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## Interlocutory Orders Are Not Appealable in Government Civil Antitrust Litigation.

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## CASE NOTES

FEDERAL APPELLATE JURISDICTION—THE INTERLOCUTORY APPEALS ACT—THE EXPEDITING ACT—INTERLOCUTORY ORDERS ARE NOT APPEALABLE IN GOVERNMENT CIVIL ANTITRUST LITIGATION. *Tidewater Oil Co. v. United States*, \_\_\_U.S.\_\_\_\_, 93 S. Ct. 408, 34 L. Ed. 2d 375 (1972).

The United States initiated action against Phillips Petroleum Company and Tidewater Oil Company for civil antitrust violations of the Clayton Act.<sup>1</sup> In April, 1971 Tidewater asked to be dismissed as a party to the litigation. Alleging that its presence in the suit was inappropriate, Tidewater declared that the Clayton Act was directed only against the acquiring corporation, Phillips, and not against it as the seller. The motion was denied and Tidewater requested that the Court of Appeals for the Ninth Circuit consider the soundness of the lower court's interlocutory order. Relying upon Section 2 of the Expediting Act, which provides that in all civil antitrust suits where the Government is the complainant "an appeal from the *final* judgment of the district court will lie only to the Supreme Court,"<sup>2</sup> the court of appeals rejected consideration of the interlocutory order for want of appropriate jurisdiction. The Supreme Court, Mr. Justice Marshall: Held—*Affirmed*. Section 1292(b) of the Interlocutory Appeals Act has no effect upon the Expediting Act's denial of court of appeals jurisdiction over interlocutory orders. In government civil antitrust cases, appeals can be reviewed only from final judgments and only by the Supreme Court.<sup>3</sup>

In 1903 there was a significant need to regulate the country's ever increasing concentration of economic power.<sup>4</sup> The problem was further magnified as antitrust suits arising under the Sherman Act<sup>5</sup> were subjected to lengthy appellate procedural delays.<sup>6</sup> Important litigation was forestalled almost in-

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1. 15 U.S.C. § 18 (1970). The Act provided that [n]o corporation engaged in commerce shall acquire . . . the whole or any part of . . . the assets of another corporation engaged also in commerce, where . . . the effect of such acquisition may be substantially to lessen competition . . .

2. 15 U.S.C. § 29 (1970) (emphasis added).

3. *Tidewater Oil Co. v. United States*, — U.S. —, 93 S. Ct. 408, 34 L. Ed. 2d 375 (1972).

4. 113 CONG. REC. 18817 (1967) (remarks of Senator Tydings).

5. 15 U.S.C. §§ 1-7 (1970). The Act states "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . .

6. It has been the requirement that appeals from the district court may be reviewed by the court of appeals if within a 6-month period. Act of March 3, 1891, ch.

definitely.<sup>7</sup> Therefore, the giant monopolistic corporations were enjoying an era of economic conservatism as well as a beneficial judicial process.<sup>8</sup>

As a corrective measure, the Expediting Act was imposed to speed the determination of prominent antitrust cases<sup>9</sup> and to furnish uniformity<sup>10</sup> in future antitrust regulations and forms of competition.<sup>11</sup> The solution provided that review of final federal district court decisions was directly appealable to the Supreme Court<sup>12</sup> within 60 days.<sup>13</sup> In addition section 1 of the Act declared that in any government civil antitrust action arising under the Sherman Act, the Interstate Commerce Act, "or any other Acts having a like purpose," the Attorney General may certify that the case is of "general public importance" and assign such action to a three-judge district court for immediate review.<sup>14</sup>

Such an approach was not a significant deviation from federal appellate procedure. The Expediting Act simply added another group of cases to the existing six classes where the Supreme Court had direct review over the decisions of the district courts.<sup>15</sup> Even though the courts of appeals had been created 12 years earlier,<sup>16</sup> Congress continued to exhibit reluctance in granting them jurisdictional authority.<sup>17</sup>

Initially, review of interlocutory orders was accorded the courts of appeals only in litigation where they already possessed review of final decrees.<sup>18</sup> Through a complicated array of Congressional amendments,<sup>19</sup> Sec-

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517, § 11, 26 Stat. 829. In addition, an unsuccessful litigant was granted a 1-year period within which to make an appeal from the court of appeals to the Supreme Court. Act of March 3, 1891, ch. 517, § 6, 26 Stat. 828.

