Union for the consideration of the bill (H.R. 10079) to amend section 104 of the Immigration and Nationality Act, and for other purposes. After general debate, which shall be confined to the bill, and shall continue for not less than two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the House shall be equally divided under the five-minute rule. At the conclusion of the consideration of the bill, the Committee on the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. COLMER. Mr. Speaker, House Resolution 559 provides for the consideration of H.R. 10079, a bill to amend section 104 of the Immigration and Nationality Act, and for other purposes. The resolution provides for an open rule with 2 hours of general debate.

The purpose of H.R. 10079 is to abolish the Bureau of Security and Consular Affairs of the Department of State as originally established, and to divide its personnel into two functions under a specialized office headed by an officer with the rank of Assistant Secretary of State, and second, an administrative unit charged with security functions such as investigation and supervision of personnel of the Department of State pertaining to suitability and loyalty to the United States, security of the Department of State and its establishments abroad, and physical security. The specialized office headed by an Assistant Secretary of State would have the responsibility for: First, the administration of passport laws; second, the determination of nationality of a person outside of the United States; third, the administration of the immigration laws relating to issuance of visas; fourth, the participation of the United States in international migration organizations and the effectuation of their purposes; and fifth, the establishment and staffing of consular affairs as may be assigned to the office by the Secretary of State. The bill also would reenact three provisions of the Mutual Security Act authorizing the operation of the Inter-American Commission on European Migration, commonly known as ICEM. The second will provide for the continuation of our participation in the United Nations High Commission for Refugees. The third is a small program which the United States has been engaged in which has to do with assistance to a select category of refugees behind the Iron Curtain.

Mr. SMITH of California. I yield to the gentleman from Mississippi, this is an open rule providing for the consideration of H.R. 10079, with 1 hour of general debate.

The contents of title 2 of the bill were last year, I believe, on the Consent Calendar. The other body added a number of amendments which were unacceptable to the House, and this provision has never been resolved. This is a further effort to try to pass into legislation a bill, in my opinion, has a great deal of merit, but I think that this is an unwarranted delegation of power, an untrammeled delegation of power to the President. I hope this provision in the bill can be eliminated or amended in some way. Mr. SMITH of California. I thank the gentleman.

Mr. COLMER. Mr. Speaker, I move the previous question on the resolution. The previous question was ordered. The SPEAKER. The question is on the resolution. The resolution was agreed to. A motion to reconsider was laid on the table.

ANTITRUST CIVIL PROCESS ACT

Mr. CELLER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 167), 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.

The motion was agreed to. Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill S. 167, with Mr. Parkinson in the chair.

The Clerk reads the title of the bill. By unanimous consent, the first reading of the bill was dispensed with.

Mr. CELLER. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, this bill gives authorization to the Attorney General to compel the production of documentary evidence required in civil investigations for the enforcement of antitrust laws. It is not a bill to bring about any criminal proceedings. It is civil in nature.

To enforce the antitrust laws the Department of Justice must be able to make adequate investigation to determine the facts. The bill, I may say, relates only to corporations, partnerships, and businesses. It does not relate to persons as such.

The bill has the approval of the American Bar Association. That association has been very helpful to the members of the Committee on the Judiciary in suggesting amendments which we have, in the main, accepted.

The bill has passed the Senate on two different occasions. It passed the Senate in the 86th Congress; it passed the Senate in this Congress. It was reemended by the previous administration and it is recommended by the present administration. The bill was reemended by the Attorney General's National Committee To Study the Antitrust Laws.

There are four ways now existent whereby the Department of Justice can get information, documentary informa-
tion, letters, writing, data, upon which they may base an antitrust suit.

First, they can ask for cooperation from the particular company involved.

Second, if the department finds that the case is unworkable, it may file a suit to compel the divulgence of the required information.

Third, they can ask the Federal Trade Commission to investigate.

Fourth, the Federal Trade Commission has the very same powers that the Department of Justice has not worked out well at all. Business entities are loathe to disclose documents, data, letters, and papers which a department would wish to have. It is only natural that they would fail to cooperate.

This cooperation from a business firm suspected of an antitrust violation, as I said, is not usually forthcoming. No one wishes to supply evidence that can subsequently be used against them. Nobody wants to dig their own grave, so that the Department of Justice has not had cooperation in that regard and commonly use properly and exclusively the first method.

The second method, as I have indicated, is to impanel a grand jury. This is a practice that has been used over the years and has not been availed of. I do not think it should be availed of because it would mean that the Department of Justice would be taking away from the Federal Trade Commission men which they need and for whom appropriate demands have been made to the Federal Trade Commission.

The Department of Justice has no right to seek the services of any personnel whose expenses are involved in the appropriations for the Federal Trade Commission.

Mr. Chairman, the fourth method is to file a civil suit without the certainty that sufficient evidence exists and the Department would resort to a compulsory process under the Federal rules of civil practice. Again, this is unfair.

There is a fourth method by which the Department of Justice would wish to have. It is the practice that has been used over the years that practice—that is, impaneling a grand jury to seek facts upon which to base a civil suit—an abuse of judicial process. And I refer to the case in which they delivered that opinion, U.S. v. Procter & Gamble, 356 U.S. 677, a case decided in 1958.

I think it is unfair also to drag a company official before a grand jury. There are criminal implications involved in a grand jury proceeding, and it is to the disadvantage of the corporation or the company upon which the demand is made.
The bill provides that the company under investigation merely make records available for inspection and copying by the Department of Justice at the company’s offices. Unlike a grand jury subpoea which compels the company to turn over only such documents as the Department of Justice may wish to inspect and copy, the Department of Justice must satisfy the district court of its need for the original.

The bill provides that the Attorney General is to designate an antitrust custodian whom the company can hold responsible for the safekeeping and return of any original documents it may be required to furnish. This is to insure that there will be no interference with the company’s right to take steps to prevent access to the records of any individual to produce documents which are the subject of the demand.

Mr. BATTIN. Mr. Chairman, will the gentleman yield?

Mr. McCULLOCH. Mr. Chairman, the bill, section 4, the antitrust provision, provides that no premerger notification is unnecessary. Mr. BATTIN. I think we understand each other on this, Mr. Chairman, as we discussed it on the way over to the Chamber, but as a matter of legislative history, the committee counsel, document custodian, on page 8, a question arises as to a demand being made upon an individual to produce documents which could of necessity or could by virtue of their nature raise the question of a person being required by law to give testimony against himself which could result in a criminal proceeding. Would you, for the sake of the record, explain under the bill what your understanding is as to how this might be avoided?

Mr. McCULLOCH. This bill is limited to the production of documents, papers, and letters. But beyond that, the bill provides for the safeguards that would foreclose that possibility which you mention. Section 3(e)(2) provides that no demand shall require the production of any documentary evidence which would be privileged from disclosure. No man need give testimony that would incriminate himself. So if the civil investigator or any agent who happened to be a member of a partnership or an officer of a corporation, he could go to the court and say that that information might tend to incriminate him, therefore, in a proper case he would be free under the court order from divulging the information or even submitting the document if it is privileged. In other words, we provide for that kind of situation.

Mr. BATTIN. That is my understanding of the bill and I thank the gentleman.

Mr. McCULLOCH. Mr. Chairman, I yield myself such time as I may consume. (Mr. McCULLOCH asked and was given permission to revise and extend his remarks.)

