In light of the effective presentations of Senator JAVITS and others among his cosponsors in articulating and interpreting the provisions of the War Powers Act, I will not take the time of my colleagues to elaborate on the details of the bill or its origins, except to reflect with some satisfaction that in May 1970, when U.S. ground forces were committed to combat in Cambodia, I introduced a progenitor of this bill to focus attention on the need to reaffirm the role of the Congress in decisions on warmaking, as envisioned by the Founding Fathers when they wrote and adopted the Constitution.

I would also like to note the great contributions of Senator STENNIS to the development of this bill, and I regret that he cannot be in the Chamber today to argue its merits. I am pleased that the distinguished Senator from Mississippi has sent us a detailed statement emphasizing his continued strong support for the measure.

The debate which begins today is an important one, with historic significance. I have confidence that it will be concluded with a major victory for this legislation.

QUORUM CALL

Mr. JAVITS. Mr. President, I believe that we are about to have a change of bills. I therefore ask unanimous consent that I may suggest the absence of a quorum without the time being charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ANTITRUST PROCEDURES AND PENALTIES ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that S. 1861, the unfinished business, and S. 440, the War Powers Act, the pending business, be temporarily laid aside and the Senate proceed to the consideration of calendar No. 280.

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

Calendar No. 280 (S. 782) a bill to amend the antitrust laws of the United States, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and without objection, it is so ordered.

The Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments on page 1, line 10, after the word "as", strike out "(h)" and insert "(i)"; on page 2, line 2, after the word "civil", strike out "or criminal"; at the beginning of line 7, insert "Any written comments relating to the proposed consent judgment and any responses thereto shall also be filed with the same district court and published in the Federal Register within the aforementioned sixty-day period. Copies of the proposed consent judgment and such other materials and documents which the United States considered determinative in formulating the proposed consent judgment shall also be made available to members of the public at the district court before which the proceeding is pending and in such other districts as the court may subsequently direct."; on page 3, at the beginning of line 11, insert "actually considered"; on page 4, at the beginning of line 1, strike out "(c)" and insert "(d)"; at the beginning of line 15, strike out "(d)" and insert "(e)"; in line 18, after the word "interest", insert "as defined by law"; in line 19, after the word "court", strike out "shall" and insert "may"; in line 23, after the word "remedies", insert "actually considered"; on page 5, at the beginning of line 6, strike out "(e) In making its determination under subsection (d)" and insert "(f) In making its determination under subsection (e)"; on page 6, line 6, after the word "subsection", strike out "(c)" and insert "(d)"; at the beginning of line 10, strike out "(f)" and insert "(g)"; in line 22, after the word "communications", insert "known to the defendant or which the defendant reasonably should have known"; at the beginning of line 24, strike out "(g)" and insert "(h)"; in line 25, after the word "sections", strike out "(d) and (e)" and insert "(e) and (f)"; on page 9, line 13, after the word "of", strike out "justice; or" and insert "justice."; after line 13, strike out:

"(2) the Attorney General files in the district court a certificate stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice; or

"(3) the district judge who adjudicated the case, sua sponte, enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice.

And, in line 22, after "(1)", strike out "or (3) or a certificate pursuant, to (2)"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antitrust Procedures and Penalties Act".

CONSENT DECREE PROCEDURES

SEC. 2. Section 5 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 16), is amended by redesignating subsection (b) as (i) and by inserting after subsection (a) the following:

"(b) Any consent judgment proposed by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which that proceeding is pending and published in the Federal Register at least sixty days prior to the effective date of such decree. Any written comments relating to the proposed consent judgment and any responses thereto shall also be filed with the same district court and published in the Federal Register within the aforementioned sixty-day period. Copies of the proposed consent judgment and such other materials and documents which the United States considered determinative in formulating the proposed consent judgment shall also be made available to members of the public at the district court before which the proceeding is pending and in such other districts as the court may subsequently direct. Simultaneously with the filing of the proposed consent judgment, unless otherwise instructed by the court, the United States shall file with the district court, cause to be published in the Federal Register and thereafter furnish to any person upon request a public impact statement which shall recite—

"(1) the nature and purpose of the proceeding;

"(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

"(3) an explanation of the proposed judgment, relief to be obtained thereby, and the anticipated effects on competition of that relief, including an explanation of any unusual circumstances giving rise to the proposed judgment or any provision contained therein;

"(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that the proposed judgment is entered;

"(5) a description of the procedures available for modification of the proposed judgment;

"(6) a description and evaluation of alternatives actually considered to the proposed judgment and the anticipated effects on competititon of such alternatives.

"(c) The United States shall also cause to be published, commencing at least sixty days prior to the effective date of such decree, for seven days over a period of two weeks in newspapers of general circulation of the district in which the case has been filed, in Washington, District of Columbia, and in such other districts as the court may direct (i) a summary of the terms of the proposed consent judgment, (ii) a summary of the public impact statement to be filed under subsection (b), (iii) and a list of the materials and documents under subsection (b) which the United States shall make available for purposes of meaningful public comment, and the places where such material is available for public inspection.

"(d) During the sixty-day period provided above, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposed consent judgment. The Attorney General or his designate shall establish procedures to carry out the provisions of this subsection, but the sixty-day time period set forth herein shall not be shortened except by order of the district court upon a showing that extraordinary circumstances require such shortening and that such shortening of the time period is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

(e) Before entering any consent judgment proposed by the United States under this section, the court shall determine that entry of that judgment is in the public interest as defined by law. For the purpose of this determination, the court may consider—

"(1) the public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of the judgment;

"(2) the public impact of entry of the judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit to be derived from a determination of the issues at trial.

"(f) In making its determination under subsection (e), the court may—

"(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

"(2) appoint a special master, pursuant to rule 53 of the Federal Rules of Civil Procedure, and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual group or agency of government with respect to any aspect of the proposed judgment of the effect thereof in such manner as the court deems appropriate;

"(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to rule 24 of the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

"(4) review any comments or objections concerning the proposed judgment filed with the United States under subsection (d) and the response of the United States to such comments or objections;

"(5) take such other action in the public interest as the court may deem approprite.

"(g) Not later than ten days following the filing of any proposed consent judgment under subsection (b), each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any officer, director, employee, or agent thereof, or other person except counsel of record, with any officer or employee of the United States concerning or relevant to the proposed consent judgment. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this section have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Proceedings before the district court under subsections (e) and (f), and public impact statements filed under subsection (b) hereof, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United Sttaes under section 4A of this Act nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding."

PENALTIES

SEC. 3. Sections 1, 2, and 3 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 209; 15 U.S.C. 1, 2, and 3) are each amended by striking out "fifty thousand dollars" and inserting "five hundred thousand dollars if a corporation, or, if any other person, one hundred thousand dollars".

EXPEDITING ACT REVISIONS

SEC. 4. Section 1 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 28; 49 U.S.C. 44), commonly known as the Expediting Act, is amended to read as follows:

"SECTION 1. In any civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff and equitable relief is sought, the Attorney General may file with the court, prior to the entry of final judgment, a certificate that, in his opinion, the case is of a general public importance. Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has as yet been designated, to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

SEC. 5. Section 2 of that Act (15 U.S.C. 29; 49 U.S.C. 45) is amended to read as follows:

"(a) Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28 of the United States Code. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292 (a) (1) and 2107 of title 28 of the United States Code but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28 of the United States Code.

"(b) An appeal from a final judgment pursuant to subsection (a) shall lie directly to the Supreme Court if—

"(1) upon application of a party filed within five days of the filing of a notice of appeal, the district judge who adjudiciated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice.

A court order pusuant to (1) must be filed within fifteen days after the filing of a notice of appeal. When such an order or certificate is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. That Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a)."

SEC. 6. (a) Section 401(d) of the Communications Act of 1934 (47 U.S.C. 401(d)) is repealed.

(b) The proviso in section 3 of the Act of February 19, 1903, as amended (32 Stat. 848, 849; 49 U.S.C. 43), is repealed and the colon preceding it is changed to a period.

SEC. 7. The amendment made by section 2 of this Act shall not appy to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act.