7. 113 CONG. REC. 18819 (1967) (remarks of Senator Tydings).

8. 9 HOUS. L. REV. 1099 (1972).

9. *Shenandoah Valley Broadcasting, Inc. v. American Soc'y of Composers, Authors & Publishers*, 375 U.S. 39, 40, 84 S. Ct. 8, 9, 11 L. Ed. 2d 8, 9 (1963) (per curiam), modified, 375 U.S. 994, 84 S. Ct. 627, 11 L. Ed. 2d 467 (1964) (mem.); see 36 CONG. REC. 1679 (1903) (remarks of Senator Fairbanks).

10. Comment, *Direct Appeals in Antitrust Cases*, 81 HARV. L. REV. 1558 (1968).

11. The Expediting Act reflected the Roosevelt administration's efforts to formulate antitrust policies within the purview of national interests. Comment, *Direct Appeals in Antitrust Cases*, 81 HARV. L. REV. 1558, 1559 (1968).

12. The Expediting Act, 15 U.S.C. § 29 (1970).

13. 113 CONG. REC. 18819 (1967) (remarks of Senator Tydings).

14. The Expediting Act, 15 U.S.C. § 28 (1970).

15. Act of March 3, 1891, ch. 517, § 5, 26 Stat. 827, 827-28. The already existing six classes were: (1) prize causes, (2) capital or infamous crimes, (3) construction of the Constitution, (4) jurisdictional questions, (5) constitutionality of a law of the United States or the validity or construction of a treaty, and (6) constitutionality of a state law or constitution.

16. *Id.* § 2.

17. Comment, *Proposed Amendment to Expediting Act Would Eliminate Direct Appeal to Supreme Court*, 39 N.Y.U.L. REV. 319 (1964).

18. Act of March 3, 1891, ch. 517, § 7, 26 Stat. 828.

19. In the Act of April 14, 1906, ch. 1627, § 7, 34 Stat. 116, the Evarts Act of 1891 was amended so that appeals from interlocutory injunctive orders could be taken

tion 1292(a)(1) of the Interlocutory Appeals Act was finally developed and provides that the courts of appeals shall have jurisdiction over appeals from interlocutory injunctive orders of the federal district courts "except where a direct review may be had in the Supreme Court . . ."<sup>20</sup> Ten years later, through the enactment of section 1292(b), additional court of appeals jurisdiction was allowed in the review of noninjunctive interlocutory orders when the district judge

shall be of the opinion that such an order involves a controlling question of law as to which there is no substantial ground for differences of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation . . .<sup>21</sup>

On its face, the statutory language of section 1292(a)(1) and (b) fails to exclude intermediate appellate jurisdiction over interlocutory orders in government antitrust cases.<sup>22</sup> However, to determine the actual meaning of legislation, it is essential to investigate the judicial interpretation of such rules of law.

Although decided 30 years prior to the Interlocutory Appeals Act,<sup>23</sup> the landmark case in this area of federal appellate procedure is *United States v. California Cooperative Canneries*.<sup>24</sup> In that decision, the Supreme Court reviewed the Court of Appeals for the District of Columbia Circuit's reversal of an interlocutory order denying a petition to intervene in a suit arising under antitrust laws.<sup>25</sup> It was ruled that the court of appeals lacked jurisdiction to consider the merits of the district court's interlocutory order as Congress, through the Expediting Act, precluded the possibility of any interlocutory appeal in government civil antitrust cases.<sup>26</sup>

Since passage of the Interlocutory Appeals Act in 1948, not only has the

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directly to the courts of appeals "in any cause" regardless of whether or not the court of appeals could review the final order.

The Act of March 4, 1911, ch. 231, § 129, 36 Stat. 1134 further clarified the appellate procedure by declaring that the courts of appeals were to review interlocutory injunctive orders of the district courts.

By the Act of Feb. 13, 1925, ch. 229, § 238(1), 43 Stat. 936, a new dimension was formulated in federal appellate procedure. This section established that "[a] direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts . . . (1) Section 2 of the [Expediting] Act of February 11, 1903 . . . ." *Id.* at 938.

20. Interlocutory Appeals Act, 28 U.S.C. § 1292(a)(1) (1970).

21. Interlocutory Appeals Act, 28 U.S.C. § 1292(b) (1970).

22. *Tidewater Oil Co. v. United States*, — U.S. —, —, 93 S. Ct. 408, 412, 34 L. Ed. 2d 375, 382 (1972).