Mr. McCULLOCH. Mr. Chairman, effective and fair enforcement of the antitrust laws requires disclosure of adequate information to the Attorney General. The Attorney General must have the means to uncover suspected evidence of civil antitrust violations. To be fair, the means must not unreasonably burden or penalize the business concerns being investigated.

As of this date, the Attorney General has four means of obtaining evidence of such suspected violations. He may request voluntary disclosure; he may impanel a grand jury; he may seek the assistance of the Federal Trade Commission; or he may file an action on limited information with the hope of building the record through discovery procedures. These means have been discussed in some detail by the gentleman who preceded me.

Mr. McCULLOCH. As of this date, the Attorney General has four means of obtaining evidence of such suspected violations. He may request voluntary disclosure; he may impanel a grand jury; he may seek the assistance of the Federal Trade Commission; or he may file an action on limited information with the hope of building the record through discovery procedures. These means have been discussed in some detail by the gentleman who preceded me.

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more convenient to the concern if agreed to by the Department of Justice and the concerned corporation or so orders upon petition of the concern. This means that documents located at branch or subsidiary offices need not be transported to the home office.

Seventh, the bill excludes the receipt of any document which would be held unreasonable under a grand jury subpoena, duces tecum, or upon any constitutional or other legal right or privilege.

Eighth, the Attorney General is prohibited from turning over to any other governmental or private authority documents received under a civil demand. In both civil and criminal cases the courts have required the documents requested to be described in enough detail to facilitate compliance. Under the provisions of this bill the demand having been made to the corporation, they must then produce the document to be delivered to an individual or authorized by the Assistant Attorney General or the Assistant Attorney General for the purpose of having the same copied. After it has been copied, it must then be returned to the corporation, association, or partnership.

Mr. Chairman, this written demand must be issued in exact form and must be delivered to the main office of a corporation. If the document is there, it may be produced and copies taken there at that point and returned to the corporation, association or partnership at that point.

Mr. SMITH of Virginia. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Colorado. I yield to the gentleman from Virginia.

Mr. SMITH of Virginia. As the gentleman from Colorado knows, and he appeared before the Rules Committee in behalf of the rule for this bill, I had some misgivings about it and thought there were some ambiguities in it. I was particularly disturbed about the possibility that the Department of Justice might peruse legal papers away and that the papers might have to be delivered at inconvenient spots for inspection.

Mr. Chairman, I have discussed the matter with the gentleman from Colorado (Mr. Rogers) and the gentleman very kindly has written me a letter. I think the statements made here this morning have shown the legislative intent. I just wanted to say to the gentleman that it is a relief of my mind from this apprehension about the bill. I am entirely willing to go along with it in its present form.

Mr. ROGERS of Colorado. I thank the gentleman, because he was kind enough to discuss the matter with me prior to the time it was taken up with the Rules Committee, and after. The gentleman from Virginia (Mr. Smith) wanted to know definitely that no one would be permitted to harass corporations or associations by making them produce documents throughout the United States. I assured the gentleman from Virginia that provision is given that no such feature of the matter but there must be a reproduction of the document and it.
Mr. WHITENER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Virginia. I am sure the gentleman is well aware of the fact that the courts have uniformly held that once one has waived his constitutional rights, all this legislation says is that as to a corporation or association, or partnership.

Mr. ROGERS of Colorado. The gentleman is correct.

Mr. WHITENER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Virginia. It is my understanding and it is now perfectly clear that the Department of Justice cannot take any ambiguity in the civil demands that are go to court and say, "This is privileged use of information which the Government is not entitled to"

Mr. ROGERS of Colorado. Of course, the individual may go to the grand jury and get the necessary books and documents without having to resort to this procedure.

Mr. WHITENER. But if the Attorney General makes certain that the person answers the demand, and the demand contains with the matter and the Government procurses under this civil demand in a criminal case?

Mr. ROGERS of Colorado. As the gentleman recognizes and knows, the demand to be made here is against a corporation, association, or partnership. Now if there is anything which is privileged and contained in the matter and which the Government is not entitled to receive, they have ample protection to go to court and say, "This is privileged and hence it will never be delivered," if they can prove that it is a privileged matter.

Mr. WHITENER. The gentleman is overlooking the fact that under this proposed legislation, the Governor simply to get these documents or papers refuses to deliver them, then this bill provides a method by which the Attorney General can require a corporation to give him those documents over.

Mr. ROGERS of Colorado. Ordinarily that would be correct, but if he has evidence that there has been a crime committed or that he is going to proceed in a prosecution, all has to do is go to the grand jury and get the necessary books and documents without having to resort to this procedure.

Mr. WHITENER. But if the Attorney General should have as to whether or not he has sufficient evidence to proceed civilly, to be sure he would not have any information of a criminal violation—assuming a civil inquiry where the Attorney General is contemplating bringing a civil action if this voyage of discovery reveals a basis for it, now the picture presents itself as one where criminal violation is at issue here.

The gentleman has mentioned something about constitutional immunity. I am sure the gentleman is well aware of the fact that courts have uniformly held that once one has waived a constitutional privilege it was waived permanently. What protection is there in here for this firm or individual who has unintentionally made this waiver?

Mr. ROGERS of Colorado. The question of the waiver of self-incrimination is not contemplated here. He cannot nor can the Attorney General say that the thousands of lawyers throughout the United States anticipate whether a man through some inadverdence has waived his constitutional rights. All this legislation says is that as to a corporation or association or a partnership, if they have certain papers which the Attorney General simply to get them, hence the argument extended in that direction just does not apply.

Mr. WHITENER. The gentleman is a distinguished lawyer with years of practical experience, and I will ask him, based on that practical experience and his vast knowledge of the law, if he would not say here today that it is a very unusual if not unprecedented discovery proceedings available to a litigant or a person or a government where no proceeding is even pending; in other words, a prelitigation discovery arrangement is not contemplated. We cannot nor can the Attorney General nor can all proceedings available to a litigant.

Mr. ROGERS of Colorado. May I say to the gentleman from North Carolina that he is familiar with the rules of civil procedure and the rules that govern when a civil suit is filed. Many times we may file a lawsuit; we may not have all the facts and the evidence necessary to proceed to final conclusion. Hence in this prelitigation procedure, make a demand on the defendant and get the evidence demanded in that lawsuit.

The object of this legislation is to make it unnecessary for the Attorney General to file a frivolous lawsuit. If he can make an investigation and make the demand, and he receives the documents, it is not necessary to file a lawsuit and he does not have to file a lawsuit. If the evidence does not warrant suit. That is the only objective. If he wanted to go ahead and file a lawsuit, he could do so and then start a fishing expedition in the course on record where the Government and everybody knows that he is trying to prosecute somebody when he may not have the evidence.

Mr. MULDER. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Colorado. I yield to the gentleman from New York.

Mr. SMITH of Virginia. I am pointing out to the gentleman that Mr. Multer is with the Department of Justice and he answered the gentleman from North Carolina.

Mr. ROGERS of Colorado. That point is right and further, if the individual is dissatisfied with the determination, he can make it unnecessary for the Attorney General simply to get the refusal on the part of a company under the criminal laws for untruth and further, if the individual is dissatisfied with the determination, he can make it unnecessary for the Attorney General to file a frivolous lawsuit. If he can make an investigation and make the demand, and he receives the documents, it is not necessary to file a lawsuit and he does not have to file a lawsuit. If the evidence does not warrant suit. That is the only objective. If he wanted to go ahead and file a lawsuit, he could do so and then start a fishing expedition in the course on record where the Government and everybody knows that he is trying to prosecute somebody when he may not have the evidence.

