State, to make the U.S. Public Health Service responsible for safeguarding our people against the hazards of all types of radiation.

Mr. President, I desire to read into the record an editorial from the St. Louis (Mo.) Post-Dispatch, reprinted in the St. Louis Post-Dispatch and the St. Louis American for July 24, 1959, entitled "AEC Fails in Health Guard on Radiation." The editorial, which was published in both the St. Louis Post-Dispatch and the St. Louis American, reads as follows:

"The PRESIDING OFFICER. The time of the Senator from Texas has expired.

Mr. YARBOROUGH. Mr. President, I yield to me 2 more minutes.

Mr. LAUSCHE. Mr. President, I yield 2 more minutes to the Senator from Texas.

The PRESIDING OFFICER. The time of the Senator from Texas is recognized for 2 more minutes.

Mr. YARBOROUGH. The editorial reads:

The Senate resumed the consideration of the bill (S. 716) to authorize the Attorney General to compel the production of documentary evidence required in civil investigations for the enforcement of the antitrust laws, and for other purposes.

Mr. LAUSCHE. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time consumed be not charged to either side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. KEFAUVER. Mr. President, how much time remains on the bill?

The PRESIDING OFFICER. The proponents have 17 minutes remaining.

Mr. KEFAUVER. Mr. President, the proposed legislation in Senate bill 716 as favorably reported by the Judiciary Committee would enable the Attorney General to make the documentary material available for civil investigations for the enforcement of the antitrust laws in civil cases.

The bill gives authority to the Attorney General or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice to obtain documentary evidence needed in civil investigations for the enforcement of the antitrust laws in civil cases.

The bill also provides that such material obtained under a civil demand may be used before any court, grand jury, or antitrust agency in any proceeding involving a violation of the antitrust laws.

Such material obtained under a civil demand may be used before any court, grand jury, or antitrust agency in any proceeding involving an alleged antitrust violation. The bill also provides that nothing in the bill shall prevent the Attorney General from making available the material so produced for examination by the Committee on the Judiciary of each House of the Congress.

This provision in the bill does not require the Attorney General to make the documentary material available to the Judiciary Committees of the Congress, but prevents the bill from barring the Attorney General's making such material subject to examination by the Judiciary Committees of the Congress.
The Attorney General and the custodian are barred from subjecting the material to examination by any person other than an employee of the Department of Justice, or any other antitrust agency and the person from whom the documents were obtained. Upon the conclusion of any such anti-trust case or proceeding, the documents produced, not including copies made by the Department of Justice, which has not passed into the hands of a court, grand jury, or other antitrust agency, shall be returned by the custodian to the person producing the documents under the civil demand.

The bill provides for the enforcement of civil investigative demands by a petition filed by the Attorney General in the district court for an order of the court requiring compliance with the demand. Disobedience to any final order issued by the court may be treated as a contempt of the order. Any violation of the antitrust laws may be punishable by a fine of not more than $5,000, or by imprisonment for not more than 5 years, or both. Such an offense may be punished as a contempt of the order. Also, any violation of the antitrust laws by a civil investigative demand made pursuant to the bill would be punishable by a fine of not more than $5,000, or by imprisonment for not more than 5 years, or both. Such an offense may be punished as a contempt of the order.

The insufficiency of the methods of procedure under the present laws, hereinafter referred to, is recognized by the Attorney General's National Committee To Study the Antitrust Laws as reported by it on March 31, 1955. This report recommended the authorization of the Attorney General by the Congress to proceed through civil demands, as provided in S. 716, in order that the Department of Justice could proceed in an orderly way to enforce the antitrust laws in civil cases. The wording of the Antitrust General's report is set forth in the report of the committee now before the Senate.

In his Economic Reports to the Congress in 1956, 1957, 1958, and 1959, the President recommended that such authority be given to the Attorney General for the enforcement of civil antitrust cases. The Attorney General and the Assistant Attorney General in charge of the Antitrust Division believe that this authority would greatly strengthen the enforcement of the antitrust laws. They have testified vigorously, as has the Federal Trade Commission, in support of the legislation now proposed.

