other grounds. United States v. Martinez, 538 F.2d 921 (2d Cir. 1976). The court noted that § 3164(c) of the Act provides that failure to commence trial within ninety days "through no fault of the accused or his counsel" shall result in release of the accused. *Id.* at 923-24 (quoting 18 U.S.C. § 3164(c) (Supp. V 1975)). The court also noted that the defendants had failed to file timely motions. Thus it held that the delay was directly attributable to the "fault of the accused or his counsel" and that, under such circumstances, the trial court's denial of the defendants' motions for release was proper. *Id.* at 924. The Second Circuit specifically stated that it was not holding, as had the trial court, that § 3161(h) exclusions apply to § 3164. Although the circuit court found the reasoning of the trial court "persuasive," it was not necessary to decide this issue on the facts of the case. *Id.*

under the interim provisions of the Act than those defendants would be entitled to when the permanent provisions took effect in 1979.[54]

IV. EVALUATION

A. *Approaches to Statutory Construction*

Examination of the foregoing cases clearly discloses that the issue on which the Ninth and District of Columbia Circuits are split is one of statutory construction—whether courts are bound by a "plain meaning" interpretation of the interim limits provisions of the Act, or whether they may adopt a "reasonable statutory construction" in light of available evidence of congressional intent. The Ninth Circuit, in using a plain meaning approach, inferred congressional intent primarily from the wording of the Act. In so doing, the court placed itself in the awkward position of arguing that Congress intended an unwise result.[55] The District of Columbia Circuit recognized the importance of legislative history in determining legislative purpose. That court's approach is more satisfying because the court attempted to give effect to the "purpose, rather than the literal words"[56] of the statute.

The Supreme Court stated the plain meaning doctrine in its traditional strict form in *Caminetti v. United States*.[57] In deciding whether the Mann Act,[58] which forbids taking a woman across state lines for prostitution, debauchery, or other immoral purposes, applied to private, noncommercial vice, the Court said:

> [W]hen words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports accompanying their introduction, or from any extraneous source. In other words, *the language being plain, and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent.*[59]

Even under this statement of the doctrine, arguments can be made that the

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54. 417 F. Supp. at 582.

55. 532 F.2d at 1300.

56. 417 F. Supp. at 583 (quoting United States v. American Trucking Ass'ns, 310 U.S. 534, 543 (1940)). See the text accompanying note 51 *supra* for the full text of the quoted material. This approach to problems of statutory construction is not new for the District of Columbia Circuit. That court has, on many occasions, recognized its duty to elucidate and effectuate congressional intent, even at the expense of plain meaning. Thus, in District of Columbia v. Orleans, 406 F.2d 957 (D.C. Cir. 1968), the court noted that "the 'plain meaning' doctrine has always been subservient to a truly discernible legislative purpose however discerned, by equitable construction or recourse to legislative history." *Id.* at 959; *see* Wilderness Soc'y v. Morton, 479 F.2d 842 (D.C. Cir.) (en banc), *cert. denied*, 411 U.S. 917 (1973); Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375 (D.C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974).

57. 242 U.S. 470 (1917).

58. 18 U.S.C. §§ 2421-2724 (1970).

59. 242 U.S. at 490 (emphasis added). In *Caminetti*, the Court declined to consider the Act's legislative history, even though that history clearly indicated that the evil Congress sought to curtail was the "white slave trade" and not noncommercial vice.

Ninth Circuit erred in failing to consider the legislative history of the Act. First, it can be argued that section 3164 should not be viewed in isolation, but rather that its meaning must be considered in the context of the Act as a whole.[60] Thus, although the language of section 3164 alone may be "plain," that section's relationship to the transitional period time limits, in general, and to the excludable delay provisions, in particular, is ambiguous. A legitimate question arises whether Congress did, in fact, intend to provide for a speedier trial for detained and high-risk defendants under the interim provisions than those defendants would be entitled to under the permanent provisions of the Act. Under such circumstances, where the words of a statute are not "free from doubt," consideration of legislative history is proper.[61]

Alternatively, it can be argued that a literal interpretation of section 3164 leads to a result that is not only unwise, as *Tirasso* admitted,[62] but that is also "absurd or wholly impracticable."[63] This argument is compelling in circumstances similar to those in *Tirasso* where release of the defendant almost certainly would result in his flight from the jurisdiction. When application of the plain meaning doctrine would lead to absurd results, resort to legislative history is proper.[64]