Mr. CRANSTON. Mr. President, I ask unanimous consent that Jon Steinberg have the privilege of the floor from now until the Senate disposes of S. 1148.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I ask unanimous consent that during the consideration of S. 782, the Antitrust Procedures and Penalties Act, Gene Mittelman, one of the staff members of the Committee on Labor and Public Welfare, may have the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TUNNEY. Mr. President, I ask unanimous consent that Rick Rubin, of my staff, be granted the privilege of the floor during the consideration of the pending bill and during any votes that may be had thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TUNNEY. Mr. President, S. 782, entitled the Antitrust Procedures and Penalties Act, was reported unanimously by the Judiciary Committee. When I introduced this measure along with my distinguished colleague from Florida, Senator GURNEY, I observed that the Nation's antitrust laws have become antiquated and are no longer doing the job of protecting the public against abuses by the giant corporate conglomerates. The concentrations of economic power and the corrosive political influence which often results from such a closed system of enterprise has meant the loss of millions of dollars to the consumer.

These facts were borne out in testimony from eminent members of the private bar, from Federal judges, law school professors, attorneys specializing in antitrust cases, and by the Antitrust Division of the Department of Justice. In extensive hearings held over 3 days, all who testified were in basic agreement that greater ventilation of the consent decree process—the process by which over 80 percent of all antitrust cases are disposed of—is vitally needed, that the opportunity for informed public comment must be extended, and that the courts must make an independent determination in approving consent judgments.

The distinguished judge of the U.S. Court of Appeals for the District of Columbia, J. Skelly Wright, put the reasons for this legislation in the proper perspective when he stated in his testimony before the Antitrust and Monopoly Subcommittee:

By definition, antitrust violators wield great influence and economic power. They often bring significant pressure to bear on government, and even on the courts, in connection with the handling of consent decrees. The public is properly concerned whether such pressure results in settlements which might shortchange the public interest.

And later in his prepared statement, Judge Wright stated the matter even more pointedly when he said:

Because of the powerful influence of antitrust defendants and the complexity and importance of antitrust litigation, the public reasonably asks in many instances whether in reaching a settlement, the government

gave up more than it need have or should have. Some response to this public concern is desirable, in my opinion, not only to ensure that the compromise struck by the Justice Department is fair from the public's point of view, but also to alleviate fears which, even if unfounded, are unhealthy in and of themselves.

I think Judge Wright gets to the heart of the problem—it is the excessive secrecy with which many consent decrees have been fashioned, and the almost mechanistic manner in which some courts have been, in effect, willing to rubber stamp consent judgments.

The history books are replete with instances of antitrust settlements hammered out behind closed doors completely out of public view, and with virtually no regard for the requisites of due process. As early as 1959, a House Antitrust Subcommittee expressed its misgivings about such proceedings when it recommended that every consent decree be accompanied by an Antitrust Division statement articulating, first, its views of the facts of the case; second, the goal the decree seeks to achieve; and third, a detailed interpretation of the key provisions.

Among the more blatantly inequitable and improper antitrust settlements was the 1941 case of United States versus Atlantic Refining Co. which charged 22 major vertically integrated oil companies, 379 of their subsidiaries and the American Petroleum Institute with a vast array of antitrust violations. While the original complaint sought sweeping divestitures in the oil industry, the eventual consent decree only resulted in the divestment of 2,500 Sinclair service stations in 14 sparsely populated Midcontinent States. But Sinclair had already decided to sell these properties because of their low rate of return.

The 1956 consent decree in the celebrated ATT-Western Electric case permitted the telephone giant to retain its manufacturing monopoly notwithstanding overwhelming evidence of improprieties.

In the Von's Grocery Store case of 1966, Von's was ordered to divest a certain number of acquired stores, but when the consent decree failed to specify which ones, Von's obligingly jettisoned its 40 least profitable outlets.

A 1969 consent decree in the so-called smog case contained no affirmative provision requiring the auto industry to undo its past damage, by retrofitting antiemission exhaust devices on cars in the California market which was the primary site of the conspiracy.

In the El Paso case—perhaps the leading atrocity in the whole litany of antitrust suits—after 17 years of inconclusive litigation, the U.S. Supreme Court, in language which some have described as unique for that body, accused the Antitrust Division of "knuckling under" to the El Paso Natural Gas Corp.

More recently, the International Telephone & Telegraph Corp., America's largest corporate conglomerate, gave up Canteen & Grinell Corp. and four other holdings, but was allowed to retain the Hartford Fire Insurance Co., its most profitable subsidiary and most liquid asset. Furthermore, it was not forced to disgorge the profits made between acquisition and divestiture, a retention which can only offer incentives to others to strive for similar short-run profit taking.

With greater public awareness, these abuses might have been stopped. At the very least public vigilance and the insistence on stricter Government surveillance of corporate conduct will make it more likely that firms will compete. Vigorous competition we have learned through sad experience, is the most trustworthy weapon against greater inflation. The eminent economist, Gardiner Means, has estimated that up to 90 percent of our inflation is due to the market power of the largest firms.

A 1969 White House economic staff report was able to say:

> At unemployment rates of 4 percent, we may expect an annual inflation rate of 1 percent when manufacturing profits average 10.1 percent of net worth. But with profit rates among the concentrated industries of 14.6 percent, we may expect an annual inflation rate of 3 percent.

Spurred by the mergers and consolidations among the largest companies, which have occurred in cycles since 1898, with an average of 3,605 mergers annually in the period between 1967 and 1969, the trend toward giantism has put tremendous strain upon the courts and the Government, who are both custodians of the antitrust laws. Tools invented essentially in the 1890's are being used to deal with the economic marketplace of the 1970's.

In his book, "The Closed Enterprise System," Mark Green traces the trend toward bigness:

> Between 1962 and 1968, 110 of *Fortune's* 500 largest industrials disappeared by merger. Moreover, between 1948 and 1968 over 1,200 manufacturing companies with assets of $10 million or more were merged with other firms. Such companies are the type expected to grow and challenge entrenched oligopolies; their disappearance negated whatever competitive potential they possessed. In all, between 1948 and 1968 the 200 top firms acquired assets in excess of $50 billion. American industry in these two decades underwent a face-lift unmatched in its history.

CONSENT DECREE PROVISIONS OF S. 782

Having taken this brief glance at antitrust history, I want to turn to an explanation of my legislation. Put simply, the Antitrust Procedures and Penalties Act would change certain specifics in the manner in which consent decrees in civil antitrust cases are formulated, would increase the penalties levied upon antitrust violators, and would modify the procedures established in the Expediting Act (S.S.C. 28) for appellate review of antitrust cases.

The measure is divided basically into three separate sections as follows:

When a consent decree is filed with the district court, the Justice Department would now also be required to file and publish a "public impact" statement which explains the nature and purpose of the relief, the alternatives actually considered by the Justice Department in deciding on such relief, and the procedures available for modification of the proposed judgement.

The period for consideration of the decree is extended from 30 to 60 days, during which time written public comment is invited and the Justice Department is required to give its answers to such comment.

The decree, the public impact statement and the comments and replies to them must be published in the Federal Register. Summaries of the consent decree and the public impact statement must also be published in newspapers of general circulation for 7 days over a period of 2 weeks.

Within 10 days of the filing of the decree, the defendant must list with the court its lobbying contacts, other than communications made by or in the presence of counsel of record with the Attorney General or the employees of the Department of Justice which are excluded from this requirement.

Before entering the decree, the court must find that it is in the public interest as defined by law. In reaching its decision the court may, in its discretion, review both procedural and substantive factors which the bill enumerates. The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.

PRESENT PRACTICE

Under present procedures, when the Department enters into a consent decree, it signs a stipulation with the respondent which says that that proposed decree shall be entered as final within 30 days after it is filed. The stipulation provides, however, that the Government has the right to withdraw its consent decree at any time during the 30 days. The private party is bound during that time and may not withdraw its consent.

On the filing day, the Department presently issues a press release advising the public of the terms of the consent decree and describing the illegal action alleged in the complaint. It also asks for public comment to the court and to the Department for 30 days prior to the entry of the judgment. The Department is not obligated to respond to written comments received. This is the crux of the present consent decree process.