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Mr. SMITH of Virginia. The CHAIRMAN. The time of the gentleman has expired.
Mr. ROGERS of Texas. The point is this, however, if the gentleman will permit me, if the Attorney General makes the request and the person of whom the request is made refuses to deliver the documents, the paper and say, "I just simply will not comply with the request"—Is it the intention of the Committee on the Judiciary in reporting this bill overwhelmingly to say that the Attorney General then must seek the petition in the Federal courts or he has an alternative of simply saying, "If you do not deliver them, I will proceed against you under the criminal law?"

Mr. ROGERS of Colorado. It is our intention, first of all, he should then proceed in court. That is No. 1. Then, in order for a person to be guilty of a crime for failure to deliver—let me read you the words:

Whoever with intent to avoid, evade, prevent or obstruct compliance in whole or in part in any such investigation, or to hinder or delay such investigation, violates any of the provisions of this Act shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Mr. ROGERS of Texas. I understand that, but the difference there is that you say, "Whoever is guilty of a crime." You do not have to be guilty of a crime to be charged with a crime. The point I am talking about is, Does this bill provide a vehicle by which the Attorney General could proceed under the criminal law?

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. ROGERS of Colorado. I yield to the gentleman from New York.

Mr. CELLER. I will say to the gentleman that I am fully aware of the situation, that if a person upon whom the demand is made persists in his refusal, the Attorney General goes to court and asks the court for a sequestration warrant compelling him to give the documents. If he still refuses, then he is subject to contempt.

Mr. ROGERS of Texas. Yes, but the point is, Is it the intention under this bill that in order for the Attorney General to proceed in court solely for the purpose of obtaining evidence, with no intention of bringing a criminal indictment, the use of that procedure to produce documents would be invalid. The problem is, however, that it is almost impossible to prove that the Government never originally intended to bring a criminal case.

Mr. CELLER. The gentleman is absolutely right.

Mr. ROGERS of Texas. I thank my colleague. I wanted the record to show that.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCULLOCH. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. LINDSAY].

Mr. LINDSAY asked and was given permission to revise and extend his remarks.

Mr. LINDSAY. Mr. Chairman, in 1955 the then Attorney General put together a committee known as the Attorney General's Committee to study the antitrust laws. There were represented on that committee members of the bar from leading law firms and judges in the field of antitrust law, men who had spent their lives, in that field. One of the recommendations made by that committee was the proposal contained in this bill.

Thereafter the Attorney General, Mr. Brownell, drafted the bill and submitted it to the Congress. It was supported by the American Bar Association and has been supported by other bar associations. I would like to mention especially the Association of the Bar of the city of New York, which traditionally has taken a leadership position in matters of judicial policy and the bill was also endorsed by the present Attorney General.

One of the areas that troubled the Attorney General's Committee under the Antitrust Laws and that troubled all lawyers has been the practice of the Antitrust Division of the Department of Justice to convene grand juries in order to discover whether the Government has sufficient evidence to bring a case, whether it be a civil case or a criminal case. The Government was driven to this device because of the absence of some kind of discovery procedure. This has meant that in some instances it has been difficult to bring a case that should have been brought in the public interest or, for worse, a frivolous case is begun which a proper investigation would have shown to be frivolous in advance. It became the practice of the Federal Government, therefore, to convene a grand jury with the understanding that it could then get access to documentary material. In other words, the Government has been forced to bring indictments when civil route was preferable.

As we know, any time an indictment is handed down there is usually a companion civil case. The Supreme Court has indicated that if it could be shown that a grand jury was convened solely for the purpose of obtaining evidence, with no intention of bringing a criminal indictment, the use of that procedure to produce documents would be invalid. The problem is, however, that it is almost impossible to prove that the Government never originally intended to bring a criminal case.

It is commendable that the judicial practice to allow a greater degree of discovery in civil disputes. It seems highly desirable also to put an end to the practice of bringing together grand juries, which is a device that is not necessary in order to discover whether a business operation has invaded the antitrust field.

The civil investigative demand, then, has been the result of careful legal thinking in the United States for some years. Having made the proposal, however, the problem then became to surround it with sufficient safeguards so that the civil investigative demand would be entitled to the same safeguards that documents produced before a grand jury were entitled to. In this regard some grand jury in preindictment stages are sacrosanct. You cannot look at them, no committee of Congress can look at them, no outsider can look at them, no competitor can look at them.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. McCULLOCH. Mr. Chairman, I yield the gentleman 5 additional minutes.

Mr. LINDSAY. I thank the gentleman.

So the problem then was to surround this procedure with the same safeguards with which grand jury procedures are surrounded. No competitor may examine such documents, no outsider may examine them; in fact, in the grand jury process, the only persons who can see produced documentary material are the members of the grand jury, and the Department of Justice.

In this bill we have watered off efforts to invade the confidential nature of this production. We have not permitted committees of Congress to have access to such documents. Based on my amendment in the committee, the committee removed "other antitrust agencies" from the bill's coverage. As it now reads, no agency other than the Department of Justice may have access to documents produced under this procedure.

It should be eminently clear to everyone that no documents will be available to any competitor of any organization that is under scrutiny. That point must be made, because the argument has been made in the past that this is an unfair device. As I mentioned a moment ago, when the Government has been forced to use the criminal process in order to obtain access to documents, the tendency has been, I fear too often, to bring an indictment and use the criminal process when probably civil processes would have served the public interest just as well.

For these reasons, Mr. Chairman, I support the bill. The committee has exercised care and wisdom in seeing to it that it has been improved in order to obtain access to documents, the tendency has been, I fear too often, to bring an indictment and use the criminal process when probably civil processes would have served the public interest just as well.

Mr. CELLER. Mr. Chairman, I yield such time as he may desire to the gentleman from Texas [Mr. PATMAN].

Mr. PATMAN asked and was given permission to revise and extend his remarks.

Mr. PATMAN. Mr. Chairman, S. 187 entitled the Antitrust Civil Process Act, is an important bill which would greatly implement the efficacy of antitrust enforcement. This is a nonpartisan bill, one sponsored by both the preceding Republican administration and the current Democratic administration. The only partisanship involved is that the bill is sponsored by the people who are partial to effective antitrust enforcement.

The NEED FOR S. 187

It is a curious fact that the Department of Justice has no specific powers to collect data and information prior to filing an antitrust case except by calling a grand jury. Yet the antitrust laws contain civil as well as crimi-
nal provisions, and a great proportion of the actions filed are civil in character.

This means that, as a practical matter, to collect information regarding a possible violation of the antitrust laws, the Antitrust Division must rely upon voluntary compliance, or go to a grand jury.

**GRAND JURY POWERS SHOULD BE LIMITED TO CRIMINAL ACTIONS**

It is widely recognized that grand jury authority should be limited to investigations likely to result in criminal indictments. As the report accompanying S. 167 points out, it is an abuse of process for the government to proceed through the grand jury where there is no intention to bring a criminal suit. Resort to the grand jury is a drastic method of investigation, in which neither the prospective defendant nor his attorneys can know what evidence has been laid before the grand jury. The American Bar Association has strongly opposed the use of grand jury proceedings in behalf of prospective defendants.

Thus, S. 167, in providing the Department of Justice with a variety of actual and implied penalties to obtain information upon which to base a civil proceeding, is a most progressive measure.