Moreover, in recent years the Supreme Court has referred to legislative material in construing statutes even when the plain meaning was not ambiguous or absurd.[65] The importance of legislative history was emphatically stated by the Court in *United States v. American Trucking Associations.*[66] There the Court was called upon to determine the meaning of the term "employee" as that term was used in the Motor Carrier Act of 1935,[67] which sought to regulate qualifications and maximum hours of motor carrier employees. The Court noted that the legislative history of the section in which the term appeared, as well as an analysis of other provisions of the Act, clearly revealed that the legislative purpose was to ensure safety of service. In confining the term "employee" to those whose duties affected safety of operation, the Court said: "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' "[68]

Since the Supreme Court's assertion in *American Trucking,* the Court has repeatedly looked to legislative history for support of its statutory interpretations, even while acknowledging that resort to the history may not be

60. *See* Philbrook v. Glodgett, 421 U.S. 707 (1975); Kokoszka v. Belford, 417 U.S. 642 (1974).

61. *See* text accompanying note 59 *supra.*

62. 532 F.2d at 1300; *see* text accompanying note 37 *supra.*

63. 242 U.S. at 490. See text accompanying note 59 *supra* for the full text of quoted material.

64. *See* text accompanying note 59 *supra.*

65. *See generally* Murphy, *Old Maxims Never Die: The "Plain-Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts,* 75 Colum L. Rev. 1299 (1975) [hereinafter cited as Murphy].

66. 310 U.S. 534 (1940).

67. 49 U.S.C. § 301 (1970).

68. 310 U.S. at 543-44 (footnotes omitted); *see* Cass v. United States, 417 U.S. 72, 78-79 (1974).

"necessary."[69] In *Ernst & Ernst v. Hochfelder*,[70] although the Court was "mindful that the language of a statute controls when [it is] sufficiently clear in its context"[71] and that "further inquiry [might] be unnecessary,"[72] it turned "nevertheless, to the legislative history of the . . . Act to ascertain whether there [was] support for the meaning attributed to [the statute]."[73] In the recent case of *Train v. Colorado Public Interest Research Group, Inc.*,[74] the Court asserted even stronger support for the importance of legislative history, since it found that, to the extent that the lower court excluded reference to the legislative history of the act in question, it was *in error*.[75]

From the foregoing discussion, it is apparent that the Ninth Circuit erred in adhering so vigorously to its literal interpretation of the interim limits section. As the District of Columbia Circuit recognized, it is clearly appropriate, and arguably necessary, to examine the legislative history of the Act to ascertain whether Congress intended section 3161(h) delay to be excluded in computing section 3164's ninety-day limit.

B. *The Legislative History*

The legislative history of the Act supports the District of Columbia Circuit's finding that Congress intended section 3161(h)'s excludable delay provisions to be applied in computing section 3164's ninety-day interim limit. The Senate report, in referring to the newly added section 3164, states: "There was consensus among the witnesses that although immediate implementation of

69. It is noteworthy that in no case since *American Trucking*, with the possible exception of Packard Motor Car Co. v. NLRB, 330 U.S. 485 (1947), has the Supreme Court actually refused to look at legislative history. Murphy, *supra* note 65, at 1303.

70. 425 U.S. 185 (1976).

71. *Id.* at 201.

72. *Id.*

73. *Id.*

74. 426 U.S. 1 (1976). This was a citizen suit brought under the provisions of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §§ 1251-1376 (Supp. V 1975), (amending 33 U.S.C. §§ 1151-1175 (1970)), against the Environmental Protection Agency (EPA) and its Administrator to compel the Administrator to perform an alleged nondiscretionary duty to regulate the discharge of radioactive materials into navigable waters. The issue was whether the term "pollutants" as used in the FWPCA included radioactive materials subject to regulation under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011-2296 (1970 & Supp. V 1975).

The Tenth Circuit relied upon the rule of statutory construction that "in construing a statute the court should first look to the language of the statute itself," and that, if the language is clear, there is no need to resort to other rules of construction. Colorado Pub. Interest Research Group, Inc. v. Train, 507 F.2d 743, 746 (10th Cir. 1974), *rev'd*, 426 U.S. 1 (1976). The court concluded that, since the statute was plain and unambiguous, it need not concern itself with legislative history and with "the ofttimes difficult task of ascertaining legislative intent through legislative history." *Id.* at 748. The Supreme Court reversed, reasserting its position in *American Trucking* that "[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' " 426 U.S. at 10 (quoting United States v. American Trucking Ass'ns, 310 U.S. 534, 543-44 (1940)).