What the Justice Department has promulgated by administrative regulation, S. 782 would codify and ratify as the law. But the guiding principles remain the same: On the one hand, the court must obtain the requisite information to enable it to make an independent determination. On the other hand, it is most important that the consent decree be preserved as a viable settlement option. This is the Government's philosophy and this remains the philosophy of our bill.

S. 782 would transform a procedure which was generally accomplished in a series of private, informal negotiations between antitrust lawyers and attorneys for the defendant, into one that is exposed to the full light of public awareness and judicial scrutiny.

But it would not compel a hearing or a trial on the public interest issues. It only asks that the trial judge elicit the needed information through the least complicated and least time consuming means. Where the public interest can be

meaningfully evaluated merely on the basis of good briefs and careful oral arguments, then that is the approach which should be followed.

One further point should be stressed. In arriving at its public interest determination, the bill enumerates some additional factors which it would have the court consider—but that consideration is purely discretionary.

The criteria are only guideposts, not designed to put strictures upon the court's freedom, but rather to encourage even greater illumination of the facts that governed the deliberations that preceded the fashioning of the consent decree.

There should also be no misunderstanding about the intent of the bill with respect to potential private plaintiffs. We do not seek to open the floodgates to litigation, nor has anyone argued that the bill, in its final version and as it was endorsed by all members of the Judiciary Committee, would do so. Provision 2(f)(3), which provides that a court may authorize participation in its proceedings upon a proposed consent decree by interested persons or agencies, is not intended to broaden the existing right of intervention.

The bill only reinforces the fundamental policies of the Antitrust Division in its enforcement of the laws: the desirability of obtaining a judgment, either litigated or consensual, which will adequately protect the public by ensuring healthy competition and the elimination of all illegal restraints upon trade. It was the strong feeling of the committee and it is the belief of this Senator that in the majority of instances the interests of private litigants can be accommodated without the risk, delay, and expense of the Government going to trial.

The objective of sound antitrust law enforcement and our obligation to protect the public interest are mutually compatible. This legislation only makes governmental aspiration a legal reality.

Thus where the Government now invites public comment, we extend the period of invitation; where the Government already has access to the information determinative in the fashioning of the consent decree, we ask that the public and the courts have equal access; where the Government now issues a press release explanatory of the reasons for its decision, we simply ask that it explain more; where the Government now makes available to the court to assist the court's review of the proposed consent decree, we ask that it provide more information by way of a public impact statement and responses to public comment; where the Government has given limited public notice of its findings, we expand that notice by requiring publication in summary form of the consent decree and the public impact statement in the Federal Register and in the newspapers.

The public impact statement, perhaps the most novel feature of the bill, is similar to the environmental impact statement presently called for under the National Environmental Protection Act. It is, therefore, not without precedent, but rather reflects a continuing concern on the part of Congress to assure that decisions having a major public impact be arrived at through procedures which take account of that impact.

These provisions add nothing which could in any way stymie or frustrate the efforts of the Department of Justice in carrying out its duties in the antitrust area. The extension of the public comment period to 60 days, the strengthened publication requirements, the necessity for listing lobbying contacts, and the need for a public interest determination all had the explicit support of the chief spokesman for the Antitrust Division, Thomas E. Kauper, in testimony before the committee.

INCREASE IN PENALTIES

The second major section of S. 782 would increase the maximum criminal fines for violations of the antitrust laws from $50,000 to $100,000 for individuals and to $500,000 for corporations. At a time when the profits garnered through the flouting of antitrust laws can run into the millions of dollars, such increases are way overdue.

The Ralph Nader study group report on antitrust enforcement pointed out that between 1955 and 1965, corporate fines averaged $13,420 and individual fines $3,365. Unless the courts are prepared to make these penalties financially prohibitive, the rewards for breaking the law will continue to outbalance the deterrent value of the fines.

The Justice Department is also on record in support of increasing penalties. In testimony before the Judiciary Committee on this legislation, Thomas Kauper, the Assistant Attorney General in charge of the Antitrust Division pointed out that his department urged Congress in the past to increase Sherman Act fines.

If we are to command respect for the antitrust laws, and support the Government in administering them, we must be willing to assess fines that have some bite.

REVISIONS TO THE EXPEDITING ACT

The third and last section of my bill seeks to amend the Expediting Act to improve the procedures for appeals in antitrust cases, and also to permit immediate Supreme Court review in certain instances.

In brief, the section would require that final judgments and interlocutory orders in certain civil antitrust cases if appealed, be heard by the circuit courts of appeals.

Specifically, it would amend section 1 of the Expediting Act (15 U.S.C. 28, 49 U.S.C. 44) providing for a three-judge district court in civil actions where the United States is the plaintiff under the Sherman or Clayton Antitrust Acts or certain sections of the Interstate Commerce Act, upon the filing by the Attorney General with the district court of a certificate that the cases are of general public importance. This proposal would eliminate the provision that a three-judge court be impaneled, and would allow, instead, that upon application of either party a single judge could certify cases of general public importance for direct appeal to the Supreme Court.

S. 782 would also amend section 2 of the Expediting Act (15 U.S.C. 29, 49 U.S.C. 45) providing only for direct appeals to the Supreme Court of any final judgment, and instead would require that only those cases of general public importance be appealable directly to the Supreme Court with normal appellate review and discretionary review by the Supreme Court in all other cases.

The need for such change is dictated by the fact that, when the Expediting Act was written into law in 1903, the Sherman Act was still a relatively new and untried method of restraining combinations and trusts. Some had fears that the newly created appellate courts would be unfamiliar with the new laws and thus might delay and even thwart efforts to control the growth of monopolies. As a result the expediting legislation was adopted at the behest of the Attorney General.

The educational process for the appellate courts is now rather complete, and it is the Supreme Court which needs to be relieved of some of the burden of hearing the many cases coming to it under the Expediting Act.

A further consideration was the adequacy of direct review by the Supreme Court. Without having before it the record of the appellate court's disposition of the case, the high court has been at some disadvantage in deciding such litigation. Thus, by implementing procedures for appellate review in many antitrust cases, not only will the number of cases that come before the Supreme Court be reduced, but the issues will come to the highest court refined, and after litigants have had the opportunity of appellate review of the district court decrees, decrees that are seldom reviewed by the Supreme Court under current practice.

These are the nuts and bolts of this legislation. If I could sum up the true meaning and purpose of this act, I would cite the crisp and clear words of Justice Louis Brandeis:

Sunlight is the best of disinfectants.

It is more sunlight that we are seeking to shed on the methods and manner by which we settle complex and costly antitrust suits through the consent decree process.

GOVERNMENT EFFORTS PRAISED

In the Report on S. 782 just issued by the Committee on Trade Regulation of the Bar of the City of New York, the following summary of the committee's position was offered:

The Committee favors adoption of S. 782 insofar as it relates to consent decree procedures, . . . We believe these provisions will, if adopted, significantly improve the content of consent decrees, assist Government attorneys in recognizing the effect of a proposed decree on commerce and the public, and dispel the atmosphere of apparent impropriety which occasionally surrounds contacts between Government decisionmakers and corporate officials. The Committee also advocates adoption of the provisions of the bill providing for increased penalties . . . since we believe these provisions will increase compliance with the strictures of the antitrust laws.

I would add one fact. This bill in no way denigrates the considerable efforts of the Antitrust Division under a succes-

sion of administrations, both Republican and Democratic, to cope with a steadily mounting workload. On the contrary, it is in recognition of the substantial legal skills and economic expertise of this division that I have asked for certain basic reforms which I feel will supply them with added muscle in enforcing the laws.

While there have been some notorious lapses in the performance of the Department, and while it is true that the courts have not been ever vigilant to correct the errors that others either willfully or accidentally made, there have also been some notable successes.

It was action by the Antitrust Division against five drug companies which directly reduced prices to the consumer of the important antibiotic tetracycline by 95 percent; it was antitrust action against a number of electrical equipment manufacturers that led to treble damage settlements resulting in a savings of more than $500 million to consumers through reduced utility rates. Yet while settlements such as the electric industry one could have met the division's current budget for more than 40 years, the Division's total budget, when measured in 1958 dollars, has actually decreased since 1950 while the size of the economy has been doubling.