The Judicial Conference of the United States expressed its disfavor to any plaintiffs' pretending to bring charges in order to discover whether actual charges should be brought, and indicated its belief that this situation could be met without detriment to the enforcement of the antitrust laws in civil cases. It appears evident that this bill meets this objection of the Judicial Conference by providing a method through which the Department of Justice can obtain proper documentary evidence before filing a complaint in civil cases. It provides effective investigative machinery which will be adequate for effective antitrust enforcement in cases where civil proceedings should be brought rather than criminal indictments.

Mr. President, I believe that the bill gives ample power to the Attorney General and the Department of Justice to proceed in a civil case. The regular use of this method would entail delay in action, but the site of the Attorney General was subjecting the action by the Department to the ability of the Federal Trade Commission to make an early investigation. It would also disrupt the work of the Federal Trade Commission and divert its personnel and funds from the work of the Commission.

The fourth method which might be used by the Department under existing law would be an anti-trust suit based upon whatever information the Department had at the time and then undertake to obtain under the Federal Rules of Civil Procedure the information or documents which the Department should have had access to before a complaint is filed. This procedure is at best haphazard since the complaint originally filed may have been based upon facts which are not supported by the evidence when finally received, requiring amendments to the complaint and perhaps a dismissal of the complaint. In the latter instance, litigants would have been put to expense and trouble which should not have been caused by the filing of a complaint without sufficient knowledge of the facts.

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and for other purposes"), approved October
12), commonly known as the Clayton Act;
(4) the Federal Trade Commission Act
(15 U.S.C. 41 and the following);
(3) Section 3 of the Act entitled "An
Act to amend the Act entitled "An Act to
control monopolies", approved February 16,
"JUDICIAL PROCEEDINGS

"Sec. 5. (a) Whenever any person fails to comply with any civil investigative demand, or to serve upon him under section 3, the Attorney General, through such officers or attorneys as he may designate, may file, in the district court of the United States for any judicial district in which such person resides or transacts business and serve upon such person a petition for an order of such court compelling such person to answer such demand or serve upon such person a petition for an order of such court modifying or setting aside such demand, as the case may require. If service of such petition is made at any time before the return date specified in the demand, whichever period is shorter, in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of the custodian designated therein is situated, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. Such petition shall specify each document upon which the petitionee relies in seeking such relief, and may be based upon such demand to compel the provisions of this Act, or upon any constitutional right or privilege of such person. Service of such petition may be made at any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with such demand, or such person may file, in the district court of the United States for the judicial district within which the custodian is situated, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand by such custodian of any duty imposed upon him by this Act."

"(c) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matters so presented, and to enter such order or orders as may be required to carry into effect the provisions of this Act. Any final order so entered shall be subject to appeal pursuant to section 1253 of title 28 of the United States Code. Any disobedience of any final order entered under this section by any person shall be punished as a contempt thereof."

"CRIMINAL PENALTY

"Sec. 6. (a) Notwithstanding section 18 of the United States Code (relating to obstruction of justice) is amended by adding at the end thereof the following new section:

"J 1950. Obstruction of antitrust civil process

"Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part, by any person with any civil investigative demand made under the Antitrust Civil Process Act, willfully removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody or control of any person having dominion and control of any such demand served upon any person shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(b) The analysis to such chapter is amended by inserting at the end thereof the following new section:

"J 1950. Obstruction of antitrust civil process."

"SAVING PROVISION

"Sec. 7. Nothing in this Act shall impair the authority of the Attorney General, the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, or any antitrust investigative officer of the grand jury, to proceed before any district court of the United States against any person for any violation of any such Antitrust Civil Process Act, or any such grand jury, or (c) institute any proceeding for the enforcement of any order or process issued in connection with such power, to punish disobedience of any such order or process by any person."

Mr. DIRKSEN, Mr. President—

The PRESIDING OFFICER. How much time does the Senator from Illinois yield himself?

Mr. DIRKSEN. I yield myself 10 minutes.

Mr. President, there is no substantial difference of opinion between the opponents and proponents with respect to the bill now pending. I joined my distinguished co-sponser, the Senator from North Carolina (Mr. Erwin), an eminent jurist, as well as a very distinguished Senator, in rallying before any district court of the bill, and I believe that in granting the power it is proposed to vest in him it ought to be safeguarded in the interest of those against whom it might be exercised.

I think everybody knows what a drastic weapon a subpoena duci ex tempore is. Very often there have been abuses, and it has been necessary for those who have been the objects and the targets of subpoenas of that kind to go to court and to insist that the demand has been entirely unreasonable.

