March 13,

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 not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to 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 present principal functions into first, 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, such other related matters affecting 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 or the participation by the United States in defined programs of assistance to certain migrants and refugees, and would authorize the appropriation of funds for such programs.

In addition, the bill H.R. 10079 would authorize the appropriation of funds to assist certain refugees from Western Hemisphere countries who fled to the United States in fear of persecution, which assistance has been hitherto rendered by using the President's contingency funds for the benefit of refugees from Cuba.

Mr. Speaker, I urge the adoption of House Resolution 559.

Mr. Speaker, at this point I yield 30 minutes to the gentleman from California [Mr. SMITH].

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

Mr. SMITH of California. Mr Speaker, I yield myself such time as I may use.

(Mr. SMITH of California asked and was given permission to revise and extend his remarks.)

Mr. SMITH of California. Mr. Speaker, as stated by 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 passed last year, I believe, on the Consent Calendar. The other body added a number of amendments which were unacceptable to the House, so the matter has never been resolved. This is a further effort to try to pass into legislation several of the things which the Judiciary Committee of this body unanimously agree should be passed.

Title 2 of the bill would provide for the continuance of three programs that were in existence under the Mutual Security Act of 1953 but were not continued under the Assistance Act last year. In addition, it will provide a fourth program, which is a new program so far as Congress is concerned. These four programs I think are of interest to all of us, and I would like to mention them to you.

First, it will continue our participation in the Intergovernmental Committee on European Migration, commonly known as ICEM. The second will provide for the continuance 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.

The fourth program is a new one so far as Congress is concerned and will authorize assistance in connection with the Cuban refugee program in the United States. The program has been in existence under Executive order. Funds have been provided by the Executive. This will authorize the program and permit appropriation of funds.

It is mainly for the assistance of the State of Florida that has so many people from Cuba at the present time.

No specific money is set forth in the bill. The estimates will have to be presented by the administration and subsequently considered by the appropriations bill.

Title I of the bill is new. In my opinion, this is a long overdue reorganization of the Bureau of Security and Counselor Affairs of the State Department. It will lump the new security functions and the counselor functions. It will also include a physical check-up of the establishments abroad to determine their suitability. It will provide that the head of the security unit may not be a Foreign Service officer. It is believed undesirable to have one individual investigate another in the same service. The individual must be fully qualified, experienced, and independent of the agency.

This is a new program that is being asked for. I believe it will improve on the security check-up in the Security and Counselor affairs of the State Department, and will provide a continuous security check on loyalty, suitability for the positions, and so forth.

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

Mr. SMITH of California. I yield to the gentleman from Iowa.

Mr. GROSS. I would like to call attention to 203(b), page 9, which gives untrammeled power to the President of the United States. I would hope that the Members before we conclude general debate on this bill will scrutinize that particular provision. The 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. PERKINS in the chair.

The Clerk read 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 prosecutions. 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 business entities. 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 recommended by the previous administration and it is recommended by the present administration. It was recommended 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, they can impanel a grand jury and compel the divulgence of the required information.

Third, they can ask the Federal Trade Commission to make this demand.

Incidentally, the Federal Trade Commission has the very same powers that we are asking for in this bill to be attributed to the Department of Justice.

There is a fourth method by which the information can be sought, and that is: the Department can willy-nilly start a suit, whether they have the appropriate evidence or not. To use words of common parlance, they could shoot from the hip.

Now, as to the first method, asking the business entity for cooperation, this 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 cannot use properly and exclusively that 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. Now, the Supreme Court of the United States has called such 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, grave disadvantage, of the company upon which the demand is made. Counsel for that company does not know what questions have been asked the witnesses before a grand jury, whereas under this bill everything is in the open; it is not in camera, and the investigated company's counsel can adequately protect the rights of his clients.

So, I think it is all advised to impanel a grand jury; and, as I have indicated, the Supreme Court of the United States has frowned upon that practice.

Mr. Chairman, the third method is to ask the Federal Trade Commission to do the work of the Department of Justice. The Federal Trade Commission, ever since the adoption of the Federal Trade Commission Act, has had the right to make a demand upon a corporation suspected for certain documents. That right has existed for many, many years, a right denied over those years to the Department of Justice.

Mr. Chairman, it is possible for the Department of Justice to make a request of the Federal Trade Commission to get these papers or documents, but that is an unworkable process. It is not effective. They are asking one set or group of men to make an investigation and then another group of men to institute a prosecution, based upon these facts.

Mr. Chairman, as has been stated by the gentleman from California [Mr. SMITH] for over 40 years that practice 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 appropriations 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. The Judicial Conference of the United States, which as the Members know, is composed of the Chief Justice of the Supreme Court and the senior circuit judges of the courts of appeals, with the district judges, has indicated that for the Department to bring such a suit merely for the purpose of discovery as to whether there is a case, they claim that that is not proper and should not be indulged in by the Department. So, what is the Department going to do? All of these four methods are in a way and in a measure foreclosed to them. They come to us and say, "We would like to have this right, a right that has been accorded all these years to the Federal Trade Commission."

Mr. Chairman, it is interesting to note that not only does the Federal Trade Commission have this right of a civil investigative demand, the National Labor Relations Board has this right, the Atomic Energy Commission has this right, the Census Bureau has this right, and all regulatory bodies have this right including the CAB, the FAA—the Federal Aviation Agency—SEC, the Interstate Commerce Commission, the Federal Communications Commission, and the Federal Power Commission. In addition, we have some 17 States which in their antitrust laws give this exact power to their departments of justice. These include the States of Arizona, Hawaii, Idaho, Kansas, Louisiana, Maine, Missouri, Montana, Nebraska, New York, North Dakota, Oklahoma, South Carolina, Texas, Utah, Washington, and Wisconsin.

