where injury or damage is caused by the negligence or wrongful act of a government employee who is acting within the scope of his employment. However, this authority does not extend to personal injury cases where the citus of the incident is outside the jurisdiction of the United States. Since employees of the Canal Zone Government go into the Republic of Panama every day while within the scope of their employment, incidents not covered by the Federal Tort Claims Act can and do occur.

In 1949, Congress acted to permit the Canal Zone Government to settle property damage claims where the accident took place outside the Canal Zone. This power has been exercised and has not given rise to any problems except where personal injury is also involved. In the latter type of case, Government officials may reimburse an injured party for damage to, say, an automobile but may not compensate the owner or occupant of the car for personal injuries. Thankfully, incidents involving personal injury or death have been very rare. None have occurred at times of high political tension. Those seeking to drive a wedge between the Republic of Panama and the United States could seize upon such an incident and add an unnecessary and avoidable pitfall to the consideration and solution of questions of serious impact between our governments.

H.R. 15229 is designed to remedy both the humanitarian and political shortcomings of the present law. The Governor of the Canal Zone is authorized to settle personal injury or death claims not cognizable under the Federal Tort Claims Act. Acceptance of a settlement payment by a claimant constitutes a complete release of any further claims against the United States. The Governor may, in his discretion, make an interim payment of up to $1,000 for humanitarian reasons. This will be a valuable power for the Governor to have. The entire bill will give the Panama Canal Zone Government added flexibility in dealing with potentially awkward or even dangerous situations with little cost to the Federal Government.

I urge my colleagues to adopt this needed legislation.

Mr. GROSS. Mr. Speaker, will my friend from Kentucky yield?

Mr. SNYDER. Mr. Speaker, I certainly will.

Mr. GROSS. May we assume this legislation will in no way further chip away any of the sovereignty of the United States in the Canal Zone?

Mr. SNYDER. I want to assure the gentleman from Iowa that if this Member of Congress thought it took one little bit out of that sovereignty, I would not support it.

Mr. GROSS. I thank the gentleman. He has provided the clear assurance I wanted.

Mr. SNYDER. Mr. Speaker, I reserve the balance of my time.

Mrs. SULLIVAN. Mr. Speaker, since Congress is the general legislature for the Canal Zone, the responsibility for making those laws which lead to the efficient administration of that area rests with us. One of the more critical aspects of the environment in the Canal Zone is its proximity to the Republic of Panama, and, of course, that factor is something that may cause different kinds of legislation. It is important that we have laws which provide for as fair and harmonious a relationship with the Republic of Panama and its individual citizens as we can give the Canal Zone Government.

H.R. 15229 is a measure which has as its main purpose expansion of the authority of the Governor of the Canal Zone so as to be able to deal with those instances in which tort claims for personal injury or wrongful death are made against the Canal Zone Government arising out of its activities in the Republic of Panama. All the other circumstances in which tort claims may arise against the Panama Canal Company or the Canal Zone Government are covered by existing law; but H.R. 15229 is designed to plug a loophole which exists in these present statutes, a loophole in which personal injury tort claims in the Republic of Panama against the Canal Zone Government cannot be handled by the Governor but would have to come to Congress for action.

Mr. Speaker, if we pass H.R. 15229 here today, it will be a step in the direction of being able to provide justice for the individual Panamanian who may be legally involved with the Canal Zone Government. Ultimately, H.R. 15229 would be a force for stability in the relations between the Canal Zone and Panama.

This is good, competent legislation designed to fill a precise statutory need. It is noncontroversial and has been passed by this body in previous Congresses, and I believe that it is important that we give it our affirmation today.

Mr. LEGGETT. Mr. Speaker, I have no further requests for time.

The SPEAKER. The question is on the motion offered by the gentleman from California (Mr. LEGGETT) that the House suspend the rules and pass the bill H.R. 15229.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEGGETT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

ANTITRUST PROCEDURES AND PENALTY ACT

Mr. RODINO. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 782) 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, as amended.

The Clerk read as follows:

S. 782

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 (15 U.S.C. 16), is amended by redesignating subsection (b) as (i) and by inserting immediately after subsection (a) the following:

"(b) Any proposal for a consent judgment submitted 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 such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive 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 proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

"(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

"(5) a description of the procedures available for modification of such proposal; and

"(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

"(c) The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the cases have been filed, in the District of Columbia, and in such other districts as the court may direct—

"(i) a summary of the terms of the proposal for the consent judgment,

"(ii) a summary of the competitive impact statement filed under subsection (b), and

"(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 place where such materials and documents are available for public inspection.

"(d) During the 60-day period as specified in subsection (b) of this section, 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 proposal for the consent judgment submitted under subsec-

tion (b). The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening 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 the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

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

"(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, 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 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 aspects of the proposed judgment or the effect of such judgment, 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 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 including any objections filed with the United States under subsection (d) concerning the proposed judgment and the responses of the United States to such comments and objections; and

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

"(g) Not later than 10 days following the date for the filing of any proposal for a 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 and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone 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 subsection 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) of this section, and the competitive impact statement filed under subsection (b) of this section, 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 (15 U.S.C. 1, 2, and 3), are each amended—

(1) by striking out "misdemeanor" whenever it appears and inserting in lieu thereof in each case "felony";

(2) by striking out "fifty thousand dollars" whenever such phrase appears and inserting in lieu thereof in each case the following: "one million dollars if a corporation, or, if any other person, one hundred thousand dollars"; and

(3) by striking out "one year" whenever such phrase appears and inserting in lieu thereof in each case "three years".

EXPEDITING ACT REVISIONS

SEC. 4. (a) The first section of the Act of February 11, 1903 (15 U.S.C. 28; 49 U.S.C. 44), commonly known as the "Expediting Act", is amended to reading 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 such court, prior to the entry of final judgment, a certificate that, in his opinion, the case is of 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.".

(b) Section 2 of the Act of February 11, 1903 (15 U.S.C. 29; 49 U.S.C. 45), commonly known as the Expediting Act, is amended to read as follows:

"SEC. 2. (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. An appeal from an interlocutory ordered entered in any such action shall be taken to the court of appeals pursuant to section 1292(a)(1) and 2107 of title 28, 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, United States Code.

"(b) An appeal from a final judgment entered in any action specified in subsection (a) shall lie directly to the Supreme Court if 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. Such certificate shall be filed within 10 days after the filing of a notice of appeal. When such a 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. 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) deny the direct appeal and remit the case to the appropriate court of appeals, which shall then have jurisdiction to hear and determine such case as if the appeal and any cross appeal in such case had been docketed in the court of appeals in the first instance pursuant to subsection (a).".

APPLICATION OF EXPEDITING ACT REVISIONS

SEC. 5. (a) Section 401(d) of the Communications Act of 1934 (47 U.S.C. 401(d)) is repealed.

(b) Section 3 of the Act entitled "An Act to further regulate commerce with foreign nations and among the States", approved February 19, 1903 (32 Stat. 849; 49 U.S.C. 43), is amended by striking out the following: "The provisions of an Act entitled 'An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three,' shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission".

EFFECTIVE DATE OF EXPEDITING ACT REVISIONS

SEC. 6. The amendment made by section 4 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 SPEAKER. Is a second demanded?

Mr. HUTCHINSON. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER. The Chair recognizes the gentleman from New Jersey (Mr. RODINO).

Mr. RODINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, there are three main purposes which the Antitrust Procedures and Penalties Act, S. 782 as amended, accomplishes: First, enactment of legislative and oversight changes to settlements of Government civil antitrust cases; second, an increased fine and sentencing provision for criminal violations of the antitrust laws; and third, the effectuation of changes in legislation pertaining to judicial procedures in the trial and appeal of public antitrust cases so that trials and appeals may be improved or accelerated.