There are safeguards along that line in the pending bill, that in the Attorney General, instead of resorting to criminal action, can file a civil action and amplify the investigative demand in the antitrust field.

What disturbed me, and disturbed other members of the committee, was a provision which was submitted and incorporated in respect to the making of copies and submitting such copies to antitrust agencies and to committees of the Congress. I believe the additional safeguard which I would propose ought to be written into the bill. The language now contained in the bill reads:

While in the possession of the custodian—

Provided for under the terms of the bill—

no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General, member, or employee of the Department of Justice or any antitrust agency.

Then comes the proviso:

Provided, Nothing herein shall prevent the Attorney General from making available the material so produced for examination by the Committee on the Judiciary of each House of the Congress.

To be sure, that leaves it within the discretion of the Attorney General. But I am not unmindful of the fact that it is Congress which appropriates for the General's office. If we ever want to exercise any pressure on any agency of the Government, we simply ask a question and say: 'We want to know how much money you got out of the public till to run your agency.'

Second, the provisions to the position of the Attorneys General and Deputy Attorneys General are subject to confirmation by the Senate. I do not mean to imply for a moment that that itself constitutes a pressure; I simply say that those who come into the Gov-

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Mr. ERVIN. The amendment which I send to the desk and ask to have stated.

Mr. KEFAUVER. The bill in the form in which it came to the Congress without giving the person who has suffered an alleged violation of the antitrust laws whatever to contest the right of the Attorney General to turn over to the legislative branch of the Government an entirely different purpose unless the owner of the documents is given a day in court and an opportunity to be heard.

Mr. ERVIN. The bill in the form in which it came from the committee affords the owner of the documents no right to be heard.

In my judgment, the defect of the bill is that the person who has suffered an alleged violation of the antitrust laws is not entitled to notice and an opportunity to be heard.

Mr. LAUSCHE. I propose to offer an amendment at the appropriate time, the same amendment which was adopted by a 5 to 4 vote on December 16, 1958.

Before offering the amendment, however, and before the time on the bill runs out, I shall want to refer to the distinguished Senator from Tennessee that the bill provides sufficient protection insofar as it regulates the right of the Attorney General to obtain possession of documents for antitrust investigations in the Department of Justice.

But the bill contains no protection whatever for the owner of the documents in respect to the provision which permits the Attorney General, in the exercise of his discretion, to turn over to the Committees of the Judiciary, for some supposed legislative purpose, material which he has collected for an entirely different purpose, namely, for the purpose of investigating whether there should be a civil action brought to enforce these antitrust laws. It seems to me that an amendment such as that which will be proposed by the distinguished Senator from Illinois, is absolutely necessary for the protection of the owner of the documents which are taken into the possession of the Attorney General for an executive purpose, namely, to investigate whether an antitrust action of a civil nature should be brought. Such an action might be premature. It might be premature to be heard before the Attorney General turns the information over to the Committees on the Judiciary for an entirely different purpose, namely, a legislative purpose.

The amendment will provide opportunities for the owner of the documents to be heard before the Attorney General undertakes to obtain possession of the documents for the purpose of determining whether he should prosecute an antitrust suit of a civil nature.

But the bill provides that the Attorney General, after he has obtained the documents, if he believes the antitrust laws have been violated, might abuse that discovery and undertake to transfer the documents to other agencies of the Government.

Mr. LAUSCHE. The complaint of the Senator from North Carolina is that the bill establishes a procedure which is tantamount to a discovery action on the part of the Attorney General. It contains provisions well designed to protect the owner of the documents by giving him a day in court when the Attorney General undertakes to obtain possession of the documents for the purpose of determining whether he should prosecute an antitrust suit of a civil nature.

But the bill provides that the Attorney General shall be given an opportunity to be heard before the Attorney General turns the information over to the Committees on the Judiciary for an entirely different purpose, namely, a legislative purpose.

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Mr. LAUSCHE. The complaint of the Senator from North Carolina is that the Attorney General, after he has obtained the documents, might abuse that discovery and undertake to transfer the documents to other agencies of the Government.

Mr. ERVIN. The Senator is exactly correct. The Senator from Illinois [Mr. Douglas] will offer an amendment to take care of the objection which I make to the bill.