23. 9 Hous. L. Rev. 1099, 1100 (1972).

24. 279 U.S. 553, 49 S. Ct. 423, 73 L. Ed. 838 (1929).

25. *California Coop. Canneries v. United States*, 299 F. 908 (1924), *rev'd*, 279 U.S. 553, 49 S. Ct. 423, 73 L. Ed. 838 (1929).

26. *United States v. California Coop. Canneries*, 279 U.S. 553, 558, 49 S. Ct. 423, 425, 73 L. Ed. 838, 842 (1929); *Collins v. Miller*, 252 U.S. 364, 370, 40 S. Ct. 347, 349, 64 L. Ed. 616, 619 (1920).

value of the Expediting Act been seriously questioned<sup>27</sup> but conflicts have developed among the courts of appeals in determining appropriate antitrust appellate procedure.<sup>28</sup>

In the controversial decision<sup>29</sup> of *United States v. Ingersoll-Rand*,<sup>30</sup> the Court of Appeals for the Third Circuit ruled that it was the intent of Congress in passing section 1292(a)(1) to relieve the harsh effect of *California Co-operative Canneries* and allow intermediate appellate review of injunctive interlocutory orders.<sup>31</sup> A similar conclusion was reached in *Fisons Ltd. v. United States*<sup>32</sup> as the Court of Appeals for the Seventh Circuit held that section 1292(b) was in complete accord with the purpose of the Expediting Act. The court ruled that section 1292(b) established appellate review of noninjunctive interlocutory orders which may materially advance the ultimate termination of the litigation.<sup>33</sup>

Diametrically opposing these positions, the Court of Appeals for the First Circuit in *United States v. Cities Service Co.*<sup>34</sup> held that there had been no clear legislative intention to modify the Expediting Act.<sup>35</sup> Therefore, to allow review of interlocutory orders pursuant to section 1292(a)(1) would be to erode the lawmaking powers granted to Congress.<sup>36</sup> In almost identical fashion, the Court of Appeals for the Ninth Circuit in *United States v. FMC Corp.*,<sup>37</sup> ruled that the Expediting Act precluded the court from granting jurisdiction over interlocutory injunctive orders.<sup>38</sup>

The Supreme Court, in formulating its opinion in the instant case, hoped to remedy the discrepancies among the various appellate courts. To achieve this objective, the Court recognized two basic issues: First, whether a court of appeals in government civil antitrust litigation had jurisdiction over injunctive interlocutory orders pursuant to section 1292(a)(1); and second, whether section 1292(b) provided intermediate appellate jurisdiction over noninjunctive interlocutory orders.

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27. See, e.g., Comment, *Direct Appeals in Antitrust Cases*, 81 HARV. L. REV. 1558 (1968).

28. *Tidewater Oil Co. v. United States*, — U.S. —, 93 S. Ct. 408, 410, 34 L. Ed. 2d 375, 380 (1972).

29. It has been said that the court of appeals' ruling in *Ingersoll-Rand* was a vain farcical attempt to provide piece-meal judicial repeal of a well settled law. 77 HARV. L. REV. 566, 570 (1964).

30. 320 F.2d 509 (3d Cir. 1963).

31. *Id.* at 517.

32. 458 F.2d 1241 (7th Cir.), cert. denied, 405 U.S. 1041 (1972).

33. *Id.* at 1245.

34. 410 F.2d 662 (1st Cir. 1969).

35. *Id.* at 664.

36. *Id.* at 670.

37. 321 F.2d 534 (9th Cir. 1963).

38. *Id.* at 535; accord, *Farbenfabriken Bayer v. United States*, 72 CCH TRADE CASES 570, cert. denied, 393 U.S. 959 (1968).