The bill placed before the Congress today has been amended in three respects since the Judiciary Committee originally approved and reported on the proposed legislation. These amendments would: First, increase fines for corporate violations of the Sherman Act from $50,000 to $1,000,000; second, increase

jail sentences for individuals committing antitrust crimes from the present 1-year provisions; and third, conform statutory language to reflect these fine and sentencing amendments by changing references to Sherman Act violations from "misdemeanors" to "felonies" wherever appearing.

The background for these changes can be simply stated, Mr. Speaker. The Judiciary Committee acted on the morning of October 8, 1974. On the afternoon of that day, President Ford addressed the Congress concerning measures needed to combat inflation and to restore competitive forces that had been distorted. President Ford, in his address, called upon the Congress to increase fines for violations of the Sherman Act by corporations to $1,000,000 and submitted a written request for this new legislation to you, Mr. Speaker, in a letter of the same date. Subsequently, the administration, in a letter of November 8, 1974, repeated President Ford's request and balanced it out by adding a request to increase jail sentences for individuals. This correspondence, as well as a related letter from me to the Assistant Attorney General for Antitrust on November 1, 1974, clearly establish the need for increasing both fine and sentencing provisions; and, are important to a complete understanding by the public of the legislative need and the legislative history of the Antitrust Procedures and Penalties Act. Therefore, Mr. Speaker, I offer this correspondence for inclusion in the legislative history of this important legislation at this time.

The cooperative action between the executive and legislative branches reflected in the amendments to the act is a shining example of the manner in which our Government can act to protect the public, to fight inflation, and to promote competition. As I said in my statement opening hearings on this bill, "effective deterrents to antitrust violations and not the undisputed need to deter such violations is the real focus of the proposed legislation before us." The Antitrust Procedures and Penalties Act as amended not only supplies measures to fill a shortage in deterrents to the commission of antitrust crimes but also, by numerous remedial provisions to procedures to be followed in civil antitrust cases, provides a total package for the vigorous enforcement of the antitrust laws, "the Magna Carta of free enterprise."

The correspondence follows:

DEPARTMENT OF JUSTICE,
Washington, D.C., November 8, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to our recent conversation with Jerome Zeifman, this is to advise that the Administration supports an amendment to the Sherman Act which would (1) provide that a violation of that act shall be punishable as a felony with a maximum sentence of five years and (2) increase fines in the case of corporations to one million dollars and in the case of individuals one hundred thousand dollars.

We respectfully suggest that your Committee support an amendment to S. 782 along the following lines:

P. 7, strike out lines 11, 12, 13 and 14 and insert the following in lieu thereof:

U.S.C. 1, 2 and 3 are each amended by (i) striking out "misdemeanor" and inserting "felony," (ii) striking out "one year" and inserting 'five years'," and (iii) striking out "fifty thousand dollars" and inserting "one million dollars if a corporation, or, if any other person, one hundred thousand dollars."

As you know, the Department has testified before your Committee in favor of an increase in fines from fifty thousand dollars to five hundred thousand dollars in the case of corporations. Obviously, any statute fixing a maximum dollar fine is somewhat arbitrary. But we believe that an increase to one million dollars for corporations and one hundred thousand dollars for individuals would provide an even greater deterrent and, in the case of large corporations, would give the courts enough flexibility to impose a meaningful sanction. For example, in the case of corporations having a billion dollars in sales, a million dollar fine would represent one percent of annual sales volume. Of course, fines for smaller companies would be adjusted accordingly in recommendations by the Department and decisions by the Court.

With respect to the felony recommendation, we believe that the time is long overdue for legislation which would make the Sherman Act a serious crime. Arguments in favor of the proposed amendment are set forth below.

Antitrust violations are often considered by the public and the business community as mere technical violations of law and not of a particularly serious nature. They have in the past been characterized as similar in nature to traffic violations, littering the public streets, and petty thefts. The fact that they are considered misdemeanors contributes substantially to this attitude. If Congress clearly expressed its view that antitrust violations are serious enough to be considered felonies, this would serve to impress upon the public and businessmen the fact that commercial crimes of this nature have a serious adverse effect on the economy. When businessmen engage in conduct that results in substantial price increases or that exacts monopoly profits, they are injuring the public in terms of monetary damages more seriously than auto thefts, armed robbery, and embezzlement which are considered felonies.

The amendment could increase the deterrent power of the Sherman Act by convincing courts to impose more meaningful sentences. The greatest deterrence in Sherman Act violations, occurs when individual defendants are prosecuted, and hence efforts must be made to secure sentences against such individuals which reflect the severity of the crime. The Antitrust Division has for many years sought to obtain jail sentences in antitrust cases, but courts have been reluctant to impose them. Only in recent years have we met with some success in this respect. With a maximum sentence of one year imprisonment, we have been able on occasions to convince the courts to impose sentences of 30 days, and these in many cases are suspended sentences. If the maximum sentence is increased to five years, reflecting the attitude of Congress on the seriousness of these violations, we might be able to obtain one year prison sentences from the courts—which itself would be an extremely effective deterrent. While it would be rare when the Department would recommend the maximum jail term, the mere fact that a five year sentence is possible could lead the courts to impose more substantial sentences than they do today.

With a better public realization of the nature of these antitrust offenses, and with the imposition of more significant penalties on individual defendants, the deterrent power of future prosecutions would become more apparent. This double-edged sword could reduce still further the recidivist inclinations of companies and their officials to engage in such violations.

This result would reduce the manpower and resources of the Antitrust Division required to prosecute such violations and enable us to divert our efforts to major structural cases in the economy. To the extent we can achieve voluntary compliance by industry itself, we can release our resources to other pressing matters. The amount of voluntary industry compliance with the antitrust laws can be expected to increase with the increase in penalties imposed by the courts. The attitude by some businessmen that engaging in antitrust violations is a risk worth taking in view of the insubstantial penalties imposed would soon be overcome.

It is also quite possible that less Department sources would be required to litigate criminal cases of this nature. With much stiffer penalties, it is possible that more individual defendants and companies would be inclined to dispose of the litigation by nolo pleas.

We believe that this amendment would be a significant step forward for antitrust enforcement in a time when it is most critical to the Nation's well being. Should you have any further questions concerning these proposed changes we would, of course, be happy to respond.

The Office of Management and Budget has advised that there is no objection to the submission of this proposal and that its enactment would be in accord with the program of the President.

Sincerely

W. VINCENT RAKESTRAW,
Assistant Attorney General.

OFFICE OF MANAGEMENT AND BUDGET,
Washington, October 8, 1974.

Hon. CARL ALBERT,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: At the request of the President, I am transmitting for your consideration and appropriate reference the following draft amendment, in implementation of the Economic Message delivered by the President before a joint session of the Congress today:

To amend H.R. 17063 to increase the fine for Sherman Act violations to $1 million for corporations and to $100,000 for individuals.

The President urges swift action on this proposal, which was referred to in the Economic Message, before the close of the 93d Congress.

Sincerely,

ROY L. ASH, *Director.*

AMENDMENT TO H.R. 17063

Page 7, strike out lines 17–24 and insert the following in lieu thereof:

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 (15 U.S.C. 1, 2, and 3), are each amended by striking out "fifty thousand dollars" whenever such phrase appears and inserting in each case the following "one million dollars if a corporation, or, if any other person, one hundred thousand dollars."

NOVEMBER 1, 1974.

Hon. THOMAS E. KAUPER,
Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Washington, D.C.