Mr. LAUSCHE. Am I correct in understanding that the Senator's complaint is that if the Attorney General obtains the data for one purpose, he should pursue that purpose and should not undertake to transfer the information he obtains either to the legislative branch or to any other administrative agency, without giving the injured person a chance to go into court and protect his rights?

Mr. LAUSCHE. That is correct. The Senator from North Carolina is that the bill provides sufficient protection insofar as it regulates the right of the Attorney General to obtain possession of documents for antitrust investigations in the Department of Justice.

But the bill contains no protection whatever for the owner of the documents in respect to the provision which permits the Attorney General, in the exercise of his discretion, to turn over to the Committees of the Judiciary, for some supposed legislative purpose, material which he has collected for an entirely different purpose, namely, for the purpose of investigating whether there should be a civil action brought to enforce these antitrust laws. It seems to me that an amendment such as that which will be proposed by the distinguished Senator from Illinois, is absolutely necessary for the protection of the owner of the documents which are taken into the possession of the Attorney General for an executive purpose, namely, to investigate whether an antitrust action of a civil nature should be brought. Such an action might be premature. It might be premature to be heard before the Attorney General turns the information over to the Committees on the Judiciary for an entirely different purpose, namely, a legislative purpose.

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The PRESIDING OFFICER. The amendment will be stated.

The Senator Vailes, on page 12, in line 24, is proposed to insert the following new sections:

(e) Within 20 days after any person receives notice pursuant to section 4(e) that material so produced by such person shall be made available for examination by any antitrust agency or committee of the Congress, such person may file in the district court of the United States for the judicial district within which the office of the custodian is situated, and serve upon such custodian, a petition for an order of such court that secret processes, developments, research, or any privileged material not be made available for examination, or be made available for examination on such terms and conditions as the court finds that justice requires to protect such person.

Mr. DIRKSEN. Mr. President, I yield 10 minutes to the distinguished junior Senator from Illinois (Mr. KEATING), who is a distinguished member of the Senate Judiciary Committee, and also is an outstanding lawyer in his own right.

The PRESIDING OFFICER. The time of the Senator from New York has expired.

Mr. KEATING. I thank the distinguished minority leader for his kind words.

Mr. President, I rise in support of the amendment.

First, I should like to make some observation about the bill itself. I believe that all members of the committee favor legislation along these general lines, to fill an important gap in the antitrust tools of the Department of Justice, by authorizing the use of this civil investigative demand in antitrust cases.

Legislation of this nature has been recommended by almost every group which has studied this subject—indicating that the Attorney General's National Committee to Study the Antitrust Laws, the Cabinet Committee on Small Business, the Judicial Conference of the United States. That is certainly impressive backing for any measure; and I am persuaded that the main purpose of this bill is sound.

The bill itself will protect business firms, as a matter of fact, in a number of important respects:

First, by vesting the Department of Justice with more adequate precomplaint investigatory processes, the bill should forestall the filing of suits where a complete investigation would demonstrate to be unwarranted. In such cases, the sanctions of prospective defendants will be spared.

A second way in which I feel the bill actually will be helpful to business firms which might be charged with violations of the antitrust laws is that the bill should, and would, I believe, remove a temptation which otherwise might exist—to invoke criminal grand-jury proceedings in what should be civil cases.

Overzealousness can sometimes cloud the judgment of even the most honorable enforcement officials. The availability of adequate civil process should keep them from using the court in that regard.

Third—and, of course, this is the most important basis for any change in our antitrust laws—this bill will help the Department of Justice obtain relief in situations in which relief is justified by the facts.

At this stage of our experience with the antitrust laws, I need not dwell on the importance to the business community and to the public of action to curb monopolists and others who would interfere with our system of free and fair competition.

I do not believe that any member of our committee was opposed to the basic purpose of this bill.

I believe that the amendments which were adopted during the consideration of the bill by the full committee greatly improved the measure reported by the subcommittee. But I am sympathetic to the additional amendment discussed by the distinguished Senator from Illinois (Mr. DIAMOND) and the distinguished Senator from North Carolina (Mr. EVANS) in their minority views on the bill. What they suggest does not seem to me to be open to any valid objection.

Complaint has been voiced by the American Bar Association and the Association of the Bar of the City of New York that the provisions of this bill as it came from the subcommittee, and I believe, even in its present form, which allows the Department of Justice to turn over subpened documents to congressional committees or any other agency.