It is strange indeed, that the Department of Justice, the primary enforcer of the antitrust laws, alone lacks authority to procure documents for investigatory purposes.

The Antitrust Civil Process Act contains many important safeguards, and could in no way be used for fishing expeditions. This legislation requires that the Antitrust Division be more informed as to the facts in any given case. It also requires that the Division file a complaint in order to get facts to determine whether a violation of the antitrust laws has occurred.

**S. 167 CONTAINS AMPLE SAFEGUARDS**

The Antitrust Civil Process Act contains many important safeguards, and could in no way be used for fishing expeditions.

This means that the Antitrust Division is more informed as to the facts in any given case. It also requires that the Division file a complaint in order to get facts to determine whether a violation of the antitrust laws has occurred.

The Department of Justice is not opposed to the Antitrust Civil Process Act, but suggests that the Act be limited to civil cases. This is a most reasonable suggestion, and I have accordingly introduced an amendment to that effect.

The Antitrust Civil Process Act is important because...
dependent regulatory Commission, and the Justice Department, a Department of the Government, not a regulatory commission, and of the Government in the executive branch of the Government, not a regulatory commission.

And, I raised the question that if they both were investigating the same company, wouldn't the evidence, would not they be in competition with each other, and might it not be more orderly for the Justice Department to exercise the authority contained in the criminal Title of title 18—(to prohibit transportation or commerce in interstate and foreign commerce).

Then the witnesses asserted that they have liaison procedures which would avoid any such duplication and conflict and interference.

But both the Federal Trade Commission General Counsel and the head for the Antitrust Division of the Justice Department indicated that existing procedures and authority have never been tried. It seems to me it would have been in order for them to have demonstrated first that existing law and powers are adequate. Existing sanctions for the production of information should have been tried. But I think in addition we should ask the Attorney General, the chief law enforcement officer of the United States, the subpena power we have given to him, that the regulations and authority have never been tried. I wonder if we have not been too generous in the Congress in granting additional power to the law enforcement agencies of this country.

I, myself, have been a law enforcement officer, a prosecuting attorney, and I myself have been an investigator and I am sympathetic with the problems of the law agencies charged with enforcing the laws of the United States. But I must say also that every time you give them more power, you are doing so at the expense of the citizens of this country. At this point I insert a list of the laws and bills I referred to:

Title 18—(to provide means for the Federal Government to combat interstate crime and to assist the States in the enforcement of the criminal laws of the United States (regulating the interstate transportation of wagering paraphernalia). Public Law 87-322—Amending section 1073 of title 18—(flight to avoid prosecution or giving testimony).

Public Law 87-216—Amending chapter 50 of title 18—(transmission of bets, wagers, and related information).

Public Law 87-306—Amending section 1362 of title 18—(to further protect the internal security of the United States by providing penalties for malicious damage to communication lines). Public Law 86-228—Amending chapter 95 of title 18—(to prohibit travel or transportation in interstate commerce in aid of racketeering enterprises).

Public Law 87-371—Amending chapter 113 of title 18—(to prohibit transportation of fraudulent State tax stamps in interstate and foreign commerce).

Public Law 87-335—Amending section 5021 of title 18—(Federal Youth Corrections Act). BILLS PASSED BY THE HOUSE IN SESSION OR CONCERNING AMENDMENTS TO TITLE 18 (CRIMES AND CRIMINAL PROCEDURE) OF THE UNITED STATES CODE.

H.R. 6961—Amending sections 671 and 3056 of title 18—(providing penalties for threats to the president, the Vice-President, and to authorize their protection by the Secret Service).

H.R. 8146—Amending various chapters of title 18—(to prohibit certain criminal offenses to the same statute as a court with respect to intimidating witnesses.

Mr. Chairman, we have also pending before our committee a bill to grant immunity to witnesses, thought to be an additional tool for law enforcement.

I raised here last year our committee reported out, at the request of the Department of Justice, a bill to give the Attorney General the authority to fix salaries within his Department. The Department, the Justice Department, asserted that the information be obtained by the Federal Trade Commission.

The witnesses asserted that they have liaison procedures which would avoid any such duplication and conflict and interference.

And, I raised the question that if they both were investigating the same company, wouldn't the evidence, would not they be in competition with each other, and might it not be more orderly for the Justice Department to exercise the authority contained in the criminal Title of title 18—(to prohibit transportation or commerce in interstate and foreign commerce).

Then the witnesses asserted that they have liaison procedures which would avoid any such duplication and conflict and interference.

But both the Federal Trade Commission General Counsel and the head for the Antitrust Division of the Justice Department indicated that existing procedures and authority have never been tried. It seems to me it would have been in order for them to have demonstrated first that existing law and powers are adequate. Existing sanctions for the production of information should have been tried. But I think in addition we should ask the Attorney General, the chief law enforcement officer of the United States, the subpena power we have given to him, that the regulations and authority have never been tried. I wonder if we have not been too generous in the Congress in granting additional power to the law enforcement agencies of this country.

I, myself, have been a law enforcement officer, a prosecuting attorney, and I myself have been an investigator and I am sympathetic with the problems of the law agencies charged with enforcing the laws of the United States. But I must say also that every time you give them more power, you are doing so at the expense of the citizens of this country. At this point I insert a list of the laws and bills I referred to:

Title 18—(to provide means for the Federal Government to combat interstate crime and to assist the States in the enforcement of the criminal laws of the United States (regulating the interstate transportation of wagering paraphernalia). Public Law 87-322—Amending section 1073 of title 18—(flight to avoid prosecution or giving testimony).

Public Law 87-216—Amending chapter 50 of title 18—(transmission of bets, wagers, and related information).

Public Law 87-306—Amending section 1362 of title 18—(to further protect the internal security of the United States by providing penalties for malicious damage to communication lines).

Public Law 87-328—Amending section 1295 of title 18—(providing for offenses not committed in any district).

H.R. 8036—Amending section 401 of title 18—(prohibiting certain acts involving the use of tokens, slugs, disks, devices, paper, or other things which are similar in size and shape to the lawful coins or other currency of the United States).

Mr. Chairman, we must maintain a proper balance and not make enforcement and regulatory agencies so powerful that they can abuse our citizens by running roughshod over their personal rights and liberties. We must see to it that the Washington establishment to which we vest this power is not used to harass and punish rather than to carry out a public policy.

Mr. Chairman, I am saying this to give notice that as far as I am concerned we shall not go slow in building up huge powers in the executive branch of the Government, including the Department of Justice.

Mr. ROGERS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. MEADER. I yield.

Mr. ROGERS of Colorado. Mr. Chairman, I would like to direct the gentleman's attention to page 4 of the report which states as follows:

(3) Finally, under 15 U.S.C. 46, the Federal Trade Commission has the power, upon application of the Attorney General, to make investigations. But this power is a limited one. It applies only with respect to corporations (whereas the present bill also applies to partnerships and associations), and its scope is not clear. It has never been used.

It is uncertain, moreover, as to whether the Commission is under an obligation to make such investigations. Both the head of the Antitrust Division and the Chairman of the Federal Trade Commission regard it as unnecessary because of the inability of the Department's attorneys to maintain control of such investigation on the one hand, and the demand on the Commission of its manpower resources on the other hand.

Will not the gentleman agree that the chief enforcing officer of the United States is the Attorney General and that ordinarily the Attorney General is the chief prosecuting officer in all criminal cases as well as the chief officer in civil cases, particularly as it relates to antitrust violations. The gentleman will agree with that premise, will he not?