Cognizant of the plausibility of conflicting constructions on the face of section 1292(a)(1), the Court held that there has been no congressional intention to establish jurisdiction of injunctive interlocutory orders in the courts of appeals<sup>39</sup> except where a final decree may be taken.<sup>40</sup> By reiterating almost 70 years of judicial precedent,<sup>41</sup> the Court reasoned that

whatever ambiguity may exist in the lengthy history of the original interlocutory appeals provision relative to the Expediting Act, it results primarily from the absence of any consideration of government civil antitrust cases in that history and thus emphasizes the extent to which appellate jurisdiction in such cases has long been viewed as a peculiarly distinct matter. . . .<sup>42</sup>

The Supreme Court had not previously considered the specific effect of section 1292(b) upon the Expediting Act. In resolving the issue, special emphasis was placed upon legislative history which indicated that section 1292(b) applied only to noninjunctive interlocutory orders "not otherwise appealable under section 1292(a)" in civil cases where the courts of appeals would have jurisdiction were the judgment final.<sup>43</sup> It is consistently held that "repeals by implication are not favored"<sup>44</sup> and that the language of a specific statute, such as the Expediting Act, controls over the language of a more general statute, such as the Interlocutory Appeals Act.<sup>45</sup>

From this point it became easy for the majority to hold that the courts of appeals could not be allowed jurisdiction over interlocutory orders pursuant to section 1292(b) when such jurisdiction was not granted by section 1292(a).<sup>46</sup> The appeal of right provided injunctive orders in non-Expediting Act cases is clearly superior to the restrictive appeals of noninjunctive orders.<sup>47</sup>

39. *Tidewater Oil Co. v. United States*, — U.S. —, 93 S. Ct. 408, 415, 34 L. Ed. 2d 375, 385 (1972).

40. *Interlocutory Appeals Act*, 28 U.S.C. § 1292(a) (1970).

41. *See generally* *Allen Calculators, Inc. v. National Cash Register Co.*, 322 U.S. 137, 142, 64 S. Ct. 905, 908, 88 L. Ed. 1188, 1192 (1944).

42. *Tidewater Oil Co. v. United States*, — U.S. —, —, 93 S. Ct. 408, 416, 34 L. Ed. 2d 375, 386 (1972). *See also* *Brown Shoe Co. v. United States*, 370 U.S. 294, 306, 82 S. Ct. 1502, 1513, 8 L. Ed. 2d 510, 524 (1962). Although the specific litigation involved a direct review to the Supreme Court, in dictum it was stated that all interlocutory orders are denied appellate review.

43. *Tidewater Oil Co. v. United States*, — U.S. —, —, 93 S. Ct. 408, 417, 34 L. Ed. 2d 375, 388 (1972).

44. *See, e.g.*, *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 437, 88 S. Ct. 2186, 2202, 20 L. Ed. 2d 1189, 1206 (1968).

45. *Clifford F. Mac Evoy Co. v. United States*, 322 U.S. 102, 107, 64 S. Ct. 890, 894, 88 L. Ed. 1163, 1167 (1944); *D. Ginsberg & Sons v. Popkin*, 285 U.S. 204, 208, 52 S. Ct. 322, 323, 76 L. Ed. 704, 708 (1932). It was petitioner's contention that if a conflict in the law exists then the subsequent statute takes precedence over the prior statute. *United States v. Wrightwood Dairy Co.*, 127 F.2d 907, 912 (7th Cir. 1942).

46. *Tidewater Oil Co. v. United States*, — U.S. —, —, 93 S. Ct. 408, 418, 34 L. Ed. 2d 375, 389 (1972).

47. *Id.* at —, 93 S. Ct. at 418, 34 L. Ed. 2d at 388-89.

The Court finally stated that an anomalous situation would develop from intermediate appellate review of certain interlocutory orders while the Supreme Court retained exclusive jurisdiction over an appeal from a final judgment.<sup>48</sup> The effect of such a procedure would make the courts of appeals an advisory board to the district courts on issues with which they would have no authority to rule with finality.<sup>49</sup> The judgment of the court of appeals on the interlocutory order could be reconsidered by the Supreme Court on appeal from the final decision of the district court. The result would be of questionable assistance to the district court and mean additional work for the court of appeals.<sup>50</sup> An interesting situation would develop if an extraordinary writ<sup>51</sup> were granted which would require the Supreme Court to review the interlocutory order and also the district court's final judgment. If the writ were denied, then the district court might be permitted "to proceed to final judgment on an erroneous basis."<sup>52</sup> Federal courts should be spared such a "potential waste of limited judicial resources . . ."<sup>53</sup>

In criticizing the majority's reasoning, the dissent declared that section 1292(b), in permitting certain interlocutory appeals in "all civil actions,"<sup>54</sup> was in complete harmony with the Expediting Act which applies to only final judgments.<sup>55</sup> Justices Stewart and Rehnquist argued that section 1292(b) reflected Congress' "contemporary view that interlocutory appeals . . . on controlling questions of law provide a desirable tool that should not be denied even in Expediting Act cases."<sup>56</sup> The dissent's arguments fail to withstand scrutiny; it seems completely unrealistic to assume that Congress in 1958 granted appellate review of certain noninjunctive interlocutory orders while retaining the jurisdictional denial of the frequently more significant injunctive orders.