The amendment which is suggested by the distinguished Senator from Illinois could well be called a day-in-court amendment. There is no justification, it seems to me, for jeopardizing secret processes, developments, research, or privileged matters which might be contained in the documents demanded by the Attorney General in the process of investigating antitrust cases.

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Notice to the business involved, whose documents these are, and an opportunity for a court review of any request for the withholding of such information would serve as an important safeguard against abuses.

This day-in-court amendment ought to go a very long way in meeting the objections to the bill which have been voiced by important and respected members of the community. I hope that the amendment will be accepted.

In committee, as the Senator from Illinois has pointed out, it was accepted once and, upon reconsideration, the vote went the other way. I think the amendment of the Senator from Illinois could well be called a day-in-court amendment. There is no justification, it seems to me, for jeopardizing secret processes, developments, research, or privileged matters which might be contained in the documents demanded by the Attorney General in the process of investigating antitrust cases.

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Notice to the business involved, whose documents these are, and an opportunity for a court review of any request for the withholding of such information would serve as an important safeguard against abuses.
the Attorney General from freely giving the Congress necessary information, even though the information might be 100 years old, and even though it might have no particular importance except for historical reasons. The Judiciary Committees of the Congress have jurisdiction of matters relating to the Department of Justice and the antitrust laws.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. KEFAUVER. I will yield later. Very well, I yield for a question.

Mr. ERVIN. The information which, under the bill, the Attorney General—

Mr. KEFAUVER. I cannot yield further.

Mr. ERVIN. I am merely asking a question. The Senator from Tennessee is talking about information 100 years old. The Attorney General is not authorized to inspect antitrust actions of persons who have been in the grave that long.

Mr. KEFAUVER. The Senator is wrong. The Attorney General has authority now to get information by subpoena, duces tecum, and grand jury investigation. With what we are asking is trying to get away from. The Attorney General has the right to get information from the Federal Trade Commission under section 6. There is a program of exchange of information in the antitrust field between the Federal Trade Commission and the Department of Justice.

Mr. KEFAUVER. The Dirksen amendment represents a step backwards. It would prohibit the Department of Justice from getting information to Congress, but it would also prohibit the Department of Justice from getting information from the Federal Trade Commission. It would end 45 years of a working arrangement between the Department of Justice and the Federal Trade Commission. It would not strengthen the position of the Congress in regard to investi- gations and it would not strengthen the position of the Federal Trade Commission, but instead the amendment would substantially hurt their positions.

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The language of the amendment would prohibit the spokesman for the Department from using those documents when he wanted to make a case to the Committee on the Judiciary.

It is almost unthinkable to me that an amendment so obviously considered by the Senate which would hurt the ability of the Department of Justice in its cooperation with the Federal Trade Commission and which would change, for the first time in the history of our Nation, a procedure which has been followed, by prohibiting the head of an agency from giving a document to a duly constituted committee of the Congress when he is willing to do so and when he thinks it proper to do so.

If we follow such a procedure, then we are cutting ourselves off from information from the Department of Agriculture, the Department of the Interior, and every other department. Soon we will be legislating in a vacuum.

As the law now reads, the Department of Justice can furnish information under circumstances which are felt to be reasonable. After all, we are dealing with intelligent people, in the first place; and, in the second place, the committees of the Congress are not going to ask for anything which is improper. If a committee asks for a document and if it is explained that the document might represent a trade secret, no committee of Congress of which I know will push the matter.

The wording of the bill under consideration simply leaves the law as it is at the present time. Senators will notice, on page 13, the language which states that nothing shall prevent the Attorney General from making available the material so produced for examination by the Committees on the Judiciary of each House of Congress. That is the law now.

The PRESIDING OFFICER. The time of the Senator from Tennessee has expired.

Mr. KEFAUVER. The Dirksen amendment represents a step backwards. It would for the first time prohibit us from getting papers and documents which now are made available to us.

Mr. CARROLL. Mr. President, will the Senator yield a couple of minutes more, so that I may ask some questions?

Mr. KEFAUVER. Mr. President, will the Senator yield a couple of minutes more, so that I may ask some questions?

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Mr. KEFAUVER. Mr. President, will the Senator yield a couple of minutes more, so that I may ask some questions?
Mr. KEFAUVER. That is correct. It is a right he should have. In the second place, it is not fair to subject people to grand jury investigations when the real purposes relate to civil actions.