Mr. MEADER. Yes, but I would like to answer the gentleman's statement regarding the report on page 4. He said essentially that the power exists, but it has not been used. They say it is unreliable, but they have not tried it. Why do they not try it before they come in here and ask us to grant additional power to the executive branch of the Government, to an executive department of the Government, not a regulatory commission?

Mr. ROGERS of Colorado. Mr. Chairman, will the gentleman yield further?

Mr. MEADER. I yield further.

Mr. ROGERS of Colorado. Certainly the prosecutor, who would be the At-
torney General, should not be limited to any action of the Federal Trade Commission or inaction of the Federal Trade Commission. That is because the Federal Trade Commission has been inactive since 1914 and that all of the Attorneys General have not cooperated, as the gentleman indicated by his argument, is no argument why the present Attorney General or future Attorneys General should not have the authority to proceed with proper civil investigations to determine whether or not there would be a suit for violation of the law which he is empowered to enforce. I do not follow the reasoning when you give to the Attorney General the direction to enforce a law, and it should not be done. That is why that power has not been exercised; and it should not be done. That is why no case has been made for this request for extra power.

The gentleman from Colorado pointed out that the report conceded that information as to violation of the antitrust law could now be obtained by the Department of Justice through a request made to the Federal Trade Commission. The report also points out that both the Department of Justice and the Federal Trade Commission witnesses have said that that power has not been exercised; and yet they say it is unworkable. I say that the way to prove something is unworkable is to try it. Until the Department of Justice has tried the existing mechanism, which has been admitted by everybody to exist, and has shown that it would not work, the present Attorney General and I are in a poor position to come in here and say that there is a strong case for granting extra power.

Mr. MILLER. Mr. Chairman, I yield myself 1 minute to the gentleman from Michigan (Mr. MEADER), namely, that the Federal Trade Commission facilities should be used to ferret out information on which the Department of Justice can take action. If the Department of Justice has that right, it would then be in a position of diverting funds and personnel from the Federal Trade Commission. It would divert attention of the Federal Trade Commission from pursuing Federal Trade Commission suits. It would be most awkward and most cumbersome to have one group making investigations and then have another group, the Department of Justice, taking over the case and building up an actual proceeding by way of an antitrust suit. It has never been done before and it should not be done. That is why over 40 years it has not been done and we should not start the practice now; because if we do it as between the Federal Trade Commission and the Department of Justice, then, the Department of Agriculture would do the same thing, and the Department of Labor and there would be no division of appropriations from one department to another.

Mr. McCULLOCH. Mr. Chairman, I yield 8 minutes to the gentleman from Minnesota (Mr. MacGregor).

(Mr. MacGregor asked and was given permission to revise and extend his remarks.)

Mr. MccGregor. Mr. Chairman, and Members of the Committee, I have some serious reservations about this legislation which I have expressed as a member of the committee. They touch upon some of the points mentioned by the distinguished gentleman from North Carolina (Mr. Whitten) and the distinguished gentleman from Michigan (Mr. Rogers). In this session of the Congress, my only session, legislation after legislation which seeks to shift from the hands of the elected Representatives of the people of this country, the executive branch of the Government more and more authority and responsibility. This particular proposal seeks to shift into the hands of one man, a grant of authority very broad, indeed. I do not know what is wanted of him? How much more do you think we should put in here?

Mr. MacGregor. May I answer the gentleman's question?

Mr. Rogers of Colorado. Yes, Mr. MacGregor. Perhaps I did not make myself clear. My principal complaint is not directed to lack of information to be given to a company under investigation, but, rather, to the extension of the power to demand documents from individuals and the use of the investigative demand to be served on any person, company, or prospective witness. This would permit an unlimited fishing expedition.

Mr. Rogers of Colorado. If the gentleman will yield further, may I point out to the gentleman that if a civil investigative demand were made on any person under the provisions of this section he can go to court. Very often by the serving of one man, one person, one corporation, or one partnership, you would find you could not establish a case except by going to another corporation which has had correspondence with the corporation that has violated the law.

Mr. MacGregor. The point raised by the distinguished gentleman from Colorado is very adequately covered on pages 79 and 80 of the hearings, in the testimony given by Mr. Simon, where he says:

"Clearly, that would be a case of both of the people being under investigation." The more difficult problem is, in the case you pose, if he also wanted a document from Joe's Hardware Store, and the question is, Who is he?

He is clearly just a witness who would have nothing to do with the problem. I would say the more difficult question is...
whether the Attorney General should have the power to issue a subpoena against Joe's Hardware Store.

And then over on page 80, Mr. Maletz, chief counsel of the subcommittee, said:

And this bill presently would make no distinction between a prospective witness and a company under investigation? Mr. Simon. That is correct.

I believe that answers the gentleman's question.

It is the very fact that this bill would make no distinction between a prospective witness and a company, association, or partnership under investigation—it is to that lack of distinction that my objection is directed.

Mr. ROGERS of Colorado. The gentleman will recall that Mr. Simon admits that the Attorney General can go beyond the company being investigated.

Mr. MacGregor. I am making no admission; but only calling attention to what Mr. Simon stated in the committee hearing.

Mr. ROGERS of Colorado. But ultimately there is only one conclusion that can be drawn because here he is opening the case, rather, expanding it beyond the one corporation that has violated the law.

Mr. Celler. Mr. Chairman, I yield myself 2 minutes. I want to answer the remarks of the gentleman from Minnesota. He quotes Mr. Simon. I ask the gentleman to look at page 80 of Mr. Simon's testimony. Mr. Simon representing the American Bar Association:

Mr. MALETZ. Mr. Simon, does not the Federal Trade Commission now have the power to obtain, prior to its filing of a complaint, documents from prospective witnesses from Joe's Hardware Store?

In other words, there may be somebody under investigation. Under the Federal Trade Commission Act, the Federal Trade Commission can get the documents for inspection from a prospective witness. That is what the Federal Trade Commission now do do now. All we are asking is that the same power which resides in the Federal Trade Commission should likewise reside in the Department of Justice.

Mr. Simon answered that question:

Yes, sir. There is no distinction made in section 9 of the Federal Trade Commission Act as to a prospective witness and a company under investigation.

Mr. Simon. That is true.

All we are asking is that the Department of Justice be placed upon a parity with the Federal Trade Commission. If we go to the gentleman, Mr. MacDonald wants to ask: If you have corporation A under investigation and the Department of Justice feels that corporation B may have certain documents which would be valuable in the prosecution of corporation A, then under the suggestion of the gentleman the Department of Justice could not examine witness corporation B or to have read any documents revealed or made manifest to the contents of certain documents which would be necessary to a successful prosecution against corporation A.

Mr. MacDonald, what would happen, for example, if there was a grand jury involving the General Electric Co.? The corporation under inquiry was the General Electric Corp. Yet there were other corporations with their testimony or documents were essential to build up that case against the General Electric Co.

If the gentleman's amendment or suggestion were to prevail, the subcommittee, party, the witnesses, the competitors and customers of General Electric could not be inquired into. So that while that was a grand jury investigation of General Electric, we are trying to do here is eliminate grand juries and panels which are of grave disadvantage to the defendant, because grand jury investigations are in camera, and in secret. Attorneys for the defendant corporations do not know what questions are asked, they do not know what the answers are. The companies are at a grave disadvantage. We want all that out in the open. That is what this bill does. It allows the proceedings to be out in the open, not in the darkness of a grand jury room. Therefore, if you have corporation A that is a corporation that you want to go before a grand corporation, if its documents, data, and letters reflected upon the first corporation which is under inquiry, you might as well tear up this bill, it does not mean a thing.