75. 426 U.S. at 9-10.

60-day trials was impractical, it was important and would be feasible to provide for speedy trials for detained defendants. This change is based in part upon a similar provision adopted by the United States Court of Appeals for the Second Circuit."[76] This passage indicates that Congress's purpose in adding section 3164 was to alleviate, immediately upon passage of the Act, the problem of delay in trials of detained defendants and *not* to provide them with speedier trials than all defendants would receive under the permanent provisions of the Act. A look at the Second Circuit Rules, on which section 3164 was based, supports this interpretation, since the rules clearly provided for the exclusion of delay in computing the time between confinement and trial for detained defendants. Rule 5 provided that in computing time limits under rules 3 and 4,[77] certain periods of delay similar to those in section 3161(h) should be excluded.[78] Rule 3, strikingly similar to section 3164, provided that, in cases involving a detained defendant, the government must be ready for trial within ninety days from the date of detention.[79] If the government was not ready, and if the defendant was charged with only a non-capital offense, the defendant was to be released.[80]

Additional evidence of congressional intent that periods of delay not be included in computing the ninety-day interim limit may be found in the Senate Committee's discussion of delay caused by court congestion.[81] The Committee noted that the Second Circuit's rule 3 made the sanction of dismissal applicable only where the prosecutor was not ready for trial within ninety days, but that the sanction would not be applied if the trial could not take place on time because of court delay.[82] The Committee asserted that, in this respect, the Act would differ from the Second Circuit rule since the sanction of dismissal

76. S. Rep., *supra* note 3, at 5. The Senate report, in discussing the history of speedy trial provisions leading up to passage of the Act, notes: "On January 5, 1971, the Judicial Council for the United States Court of Appeals for the Second Circuit announced its intention to place into operation six months hence a set of rules requiring the prompt disposition of criminal cases. In essence, the rules require the Government to be ready for trial within six months of arrest if the defendant is not detained, and within 90 days if he is detained. The rules also allow a number of the traditional exclusions (*i.e.* for certain pretrial proceedings), suggested by the American Bar Association Standards, and contained in many of the modern speedy trial statutes. The rules also contain a mandatory dismissal sanction if the United States Attorney is not ready for trial within the prescribed time limits." *Id.* at 17; *see* note 52 *supra*.

77. The provisions of rule 4 were similar to those of § 3161 of the Act. The rule, which set up general speedy trial guidelines, provided: "In all cases the government must be ready for trial within six months from the date of the arrest, service of summons, detention, or the filing of a complaint or of a formal charge . . . . If the government is not ready for trial within such time, or within the periods as extended by the district court for good cause under rule 5, and if the defendant is charged only with non-capital offenses, then, upon application of the defendant or upon motion of the district court . . . the charge shall be dismissed." 2d Circuit Rules, *supra* note 52, rule 4.

78. *Id.* rule 5.

79. *Id.* rule 3.

80. *Id.*

81. S. Rep., *supra* note 3, at 22.

82. *Id.*

would be applicable to both the prosecutor and the court.[83] It is noteworthy that the Committee did not state that section 3164 would differ from the Second Circuit rule with respect to the applicability of delay in computing the time to trial.

C. *The Effect of Judicial Council Approval of District Court Speedy Trial Plans*

Totally apart from the issues of statutory construction and congressional purpose is the question of the effect of judicial council[84] approval of district court speedy trial plans. Section 3165(a) of the Act provides that each district court "shall prepare plans for the disposition of criminal cases in accordance with [the Act],"[85] and section 3165(c) requires that each district court plan be approved by the judicial council of the circuit.[86] The question which arises is whether approval by the judicial council is a judicial determination in the circuit of the interpretation to be given to the Act, or whether it is a mere stamp of administrative approval. If council approval is judicial in nature, the courts in the circuit may be barred from holding that an approved plan incorrectly interprets the Act. In that case, one can merely look at the plans approved in the circuit to determine that circuit's interpretation of section 3164. In contrast, if council approval is administrative in nature, the courts are free, in judicial settings, to interpret the provisions of the Act and to hold that any approved plan fails to conform to their interpretation of section 3164.