Mr. CARROLL. Is the protection afforded those whose records are to be subpoenaed by a subpoena duces tecum in that they can go to the courts? Mr. KEFAUVER. There is adequate protection. Every protection there is now will continue to be available.

Mr. KEFAUVER. I do not think my understanding is correct regarding the real purpose of the Dirksen amendment? If this is the same amendment which we discussed in the Judiciary Committee, and if I correctly understand it, the Dirksen amendment in effect would establish a doctrine of executive privilege. I have not had an opportunity, I am sorry to say, to thoroughly study it. I really did not know the bill was going to be considered today. We should have had more time to discuss it, because this is a very important piece of proposed legislation.

As I understand the Dirksen amendment, in effect it would invoke the doctrine of executive privilege against the Congress itself. What the Senate Committee on the Judiciary wanted to do, when the Attorney General got the records he desired, was to permit him to let the Congress have access to those records. As I understand the Dirksen amendment, it would take away from the Congress some of its powers to investigate and some of its powers to know the facts.

Does the Senator from Tennessee care to comment upon that?

Mr. KEFAUVER. That is correct. The Dirksen amendment would change executive privilege. The reason for the Attorney General to turn over to Congress information which he can now turn over to it.

Mr. CARROLL. We now have the curious anomaly of the Congress itself seeking to curb its own investigating powers. All we seek to do is to implement or supplement or augment what the Attorney General of the United States, the chief enforcement officer in this field, wants to do in this instance, shall be curtailing them to a greater extent later.

Mr. KEFAUVER. The Senator is exactly correct. If we curtail our powers in this instance, shall be curtailing them to a greater extent later.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KEFAUVER. I yield myself 3 additional minutes.

Mr. CARROLL. Mr. President, will the Senator further yield?

Mr. KEFAUVER. I yield.

Mr. CARROLL. We worked long and hard on this proposed legislation. The Dirksen amendment was offered and rejected in the Senate Judiciary Committee. It seems to me that in the bill we tried to provide every safeguard.

We would have subpoenaed documents referred to the chairman of the Senate Judiciary Committee or the chairman of the House Antimonopoly Subcommittee. We have records and copies of records floating indiscriminately around the Senate. It seems to me that when we have a real job of investigation to do, such as the Judiciary Committee has done for the past 2 years, the investigative powers of Congress should not be curtailed. The Senate Judiciary Committee established the economic concept of administered prices to a greater extent than any other group in the country. We have investigated the gas and oil industry, the automotive industry, and the steel industry, headed by the Senator from Tennessee, and the steel industry in the first and second quarters of the year, we must be aware that had the industry paid some attention to the chairman of the Antimonopoly Subcommittee, the Nation would not be in the situation it is in today.

After the work which the Judiciary Committee has done on the bill, I think it would be a tragedy to accept the Dirksen amendment and whittle away some of the investigative powers of the Congress.

Mr. KEFAUVER. Mr. President, has my time on the amendment expired?

The PRESIDING OFFICER. The time of the Senator on the amendment has expired.

Mr. DIRKSEN. Mr. President, I yield myself 1 minute.

Let us solve a few things. In the first place, the President did not ask for this provision. The provision for the disclosure of certain things to Congress was not in the bill when it was introduced. Let us be fair.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. DIRKSEN. I yield.

Mr. KEFAUVER. It is not in the bill now. The pending bill is the present law. There is no requirement in the bill that the Attorney General turn over any papers over to Congress.

Mr. DIRKSEN. It could be done.

Mr. KEFAUVER. It could be done. Mr. DIRKSEN. Mr. President, I do not yield further.

The President has not asked for such a provision at any time. It is said that the Attorney General does not want this amendment. He says, "I have no particular reasons." Mr. President, Congress should not see the documents, but each time someone else has an opportunity to see the private records of a corporation, the more difficult it is to get such records in the future.

We are trying to help the Attorney General. I think the Attorney General's office drew this amendment, if the truth must be known.

Mr. KEFAUVER. I now yield 3 minutes to the Senator from North Carolina [Mr. ERVIN].

The PRESIDING OFFICER. The Senator has 2 minutes on the amendment and 9 minutes on the bill.

Mr. ERVIN. Mr. President, the able and distinguished Senator from Tennessee, said he was mistaken when I said that this bill does not authorize a search for 100-year-old documents. I will let the Senate decide whether I was wrong in my statement on that point.