Mr. Justice Douglas joined in the dissent's statutory interpretation of section 1292(b). However, in a separate opinion, he disagreed with both the majority and minority opinions that the Expediting Act overburdened the court.<sup>57</sup> Justice Douglas concluded that the consideration of important anti-

48. *Id.* at —, 93 S. Ct. at 421, 34 L. Ed. 2d at 391.

49. *Id.* at —, 93 S. Ct. at 421, 34 L. Ed. 2d at 392.

50. *Id.* at —, 93 S. Ct. at 421, 34 L. Ed. 2d at 392.

51. 28 U.S.C. § 1651(a) (1970).

52. *Tidewater Oil Co. v. United States*, — U.S. —, —, 93 S. Ct. 408, 420, 34 L. Ed. 2d 375, 391 (1972).

53. *Id.*

54. *Id.* at —, 93 S. Ct. at 423, 34 L. Ed. 2d at 395 (court's emphasis).

55. *Id.* at —, 93 S. Ct. at 423, 34 L. Ed. 2d at 395.

56. *Id.* at —, 93 S. Ct. at 426, 34 L. Ed. 2d at 398.

57. *Id.* at —, 93 S. Ct. at 421, 34 L. Ed. 2d at 392. In dictum, the majority opinion stated that the valuable input of court of appeals review is barred by outdated federal appellate procedure. Uniformity in antitrust laws can be effectively maintained by review in the courts of appeals and the right of certiorari to the Supreme Court. *Id.* at —, 93 S. Ct. at 419, 34 L. Ed. 2d at 390. The minority reasoned "that interlocutory appeals under § 1292(b) in government antitrust cases would serve

trust litigation affecting the nation's economy imposed no added load on a "vastly underworked" court.<sup>58</sup>

The Supreme Court's remedy in the instant case appears to have been only temporary. The Court of Appeals for the Second Circuit in its recent decision, *International Business Machines Corp. v. United States*,<sup>59</sup> reviewed a district court interlocutory order to produce certain allegedly privileged documents in antitrust litigation initiated by the Government. The court granted jurisdiction by concluding that *Tidewater* bars appellate review of interlocutory orders which are part of the main antitrust action but allows appeals from such orders that place "a litigant on the horns of a dilemma."<sup>60</sup> In granting the Expediting Act a practical rather than a technical application, the court explained that the Supreme Court would not preclude appellate review of an interlocutory order when there was a danger of denying justice.<sup>61</sup> It seems that the court of appeals has attempted a superficial distinction in the face of explicit Supreme Court language to the contrary.<sup>62</sup>

Apparently, irreconcilable contradictions of the interpretation of the Expediting Act are likely to continue until remedial legislation is enacted. Even the few proponents of the Expediting Act feel that some improvements are in order.<sup>63</sup> Criticism of the present appellate procedure was appropriately summarized by Mr. Justice Clark:

Whatever may have been the wisdom of the Expediting Act in providing direct appeals in antitrust cases at the time of its enactment in 1903, time has proven it unsatisfactory. . . . Direct appeals not only place a great burden on the Court but also deprive us of the valuable assistance of the Courts of Appeals.<sup>64</sup>

Since 1949, various attempts have been made to modify, amend or repeal provisions of the Expediting Act<sup>65</sup> but Congress has failed to reach a compromise. Of the numerous previously proposed amendments only the one presented on behalf of the American Bar Association in 1967 seems to ef-

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to lighten the burden on trial courts and litigants alike." *Id.* at —, 93 S. Ct. at 428, 34 L. Ed. 2d at 399-400.

58. *Id.* at —, 93 S. Ct. at 423, 34 L. Ed. 2d at 394.

59. — F.2d — (2d Cir. 1972).

60. *Id.* at —.

61. *Id.* at —.