DEAR MR. KAUPER: In your public address yesterday, you disclosed that the Antitrust Division intends to submit proposed legislation making antitrust violations a felony and increasing jail sentences therefor to five years. As I supported Attorney General Saxbe's sentiments disclosed in his address of October 4, 1974 calling for increased

punishment and deterrence of "white collar crime", I want you to know that the full resources and cooperation available to me as Chairman of the House Judiciary Committee and its Monopolies and Commercial Law Subcommittee will be committed to the renewed programs outlined by both you and Attorney General Saxbe.

As present antitrust legislation pending House action and already approved by the Judiciary Committee revitalizes and reshapes judicial and public attitudes toward civil antitrust offenses, similar legislation for criminal antitrust violations appears both necessary and equally long overdue. It may be that an amendment making antitrust crimes felonies rather than misdemeanors is possible for the present Congress. Added urgency in this regard would appear to be found in recent disclosures concerning both price fixing and monopolistic practices and prolonged profit gouging in the food industry. As you know, my intense concern about food pricing and monopolistic practices was expressed early in the 93d Congress during the food price investigative hearings conducted by the Monopolies Subcommittee during June and July, 1973. Extensive examination of the reasons for the Nation's disastrous inflation since that time have confirmed my early suspicions concerning the role of antitrust violations by the food industry as a major cause thereof.

Your forthright call to action dramatizes again the need for significant and speedy executive and legislative cooperation not only to deter further antitrust violations but also to eliminate the pervasive anticompetitive and inflationary effects of past antitrust violations. Both the public and our Nation's unique free enterprise system will benefit from this noble endeavor.

Sincerely,

PETER W. RODINO, Jr.,
Chairman.

Mr. HUTCHINSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this bill. S. 782 would make three changes in the way the antitrust laws are enforced. No change would be made in the substantive antitrust law itself. First, the bill would provide new rules for consent decree procedures; second, it makes changes in appellate review in Government injunction suits, and third, it would increase penalties for criminal violations of the Sherman Act.

Perhaps the most significant provision is that which would increase criminal penalties. The maximum fine that could be imposed would be increased from $50,000 to $1,000,000 for corporations and to $100,000 for other persons. The maximum jail sentence that could be imposed would be increased from 1 year to 3 years, thereby transforming what has been a misdemeanor into a felony. These increases are intended to convey a message that conspiracies in restraint of trade will no longer be worth the risk. The maximum criminal penalties would be increased, so that fines need no longer be small or jail sentences light. One cannot unknowingly commit a criminal antitrust violation. This increase is designed to deter those who might conspire to fix prices or to monopolize a given market.

Judges complain that we tie their hands whenever we write minimum mandatory sentences into the law. Yet they leave little choice for Congress when they treat serious wrongdoers leniently. We refrained from imposing minimum mandatory sentences this time with the hope that the courts would understand our firm resolve to crack down on antitrust violators.

Although I support this legislation and will vote for it, I do not subscribe to every provision of each part of the bill. As I stated in my additional views to the committee's report, the first part of the bill which treats with consent decrees imposes on the courts what is essentially a nonjudicial function. In short, the courts will have to decide whether the Department of Justice has exercised its prosecutorial discretion to settle antitrust cases as well as it should. Since the bill offers no guidance to the courts in reviewing executive discretion other than that they are to decide if the proposed settlement is in the "public interest," the bill attempts to assist the courts by allowing the general public or any "public interest" group to offer its views and comments after the proposed settlement has been published in the Federal Register. In my opinion, such a process is foreign to the judicial function.

In addition to this objection, there are two instances in which the Senate version of the bill is preferable to the House bill. The first deals with the public benefit of a trial versus a settlement; the second deals with lobbying contacts.

First. In making the determination whether a proposed consent decree is in the public interest, the court is authorized to consider the public impact of the consent decree on "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." It is my fear that this language may invite the courts to "second guess" the wisdom of the policy enacted by the Congress in section 5 of the Clayton Act, which states that consent decrees are not to be considered as prima facie evidence of a defendant's liability in subsequent cases brought by private parties seeking treble damages. It will always be true, in view of that provision of the Clayton Act, that a consent decree is less advantageous to private plaintiffs than a litigated judgment would be. Since that is the necessary and intended result of the congressional policy, it seems to undercut that policy to allow a judge to weigh such a factor in determining whether the proposed consent decree is not in the public interest. It seems to me that the court should be looking at the terms of the proposal and not upon its legal effect. The court should evaluate whether the proposed consent decree by its terms remedies the wrongs alleged in the complaint. A court should not be authorized to refuse a consent decree merely because of its lack of evidentiary utility in subsequent cases brought by private parties. The bill as it passed the Senate did not contain this mischievous language. I hope that the House bill will be remedied at a later stage.

Second. The bill would require that the defendant publish the contacts that it had with any employees of the Government regarding the case in question. Since it is anticipated that this requirement will have a chilling effect on contacts between the defendant and Government, exception was made to the general rule for certain legitimate contacts. The Senate version would exempt from the reporting requirement contacts "made by or in the presence of counsel of record with the Attorney General or the employees of the Department of Justice." Since it is both common and appropriate for a defendant and his lawyer to meet with the plaintiff, this exemption appears reasonable to me. The committee, on the other hand, took the position that such a contact was, in fact, a lobbying contact which should be reported. I disagree. Contacts by the defendant and its counsel with employees of the Department of Justice are appropriate litigation contacts and should be encouraged. Very often it is in such meetings that the employees of the Department of Justice in talking both to the defendant and its counsel find the answer to the question of whether they should prosecute a case against the defendant. As we all know, lawyers are more circumspect in discussing their litigation posture than are regular businessmen. In these meetings when businessmen talk, the legality or illegality of the activity in question may be more apparent than when it is couched in the verbiage of the law. On this point the Senate version appears preferable to me.

The third part of the bill deals with appellate review in injunction cases brought by the Government. The bill makes much needed changes. It permits the parties to appeal the grant or denial of a preliminary injunction without having to await the completion of a typically lengthy trial. In merger cases, this change will be much welcomed.

The other major change regarding appellate review deals with final orders.

Under current law all antitrust cases may be appealed from the district court only to the Supreme Court of the United States. In practice this procedure which treats all cases as special simply does not work. For the Supreme Court does not permit itself to be forced to hear nonimportant cases. Instead, it summarily affirms the decisions of the lower courts. What this means in practice is that in the majority of antitrust cases there is no real appellate review. The majority of antitrust cases are treated as something less than an ordinary Federal case.

The Senate version of the bill would provide a mechanism whereby the routine cases could be treated as routine and the special cases could be treated as special. The Senate version would permit the trial judge on application of either party to certify that direct review is of general public importance in the administration of justice. The problem with that procedure, however, is that the trial judge is not in the best position to determine how important a case at bar is to the enforcement of the antitrust laws. He does not have a feel for the cases then pending in other district courts or for cases yet to be filed by the Department of Justice. The one who can best make that judgment is the Attorney General, for he is the only one charged with prosecuting the antitrust laws.

That is why the committee's version grants the certification power to the

Attorney General solely and directly, for he is in the best position to know. If he is clearly in error, the Supreme Court is authorized to remit the case to the court of appeals where the appeal should have been brought.

It may be argued that the committee's version is inequitable since it does not provide the defendant with the same power as the Attorney General. The answer to that is that no one simply because he is sued becomes an expert on what is in the public interest and what cases are of general public importance in the administration of the antitrust laws. That burden is placed by law upon the Attorney General. The committee's version gives him the means to meet that responsibility.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. HUTCHINSON. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, the bill before us today (S. 782) will reform the procedures affecting consent decrees in antitrust cases. The measure corrects various deficiencies and omissions that have resulted in abuses in the enforcement of our antitrust laws.