The bill provides that the Attorney General may not obtain possession of any documents unless he has reason to believe that some person may be in possession, custody, or control of documentary material pertinent to an antitrust investigation.

There are two kinds of actions which can be brought under the antitrust laws. One is a suit against an organization. The Attorney General could not bring a suit for an injunction to restrain acts violative of the antitrust laws unless the acts were committed by an organization. He could only bring the suit. So it is ridiculous to say that the bill refers to documents 100 years old. It refers to documents which are current.

The other kind of suit that can be brought under the antitrust laws is a suit for damages by the injured party, or a suit for damages by the United States. Title 15, subsection 15(b) of the United States Code provides that the statute of limitations runs on such suit in 4 years. So the documents which are being sought cannot possibly be documents more than 4 years old. So the bill does not involve a search for historical documents.

The argument that this amendment would interfere with any arrangement between the Attorney General and the Federal Trade Commission is not valid, because it refers only to antitrust suits brought by the Attorney General, and does not refer to the Federal Trade Commission.

The reason I am fighting for this amendment is that I do not believe this body should try to get information in violation of either the letter or the spirit of the Constitution, or the Attorney General must have cause to obtain a document for investigative purposes; but under the bill as it is now worded, the Attorney General would not have to show cause, and the Judiciary Committees would not have to show cause before the Attorney General turned the documents over.

Neither the Judiciary Committee nor any other congressional committee is entitled to possession of a citizen's documents except for legislative purposes. The Supreme Court of the United States held in the Kilbourn case that congressional committees cannot obtain possession of a citizen's documents, unless they can show a legislative purpose entitling them to their possession.

The bill in its present form would permit the Attorney General to turn over to the congressional committees documents which he seizes, for investigative purposes, without the congressional committees' showing that it had any legislative purpose for having possession of such documents.
Mr. DIRKSEN. Mr. President, how does the time stand?

The PRESIDING OFFICER. All time on the amendment has expired. The Senator has 8 minutes remaining on the bill.

Mr. DIRKSEN. Mr. President, I conclude with this thought: There is nothing in my amendment which would in any way impair the subpena powers of the Congress, or any of its committees. They can subpena to their heart's content. The amendment provides only that if a committee is to obtain documents through the Attorney General, to be handed over to an antitrust agency or to a committee of Congress, the person whose documents are being taken may go before a court, file a petition, and say, "They are trying to obtain trade secrets. They are trying to injure our interests in the field of research, which we regard as of value."

Such information ought not be permitted to flow, by means of copies, into the files of committees or antitrust agencies. I prefer to leave it to the sound discretion of a judge to determine whether, willy-nilly, helter-skelter, all documents shall be obtained, and what copies may be made and circulated. It would be impossible to get the copies back from the committee or the agency. That is what is involved in the amendment. As I said before, it was drafted in the office of the Attorney General.

Mr. KEFAUVER. Mr. President, have I any time remaining?

The PRESIDING OFFICER. The Senator has 6 minutes remaining on the bill.

Mr. KEFAUVER. I yield myself 3 minutes on the bill.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 3 minutes on the bill.

Mr. KEFAUVER. As I pointed out to the distinguished Senator from New York, this amendment protects Congress from a danger that has never existed before.

This would be the first time in the history of Congress that the Congress itself would have tried to cut itself off from information it was entitled to have under certain circumstances.

The bill says that the Attorney General and the Federal Trade Commission shall not be required to produce documents which might have a bearing upon proposed legislation which the committee is considering.

If the pending amendment is adopted, the present law will be changed. So we would be denying access to the right to the Senate even to see some document which is not important, except as a matter of information about the Clayton Act. As I said before, the Attorney General is willing for us to see it.

Congress has been downgrade enough by these agencies. It is hard enough, in the face of executive privilege, to get information we ought to have, and why anyone should want Congress to tie its own hands I do not know. I would rather see this bill not passed at all than to see Congress take a step backward.

Let me point out also that it is stated in the report that former Representative Gwynne, a former Chairman of the Federal Trade Commission, protested bitterly the idea that the Federal Trade Commission would not be able to see the documents secured by the Department of Justice. He pointed out that for 45 years——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KEFAUVER. How many minutes do I have?

The PRESIDING OFFICER. The Senator has 3 minutes remaining on the bill.

Mr. KEFAUVER. I yield myself the 3 minutes remaining on the bill.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 3 minutes.