Mr. MacGregor. Mr. Chairman, will the gentleman yield?

Mr. Celler. I yield to the gentleman from Minnesota.

Mr. MacGregor. If you wanted to look at the books, records, and papers of the second corporation that may have come into the possession of the first corporation, would not that second corporation be "under investigation" too?

Mr. Celler. They propose to investigate corporation A. Incidentally, you may have to investigate corporation B. That is exactly what the Federal Trade Commission can do now. If, on the one hand, Mr. Simon says what you do want, that they will go back to their old practice of empaneling a grand jury. That is what we are criticizing and inveighing against. The Department of Justice has said that it is opening new cases to go before the grand juries. Are you going to leave the Department of Justice helpless? If you want to do that, of course that is another matter.

Mr. MacGregor. No, I do not.

Mr. Celler. Mr. Chairman, I yield 5 minutes to the gentleman from North Carolina (Mr. Whitten).

Mr. Whitten. Mr. Chairman, and member of the committee, I must rise in opposition to my committee chairman on this legislation. The bill before us constitutes a new departure, notwithstanding what others may have said, in the field of civil procedure. Now, I know that when you come in here and talk about antitrust and big corporations or organized crime and some of these other expressions that we hear so often, that that means that you then are supposed to march right down the aisle and inveigh against these terrible things called antitrust violators and big corporations and organized criminals.

This Government of ours is involved in many, many programs where civil litigation is involved. If a lawyer, cannot see why the Department of Justice needs this legislation to assist it in preparing and handling civil actions. And then over on page 80, Mr. Maletz, chief counsel of the subcommittee, said:

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This Government of ours is involved in many, many programs where civil litigation is involved. If a lawyer, cannot see why the Department of Justice needs this legislation to assist it in preparing and handling civil actions.
Mr. Chairman, if the State of North Carolina will refer to the Attorney General of the gentleman from North Carolina [Mr. WHITENER] object to the Attorney General's having the same authority? Mr. ROGERS of Colorado. That is a question I wish to refer back to the gentleman from Colorado [Mr. ROGERS] to be saying that the Attorney General of the United States under present law does not have that duty under the Constitution.

Mr. WHITENER. If the gentleman will yield further, the gentleman from Colorado is referring to the Attorney General of the gentleman's State.

Mr. WHITENER. Let us leave North Carolina out and talk about the Attorney General of the United States. Does the gentleman from Colorado say that the Attorney General of the United States has no authority now to investigate antitrust violations?

Mr. ROGERS of Colorado. If the gentleman will yield further, the Attorney General of the United States has ample authority to empanel a grand jury any time he wants to, upon application to that State. The Attorney General of the United States can file a lawsuit any time he wants to. But the point is that it is not necessary for him to file the lawsuit and then use the civil procedure to get the evidence. This is a method whereby he can secure it without the necessity of filing a lawsuit. If he should discover that a violation has not occurred, then it is not necessary for him to file a lawsuit and he must file a lawsuit in order to get the evidence, he has the authority to do it.

Mr. Chairman, what are we trying to do here is to make it crystal clear.

Mr. WHITENER. Is the gentleman from Colorado referring to Colorado?

Mr. ROGERS of Colorado. That is the Attorney General of the United States and the right to investigate as to whether or not the Attorney General of the United States has the authority to empanel a grand jury.

Mr. WHITENER. I thank the gentleman for his usual, fine contribution to the discussion. But I want to say to the gentleman from Colorado in all kindness that either the gentleman from Colorado or the gentleman from North Carolina, one or the other is in the boat and one is in the river. I think the gentleman from Colorado is the one in the river. The gentleman has mentioned North Carolina. I want to say to the gentleman that he cannot find in the general statutes of North Carolina—and I would like for the gentleman to listen to any such procedure which entitles the Attorney General to demand that a corporation turn over records and then if they do not do it, go trucking a load of records away.

Mr. Chairman, I will say this to the gentleman——

Mr. ROGERS of Colorado. Will the gentleman yield further?

Mr. WHITENER. No. I am going to have to use some of my time. But I want to say this to the gentleman from Colorado, that if what he says is good law—

in this matter or good civil procedure, why does not the gentleman come out of every civil case in which the Government is a party plaintiff in civil actions.

Mr. ROGERS of Colorado. Will the gentleman yield?

Mr. WHITENER. I will be happy to yield to the gentleman to answer the question.

Mr. ROGERS of Colorado. Yes; I am delighted because you answered the question about North Carolina.

Mr. WHITENER. I am asking the gentleman to answer my question. This is my time. Mr. ROGERS of Colorado. I will answer the gentleman's question, first, as to North Carolina.

Mr. WHITENER. Does the gentleman recommend that this procedure which he now advocates be made a part of the procedural law in any civil action in which the Government is a party plaintiff?

Mr. ROGERS of Colorado. I yield no further to the gentleman.

Mr. ROGERS of Colorado. Will the gentleman permit me to finish the answer?

Mr. WHITENER. I yield no further to the gentleman. The gentleman has totally failed to answer my question. I have such limited time that I cannot yield further to the gentleman.

I will say this to the Members of the House, that as the gentleman from North Carolina has said, there have been many new suggestions about getting away from all of the time-honored practices and principles in the field of the administration of justice.

I am not opposed to all change, but I say to you in all seriousness, that the rights of the Government, the rights of the defendant, does not have. The citizen should have that same right of discovery or whatever right of procedure you give the Government.

Mr. Chairman, I am not here representing any giant corporation. I know no firm or any official in any firm personally, which has been involved in an antitrust case; I have no acquaintance-ship with anyone that has ever been even investigated for violating the antitrust laws. Do I know any American citizens who have come into contact with the Federal Government, the State government and the local government in the course of a business transaction?

If the State of North Carolina has had civil procedure that does not justify the Federal Government having it. I urge you to consider this matter. It means no more to me personally any more than it does to any other living American citizen.

Mr. CELLER. Mr. Chairman, I yield 2 minutes to the gentleman from Colorado [Mr. ROGERS].

Mr. ROGERS of Colorado. Mr. Chairman, I would like the gentleman from North Carolina [Mr. WHITENER] to say to you in all sincerity, what the statute of his State provides:

In performing the duty required in section 78-9, the attorney general shall have the power, either alone or with any or all of the officers, agents or employees of any such corporation, and all other persons having knowledge with respect to the matters and affairs of such corporation, to submit themselves to examination by him, and produce and inspect books and papers of any such corporations, or which are in any way connected with the business thereof.

As heretofore pointed out, there are at least 17 States that as a provisio where the attorney general or the investigating officer may demand and secure these things. This section does not protect anybody by requiring that the attorney general shall serve a notice setting forth what he wants. In North Carolina the attorney general is free to demand that they bring to him the books and papers. The legislation why we should not adopt this legislation.

Mr. MCCULLOCH. Mr. Chairman, I yield myself two minutes.

Mr. Chairman, I wish to associate myself with the remarks last made by the gentleman from Colorado, Mr. McCULLOCH.

Those who will carefully read the legislation, which is before us, will certainly see that the safeguards therein are immeasurably greater than the safeguards in the North Carolina law.