62. See *Tidewater Oil Co. v. United States*, — U.S. —, —, 93 S. Ct. 408, 421, 34 L. Ed. 2d 375, 391-92 (1972); *United States v. California Coop. Canneries*, 279 U.S. 553, 558, 49 S. Ct. 423, 425, 73 L. Ed. 2d 838, 842 (1929).

63. Kirkpatrick, *Antitrust to the Supreme Court: The Expediting Act*, 37 GEO. WASH. L. REV. 746, 786 (1969); Solomon, *Repeal of the Expediting Act—A Negative View*, 1961 N.Y.S.B.A. ANTITRUST LAW SYMPOSIUM 94, 97.

64. *United States v. Singer Mfg. Co.*, 374 U.S. 174, 175 n.1, 83 S. Ct. 1773, 1774 n.1, 10 L. Ed. 2d 823, 827 n.1 (1963). See, e.g., Gesell, *A Much Needed Reform—Repeal the Expediting Act for Antitrust Cases*, 1961 N.Y.S.B.A. ANTITRUST LAW SYMPOSIUM 98, 99.

65. Comment, *The Antitrust Expediting Act—A Critical Reappraisal*, 63 MICH. L. REV. 1240, 1250 (1965).



fectively reduce the heavy caseload of the Supreme Court, expedite significant litigation affecting the nation's economy, and maintain uniformity in antitrust regulations. The proposal basically stated that the appellate courts would have jurisdiction over appeals from final judgments and interlocutory orders of the district courts in civil antitrust suits where the Government is complainant. Direct Supreme Court review would exist when the final judgment or interlocutory order stemmed from a three-judge district court decision or when the Attorney General or the district court certified that the final judgment or interlocutory order was appropriate "in the interests of justice."<sup>66</sup>

Elimination of Section 1 of the Expediting Act in the American Bar Association's proposal could prevent an unfair Government advantage. It seems unreasonable to furnish the Attorney General with the authority to empanel a three-judge district court to hear antitrust litigation from which an appeal of right is granted and also to provide him with authority to certify that a single-judge district court decision warrants immediate Supreme Court review. Section 1 of the Expediting Act has proven to be of dubious value since conception, as it has "raised grave questions of fairness."<sup>67</sup> Furthermore, the rarely employed three-judge district court,<sup>68</sup> as an integral part of this type of review, has been regarded with disfavor among the judiciary.<sup>69</sup> In fact, during one 20-year period, only a single antitrust case was tried before such a tribunal.<sup>70</sup>

The other proposed amendments appear to grant an even greater advantage to the Government,<sup>71</sup> seem virtually ineffective,<sup>72</sup> or provide an unnecc-

66. S. 2806, 90th Cong., 1st Sess. (1967). *But cf.* Comment, *Proposed Amendment to Expediting Act Would Eliminate Direct Appeal to Supreme Court*, 39 N.Y.U.L. REV. 319, 326 (1946). The ABA proposal was analogous to an earlier proposal in 1963 by Senator Eastland for the Department of Justice; the only difference being that S. 2806 provided 70 days within which the Attorney General or the district court could certify the case for direct Supreme Court review and the Justice Department proposal provided a 30-day period. S. 1892, 88th Cong., 1st Sess. (1963). The 1963 version of the ABA proposal was markedly different from the 1967 bill as it advocated complete repeal of § 1 of the Expediting Act. S. 1811, 88th Cong., 1st Sess. (1963).

67. Celler, *Case in Support of Application of the Expediting Act to Antitrust Suits*, 14 DE PAUL L. REV. 29, 49 (1964).

68. Compare 9 HOUS. L. REV. 1099, 1100 (1972) with Gesell, *A Much Needed Reform—Repeal the Expediting Act for Antitrust Cases*, 1961 N.Y.S.B.A. ANTITRUST LAW SYMPOSIUM 98, 99.

69. Solomon, *Repeal of the Expediting Act—A Negative View*, 1961 N.Y.S.B.A. ANTITRUST LAW SYMPOSIUM 94.

70. See *United States v. Crocker-Anglo Nat'l Bank*, 223 F. Supp. 849 (N.D. Cal. 1963).

71. Senator Tydings proposed a bill reflecting the view that § 1 of the Expediting Act should be retained and suggested that § 2 be repealed by allowing courts of appeals jurisdiction over *all* district court final judgments and interlocutory orders. S. 2809, 90th Cong., 1st Sess. (1967) (emphasis added).

72. The Harvard Legal Research Bureau proposed that appeals from final judg-