Some 80 percent of all antitrust complaints never come to trial but are settled by consent decrees. S. 782 opens these pretrial settlement procedures to public scrutiny. Publication of the terms of consent decrees is required at least 60 days before they become effective and mechanisms are established for public comment and Justice Department response. The Justice Department is required to file a "competitive impact statement" for each consent judgment detailing the alleged violations, setting forth the proposed decree, delineating the remaining remedies for private persons damaged by the antitrust violations and outlining the alternatives considered to the proposed consent judgment. Federal judges are to determine that proposed consent judgments are in the public interest—a provision intended to eliminate district court "rubberstamping" of proposals submitted by the Justice Department. To eliminate both the appearance and the occurrence of "political justice" in public civil antitrust cases because of heavy lobbying, defendants are required to report all their "lobbying" contacts in connection with the pending antitrust cases.

Mr. Speaker, this measure will bring all aspects of the case that results in a consent decree out into the open. Considerations which contribute to development of a consent decree will be made known to the Court—and to interested parties. There will be no backdoor arrangements—and no secret agreements or understandings.

Mr. Speaker, those who wish to comment on a proposed consent decree will be given far greater opportunity under this bill as amended.

Mr. Speaker, in addition, it is important also that we increase the penalties for violations of the antitrust laws as recommended by the President—and as set forth in this legislation.

Mr. Speaker, the committee is to be commended for bringing this measure to the House—and I urge an overwhelming vote on final passage.

Mr. HEINZ. Mr. Speaker, will the gentleman yield?

Mr. HUTCHINSON. I will be glad to yield to the gentleman from Pennsylvania.

Mr. HEINZ. Mr. Speaker, I want to join in support of the gentleman's statement that this is a necessary piece of legislation.

I rise in support of S. 782, the "Antitrust Procedures and Penalties Act." It has long been a guiding principle of the Republican Party to support strong antitrust enforcement. This bill is designed to increase the effectiveness of antitrust enforcement. A similar although weaker version passed the Senate in July of 1973 by a vote of 92 to 0. In September of this year I, along with other members of the House Republican Task Force on Antitrust and Monopoly Problems, became apprehensive that the bill might never be reported out of the House Committee on the Judiciary despite the completion of subcommittee action in the spring of this year. We urged the distinguished chairman of the committee to bring this bill to the floor of the House. Later, on the day that the committee finally acted on the bill, the President asked for greater criminal antitrust penalties than had been approved by the committee. Both the Republican Antitrust Task Force and the House Republican Policy Committee have taken positions in support of the bill, and have recommended that the maximum criminal penalties for antitrust violations be increased along the lines of the President's request. I commend the committee for considering the President's request and reporting the bill along with an amendment to increase the maximum criminal penalties to $1 million for corporations and to up to 3 years for individuals. Let us act now and vote favorably on this bill and the amendment.

I believe that when the marketplace is truly open and competitive, it is the best regulator of industry and an indispensable aid to our fight against inflation. The antitrust laws provide the rules for competition. They are a cornerstone in our free enterprise system. They are intended to prevent predatory conduct or combinations which unreasonably raise consumer prices. These laws are designed to encourage businessmen to us their energies to increase efficiency, and lower prices. They are at the heart of our ability to allocate the scarce resources of capital, management, and labor among the competing sectors of our economy.

The antitrust laws are very important, but they cannot do the job if they are not enforced promptly and fairly, or if those who violate them receive so little punishment that it pays them to ignore the law. At present, antitrust enforcement is too often a long drawn out affair and many times the same corporation must be prosecuted repeatedly. We must slow down inflation, we must speed up antitrust enforcement, and we must deter great corporations and the executives that run them from continuing to violate the antitrust laws.

This bill will speed up Government and defense appeals of antitrust cases by permitting circuit court consideration. In the past, antitrust cases have all too often taken years to be resolved and the public has suffered from delays. The public cannot now afford delayed enforcement of the antitrust laws. Circuit court review would also reduce the Supreme Court's caseload and allow that court to spend its time dealing with only the most important cases.

This bill also will strengthen the Government's hand in dealing with large corporate mergers by granting the right of appeal if a district court denies a request for an injunction to stop a merger. At present, if a district court does not grant the Government's request to stop a merger before it takes place, it may be many years before the companies are separated. The companies make money and the public suffers from the loss of competition. We cannot tolerate delay any longer.

As an important additional provision, the bill provides for significantly increased public disclosure of settlements in Government's antitrust cases. It insures that settlements are open to public view and comment and that they are in the public interest. It also insures that settlements will not result from improper lobbying contacts. We must be sure that the laws are enforced fairly and this bill goes a long way in that direction.

The maximum fines that may now be levied against corporations that violate the antitrust laws do not amount to much compared to the sales and profits of some giant corporations. Corporate executives may now reasonably expect that they will not receive any meaningful punishment for criminal violations of the Sherman Act even when they commit the most serious of price-fixing offenses. In this time of double-digit inflation, the public cannot afford to let giant corporations commit repeated violations of the antitrust laws. Today we should and must amend those laws to make the penalties for antitrust violations strong enough to act as a real deterrent. The bill before us will increase the maximum criminal penalties to $1 million in fines for corporations and up to 3 years for individuals. I hope that the most serious penalties might never need to be used. I hope that if these penalties are enacted that criminal violations of the antitrust laws will become a rare event. We know that the current penalties are too low to do this job and must be increased.

When the House approved in June of this year my amendment to increase the staff of the Antitrust Division of the Department of Justice, we took a step forward in antitrust enforcement. We have given the Antitrust Division most of the manpower it needs to enforce the law. Let us now give them a meaningful law to enforce. I urge your support of this necessary and overdue bill.

Mr. RODINO. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. SEIBERLING).

Mr. SEIBERLING. Mr. Speaker, I think the committee and in particular, the chairman, the gentleman from New Jersey (Mr. RODINO), are to be commended for bringing up this legis-

lation at this time. We are all concerned with inflation, and the very serious effects that anticompetitive behavior in our free enterprise system can have upon prices to consumers. It has been estimated by a member of the Federal Trade Commission that price-fixing conspiracies cost the public about $10 billion a year, and that ineffective competition costs, according to the Justice Department, another $80 billion. So anything we can do to strengthen our antitrust laws and create more effective competition is likely to have a considerable impact upon prices and inflation.

This bill I think cures some real deficiencies in our antitrust laws. Under the existing law, courts, before approving a consent decree, are supposed to consider whether the decree is in the public interest, and not merely to "rubberstamp" an agreement that has been arrived at between the Department of Justice and the particular defendants. But too often the courts have, in fact, simply rubberstamped such agreements, and the public or competitors that might be affected have not had an effective way to get their views before the court, or even to find out in advance what the background and the effect of the proposed decree are. This bill remedies that by requiring a 60-day period, at the start of which the proposal has to be made public, and during which time comments can be submitted by interested parties to the Department of Justice, which must submit to the court what those comments and the responses thereto are.

Furthermore, the bill expressly provides that while the court does not have any mandatory requirement to make further inquiries, it has the specific authority to do so, an authority which it now has under its general equity powers but which is spelled out in the proposed legislation along with some explicit statutory guidelines.

Another thing that the bill would do is to remedy a serious problem, as we discovered during the course of the recent Watergate investigation, which is the tendency of persons who represent defendants in antitrust proceedings to make contact secretly with high Government officials in an effort to obtain a settlement which they consider to be favorable. There is of course nothing wrong with trying to negotiate a settlement, but certainly there is something wrong in not having the public and other interested parties, such as the competitors affected, know about the nature of the contacts made, if those contacts go beyond the mere technical negotiation among the lawyers to the parties.