Furthermore, Mr. Chairman, I am sure that those who have studied antitrust investigations know what an unbelievably heavy burden is on the Department of Justice in trying to ascertain the material facts before action is brought. There is on the staff of the House Committee on the Judiciary, a first young lawyer who spent all 15 years collecting information which resulted in a certain suit, which I do not care to mention on the floor today. In one other case, it has taken longer than that to collect the evidence justifying the commencement of the suit. I ask the members of this committee whether any prefer a suit against a constituent, with attendant unfavorable publicity where desired information may be secured by subpoena duces tecum, or
whether they prefer a request or demand from the Department of Justice so that 4 conclusion based on this information tion, without the publicity resulting from a lawsuit. I feel sure most corporate officials would prefer a demand from the Attorney General rather than a lawsuit, or a CHAIRMAN. The time of the gentleman has expired.

Mr. McCulloch. Mr. Chairman, I have no further requests for time. Mr. Chairman, I yield

THE CHAIRMAN. The Clerk will read,

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the “Antitrust Civil Process Act”.

DEFINITIONS

Sec. 2. For the purposes of this Act—

(a) The term "antitrust law" includes:

(1) Each provision of law defined as one of the antitrust laws by section 1 of the Act (enacting laws against unlawful restraints and monopolies, and, for other purposes", approved October 15, 1914, as amended; 15 U.S.C. 15a), commonly known as the "Clayton Act;"
(b) The term "Federal Trade Commission Act (15 U.S.C. 41 and the following);"
(c) Section 3 of the Act entitled "An Act to amend section 2 of the Act entitled ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes’, approved October 15, 1914, as amended; 15 U.S.C. 15a), commonly known as the Robinson Patman Act;" and
(d) Any statute hereafter enacted by the Congress which prohibits, or makes available to the United States in any court or antitrust agency of the United States any civil remedy with respect to (A) any restraint upon or monopolization of interstate or foreign trade or commerce, or (B) any unfair trade practice in or affecting such commerce.

(b) The term "antitrust agency" means any board, commission, or agency of the United States (other than the Department of Justice) charged by law with the administration or enforcement of any antitrust law or the adjudication of proceedings arising under any such law.

(c) The term "antitrust order" means any final order of any antitrust agency, or any final order, decree, or judgment of any court of the United States, duly entered in any case or proceeding arising under any antitrust law.

(d) The term "antitrust investigation" means any inquiry conducted by any antitrust investigator for the purpose of ascertaining whether any person is or has been engaged in any antitrust violation;

(e) The term "antitrust violation" means any act or omission in violation of any antitrust law or any antitrust order;

(f) The term "antitrust investigator" means any attorney or investigator employed by the Department of Justice who is charged with general rather than with specific offenses, or with bringing to light offenses or any other antitrust law;

(g) The term "person" means any corporation, association, partnership, or other legal entity not a natural person.

(h) The term "material" includes the original or any copy of any book, record, memorandum, paper, communication, tabulation, chart, or other document;

(i) The term "documentary material" means the antitrust document custodian or any deputy custodian designated under section 4(a) of this Act.

CIVIL INVESTIGATIVE DEMAND

Sec. 3. (a) Whenever the Attorney General, or the Assistant Attorney General in charge of the Division of Antitrust of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of documentary materi material relevant to an antitrust investigation, he may, prior to the institution of a civil or criminal proceeding therein, issue a civil investigative demand requiring such person to produce such documentary 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 identified;

(3) prescribe a return date which will provide a reasonable period of time within which the material shall be delivered and made available for inspection and copying or reproduction;

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall—

(1) contain a request 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 evidence 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 marshal or deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

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

(1) delivering a duly executed copy thereof to an officer of any such partnership, corporation, association, or other legal entity;

(2) delivering a duly executed copy thereof to the person in charge of the office or place of business of the partnership, corporation, association, or entity to be served;

(3) depositing such copy in the United States mails, by registered or certified mail directed to such partnership, corporation, association, or entity at its principal office or place of business.

(f) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be permitted. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

ANTITRUST DOCUMENT CUSTODIAN

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 any antitrust investigator as he shall determine from time to time to be necessary to serve as such. The name of each antitrust investigator so designated shall be certified by the Assistant Attorney General to the return of all documentary material (other than copies thereof made by the Department of Justice or any antitrust agency pursuant to subsection (c)) which has not passed into the control of any court, grand jury, or antitrust agency through the introduction thereof into the record of such case or proceeding.

(b) Upon the completion of (1) the antitrust investigation, (2) the investigation of the documentary material was produced under this Act, and (2) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material (other than copies thereof made by the Department of Justice or any antitrust agency pursuant to subsection (c)) which has not passed into the control of such court, grand jury, or antitrust agency through the introduction thereof into the record of such case or proceeding.

(c) Any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court, grand jury, or antitrust agency through the introduction thereof into the record of such case or proceeding.

(f) Any attorney who has been designated to appear on behalf of the United States before any court, grand jury, or antitrust agency in any case or proceeding involving any alleged antitrust violation, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of the case or proceeding to any such court, grand jury, or antitrust agency.

(g) In the event of the death, disability, or separation from service in the course of such investigation, such person shall be replaced by an attorney designated by the Attorney General, or upon the Attorney General or upon the Assistant Attorney General in charge of the division of Antitrust of the Department of Justice of such attorney shall have access to such material for use in such investigation.

(h) In the event of the death, disability, or separation from service in the course of such investigation, such person shall be replaced by an attorney designated by the Attorney General, or upon the Attorney General or upon the Assistant Attorney General in charge of the division of Antitrust of the Department of Justice of such attorney shall have access to such material for use in such investigation.
Assistant Attorney General in charge of the Antitrust Division shall promptly (1) designate another antitrust investigator to serve in writing to the person who produced such material as to the identity and address of the successor so designated. Any successor so designated shall not be held responsible for any default or direction which occurred before his designation and appointment.

JUDICIAL PROCEEDINGS

Sec. 5. (a) Whenever any person fails to comply with any civil investigative demand duly served upon him under section 3 or who otherwise fails to appear, comply with any such demand, to answer or to answer any questions of any such material as to the identity and address of any such individual, the court or grand jury, the court or any custodian for the judicial district within which such person resides or, if such person transacts business in any such district, to which such person transacts business as his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(b) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for any judicial district within which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of such demand, or for such person's having tested or having testified to any matter pending therein; or

"Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavours to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such investigation or inquiry is being had by or before any grand jury or any joint committee of Congress; or

"Whoever injures any party or witness in his or her property or on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or

"Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part with any civil investigative demand duly and properly made under the Antitrust Civil Process Act willfully removes from any place, conceals, destroys, mutilates, alters, or by any other means falsifies any documentary material which is the subject of such demand; or

"Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavours to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such investigation or inquiry is being had by or before any grand jury or any joint committee of Congress;

"Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(b) The analysis of chapter 73 of title 18 of United States Code is amended so that the title of section 1505 shall read therein as follows:

"1505. Obstruction of proceedings before departments, agencies, and committees.

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, (b) invoke the power of any such court to compel the production of any evidence before any such grand jury, or (c) institute any proceeding for the enforcement of any order or process issued in execution of such power, or to punish disobedience of any such order or process by any person.

Mr. CELLER (during the reading of the bill). Mr. Chairman, I ask unanimous consent that the bill be considered as read, and be open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. The Clerk will report the committee amendments.

The Clerk read as follows:

Page 2, beginning at line 7 and through line 14, strike all of the language therein.

Page 2, line 15, strike subparatragraph "(4)" and insert in lieu thereof subparatragraph "(3)".