Although the effect of judicial council approval of district court plans has not been raised in the cases, the Supreme Court has considered the dual role of the council members as judges and as administrators. *Chandler v. Judicial Council*[87] raised the issue of whether an order issued by the Judicial Council of the Tenth Circuit, finding that a district judge in the Circuit was unable or unwilling to discharge his duties and directing that no further cases be assigned to him, was an order reviewable by the Supreme Court. The judge

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83. *Id.*

84. The judicial councils of the circuits are composed of the active circuit judges of each circuit. *See* 28 U.S.C. § 332 (1970). They are charged with making "all necessary orders for the effective and expeditious administration of the business of the courts within [their] circuit[s]." *Id.* § 332(d). This grant of power includes assigning judges to districts and to particular types of cases, ordering judges to decide cases which have long been held under advisement, and setting standards of judicial ethics. Fish, *The Circuit Councils: Rusty Hinges of Federal Judicial Administration*, 37 U. Chi. L. Rev. 203, 207 (1970) [hereinafter cited as Fish]. In addition, the councils have been given responsibility for approving district court plans under the Criminal Justice Act of 1964, 18 U.S.C. § 3006A (1970 & Supp. V 1975), the Jury Selection and Service Act of 1968, 28 U.S.C. §§ 1861-1874 (1970 & Supp. V 1975), and, now, the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174 (Supp. V 1975)). Fish, *supra* at 216.

85. 18 U.S.C. § 3165(a) (Supp. V 1975).

86. *Id.* § 3165(c). Section 3165(c) requires that each district plan "shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge . . . may designate." *Id.*

87. 398 U.S. 74 (1970).

involved asked the Court to issue an order under the All Writs Act[88] instructing the Council "to 'cease acting [in] violation of [his] rights as a federal judge and an American citizen.' "[89] The Judicial Council contended that its action was solely administrative and that it could not, therefore, be reviewed as an original proceeding by the Supreme Court. Although the Court did not decide the nature of the Judicial Council's action,[90] it discussed the issue at length in the majority opinion, a concurring opinion of Justice Harlan and a dissent of Justice Douglas.

The Solicitor General had filed a brief as *amicus curiae* contending that the Court had jurisdiction to entertain a petition for writ of mandamus or prohibition when a judicial council order was directed to a district judge because, in such circumstances, the council acted as a judicial, rather than an administrative, tribunal. He took the position that the council was "nothing more nor less than the Court of Appeals sitting *en banc*"[91] and that the proceeding could be analogized to a disbarment. The Court noted, however, that there was nothing in the statute or legislative history which indicated that Congress intended the councils to be courts of appeal *en banc*[92] or which suggested that they were "to be anything other than an administrative body functioning in a very limited area in a narrow sense as a 'board of directors' for the circuit."[93] Congress had given each council authority to make "all necessary orders for the effective and expeditious administration of the business of the courts within [its] circuit."[94] The Court stated that matters involving solely the internal operation of the courts, such as the length of time a case may be delayed in decision and whether a case is to be tried, were administrative.[95] It was, therefore, within the power of the councils to make reasonable, proper, and necessary rules concerning such matters. In *Chandler,* although it was not necessary to decide the issue, the Court noted that the Judicial Council's action, in directing that no further cases be assigned to the judge, had much of what the Court thought of as administrative action.[96]

Justice Harlan, in his concurring opinion, did not agree that the action taken by the Judicial Council of the Tenth Circuit was administrative. He stated that "[t]his legislative history lends support to a conclusion that, at least in the issuance of orders to district judges to regulate the exercise of their official duties, the Judicial Council acts as a judicial tribunal for purposes of

88. *Id.* at 76 n.2 ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.") (quoting 28 U.S.C. § 1651(a) (1970)).

89. *Id.* at 76-77.

90. The Court held that the judge was not entitled to the remedy sought because he had expressly acquiesced in the division of business in the district and because he had not sought other relief which might be open to him from the Council or other tribunal. *Id.* at 88-89.

91. *Id.* at 83.

92. *Id.* at 83 n.5.

93. *Id.* at 86 n.7.

94. *Id.*

95. *Id.* at 84-85.