Accordingly, section 2 of the bill also requires defendants in these consent decree cases to file with the court a description of all contacts the defendant had with Government officials concerning the settlement, except those contacts by the defendant's counsel of record alone with Justice Department officials alone. If a corporate officer were present with the counsel of record in negotiations with the Justice Department, that contact would have to be reported and made public at the appropriate time.

Section 3 of the bill has been amended to provide for a maximum Sherman Act fine of $1 million for corporations and $100,000 for other individuals, and to change Sherman Act violations from misdemeanors to felonies with a maximum sentence of 3 years. Several hours before President Ford asked us to raise the corporate fines, the full Judiciary Committee had recommended increasing the corporate fine from $50,000 to $500,000. During a Judiciary Committee meeting this morning, a consensus was reached to recommend approval of President Ford's $1 million figure, along with the administration's proposal to increase prison sentences. Although the administration had recommended a maximum sentence of 5 years, the consensus of the committee was that the maximum should be 3 years.

Violations of the Sherman Act are serious offenses. Despite the economic and social costs of such violations, prison sentences are rare. By making these offenses felonies, Congress would be serving notice that we consider hard-core violations of the Sherman Act to be serious crimes. The amendment incorporated into section 3 of the bill is intended to deter such crimes and to punish offenders appropriately.

Section 4 of the bill amends the Expediting Act. Right now, upon certification of importance by the Attorney General, civil antitrust cases are heard in an expedited manner by 3-judge courts. There are no interlocutory appeals, but appeals from final judgments lie directly to the Supreme Court. Various members of the Supreme Court have urged that Congress utilize the Courts of Appeals for all appeals. And the Justice Department has asked for the flexibility to determine whether and how to appeal litigated antitrust cases.

Because the Judiciary Committee finds that the need for the Expediting Act has changed, S. 782 provides that civil antitrust cases would be heard by a single district court judge and appeals from interlocutory orders would lie to the courts of appeals. Appeals from final judgments would also lie to the courts of appeals, except when the Attorney General certifies that immediate Supreme Court consideration is of "general public importance in the administration of justice," in which case the appeals would lie to the Supreme Court. The Supreme Court would then have the discretion to dispose of such a case or to remit it to the appropriate court of appeals. Section 5 of the bill would conform the Expediting Act procedures for Justice Department antitrust cases brought under the Communications Act and the Interstate Commerce Act.

Ms. HOLTZMAN. Mr. Speaker, would the gentleman yield?

Mr. SEIBERLING. I yield to the gentlewoman from New York.

Ms. HOLTZMAN. Mr. Speaker, I thank the gentleman for yielding me this time. I want to compliment the gentleman from Ohio for his leadership, and, of course, the distinguished chairman of the committee, Mr. RODINO, in bringing this bill to the floor of the House.

I had planned to offer an amendment, to clarify what I believe is an oversight in this bill, but because this bill is being brought up under suspension of the rules I cannot offer the amendment.

It seems to me that the bill makes a very good point when it requires defendants in antitrust cases to disclose to the court as any communications by the defendant with officials of the Justice Department or other Government officials before any proposed settlement becomes final. The intention of this provision is, of course, to avoid the kind of secret negotiations which occurred in the ITT matter and questions of possible corruption.

Unfortunately, this bill does not spell out that a defendant must try to ascertain all such communications that may have been had; nor does it require a defendant or defendant's counsel to go to all the officers of the corporation and find out whether or not they had such communications. Apparently this was an oversight in the bill that was really unintentional. I am sure it is implicit in the bill that reasonable efforts have to be made to find out what communications with Government officials took place. Otherwise, the main purpose of this section of the bill would be thwarted, and defendants could wear "blinders" in making their disclosures to the court.

It is regrettable that an amendment to make this requirement explicit could not be offered.

Mr. SEIBERLING. Would the gentlewoman from New York read the proposed language of her amendment so that we might have clarification as to just what the gentlewoman is referring to?

Ms. HOLTZMAN. Mr. Speaker, I would have proposed the following amendment. On page 16, line 3, after "shall", insert the following: "make reasonable efforts to obtain a complete description of all such communications from the officers, directors, employees and agents of such defendant, and from all other persons acting on behalf of such defendant, and shall."

Mr. SEIBERLING. Mr. Speaker, I might say that, having practiced antitrust law for many years and worked in corporate law departments, and having made reports on the results of numerous investigations, there is no question that the proper and ethical thing for lawyers to do in this type of situation is to make that type of certification to the Justice Department or the court. I certainly think that is within the intent of the bill. If possible, we would try to clarify that in the conference with the Senate. In any event, that is clearly the intent of the bill.

Ms. HOLTZMAN. I thank the gentleman, and I again want to express my strong support for this bill to reform consent decree procedures and to increase penalties for violation of the Sherman Act. This bill will encourage vigorous enforcement of the antitrust laws—which is necessary if we are to help keep prices down and restore the health of our economy. It will also help put an end to the Watergate atmosphere and insure that our antitrust laws are not for sale. The ITT settlement, which was aired during the impeachment inquiry, created a good deal of public suspicion and cynicism about our anti-

trust laws, particularly with respect to settlement procedures. This bill, I believe, will go far to allay this cynicism.

Strengthening of penalties is an important measure, in this regard. Certainly in this day of giant corporations, fines of $50,000 are meaningless. The $1 million maximum corporate fine—which this bill proposes—would seem to be more realistic in deterring violations of the Sherman Act. The harmful effects of anticompetitive practices on consumers' pocketbooks merit serious penalties of this nature.

I am particularly pleased by the sections of the bill which require public disclosure of any proposed settlement between a corporation and the Government. Such settlements can have a crucial impact on the economy as a whole and on consumers in particular. The time to air and criticize such settlements is before, not after, they become final. In addition, disclosure of all communications between a corporation and the Government regarding proposed settlements should deter any improprieties in the settlement procedures.

Mr. DENNIS. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Indiana.

Mr. DENNIS. I thank my colleague on the subcommittee for yielding.

Mr. Speaker, I, too, rise in support of this measure on which our subcommittee has worked. Since I will not have the pleasure of serving with the gentleman and the other members of the subcommittee in the next Congress, I should like to express the hope that he and others may agree with me that in our further studies on the questions of free competition and price fixing, and so on, to which we have been addressing ourselves, we may consider the question of whether or not we ought not to take up the topic of whether the antitrust laws should also be extended in certain particulars to our great labor unions of this country which, by negotiating national contracts with the great corporations may also have their input in the price fixing and noncompetitive area.

Mr. SEIBERLING. I might say that is an important question, although, as the gentleman undoubtedly knows, there is a very long history as to the reasons for exemption of labor relations from the antitrust laws, which would have to be gone into at great length, and I think they are not particularly germane to this bill.

Mr. DENNIS. I agree with the gentleman, if he will yield further. It certainly needs to be gone into carefully and thoroughly. I am simply hoping for the prospect of the gentleman's labors and attention during the next session.

Mr. SEIBERLING. I should also like to make a further observation. One of the things that this bill as amended would do is to increase the penalties for violation of the antitrust laws in criminal cases. As I am sure the gentlemen on the committee know, criminal prosecutions of the antitrust laws are not brought except in cases where the law is very clear and where the violation is potentially very serious, and the defendants' actions are very clear, because the prosecution must meet the burden of proof in criminal proceedings and prove its case beyond any reasonable doubt. So we are not dealing with fuzzy areas but very clear black-and-white areas of the antitrust laws.