Page 2, line 17, strike the words "or antitrust agency" and insert in lieu thereof subparatragraph "(e)".

Page 2, lines 22 through 25, strike all of the language therein.

Page 3, line 1, strike subparagraph "(c)" and insert in lieu thereof subparatragraph "(d)".

Page 3, line 8, strike subparagraph "(d)" and insert in lieu thereof subparatragraph "(e)".

Page 3, line 13, strike subparagraph "(e)" and insert in lieu thereof subparatragraph "(d)".

Page 3, line 18, strike subparagraph "(f)" and insert in lieu thereof subparatragraph "(e)".

Page 3, line 20, strike subparagraph "(g)" and insert in lieu thereof subparatragraph "(f)".

Page 3, line 23, strike subparagraph "(h)" and insert in lieu thereof subparatragraph "(g)".

Page 4, line 11, strike subparagraph "(i)" and insert in lieu thereof subparatragraph "(j)".

Page 4, line 12, strike the word "an" and insert thereof "a civil".

Page 7, line 5, after the word "writing" and before the parentheses, insert "or as the court may direct, pursuant to section 5(d) of this Act.

Page 7, line 17, after the word "General" strike the comma and insert in lieu thereof a "period"; and after the word "General" strike the word "agency" and insert "and the agency access to"; and on line 18 strike the words "such material for examination.

Page 7, line 22, insert "period" after the word "Justice", and strike the word "or".

Page 7, line 23, strike the words "any antitrust agency.

Page 8, line 5, strike out "court.

Page 8, line 6, strike out "grand jury, or antitrust agency" and insert in lieu thereof "court, or grand jury, or antitrust agency" and insert "court, or grand jury, or antitrust agency.

Page 8, lines 14 and 15, strike out "court, grand jury, or antitrust agency" and insert "court, grand jury, or antitrust agency.

Page 8, lines 23 and 24, strike out "or any antitrust agency.

Page 8, line 25, strike out "court, grand jury, or antitrust agency.

Page 9, line 1, strike out "agency" and insert "court or grand jury.

Page 9, line 15, strike out "or any antitrust agency.

Page 10, line 15, after the word "person," insert "including a natural person.

The committee amendments were agreed to.

Mr. MacGREGOR. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MacGREGOR: On page 4, line 11, after "person" insert "under investigation.

Mr. MacGREGOR. Mr. Chairman, this amendment is offered simply to conform to the recommendations made to the subcommittee by the American Bar Association and contained in the hearings.

The effect of the amendment would be to place some of the safeguards we have all been talking about, some of the
reasonable limitations that have been mentioned here on many occasions, against unlimited finding expeditions by the Deputy Attorney General who will be in charge of antitrust actions under this legislation.

There is no doubt about the fact that this simply would enact into law the recommendations of the American Bar Association, let me call the committee's attention to page 63 of the hearings in connection with the testimony of Mr. William Simon who appeared on behalf of the American Bar Association.

He submitted for the record the following statement of the Section of Antitrust Law of the American Bar Association on civil investigative demand legislation:

The House of Delegates of the American Bar Association has authorized the officers and counsel of the section of antitrust law to recommend to the Congress that legislation be enacted which would authorize the Attorney General or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, under appropriate safeguards, to demand the production at the principal office or place of business of a corporation, association, or partnership, under investigation, for purposes of inspection and copying of relevant unprivileged documents, to compel the officers of such corporation, association, or partnership to produce such documents and to submit documents or papers.

Let us suppose there are letters written by the officers of corporation A to the officers of corporation B, and A has destroyed its copies of those letters but B has preserved them, and B has copies secreted somewhere. Let us suppose that the U.S. district court for the district in which such principal office or place of business is located, with power to enforce, modify, or set aside such demand.

Next, on page 68 of the hearings: the draft bill of the American Bar Association reads, and I quote from section 3(a):

Whenever the Attorney General or the Assistant Attorney General in charge of the Antitrust Division has reason to believe that any person under investigation.

And finally, on page 80: The distinguished chairman of the committee and I had a little colloquy about this but neither of us read the final answer given by Mr. Simon.

Mr. Malez, the committee counsel, said:

And this bill presently would make no distinction between a prospective witness and a company under investigation?

Mr. Malez. Am I correct?

Mr. Malez. And you propose, because of the considerations you have outlined, to make such a distinction?

And the answer is:

Yes, sir; by putting my suggestions in different categories.

The record of the subcommittee is absolutely clear that it is the intention and desire—and I believe wisely so—of the American Bar Association to limit the powers of this new power to those companies, associations, or partnerships actually under investigation. This is an entirely reasonable limitation on the grant of this sweeping new power to the executive branch of Government.

I urge the committee to adopt this amendment.

Mr. Cellet. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Minnesota (Mr. Macgregor).

Mr. Chairman, the amendment offered by the gentleman from Minnesota seems quite simple; but if it were adopted it would have a far-reaching effect. No agency which has the power to use the investigative demand has such limitations upon its power as envisioned by this limitation.

The Federal Trade Commission has no such limitation, the Atomic Energy Commission has no such limitation, the Department of Labor has no such limitation, the Treasury Department has no such limitation, the National Science Foundation has no such limitation, the Atomic Energy Commission has no such limitation, the National Labor Relations Board has no such limitation, the Federal Power Commission has no such limitation. The CAB, the FAA, the SEC—none of them have these limitations.

Why does the gentleman pick out the Department of Justice to have this limitation?

I said that his amendment would have a far-reaching effect, such a far-reaching effect as to destroy the very purport and purpose of this bill. That is, if an investigation is made on the basis of the officials of corporation A and corporation B, A has some very pertinent documents that are necessary to build up the case against A. Against A, the Attorney General would not have the right in these proceedings to call the officials of corporation B as witnesses and to submit documents or papers.

What is he going to do? He is going into a grand jury room. A grand jury isimpanimental. The Attorney General will get the very same papers this amendment would deny him if he proceeds civilly out in the open.

I think the corporation would welcome this bill as it is and would deplore the amendment offered by the gentleman from Minnesota, because corporation attorneys would not know what is happening at the moment when the case is before the grand jury. They would not know anything as to what is happening when it is in the secrecy of a grand jury room.

I trust, therefore, the amendment will be voted down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. MacGregor).

The question was taken, and on a division (demanded by Mr. MacGregor) there were—ayes 37, noes 41.

Mr. BRUCE. Mr. Chairman, I demand a division. Tellers were ordered, and the chairman appointed as tellers Mr. MacGregor and Mr. Rogers of Colorado.

The committee again divided, and the tellers report that there were—ayes 55, noes 52.
Mr. SMITH of Virginia. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file certain privileged reports.

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

There was no objection.

**COMMITTEE ON RULES**

Mr. EDMONDSON. Mr. Speaker, I ask unanimous consent that the Subcommittee on Mines and Mining sit during general debate this afternoon.

There was no objection.

**SUBCOMMITTEE ON MINES AND MINING**

Mr. EDMONDSON. Mr. Speaker, I ask unanimous consent that the Subcommittee on Mines and Mining may have until midnight tonight to file certain privileged reports.

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

There was no objection.

**AMENDING THE IMMIGRATION AND NATIONALITY ACT**

Mr. WALTER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 10079) to amend section 104 of the Immigration and Nationality Act, and for other purposes.

The motion was agreed to.

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 10079), with Mr. O'Barre of New York in the chair.