Mr. KEFAUVER. Mr. Gwynne pointed out that for 45 years, under sections 8 and 9 of the Federal Trade Commission Act, the Commission has had the power to get documents, just as the Attorney General will have here under the pending bill, and that upon the request of the Department of Justice some of these have been turned over to them, and they have had the power, under certain circumstances, to turn over the documents. But under the proposal this will all be changed, so far as the Department of Justice is concerned. The Department of Justice would have power to get papers from the Federal Trade Commission, but under the Dirksen amendment the Federal Trade Commission could not get anything from the Department of Justice.

I call attention to the fact that under the Clayton Act there is a dual responsibility between the Federal Trade Commission and the Department of Justice for the enforcement of the law. Practically everything that violates the Sherman Act violates the Clayton Act or the Federal Trade Commission Act, and yet the Federal Trade Commission is not to be denied documents secured by the Department of Justice, even though the Department of Justice can deny documents secured by the Federal Trade Commission.

Mr. President, if the Senator from Illinois and the distinguished Senator from New York were in the Committee on the Judiciary at the critical time, and were the Judiciary Committee to give the Committee on the Judiciary Committee access to some documents which might have a bearing upon proposed legislation which the committee is considering, if the pending amendment is adopted, the present law will be changed. So we would be denying access to the right to the Senate even to see some document which is not important, except as a matter of information about the Clayton Act. As I said before, the Attorney General is willing for us to see it.

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CIVIL INVESTIGATIVE DEMAND

SEC. 3. (a) Whenever the Attorney General in charge of the Antitrust Division of the Department of Justice, or any attorney or investigator employed by the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material pertinent to any antitrust investigation, he may issue a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall—

(1) state the nature of the conduct constituting the alleged antitrust violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and produced;

(4) identify the person to whom such evidence is to be delivered; and

(5) specify a place at which such delivery is to be made.

(c) No such demand shall—

(1) contain any requirement which would be held to be unreasonable if contained in a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged antitrust violation;

(2) require the production of any documentary material which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged antitrust violation.

(d) Any such demand may be served by any antitrust investigator, or by any United States district or civil authority, in any place within the territorial jurisdiction of any court of the United States.

(e) If any person, after receipt of any such demand or of any petition filed under section 5 of this Act may be made upon a partnership, corporation, or other legal entity by—

(1) delivering a duly executed copy thereof to any partner, executive officer, agent, or other person who is, or may be, in the possession, custody, or control of the person to whom the demand or petition is directed, or to any agent thereof authorized by appointment or by law to receive service of process.
process on behalf of such partnership, correspondence, or entity, to be served; or
(b) delivering a duly executed copy thereof to the principal office or place of business of such partnership, correspondence, or entity, to be served; or
(c) mailing such copy by United States mails, by registered or certified mail, or by any other means authorized by law, to the custodian, and such additional copies of such documentary material as may be required for official use by any individual who is entitled, under law, to examine such material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representative of such person.

SEC. 4. (a) The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice shall designate an antitrust investigator to serve as antitrust document custodian, and such additional antitrust investigators as he shall determine to be necessary to serve as such or to be deputies to such officer. The analysis to such chapter is amended by inserting at the end thereof the following new section:

"J 1509. Obstruction of antitrust civil process"

"Whoever, with intent to avoid, evade, prevent, or obstruct compliance with any such demand, in whole or in part, by any person with any civil investigatory demand made under the Antitrust Civil Process Act, willfully obstructs or resists such demand or any failure of such demand to comply with any such demand, shall be punished by a fine of not more than $10,000 or imprisonment for not more than one year, or both."

(b) The analysis to such chapter is amended by inserting at the end thereof the following new item:

"SAVING PROVISION
SEC. 7. Nothing contained in this Act shall impair the authority of the Attorney General, the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, or any antitrust investigator to (a) lay before any grand jury impaneled before any district court of the United States any evidence concerning any alleged antitrust violation, and (b) invoke the power of any such court to compel the production of, and to enforce the testimony regarding, any such evidence."

Mr. DIRksen. Mr. President, I move that the motion to lay on the table the motion to reconsider the vote by which the bill was passed be reconsidered.

Mr. Kuchel. Mr. President, I move that the vote by which the bill was passed be reconsidered.

The motion to lay on the table was agreed to.