At the time the Sherman Act was passed in 1890, violations were made a misdemeanor rather than a felony, and the maximum penalties were in an amount which was considerable in those days but today is not very great, considering what has happened to our money value since. So in an effort to emphasize the seriousness of these economic offenses, the bill would increase the maximum fines for corporations to $1 million per offense from the present $50,000 and make the violations punishable by 3 years in jail. That would make them a felony.

I might add that if there is any one thing from my own experience that has made the enforcement of the antitrust laws much more meaningful, it was when courts started sentencing corporate executives to jail, because if there is one thing most corporate executives, who are usually respected members of their community, do not like, it is having a criminal label attached to them for the rest of their lives and having the reputation of having served time in jail. Believe me, that has had a tremendous effect on antitrust compliance within the major businesses of this country.

Mr. MEZVINSKY. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Iowa.

Mr. MEZVINSKY. I thank the gentleman for yielding.

Mr. Speaker, I just want to say that I strongly support the legislation. I think it is a significant step in antitrust law.

This legislation is one of the most important bills to come before Congress this year. I believe that everyone who has studied and tried to come to grips with the problems of inflation recognizes the necessity for strong antitrust laws and strict enforcement of the statutes already on the books.

The most frequently used tool to stop anticompetitive practices is consent decrees. This procedure compels those who engage in monopolistic activities to cease such activities without the several-year delay which can result from a long and complicated trial. To take every case to trial would far outstrip the resources of the Justice Department and our judicial system as well as allow many of these anticompetitive practices to go unchecked during litigation. For this reason, the consent decree is a very useful procedure to force certain companies to voluntarily stop practices which are not in the best interests of competition.

But this process is not without fault. Under the present system, once a consent decree is entered, the public remains unaware of those practices which necessitated that consent decree actions be instituted. I believe that the public should know of those illegal activities and the effect they have had on competition and ultimately on consumer prices. The legislation before us will give this information to the public and help them to understand the problems caused by anticompetitive practices and to evaluate the effects of the settlement.

This bill also increases the penalties for violations of the antitrust laws. For corporations that do hundreds of millions of dollars worth of business per year, penalties have to be substantial in order for them to be a deterrent to anticompetitive practices. With the increase in fines allowed by law, we are hopeful that the judicial branch will be levying higher penalties on those found to be in violation of the antitrust laws.

There is yet another provision that I would like to speak of for a moment. In an era when government secrecy has come under well-justified attack, I am proud to have worked with the Monopolies and Commercial Laws Subcommittee of the Judiciary Committee on this bill which will help open the governmental process. This legislation makes a significant inroad into secretive practices by forcing the defendant in an antitrust action to disclose its lobbying contacts. The public has an often distorted view of lobbyists and their functions and influence. This type of legislation will help clear up some of the suspicions that many of these contacts raise in addition to showing if improper contacts and influence have been exerted.

Under section 2(g) a defendant in an antitrust suit is required to describe all communications to the Justice Department initiated by it or on its behalf in connection with the case sought to be settled by the consent decree procedure. Of course, communications between counsel of record for the defendant who meet alone with appropriate members of the Justice Department in connection with the case are exempt from this bill. This exemption makes the necessary distinction between lawyering and lobbying. Although legal ethics cannot be legislated, our committee has tried to differentiate between those contacts which are necessary and proper to settle procedural matters in relation to the pending case and those which go to the substantive merits and specifics of the matter before the Department. I believe this will remove a great deal of the doubt surrounding the consent decree procedures.

This section, along with other sections of the bill, make notable changes in the antitrust laws which are vital to our economy. I urge my colleagues to join me in supporting this bill.

Mr. SEIBERLING. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Texas (Ms. JORDAN).

Ms. JORDAN. I thank the gentleman from Ohio for yielding.

Mr. Speaker, the Antitrust Procedures and Penalties Act has been carefully developed by the House Judiciary Committee to command the widest possible support. It is supported by both the majority and minority party members of the committee. It is supported by the administration. It should qualify for the support of every Member of the House of Representatives.

Basic to the wide support commanded by this bill is its simple purpose: to ventilate the consent decree process by which the Justice Department disposes of

more than 80 percent of all antitrust cases. Normally, secret negotiations precede the filing of a proposed consent decree in a district court. S. 782 would pierce the secrecy with a requirement that the Justice Department file a competitive impact statement with the court along with the proposed consent decree. The public will have 60 days to comment on the proposed decree.

In addition the Antitrust Procedures and Penalties Act provides procedures to be employed by the courts upon the submission to it of a proposed consent judgment. During testimony on the bill it was pointed out that some members of the bar felt district courts were "rubberstamping" proposed consent decrees after having been submitted by the Justice Department. Section 2(e) of the bill is written to correct this practice. For the first time, judges will be able to look to statutory language for explicit guidance prior to rendering judgment on a proposed consent decree. The bill makes a clear distinction between what the courts "shall do" and "may do" in evaluating proposed decrees. This distinction is necessary in order to preserve maximum judicial flexibility on a case-by-case basis. District court judges shall be required to find that each proposed consent judgment is in the public interest. The courts will thus be required to make a positive finding that the decree is in the public interest.

The committee believes this requirement will serve to remedy the so-called rubberstamping practice. It is hoped that flexible judicial procedure will evolve in the process of correcting judicial rubberstamping. It is not the intention of the committee to require the courts to conduct a hearing or trial on the public interest question. It is anticipated the trial judge will adduce the necessary information through the least complicated and least time-consuming means possible.

To assist the court in resolving the public interest question the bill includes language suggesting a series of questions the court may wish to consider. Will the decree increase competition? Will the decree terminate the alleged violations? Does the decree make provision for enforcement? What is the relief? Were other alternative remedies considered, and, if so, what would have been their anticipated effects? Would the individuals, and the public generally, be relieved of injury from the cessation of the alleged violations? And finally, would the injured parties, and the public generally, benefit from a determination of the issues at trial?

This language is not meant to limit judicial consideration of other questions as well. The committee is cognizant of the need for judicial discretion and wishes to preserve to trial judges the widest possible discretion in evaluating proposed decrees. That is why the premissive "may" is employed. The question confronting a judge when presented with a proposed decree is: Shall this court accept or reject the proposed settlement? The judge cannot compel the parties to write a different consent decree. He cannot compel the parties to go to trial. But what the judge can do is make a judgment as to whether the proposed solution to the alleged violations are in the public interest. And this is all the bill requires of the judge.

Mr. Speaker, I would hope an overwhelming majority of the Members of this House would agree with me that this bill should receive their full support.

Mr. SEIBERLING. Mr. Speaker, I have no further requests for time.

Mr. HUTCHINSON. Mr. Speaker, I yield such time as he may require to the gentleman from Iowa (Mr. MAYNE).

Mr. MAYNE. Mr. Speaker, I rise in support of S. 782, the Antitrust and Penalties Act, as amended and reported by the House Judiciary Committee.

This is one of the most important bills awaiting House action. It is an important part of the fight against inflation, and should be promptly enacted.

I have long been interested in the problems of antitrust enforcement, and have studied this matter as a member both of the House Judiciary Committee and of the House Republican Task Force on Antitrust and Monopoly Problems. The open and competitive marketplace is the best regulator of industry and the best guard against inflation. Antitrust laws provide rules for competition and can prevent predatory conduct or combinations which unreasonably raise prices to consumers. They encourage businesses to seek increased efficiency which lowers costs and prices. They help our system allocate scarce resources of capital, management, and labor among the competing sectors of our economy.

However, antitrust laws can not do the job if they are not enforced promptly and fairly, or if violators receive minimal punishment so that they can afford to ignore the law. Antitrust enforcement today too often is dragged out interminably, and too often the same corporation must be repeatedly prosecuted without truly mending its ways.