96. *Id.* at 88 n.10.

this Court's appellate jurisdiction under Article III."[97] He found that the discretion exercised by the councils in taking actions necessary to expedite business in the circuit was not of a different kind from that exercised by district judges in many matters of trial administration.[98] Justice Douglas, in his dissent, also believed that, although some functions performed by the councils may be administrative, an order directed against a district judge disqualifying him from sitting moved against him "with all of the sting and much of the stigma that impeachment carries."[99] Under such circumstances, the Council acted as an "inferior judicial tribunal,"[100] raising a case or controversy over which the Court had appellate jurisdiction.

Thus, while the nature of judicial council action is not always clear, it is apparent that in at least some cases the councils act purely as administrative bodies. In the case of judicial council approval of district court speedy trial plans, the action *looks* more administrative than judicial. The speedy trial plans relate directly to the "effective and expeditious administration of the business of the courts"[101] and may be analogized to other internal rules governing the business of the courts. As such, they seem to be precisely what the Supreme Court thought of as administrative in *Chandler*. Furthermore, in merely approving district court plans, the judicial councils do not move in any way, against any person, with the "sting" of judicial action.

An inference may be made that at least some of the councils consider their action in approving district court plans administrative. Six of the eleven circuit councils[102] have approved both district plans which incorporate section 3161(h) exclusions into computation of time limits under section 3164 *and* district plans which provide that section 3161(h) exclusions are inapplicable to computations of section 3164 time limits.[103] If such approval is judicial in nature, the concept of *stare decisis* is suffering.

As a practical matter, most judges believe that their action in reviewing

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97. *Id.* at 102 (Harlan, J., concurring). Article III of the United States Constitution provides that the Supreme Court shall have original jurisdiction in "Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party," but that "[i]n all the other Cases . . . the supreme Court shall have appellate Jurisdiction . . . ." U.S. Const. art. III, § 2, cl. 2.

98. 398 U.S. at 108-09 (Harlan, J., concurring).

99. *Id.* at 135 (Douglas, J., dissenting).

100. *Id.* (Douglas, J., dissenting).

101. 28 U.S.C. § 332(d) (1970); *see* note 84 *supra*.

102. Appellant's Memorandum of Law and Fact at appendices B & C, United States v. Corley, 548 F.2d 1043 (D.C. Cir. 1976). The six circuits are the first, third, fourth, fifth, seventh, and eighth. *Id.*

103. Telephone interview with Mr. Norbert A. Halloran, Speedy Trial Coordinator in the Administrative Office of the United States Courts (Sept. 7, 1977). This is consistent with the authority granted to the councils in their approval of plans under the Jury Selection and Service Act of 1968, 28 U.S.C. §§ 1861-1874 (1970 & Supp. V 1975); *see* note 84 *supra*. The Jury Act limits review to the issue of the district court plan's compliance with the provisions of the Act, and it is not intended that the panel substitute its own plan for district court plans in compliance with the statute. Fish, *supra* note 84, at 216 n.113.

district court plans is tacit approval,[104] and that they are not, therefore, judicially binding themselves. This view is consistent with the majority view in *Chandler* and with the legislative purpose of "giv[ing] judges a statutory framework and power whereby they might 'put their own house in order.' "[105]

If judicial council approval of district court speedy trial plans is, in fact, administrative in nature, the courts in the circuit are not bound by approved plans in their interpretation of the interim limits section. The courts may, of course, use approved plans as some guidance in their interpretative task,[106] but their primary source of aid in construing the statute should be the legislative history of the Act.

V. CONCLUSION

The legislative history of the Speedy Trial Act should not be ignored in construing the interim limits section, no matter how "plain" the wording of the statute may appear. That history argues persuasively that Congress intended that periods of delay not be considered in computing the ninety-day interim limit applicable to detained and high-risk defendants. This interpretation is reasonable, particularly in view of the danger of released felons fleeing from the jurisdiction of the courts. It is to be hoped that, in construing the interim limits section of the Act, the remaining circuits will adopt the reasonable statutory construction of the District of Columbia Circuit and will reject the Ninth Circuit's plain meaning approach.

Greta Glavis Keenoy

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104. 398 U.S. at 85.

105. *Id.*

106. Twenty-six of the district court plans recommend amending the Act to make the excludable time limits expressly applicable to the interim time limits. A bill to this effect, H.R. 14521, has been introduced in the Congress, Administrative Office of the United States Courts, Report on the Implementation of Title I and Title II of the Speedy Trial Act of 1974 at 20 (Sept. 30, 1976.)