In 1950, the Antitrust Division had 314 professional staff lawyers and economists. Today, it has 354 professional personnel, a mere 12-percent increase in over two decades. By comparison during this same period, the 200 top industrial firms increased their control over manufacturing assets from approximately 46 to 66 percent.

For a trillion-dollar economy with 52 percent of all manufacturing assets in the hands of 115 "billion-dollar" firms, 354 legal guardians is clearly inadequate, and the $13 million for the division which I see was requested by the administration for fiscal year 1974 is plainly too little.

In a letter to Senator PASTORE's Appropriations Subcommittee, I joined Senator HART, the distinguished chairman of the Antitrust and Monopolies Subcommittee, and other colleagues in asking for an increase of $3 million in the budget for the Antitrust Division of the Department of Justice. We made this request, mindful of widespread concern about inflation and the effect of Government spending on the economy, because we agree with economists of many persuasions, including Dr. Arthur Burns, Chairman of the Federal Reserve Board, and Dr. Pierre Rinfret, formerly special economic adviser to President Nixon, who have stated that the most effective method of controlling prices is to increase competition in the marketplace. That is exactly what the antitrust laws are designed to do.

Mr. President, it is past the time when we needed to implement these basic changes in the Nation's antitrust laws. Longer study will probably reveal that additional changes must be made to adapt to the rapidly changing economic structure in this country. But it is already certain that excessive secrecy in the affairs of Government, and negotiating sessions conducted in total isolation from the public eye, create the potential for grave excesses that undermine the very framework of democratic government. Such clandestine action is not alien to some of the world's most repressive dictatorships, but it must never be permitted to become an acceptable feature of our landscape.

The corporate sector was never constitutionally intended to wield power equal to or greater than that retained by the branches of Government charged by law to oversee its conduct.

But abuses will not stop unless the public is permitted to know what they are. Vigorous competition, we have learned through sad experience, is the most trustworthy weapon against greater inflation; but an informed public may be the best device for insuring such competition.

This bill would hasten the achievement of those common goals. I strongly urge that my colleagues vote in support of it.

I also ask unanimous consent that Mr. Tom Brennan of the Judiciary Committee staff be allowed the privilege of the floor during the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Does the Senator request that the committee amendments be considered en bloc?

Mr. TUNNEY. Yes.

The PRESIDING OFFICER. Without objection, the committee amendments are considered and agreed to en bloc.

Mr. TUNNEY. I ask unanimous consent to have printed in the RECORD a statement on this measure by the Senator from Florida (Mr. GURNEY).

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR GURNEY

The consent decree is an important and useful tool in the enforcement of our antitrust laws. The antitrust procedures and penalties act, by amending the existing antitrust laws to make more information available to the courts and to the public about proposed consent decree settlements of antitrust cases, promises to shape the consent decree into a more important and more effective device.

This, in turn, should enhance the very free enterprise business system which the antitrust laws themselves are designed to protect.

The importance of consent decrees is difficult to understate. The vast bulk of antitrust judgments entered annually are implemented by these decrees.

Consider, for example, the following statistics regarding the use of consent judgments. During the years from 1955 to 1967, 81 percent of all antitrust judgments were represented by consent decrees.

The annual percentage of antitrust judgments represented by consent decrees during the period 1955 to 1972 are represented by the following table.

	Percent
1955	91
1956	91
1957	88
1958	88
1959	82
1960	100
1961	70
1962	100
1963	82
1964	88
1965	75
1966	80
1967	53
1968	66
1969	57
1970	84
1971	93
1972	76

It shows again the number of antitrust consent decrees and these figures certainly indicate the importance of the consent decree in antitrust enforcement.

In none of the 18 years listed did the percentage of consent decrees constitute less than half the total number of judgments in antitrust litigation.

In only two years, 1963 and 1969, did the percentage even approach the 50 percent mark, and in two years, 1960 and 1962, 100 percent of all the judgments entered were pursuant to the consent decree.

The antitrust laws of the United States are the bulwark of our free enterprise system. Without effective operation of the laws against trust and monopoly power, competition is eroded and the quality of our commerce is correspondingly reduced.

Competition in the marketplace is virtually indispensable to the production of high quality goods at the lowest possible price. Without it, the advantages of a free enterprise system are lost, with consequent loss of efficiency and economy.

Now, the Antitrust Procedures and Penalties Act is designed to enhance the value and effectiveness of the consent decree as a tool of public policy.

Specifically, the bill establishes a specific but reasonable set of standards and guidelines to govern the settlement of antitrust cases and, in particular, the procedures by which consent judgments are entered into.

Its most important advantage will be to increase public confidence in the administration of antitrust settlements, by expanding upon existing law without working undue hardship.

The first section of S. 782 would require that any consent decree proposed by the Department of Justice must be filed with the court and published in the Federal Register 60 days before it is intended to take effect, and by amendment there are certain requirements for publication in newspapers of general circulation. Also there are certain filing requirements relating to written comments and the like.

At the same time, the Department would be required to file a "public impact" statement, analogous to that required under the National Environmental Protection Act, listing information on the case, the settlement proposed, the remedies available to potential private plaintiffs damaged by the alleged violation, a description of the alternatives to the settlement, and the anticipated effects of such alternatives.

The extra time and additional information that the bill thus requires is for the purpose of encouraging, and in some cases soliciting, additional information and public comment that will assist the court in deciding whether the decree should be granted.

To ensure that public comment receives consideration, a further provision requires that the Justice Department file a formal response to it.

The bill further requires that the court accept a proposed consent decree only after it determines that to do so is in the public interest as defined by the antitrust laws of the United States. The bill specifies criteria the court may consider in deciding whether the judgment would in fact be in the public interest so defined. This is a particularly important provision, since after entry of a consent decree it is often difficult for private parties to recover redress for antitrust injuries.

In some cases, the court may find that it is

more in the public interest, for this reason and others, that the case go to trial instead of being settled by agreement.

It is not the purpose of S. 782 to undo the effectiveness of the consent decree. The bill explicitly provides that proceedings before the district court in connection either with the decree itself or the required public impact statements are not admissible against any defendant in any antitrust action, nor may they be used as a basis for introduction of the decree itself as evidence.

By declining to give it prima facie effect as a matter of law, the attractiveness of the consent decree is thereby preserved.

The other portions of the bill are valuable too. They raise the penalties for criminal violations of the antitrust laws, and improve the appellate procedures for antitrust cases.

This will help solve the inadequacies of the present $50,000 maximum fine. And strengthening procedures for immediate review of cases of general public importance will benefit everyone concerned, either as an individual connected with the suit itself or as a member of the general public.

The antitrust procedures and penalties bill has been the subject of extensive hearings and comments before the antitrust subcommittee, and without dissenting vote it has been favorably reported out of both the antitrust subcommittee and the judiciary committee. This legislation will serve to strengthen our antitrust laws and enhance public confidence in procedures by which they are administered. This is an important bill which meets an important problem. I hope my colleagues will join with me in supporting and voting for this bill.

The PRESIDING OFFICER. Who yields time?

Mr. TUNNEY. Mr. President, it is my understanding that the time on this bill is divided between the manager of the bill, myself, and the designee of the minority leader, the Senator from New York (Mr. JAVITS). Is that correct?

Mr. JAVITS. Mr. President, I understand it is the designee of the minority leader, though I have not been designated.

Mr. ROBERT C. BYRD. Mr. President, the time on passage of this bill has been divided between Mr. JAVITS and Mr. TUNNEY.

Mr. JAVITS. Fine. Mr. President, if I may, then, I will yield myself 5 minutes. I am not on the Judiciary Committee, but I have a very deep interest in the antitrust laws, and for a very considerable period of time have been concerned with the revision of those laws, which I deeply believe ought to be reviewed in the light of modern economic developments.

In pursuance of that interest, I examined carefully Senator TUNNEY's bill and came to the conclusion that, on the whole, it made a desirable reform but that it had some defects. In the course of seeking out the question of the defects, I communicated with the Department of Justice and the Assistant Attorney General in charge, Thomas E. Kauper, who wrote me a letter on July 12, 1973, stating his objections to the bill.