All antitrust laws and regulatory practices should be thoroughly reviewed, but this modest bill is a good first step in the direction of improving antitrust enforcement.

S. 782 as amended and reported by the House Judiciary Committee today, with my support, would expedite government and defense appeals of antitrust cases by permitting circuit court consideration. Allowing circuit court review also reduces the case load of the Supreme Court, thereby allowing that Court to spend its time on the most important cases.

The present bill strengthens the Government's hand when dealing with large corporate mergers by granting right of appeal whenever a district court denies a request for an injunction to halt a merger—at present, if a district court does not grant the Government's request to stop a merger before it takes place, it may be many years before the companies are separated.

Some 80 percent of all antitrust complaints never come to trial but are settled by consent decree. These consent decrees and pre-trial settlement procedures are opened up by S. 782 to public scrutiny. The bill requires the terms of consent decrees to be published at least 60 days before they become effective, and it establishes mechanisms for public comment and Justice Department response. It requires the Justice Department to file a "competitive impact statement" for each consent judgment detailing the alleged violations, the proposed decree, the remaining remedies for private persons damaged by the antitrust violations and the alternatives considered to the proposed consent judgment. It provides for Federal judges to determine that proposed consent judgments are in the public interest—hopefully this will eliminate district court "rubberstamping" proposals submitted by the Justice Department.

The Judiciary Committee amended S. 782 with my full support to increase the maximum criminal penalties for violations of the Sherman Antitrust Act. It raises maximum corporate fines from $50,000 to $1 million, and raises maximum fines for other persons from $50,000 to $100,000, and to a maximum sentence of 5 years for individual defendants convicted of violation. Current penalties are far too low to act as a real deterrent to violation.

Antitrust violations should not be dismissed as merely misdemeanors or technical violations. They cause greater economic injury to the public than do many other felonies. Hopefully increased jail sentences and higher fines will serve to deter individuals and companies from flouting antitrust prosecution.

Enactment of S. 782 with the committee amendments increasing penalties will help curb commercial crimes that adversely impact the economy, crush small businesses and independent businesses, and contribute to rising prices. It will aid in assuring that antitrust settlements are in the best public interest and will expedite and open to full public view the procedures by which these settlements are reached. I respectfully and strongly urge my colleagues to support adoption of the motion to suspend the rules and pass S. 782.

Mr. DANIELSON. Mr. Speaker, I support the bill, S. 782, the Antitrust Procedures and Penalties Act, though I do not have high hopes that it will produce a beneficial effect. It promises much, but will achieve little.

The purpose of the act, the ends it seeks to achieve, are most worthwhile and, in my opinion, would go a long way toward correcting many of the economic injustices which afflict our people. Clearly, an improvement in the antitrust laws which would help them effectively to realize their intended purposes is most desirable. The fact that the management of large business enterprises, which become de facto monopolies, can so rig the prices people have to pay for the necessities of their day by day standard of living constitutes one of the most serious criticisms of our present economic system. While operating under the banner of free enterprise, many of our largest and most influential business organizations have consistently schemed, combined, and plotted together to defeat that very system of free enterprise by fixing the prices under which their products are sold or their services are rendered, thereby denying the American people the benefits of competition and the free en-

terprise system which we have traditionally supported.

S. 782 purportedly seeks to add strength to our antitrust laws by increasing the penalties incident to the violation of those laws in two respects—namely by increasing the maximum period of imprisonment and by increasing the maximum fine which can be imposed because of a violation.

While I do not question the motivation of those who have sponsored this bill, in fact I commend them for having done something to improve our antitrust laws, I respectfully point out that the remedies contained in this bill will be of minimal practical effect, if any.

The approach taken in this bill, increasing maximum potential confinement and increasing maximum fine, are not meaningful when considered in the light of the history of the enforcement of our antitrust laws. In fact, from a practical point of view, the changes which will be brought about by this bill are mere window dressing and could be considered as sham. It means nothing to increase the maxmium possible imprisonment for violation of our antitrust laws if one stops to recall that, under the existing laws, the penalty for confinement has rarely been imposed at all. The fact of the matter is that the largest sentences which have been imposed are for confinement for 30 days, and usually those sentences have been suspended. We seem to have a fascination with the idea that imprisonment and fines are the proper methods of punishment for crime. We consistently labor under the delusion that potential imprisonment and potential fines serve as adequate deterrent for the successful functioning of our criminal laws—including those relied upon for the enforcement of antitrust laws. If past experience means anything, it establishes that this is nothing but a fiction and that the threat of confinement and monetary penalties through fines has no significant deterrent effect whatever.

It is axiomatic that punishment in any criminal situation should fit the crime. I respectfully submit that if the punishment for criminal antitrust law violations is to fit the crime, the penalities imposed must be such as will effectively deter a corporate executive from seriously contemplating a violation of those laws and it must be penalties which the courts will either be willing to impose or must impose. Under the present structure of our antitrust laws, which is not changed by the present bill, except to increase the size of the possible but mythical penalties when the antitrust laws are violated, the corporate executive pays a fine and conceivably receives a 30-day suspended sentence and then he is free to continue in the same course as before, without noticeable impairment in his financial well-being or in his social or economic status.

It is notorious that an American citizen convicted of a traffic violation often receives a more severe sentence of confinement than does a corporate executive who violates the antitrust laws and thereby effectively steals millions of dollars from the Amercian people. I respectfully submit that if these laws are to have any practical effect whatsoever, we must forget our long-time fascination with the concept of imprisonment and fines as being a deterrent to antitrust law violations. The deterrent effect of the penalty will be of value only if it is real and certain, and of such nature that the person whose conduct we seek to restrain will be discouraged from that conduct before he ever starts. The only way that that can be done is to attack the motivation for antitrust violation, namely, by effectively taking the profit out of it. If we can deny any profit and any advantage to the potential antitrust law violator, we will then be taking a practical and effective step in enforcing our antitrust laws. I suggest that instead of increasing the potential imprisonment of an antitrust law violator, when we all know that the present provisions for imprisonment are never enforced, we will be far better off to amend the laws to provide penalties which will strike at the heart of the offense—which will destroy the motivation for violating the antitrust laws. This could easily be done, I submit, by taking the potential for profit and the potential for personal gain out of the opportunities to violate those laws. A more meaningful punishment for antitrust violations would be a mandatory disqualification of the offender from serving as a member of the board of directors, or as an executive, of any corporation engaged in interstate commerce for a fixed period of time, such as 5 years. I respectfully submit that such a penalty would cause the managers and directors of corporations to think not twice, but many times before they would engage in combinations in restraint of trade.

As the laws now provide, and as they will continue to provide, even after S. 782 becomes the law of the land, the convicted corporate executive or director will simply pay his fine and receive a token suspended 30-day sentence and will then be immediately free to continue his regular business and social activities. He will still be on the corporation's payroll, he will still receive his director's fees, he will continue to receive and exercise his favorable stock options, he will continue to participate in corporate retirement plans which often rival those of an oriental potentate, he will continue to use the corporation's private jet, he will continue to use the corporation's membership in the choice country clubs, and will continue to enjoy the social and economic status which is so commonly incidental to being a director or officer of a modern corporation. When you consider these facts, you recognize how small is the deterrent effect of the fine and token suspended sentence which we now use to enforce our antitrust laws. If, on the other hand, the violation of those laws would trigger a disqualification for a period of, say, 5 years, from serving as director or officer of a corporation engaged in interstate commerce, then I submit that we would have a true deterrent to antitrust violations and we might begin to get somewhere realistically with the enforcement of these well-intended laws.