He said:

The amendments made to the proposed bill do not meet our objections—

Meaning the Department of Justice—to the bill as originally introduced and, as noted above, are in some cases objectionable to us in themselves. The Department therefore continues to oppose enactment of S. 782.

Mr. President, I ask unanimous consent to have the entire letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF JUSTICE,
Washington, D.C., July 12, 1973.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington D.C.

DEAR SENATOR JAVITS: Your staff has requested that we comment on S. 782, as amended and reported by the Subcommittee on Antitrust Monopoly of the Senate Judiciary Committee. I testified before the Subcommittee opposing the bills as originally written. I enclose a copy of my statement at that time.

We continue to oppose S. 782 and are of the view that the amendments made by the Subcommittee are not sufficient to insure that our consent decree program will not be unnecessarily impeded by persistent judicial review of a large number of consent decrees proposed by the Department. The amended bill leaves with the courts discretion to consider the public impact of the judgment including a number of issues purportedly related to that public impact. This is a modification of the original version, which would have made such consideration mandatory. In my judgment, however, the legislation still unnecessarily invites extended judicial hearings. These matters, along with detailed comments and objections on the content of the "public impact" statement and the subjects to be inquired into by the court, are discussed in my previous statement. I will not repeat them here.

The bill, as reported out, provides that the United States shall file, in addition to that which it already files, "other materials and documents which the United States considers determinative in formulating the proposed consent judgment." This conceivably could require production of virtually every piece of paper generated by the staff of the Antitrust Division, outside reports of complainants and the like, as such documents may be considered in one way or another to have entered into the determination of the government to enter the settlement, and thereby would be "determinative." This is particularly troublesome in view of the further provision that the public impact statement describe and evaluate all alternatives "actually considered," presumably by Antitrust Division staff. These two provisions, taken together may well require production of a wider range of staff documents.

I consider this legislation as still presenting the danger that the government will be unable to maintain an orderly consent decree program. There is a considerable likelihood that substantial resources of the Antitrust Division will be tied up in judicial hearings throughout the country looking into the "public impact" of consent decrees we file. At a time when our case backlog is higher than it has been in the last seven years, this could in turn drain resources that would otherwise be used to prosecute other antitrust violations and could seriously undermine our ability to enforce the antitrust laws.

I am also of the view that production of documents discussed above would have a "chilling effect" on the full and free exchange of ideas among the Antitrust Division personnel and could impede access of the Department to industry complainants and informants which might not come forward if there was likelihood that their identity would be revealed.

We also note that the bill as reported out does not give the Attorney General the right to certify cases of national importance under the antitrust laws to the Supreme Court. We prefer that right of certification as contained in the original bill.

The amendments made to the proposed bill do not meet our objections to the bill as originally introduced and, as noted above, are in some cases objectionable to us in themselves. The Department therefore continues to oppose enactment of S. 782.

Sincerely yours,

THOMAS E. KAUPER,
Assistant Attorney General, Antitrust Division.

Mr. JAVITS. Now, Mr. President, specifically objection was taken in Mr. Kauper's letter to one point which interested me upon which I will, in due course, propose an amendment. That point is the following:

The bill, as reported out, provides that the United States shall file, in addition, to that which it already files, "other materials and documents which it is considered determinative in formulating a proposed consent judgment."

Mr. President, this conceivably could require the production of virtually every piece of paper generated by the staff of the Antitrust Division, outside reports of complainants and the like, as such documents may be considered in one way or another to have entered into the determination of the Government to enter the settlement and, thereby, would be "determinative." This is particularly troublesome in view of the further provision that the public impact statement describe and evaluate all alternatives "actually considered," presumably by the Antitrust Division staff. These two provisions, taken together, may require production of a wider range of staff documents.

Now, in deference to that objection, which I thought was valid, because it could compromise trade secrets, or other material which is confidential, and could compromise the work product of Justice Department attorneys. It could compromise material which could be used damagingly by competitors and, in addition, could involve the disclosure of intraoffice memoranda which could be unevaluated in the office of the Attorney General, in charge of the antitrust laws.

The Department of Justice, as I understand from Senator TUNNEY, has drawn two amendments to bring about the necessary change which, at the appropriate time, I will offer as amendments to the bill and which I understand are acceptable to Senator TUNNEY.

Mr. TUNNEY. I have had the opportunity to discuss the amendments of the Senator from New York (Mr. JAVITS) and I think that they have the effect of improving the legislation. So when they are offered, I shall accept them.

With respect to the filing with the court of the material and documents, I think that what the committee intended was to have the material and documents filed with the courts but certainly not stacked at random. I do not feel that it would be appropriate in this legislation to have those documents which would be protected from disclosure under the Freedom of Information Act produced and made available publicly.

It is my understanding that the Senator's amendment as it relates to the

filing of materials and documents would reference the Freedom of Information Act and say that those documents which are privileged under section 552(b) of the Freedom of Information Act would be privileged under this bill.

Mr. JAVITS. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There being a sufficient second, the yeas and nays were ordered.

Mr. JAVITS. Mr. President, in response, I may say that these two amendments, I understand, were drawn up by the Department of Justice to cover this particular point. The Department has other points of opposition, but I have not undertaken to stand for the Department's position, other than as to these changes, which I favor, so someone else will have to take up the cudgels for the Department. I do wish to make two other points, and I am glad the Senator from Michigan (Mr. HART) is in the Chamber to hear them.

I have for some time been working on a bill to establish a commission to study the antitrust laws and how they should be revised to accord with modern economic necessity in this country. I believe that the present bill deals partially with the problems of the antitrust laws, dealing with the methodology by which they may be enforced.

What we are beginning to see is a piecemeal approach to changing the antitrust laws. A bill went through the other day, dealing with a unique aspect of the antitrust laws as it relates to bottlers of soft drinks. Several years ago we enacted legislation giving special treatment to so-called failing newspapers. I find this trend toward ad hoc, piecemeal legislation disturbing.

I know that the Senator from Michigan is willing to hold hearings on my bill, S. 1196, which takes a broader approach and I wish to ask him, while he is in the Chamber, if he would be good enough to respond to the question of granting hearings on S. 1196, to create a study commission. I yield to him for that purpose.

Mr. HART. Mr. President, the Subcommittee on Antitrust and Monopoly has already scheduled hearings, beginning on July 12, on a bill that has been introduced. It was indicated to the chairman of the subcommittee, the Senator from Michigan, that the one witness we would certainly be able to hear on July 12 is the able Senator from New York (Mr. JAVITS), but that additional witnesses who were sought, as I understand it, through the office of the minority chief counsel, Mr. Chumbris, were not able to arrange their schedules for testimony to be received.

However, I welcome the opportunity to advise the Senator from New York that the Antitrust and Monopoly Subcommittee is scheduling hearings for some time in October. The exact date has not as yet been fixed. But, as I understand it—and again, this is largely through the efforts of Mr. Chumbris—arrangements are being undertaken to insure that on such days as may be set in October, witnesses will be available to testify in support of and, if any oppose, in opposition to the bill.

The Senator from New York has urged upon me over a long period of time the necessity to hold hearings.

Mr. JAVITS. I thank the Senator very much. I shall be prepared to testify. I appreciate very much the opportunity to have hearings on the bill.

I am prepared to yield back the remainder of my time; but first, I ask that I may yield to the Senator from Maryland (Mr. BEALL).

Mr. BEALL. I think I have had experience with the legislation that is proposed, but I believe that other Senators would like to be heard on it.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum, the time not to be charged to either side.

Mr. HART. Mr. President, will the Senator withhold his request momentarily?

Mr. JAVITS. Yes.

Mr. HART. In order to save time, I should like to offer an amendment which I think can be handled very quickly. In the meantime, perhaps other Senators who have amendments, and who are not on the Senate floor, could be alerted.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. As I understand, amendments may not be offered until the time for debate on the bill has expired. Is that correct?

The PRESIDING OFFICER. The Senator is incorrect.

Mr. JAVITS. They may be offered?

The PRESIDING OFFICER. That is correct.

Mr. JAVITS. That is fine. Then, I do not yield back the time, and I am perfectly willing to have amendments offered.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. TUNNEY. Mr. President, will the Senator from Michigan yield so that I can offer a technical amendment?

Mr. HART. I yield.

Mr. TUNNEY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. TUNNEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 9, after line 5, strike on down to and including the words "subsection (a)." on page 10, line 9, and insert in lieu thereof "(b) An appeal from a final judgment pursuant to subsection (a) shall lie directly to the Supreme Court if, upon application of a party filed within five days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within fifteen days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a)."

Mr. TUNNEY. Mr. President, the committee amendment changes no language in the bill. It only changes the numbering and the lettering of various provisions of the bill. It is purely a technical amendment and was suggested by the staff.

The PRESIDING OFFICER. Is all time yielded back on the amendment?

Mr. TUNNEY. I yield back my time.

Mr. JAVITS. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HART. Mr. President, I call up the amendment I have at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. HART. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 6, line 15, insert the following: after the word "person", strike "except counsel of record, with any officer or employee of the United States concerning or relevant to the proposed consent judgment." and insert in lieu thereof "with any officer or employee of the United States concerning or relevant to the proposed consent judgment: *provided* That, communications made by or in the presence of counsel of record with the Attorney General or the employees of the Department of Justice shall be excluded from the requirements of this subsection."

Mr. HART. Mr. President, this bill, which reflects the deep concern of Senator TUNNEY—who was joined, I should add, in the committee by the able Senator from Florida (Mr. GURNEY)—to improve the public acceptance of consent decrees, is a most worthwhile effort. I hope that we will promptly adopt it. I am grateful to those two Senators for their leadership in the effort.

The amendment I offer seeks to close what may have been an inadvertent but gaping hole and to improve the likelihood that a free exchange may be engaged in by counsel and defendant with officers and employees of the Department of Justice.

As the bill was reported, the subsection requires that all communications with any employee or officer of the Government be disclosed, except those made by counsel of record. As I have said, I think that perhaps inadvertently this is wide of the mark.

As I read the language, it appears that all contacts by the counsel of record are

exempt from disclosure. In other words, so long as he does not have his client with him, a counsel can wander through the White House and the Department of Commerce and the Department of the Treasury and any other agency of government and lobby against the merits of the pending litigation which has been brought by the Antitrust Division. There may be nothing inherently wrong in that, nothing sinister in going outside the department to seek to raise a concern that a citizen might have. But it is precisely the kind of contact which ought to be disclosed to the court. Thus, the policy which this section seeks to implement—namely, that of disclosure—could easily be avoided.

By the same token, as presently written, the subsection would hamper the kinds of contacts which ought to be encouraged. In other words, if the counsel of record engages in negotiations looking toward a settlement with the Antitrust Division and takes his client along, those contacts must be disclosed. I think we all recognize that in the give and take of protracted negotiations, it would be important that officers or employees of the client be present.

In short, I would suggest that these are the kinds of contacts which ought to be encouraged. In this regard, Mr. Kauper, the Attorney General in charge of the Antitrust Division, testified:

I would, frankly, not want to do anything which would diminish the ability of counsel to bring essentially his client in. The client, after all, is frequently the repository of information and it can be very useful to have him there.

Mr. President, I have given thought to drawing a line above which disclosure should be made at the Assistant Attorney General in charge of antitrust; but, after all, the decisionmaking power in litigation of this kind does rest at that level in all but a few cases.

The fact is that the responsibility for enforcing antitrust laws rests with the Attorney General, and the assistant in charge of the division is responsible to him and obviously works under his supervision. Thus, I think it is appropriate that all contacts made by the counsel of record or by the client in the presence of counsel of record throughout the Department of Justice be excluded from disclosure.

This bill is designed to reinforce the confidence of the public in the validity and the justice of a consent decree; and I think the amendment I have offered reflects what, in the minds of most of us as we processed this bill, we thought we were achieving. I hope very much that the amendment is adopted.

Mr. TUNNEY. Mr. President, it is my understanding that the amendment offered by the Senator from Michigan would do two things, basically.

First, it would say that if an official of the corporation, the defendant, comes with counsel of record to visit a member of the Justice Department—the Attorney General or a member of the Antitrust Division—it would not be required to indicate that the meeting took place and that the contents of the meeting be filed with the court of record.

Mr. HART. That is correct.

Mr. TUNNEY. Second, it is my understanding that if the counsel of record should meet with other governmental officials besides the Attorney General or members of the Antitrust Division of the Justice Department, such a meeting would be required to be filed with the court, and a summary of the purpose of the meeting would be filed, also.

Mr. HART. That is correct.

Mr. TUNNEY. I have had an opportunity to discuss this matter with the cosponsor of the bill, Senator GURNEY—who, unfortunately, is unable to be on the floor at the moment—and Senator GURNEY and I would like to clarify one point.

Nothing in this amendment would be construed to require an attorney of record to divulge any private communications with his client which are protected under the law as a part of the legitimate attorney-client relationship, would it?

Mr. HART. Certainly, the amendment which is pending does not go to the point that the Senator from California is discussing. It seeks not to change in any respect the degree of confidentiality attached to the basic documentation. It seeks only to insure, as the Senator from California well stated, that the counsel and the client can discuss with the Department of Justice matters bearing on the litigation and not be required to file that with the court.

Second, if the counsel of record goes to other sources than the Government—as, for example, White House assistants—that action and a summary of the discussion should be filed.

Mr. TUNNEY. I understand that.

As I understand the Senator's amendment, if the attorney of record would go to see a White House official, he would not subsequently be required to divulge private conversations he had had exclusively with his client, which he had heard at some other time even though they might be somewhat relevant in a broader context to the conversation he had had with that White House official.

It would only be the conversation he had with the White House official that would be relevant so far as the filing is concerned in the Senator's amendment.

Mr. HART. It would be whatever disclosure that would be required by the basic language in section (g), whether it was in connection with a White House official or anyone else.

Mr. TUNNEY. Yes. Anything that was discussed with any third party other than the Justice Department relating to the proposed consent decree obviously would have to be subject to the filing provision.

Mr. HART. I think my best answer and our clearest understanding would be for me to say that in the language of the bill there should be filed in court a written description of all communications by and on behalf of such defendant with any officer or employee of the United States bearing on the proposal.

Mr. TUNNEY. I think I understand completely the Senator's amendment. I believe that on that basis both the Senator from Florida and I would accept the amendment. I think it improves the bill. It certainly gives to the Justice Department an opportunity to get the kind of information from an official of the corporation who would accompany the counsel of record that the Justice Department would not have if that official of the corporation did not attend the meeting, and yet if the corporation felt there was going to be a public record of conversations had with the Justice Department he might be reluctant to come down to the Justice Department. So I think to expedite the antitrust laws and to make sure we have a fair determination in an antitrust suit, the Senator's amendment strengthens the legislation. Therefore, I accept it.

Mr. HART. I am prepared to yield back my time.

Mr. GRIFFIN. Mr. President, I rise to support the bill. The proposed amendment offered by the Senator from Michigan (Mr. HART) would strike, in line 15 on page 6 in subsection 2(g) the language "except counsel of record" and add a proviso at the end of that sentence to the effect that contacts by or in the presence of counsel of record exclusively with employees of the Department of Justice need not be listed in the description of written and oral communications by or on behalf of a defendant with officers or employees of the Government.

The present section, as drafted, it seems to me is deficient in two respects. First, it permits counsel of record to contact any officer or official of Government, however illegitimate or lacking his interest in a particular case pending before the Department of Justice may be, without listing that contact in the description filed with the court. Second, I thing it would tend to have a chilling effect upon totally legitimate contacts with the staff of the Antitrust Division.

The amendment would make two improvements in the bill. One would require the reporting by or on behalf of defendants of all contacts with Government officials other than those in the Department of Justice which is, in reality, the party litigating the action on behalf of the United States. And the other would make clear that perfectly legitimate contacts in the presence of counsel of record by responsible officers of antitrust defendants are not discouraged. Both of these suggested improvements in the bill would have a salutary effect and I wish to indicate my support for the amendment.