Again, I wish to state that I shall vote for S. 782, the Antitrust Procedures and Penalties Act of 1974, since it is well-intended and certainly does not impair the effectiveness of our present antitrust laws. However, I do so without any illusions as to it being a practical improvement to our present laws.

Mr. GUNTER. Mr. Speaker, we are taking an important step today in passage of S. 782, the Antitrust Procedures and Penalties Act.

It is in the public interest to pass this bill because it recognizes the need for full disclosure of pertinent facts leading up to a negotiated consent decree between the Justice Department and the party probed. It offers public citizens as third parties the opportunity to disagree and make their points in court to a consent agreement.

It is in the interest of free enterprise because the requirement that competitive impact statements be filed along with a petition for a consent decree requires the parties to access the probable impact in our economy of such agreements.

For these reasons I applaud the work of the House and Senate Judiciary Committees in opening up consent decrees to public scrutiny. Hopefully it will prevent a reoccurrence of the scandal and public exposure of highly irregular maneuvers associated with the International Telephone & Telegraph consent settlement.

But I want to emphasize, Mr. Speaker, that I consider this a first step. There is unfinished business, important unfinished business, in putting teeth in procedures to prevent major mergers that render the Justice Department powerless to assemble the facts it needs to prevent the formation of monopolies in vital sectors of our economy.

A recent case in point is the recent published findings of the Senate Special Subcommittee on Integrated Oil Operations which cited the ineptitude of the Justice Department to enforce the antitrust laws and prevent the anticompetitive merger of Signal Oil Co. with British-owned Burmah Oil Co., Ltd.

Here is a case in which the companies arrogantly refused U.S. Justice Department requests to delay the merger and far from seeking a consent decree defied the Department to take them to court. The Department for its part had neither the time nor the facts it needed to take such action, by its own admission.

The end result was that in January Burmah Oil Co., Ltd., acquired one of the three largest independent suppliers of crude oil in natural gas in the United States and won Signal's claim to oilfields in the British North Sea to boot.

The point is that the Justice Department under current procedures is operating in the dark when it comes to weighing the antitrust implications of a merger that is snowballing toward consummation. In the case of the Signal merger, I am convinced that the oil companies involved deliberately accelerated the pace to discourage Justice Department action and congressional review.

This is particularly disturbing because we are dealing here with a commodity in short supply in this country—oil and the energy it produces.

I would therefore urge that the 94th Congress take the legislation we are completing here today a step further in

the interest of protecting the consumer and the business which both suffer from restraints on trade.

It seems to me that the Justice Department should be given the statutory authority to order a delay in a merger when questions of possible antitrust violations arise. That delay could be for 60 days or for 90 days, some reasonable period of time to permit a thorough review.

The Justice Department should also have the right to request pertinent documents for review. The next step would be to work out a consent decree which would then be subject to the legislation we are discussing today or, barring an agreement, a contest of the case in court.

There really should be nothing short of total cooperation between the Justice Department and those seeking a merger. Because if there is a violation, there should not be a merger. In any case, the determination should not hinge on how cleverly the parties involved kept the facts from the Justice Department.

I offer these as suggestions to my friends of the new Congress, some of whom may read these remarks. My experience in attempting to convince the Justice Department to move forcibly to delay the Signal-Burmah merger makes me believe that there is an important contribution to be made in antitrust legislation by Members of the 94th Congress.

Mrs. HOLT. Mr. Speaker, the Antitrust Procedures and Penalties Act should be a powerful deterrent against price fixing and the creation of monopolies.

This is the best kind of consumer protection legislation, because it gives us the tools we need to prevent such things as the current exhorbitant sugar profits through price manipulation. This legislation will go a long way toward preserving competition in the free market.

I will vote in favor of this because I believe that giant corporate monopolies are as dangerous to a free society as big government. By raising the maximum fine for corporate violations of the Sherman Antitrust Act to $1 million and by punishing individual violations by as much as 3 years in prison, we have gone a step further in protecting the people from abuses of economic power in the private sector.

I am urging President Ford to maintain pressure on the Justice Department for vigorous enforcement of antitrust laws. This legislation gives the administration the authority it needs for an effective war against monopolies and price fixing. We do not need vast new bureaucracies to strangle business in senseless regulations, but we do need tough enforcement of laws to preserve our free economy in the marketplace.

This is an important step against inflation by conspiracy, but I would also remind this Congress of the necessity to fight inflation caused by deficit Federal spending—inflation caused by irresponsibility.

We have demonstrated our will to curb abuses by big business, but it is also time for us to concentrate on restricting the abuses by big government.

The SPEAKER. The question on the motion is offered by the gentleman from New Jersey (Mr. RODINO) that the House suspend the rules and pass the bill S. 782, as amended.

The question was taken.

Mr. GROSS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Pursuant to the provisions of clause 3(b) of rule XXVII and the prior announcement of the Chair, further proceedings on this motion will be postponed.

Does the gentleman from Iowa withdraw his point of order that a quorum is not present?

Mr. GROSS. Yes, I do, Mr. Speaker.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the bill under consideration.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO MEET WHILE HOUSE IS IN SESSION

Mr. RODINO. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may be permitted to sit while the House is in session for reading of the bills under the 5-minute rule so the committee may conduct hearings on the Vice Presidential nomination.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

AMENDING THE COMMUNICATIONS ACT OF 1934 WITH RESPECT TO THE PERIOD OF LIMITATIONS ON CERTAIN PROCEEDINGS BY OR AGAINST COMMUNICATIONS CARRIERS

Mr. STAGGERS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1227) to amend section 415 of the Communications Act of 1934, as amended, to provide for a 2-year period of limitations in proceedings against carriers for the recovery of overcharges or damages not based on overcharges.

The Clerk read as follows:

S. 1227

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsections (a), (b), and (c) of section 415 of the Communications Act of 1934, as amended (47 U.S.C. 415), are amended to read as follows:

"(a) All actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun, within two years from the time the cause of action accrues, and not after.

"(b) All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subsection (d) of this section.

"(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within two years from the time the cause of action accrues, and not after, subject to subsection (d) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended to include two years from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice."

Mr. STAGGERS. Mr. Speaker, S. 1227 amends the Communications Act to extend from 1 to 2 years the period during which proceedings may be brought against communications common carriers—telephone and telegraph companies—for overcharges or for damages not based on overcharges. The bill also grants the same extension of time for actions by communications common carriers to recover their lawful charges.

"Overcharges" are charges for services by a telephone company or a telegraph company which are in excess of the charges for the service which are set forth in tariffs which are on file with the FCC.

"Damages not based on overcharges" are amounts recovered from charges for services of a telephone or telegraph company which, even though they are included in a tariff on file with the FCC, are unjust, unreasonable, or unduly discriminatory.

Section 415 of the Communications Act requires that proceedings against communications common carriers for recovery of overcharges and damages not based on overcharges must be commenced within 1 year. Similarly actions by such carriers for recovery of their lawful charges must be brought within 1 year.

When the Communications Act was enacted into law in 1934, the 1 year limitation on proceedings to recover overcharges and damages not based on overcharges of telephone and telegraph companies was reasonable. Most interstate communications were either telegrams or long distance telephone calls. Charges for these services were easy to determine.

Today, however, many organizations use complex private line networks over extended periods of time. For example, complex interstate communications networks are used to tie computers together. To compute proper charges for these services is complicated and time consuming. The FCC reports that some large industrial users of communications common carriers have been prevented from making substantial claims for over charges because of the 1 year period of limitations.

The same considerations apply to complaints for damages not based on overcharges. It is believed that extending the period of limitation to 2 years will correct this problem.

As a matter of fairness the 1-year period of limitations on actions by communications common carriers to recover their lawful charges is also increased to 2 years. This will also avoid problems