The PRESIDING OFFICER (Mr. KENNEDY). Do Senators yield back their time?

Mr. TUNNEY. I yield back my time.

Mr. HART. I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. GRIFFIN. Mr. President, I have an amendment I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment as follows:

On page 9, line 8, strike the word "five" and insert the word "fifteen".

On page 9, line 23, strike the word "fif-

teen" and insert in lieu thereof the word "thirty".

Mr. GRIFFIN. Mr. President, I am not a member of the committee but I present this amendment on the part of the Department of Justice. It is essentially a technical amendment which would extend the period for filing an application before the district court for a certification of the case directly to the Supreme Court from 5 to 15 days and for the entry of an order of certification from 15 to 30 days.

In cases where the United States has been successful in the district court and the defendant files a notice of appeal, normal processing of a copy of such a notice through the mails to the Department of Justice and to responsible officials in the Department may simply require more than 15 days. Accordingly, this amendment is proposed so that the period for applying to the district court for an order of certification is not allowed to run inadvertently.

I understand that the amendment is known to the manager of the bill and if he agrees it is essentially a technical amendment to carry out the purposes of the bill, I hope it might be accepted.

Mr. TUNNEY. Mr. President, I have seen the amendment the Senator is offering, and I believe it is technical in nature in that it would only extend the application filing period for district court certification from 5 to 15 days, and would extend the period for entry of the district court's certification order from 15 to 30 days. This strengthens the bill because I can anticipate complicated cases where it would take longer than the time periods now required by the bill to make the necessary determinations.

Therefore, I accept the amendment.

The PRESIDING OFFICER. The Chair states that the amendment is not in order. It amends language which has previously been struck from the bill by the Senator from California and other language has been put in.

Mr. TUNNEY. Can it be offered as a substitute?

The PRESIDING OFFICER. The Chair states that the amendment could be offered as an amendment to the amendment of the Senator from California, but by unanimous consent and the amendment would have to be redrafted.

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that it be in order to offer an amendment to the language which already has been adopted in the form of an amendment offered by the Senator from California (Mr. TUNNEY).

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GRIFFIN. Mr. President, the revised amendment is pending at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read, as follows:

On line 2, of the amendment by the Senator from California (Mr. TUNNEY) strike the word "five" and insert the word "fifteen". On line 6 strike the word "fifteen" and insert in lieu thereof the word "thirty".

Mr. TUNNEY. Mr. President, I accept the amendment that has been offered by the Senator from Michigan. It is the discussed and to which I have responded already. It strengthens the bill.

I yield back the remainder of my time.

Mr. GRIFFIN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HRUSKA. Mr. President, I call up an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, as follows:

On page 3, lines 11 and 12, strike "and the anticipated effects on competition of such alternatives".

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HRUSKA. Mr. President, this amendment proposes to strike, at lines 11 and 12 of page 3, the language in subsection 2(b)(6) "and the anticipated effects on competition of such alternatives." If adopted, the bill would retain a requirement that the public impact statement disclose a description and evaluation of alternatives which were actually considered by the Antitrust Division in formulating a proposed consent judgment.

The language proposed to be stricken would require the staff of the Antitrust Division to speculate publicly as to the various effects upon competition which would be generated by various alternatives to the proposed consent judgment. These anticipated effects quite clearly can be speculated upon by the district court considering a proposed consent judgment or by other interested parties. The court retains the right under section 2(e)(1) of the bill to consider these predicted effects.

There is no reason, however, to require the staff of the Antitrust Division, at the peril of later embarrassment, to make a public prediction as to the competitive effects of various alternatives which it has considered. It is sufficient if the various alternatives are disclosed to the court and to the public. Then, in an atmosphere infused with comments from the public, from customers, from suppliers, and from competitors, the court can make an informed judgment as to whether the proposed consent decree is in the public interest.

It is my belief that the amendment would subserve the intended effect of the bill as considered by the committee.

Mr. TUNNEY. Mr. President, the Senator from Nebraska gave me the opportunity to review the amendment before bringing it to the floor and I am in agreement with its basic intent. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HRUSKA. Mr. President, I call up for immediate consideration an amendment which lies at the desk.

The PRESIDING OFFICER. The clerk will read the amendment.

The legislative clerk read the amendment, as follows:

On page 5, lines 3 through 5, strike the comma after the word "complaint" and strike "including consideration of the public benefit to be derived from a determination of the issues at trial".

Mr. HRUSKA. Mr. President, I yield myself 3 minutes.

The language proposed by the amendment to be stricken from the bill appears totally inconsistent with the intention of the committee as stated in the report. The report states that section 2(e) is not "intended to force the Government to go to trial for the benefit of potential private plaintiffs." However, inclusion of this language in the bill is an invitation to the court to require the Government to go to trial, for some unstated reason, even though the relief secured by the Government in a proposed consent decree is fully adequate to protect the public interest in competition.

The language which should be retained in subsection 2(e)—to the effect that the court may consider "the public impact of entry of the judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint"—is fully adequate to protect the public interest. It seems, therefore, that the only effect of the language which is proposed to be stricken from the bill would be to induce a district court to consider whether requiring the Government to go to trial would aid private treble damage plaintiffs—an effect which the report accompanying the bill specifically disavows.

I believe adoption of the amendment will comply with the purported and reported intent of the committee when it reported the bill favorably.

Mr. TUNNEY. Mr. President, the Senator from Nebraska has given me the opportunity to look at this amendment prior to bringing it up on the floor. I am familiar with it. I think he is correct in the statement he has made to the Senate. I think the language he is suggesting be stricken is surplusage.

Therefore, I accept the amendment.

Mr. HRUSKA. Mr. President, I yield back the remainder of my time.

Mr. TUNNEY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I send two amendments to the desk and ask that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments will be read.

The legislative clerk read the amendments, as follows:

On page 2, line 8, after the word "thereto", and before the word "shall", insert ", other than those which are exempt from disclosure under section 502(b) of title 5, United States Code,".

On page 2, line 13 after the word "judgment", and before the word, "shall", insert ", other than those which are exempt from disclosure under sections 552(b)(4) and (5) of title 5, United States Code."

Mr. JAVITS. Mr. President, I yield myself such time as I may require.

These amendments, as I understand, were drawn by the Justice Department and deal with the matter of disclosure in the filing with the Court of necessary documentation in respect of consent decrees. The purpose of the amendment is to exclude improper material insofar as disclosure is concerned because of prejudice, confidential information, trade secrets, inter- and intra-office memoranda, et cetera; but it is designed to afford to the public access to the material which is relevant to a fair consideration and desirability under the criteria set forth in the bill for a consent decree.

These are amendments which the Senator from California has reviewed, and as he said before, I hope they are acceptable to him.

Mr. TUNNEY. Mr. President, is the Senator offering these two amendments en bloc?

Mr. JAVITS. Yes.

Mr. TUNNEY. Mr. President, I accept both amendments. I have had an opportunity to discuss them with the Senator from New York prior to his offering the amendments on the floor.

With regard to the amendment that relates to comments and Government responses, I think this amendment would merely reaffirm existing law, as established in the Freedom of Information Act, and make clear that competitors, suppliers, and customers may supply certain data to the Justice Department in confidence with respect to what this data states as to the merits or lack of merits of a proposed consent decree.

With regard to the second amendment, materials and documents, I believe that it also would merely reaffirm existing law, by referencing certain sections of the Freedom of Information Act protecting certain internal memoranda and work products from disclosure.

It was not our intent that this section have an inhibiting effect by requiring the publication of virtually all internal staff memoranda by division attorneys in a way which might curtail their ability to discuss and comment freely upon matters pertaining to the proposed consent decree.

I do not understand this amendment to preclude the disclosure of information volunteered by a person from outside the Department on a nonconfidential basis pertaining to the economic consequences of particular antitrust action. I am thinking here of the so-called Ramsden memorandum which was important in the ITT case.

My main concern, and the cornerstone of this bill, is that there be ample public disclosure, and I do not construe either of these amendments as militating against this objective.

I would hope that the Senator from New York would agree with that interpretation.

Mr. JAVITS. Mr. President, that sounds like a reasonable interpretation to me. However, I understand that this is the language desired by the Department, and I am glad to accommodate them.

Mr. TUNNEY. Mr. President, it is language that the Department desires. And I think that this is language that will strengthen the bill. Therefore, I accept both amendments.

Mr. JAVITS. Mr. President, I yield back the remainder of my time.

Mr. TUNNEY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendments en bloc. [Putting the question.]

The amendments were agreed to en bloc.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alabama (Mr. SPARKMAN), the Senator from Alaska (Mr. GRAVEL), the Senator from Maine (Mr. HATHAWAY), and the Senator from Montana (Mr. MANSFIELD) are necessarily absent.

I further announce that the Senator from Washington (Mr. MAGNUSON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Alaska (Mr. STEVENS) is absent by leave of the Senate on account of illness in his family.

The Senator from Utah (Mr. BENNETT) is detained on official business.

The result was announced—yeas 92, nays 0, as follows:

[No. 302 Leg.]

YEAS—92

Abourezk	Byrd, Robert C.	Fong
Aiken	Cannon	Fulbright
Allen	Case	Goldwater
Baker	Chiles	Griffin
Bartlett	Church	Gurney
Bayh	Clark	Hansen
Beall	Cook	Hart
Bellmon	Cotton	Hartke
Bentsen	Cranston	Haskell
Bible	Curtis	Hatfield
Biden	Dole	Helms
Brock	Domenici	Hollings
Brooke	Dominick	Hruska
Buckley	Eagleton	Huddleston
Burdick	Eastland	Hughes
Byrd, Harry F., Jr.	Ervin	Humphrey
	Fannin	Inouye
Jackson	Moss	Schweiker
Javits	Muskie	Scott, Pa.
Johnston	Nelson	Scott, Va.
Kennedy	Nunn	Stafford
Long	Packwood	Stevenson
Mathias	Pastore	Symington
McClellan	Pearson	Taft
McClure	Pell	Talmadge
McGee	Percy	Thurmond
McGovern	Proxmire	Tower
McIntyre	Randolph	Tunney
Metcalf	Ribicoff	Weicker
Mondale	Roth	Williams
Montoya	Saxbe	Young

NAYS—0

NOT VOTING—8

Bennett	Magnuson	Stennis
Gravel	Mansfield	Stevens
Hathaway	Sparkman	

So the bill (S. 782) was passed, as follows:

S. 782

An act to reform consent decree procedures, to increase penalties for violation of the Sherman Act, and to revise the Expediting Act as it pertains to Appellate Review.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antitrust Procedures and Penalties Act".

CONSENT DECREE PROCEDURES

SEC. 2. Section 5 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 16), is amended by redesignating subsection (b) as (i) by inserting after subsection (a) the following:

"(b) Any consent judgment proposed by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which that proceeding is pending and published in the Federal Register at least sixty days prior to the effective date of such decree. Any written comments relating to the proposed consent judgment and any responses thereto, other than those which are exempt from disclosure under section 552(b) of title 5, United States Code, shall also be filed with the same district court and published in the Federal Register within the aforementioned sixty-day period. Copies of the proposed consent judgment and such other materials and documents which the United States considered determinative in formulating the proposed consent judgment, other than those which are exempt from disclosure under sections 552(b)(4) and (5) of title 5, United States Code, shall also be made available to members of the public at the district court before which the proceeding is pending and in such other districts as the court may subsequently direct. Simultaneously with the filing of the proposed consent judgment, unless otherwise instructed by the court, the United States shall file with the district court, cause to be published in the Federal Register and thereafter furnish to any person upon request a public impact statement which shall recite—

"(1) the nature and purpose of the proceeding;

"(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

"(3) an explanation of the proposed judgment, relief to be obtained thereby, and the anticipated effects on competition of that relief, including an explanation of any unusual circumstances given rise to the proposed judgment or any provision contained therein;

"(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that the proposed judgment is entered;

"(5) a description of the procedures avail-

able for modification of the proposed judgment;

"(6) a description and evaluation of alternatives actually considered to the proposed judgment.

"(c) The United States shall also cause to be published, commencing at least sixty days prior to the effective date of such decree, for seven days over a period of two weeks in newspapers of general circulation of the district in which the case has been filed, in Washington, District of Columbia, and in such other districts as the court may direct (i) a summary of the terms of the proposed consent judgment, (ii) a summary of the public impact statement to be filed under subsection (b), (iii) and a list of the materials and documents under subsection (b) which the United States shall make available for purposes of meaningful public comment, and the places where such material is available for public inspection.

"(d) During the sixty-day period provided above, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposed consent judgment. The Attorney General or his designate shall establish procedures to carry out the provisions of this subsection, but the sixty-day time period set forth herein shall not be shortened except by order of the district court upon a showing that extraordinary circumstances require such shortening and that such shortening of the time period is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

"(e) Before entering any consent judgment proposed by the United States under this section, the court shall determine that entry of that judgment is in the public interest as defined by law. For the purpose of this determination, the court may consider—

"(1) the public impact of the judgment, including termination of alleged violation, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of the judgment;

"(2) the public impact of entry of the judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint.

"(f) In making its determination under subsection (e), the court may—

"(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

"(2) appoint a special master, pursuant to rule 53 of the Federal Rules of Civil Procedure, and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual group or agency of government with respect to any aspect of the proposed judgment of the effect thereof in such manner as the court deems appropriate;

"(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to rule 24 of the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

"(4) review any comments or objections concerning the proposed judgment filed with the United States under subsection (d) and the response of the United States to such comments or objections;

"(5) take such other action in the public interest as the court may deem appropriate.

"(g) Not later than ten days following the filing of any proposed consent judgment under subsection (b), each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any officer, director, employee, or agent thereof, or other person with any officer or employee of the United States concerning or relevant to the proposed consent judgment: *Provided*, That communications made by or in the presence of counsel of record with the Attorney General or the employees of the Department of Justice shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this section have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

"(h) Proceedings before the district court under subsections (e) and (f), and public impact statements filed under subsection (b) hereof, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 4A of this Act nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding."

PENALTIES

SEC. 3. Sections 1, 2, and 3 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 209; 15 U.S.C. 1, 2, and 3) are each amended by striking out "fifty thousand dollars" and inserting "five hundred thousand dollars if a corporation, or, if any other person, one hundred thousand dollars".

EXPEDITING ACT REVISIONS

SEC. 4. Section 1 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 28; 49 U.S.C. 44), commonly known as the Expediting Act, is amended to read as follows:

"SECTION 1. In any civil action brought in any district court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restrains and monopolies', approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff and equitable relief is sought, the Attorney General may file with the court, prior to the entry of final judgment, a certificate that, in his opinion, the case is of a general public importance. Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has as yet been designated, to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited."

SEC. 5. Section 2 of that Act (15 U.S.C. 29; 49 U.S.C. 45) is amended to read as follows:

"(a) Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled 'an Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890, or any other Acts having like purpose that have been or hereinafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgment entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28 of the United States Code. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 of the United States Code but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28 of the United States Code.

"(b) An appeal from a final judgment pursuant to susection (a) shall lie directly to the Supreme Court if, upon application of a party filed within fifteen days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within thirty days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same is if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a)."

SEC. 6. (a) Section 401(d) of the Communications Act of 1934 (47 U.S.C. 401(d)) is repealed.

(b) The proviso in section 3 of the Act of February 19, 1903, as amended (32 Stat. 848, 849; 49 U.S.C. 43), is repealed and the colon preceding it is changed to a period.

SEC. 7. The amendment made by section 2 of this Act shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act.

The title was amended, so as to read: "A bill to reform consent decree procedures, to increase penalties for violation of the Sherman Act, and to revise the Expediting Act as it pertains to Appellate Review."

The PRESIDING OFFICER. What is the will of the Senate?

ORDER FOR ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 9:45 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY MEDICAL SERVICES CONFERENCE REPORT—ORDER FIXING TIME FOR VOTING AND ORDER FOR THE YEAS AND NAYS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a vote occur on the conference report on emergency medical services (S. 504) at the hour of 10:15 a.m. tomorrow.