Mr. Chairman, in addition to those departments that I have named, the Secretary of Agriculture has that right when it comes to commodity exchanges under the Agricultural Adjustment Act.

Also, the National Science Foundation; the Department of Labor has that when it comes to compensation for injuries to employees of the United States; the Department of the Army has that right when it concerns bridges over navigable waters. Yes, the Veterans' Administration has that right when it comes to records and investigations of a general nature.

So, since all these groups—departments, commissions, agencies, have this right, there is no reason why the Department of Justice likewise should not have it. There is every appropriate safeguard in this bill to protect the citizenry. The bill, as I said, would empower the Attorney General or the Assistant Attorney General in charge of the Antitrust Division to issue a written civil investigative demand to a company. The demand would require the company to produce documents for examination by duly designated representatives of the Department of Justice in connection with the civil antitrust investigation to determine whether the evidence warrants the filing of a civil antitrust suit.

The bill, as amended, provides every conceivable safeguard for the company to which a civil investigative demand is addressed. Many of these amendments were inserted at the suggestion of the American Bar Association. The demand must set out the nature of the conduct constituting the alleged antitrust violation and the applicable provision of the law. It must also describe the documents to be produced with such definiteness and precision and certainty as to permit the documents to be fairly identified. Privileged documents may not be demanded; existing law is expressly invoked to protect against unreasonable demands.

And at the suggestion of the American Bar Association, only "relevant" documents may be demanded.

The bill provides that the Department of Justice must come to the office of the company under investigation to inspect their company records and all judicial proceedings are to be had in the judicial district where the company maintains its principal office. In other words, the Department of Justice must come to the district where the company has its office. That is to say, Mohammed must come to the mountain.

The company which is served with a civil investigative demand has an option: It can sit tight and do nothing, refuse compliance; in which case the Department must apply to the district court where the company maintains its principal office to enforce the demand. The company, however, may also apply to the district court in any district not only where it does business, to vacate or modify the civil investigative demand, just as a party might do under rule 30(b) of the Federal Rules of Civil Procedure. In short, the company is permitted to shop around for its preferred forum. In either case the company is free to raise any objections it may have to the demand.

The reasonableness of the demand is to be determined by the same rules which are applicable to a subpena duces tecum in aid of a grand jury investigation of such an alleged antitrust violation.

The bill provides for service of the civil demand and return of service in the manner prescribed in civil cases under the Federal Rules of Civil Procedure, and the Federal rules are expressly made applicable to proceedings under the act, to the extent that they are not inconsistent.

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 subpena it does not authorize the Department to swoop down and carry off the company's records to Washington or to the district court.

The bill does provide for those rare, but sometimes crucial, instances where a handwritten notation on an original document cannot be adequately reproduced. In such a case, if the company is unwilling to part with the original, the Department 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 safekeepig and return of any original documents it may be required to furnish. This is to insure that the company will know whom to go to to get back its papers within the Department.

It is worth noting that the original documents need not be supplied. Sometimes if original documents are taken from the company that impedes and interrupts the activities of the company. So that the company officials generally would need only to make copies of the records available to the Department of Justice. The company is entitled to access to its papers while in the hands of the Department and it is entitled to require their return, if the Department holds them for an unreasonable time. However, willful destruction and willful concealment or falsification of documents which are the subject of the demand make the perpetrator the subject of the penal provisions of title 18, section 1505, if done with intent to prevent compliance.

The Federal Trade Commission is very anxious that we give this power to the Department of Justice. The Department of Justice is very anxious to have this power. The bill is purely procedural and is not a substantive bill. This is particularly needed in the case of contemplated mergers. The Department presently cannot get any advance information or appreciable advance information as to contemplated mergers. This would give the Department the power to get the information and the documentary evidence so that if a merger that is contemplated is unlawful, such mergers can be prevented before they are consummated. As it is now, sometimes it is entirely too late when the Department of Justice gets the required information and the mergers have taken place and it is uneconomical to separate one of the merged companies from the other. It may be unfair to do so. In other words, you cannot unscramble eggs. This will give the Department of Justice power to prevent the scrambling of eggs which are bad. So I am inclined to believe if we pass this bill, we need not have any need to pass the Premerger Notification Act. That might be agreeable to a number of those on the other side of the aisle who oppose the Premerger Notification Act and I have indicated in the confines of the Committee on the Judiciary that if we pass this bill, I certainly would not press for passage of the Premerger Notification Act.

Premerger notification would do two things: it would require advance notice of significant mergers to the Department of Justice and it would require the production of relevant evidence by the merger parties. The Department of Justice has stated that it generally has advance information regarding significant mergers, and this bill would permit the Department to obtain relevant evidence prior to the merger, so it could go into court and get a temporary injunction restraining a proposed merger in advance before the horse is out of the barn. So the adoption of this bill may render premerger notification unnecessary.

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

Mr. CELLER. I yield to the gentleman from Montana.

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 bill, section 4, the antitrust 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 their very 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. CELLER. This bill is limited to the production of documents, papers, and letters. But beyond that, the bill provides for the safeguards that would forfend that possibility which you mention. Section 3(c)(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 investigators make demand on an individual 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. We set up that safeguard. The individual who is served with that demand goes to court and asks the protection of the court and he would get it. But, in order to nail that down, I will say to the gentleman, in our report we will advert to that and make certain to all who may read the report that there is no intention of forcing anybody to incriminate himself.

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

The CHAIRMAN. The gentleman from New York has consumed 20 minutes.

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 be effective, 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, so I need not elaborate upon their respective shortcomings. I need only state that in far too many instances the use of these existing means leads to ineffective enforcement of the antitrust laws or to unfair legal action against the individual.

Therefore, I urge the passage of S. 167 which shall give the Attorney General the ability to obtain documentary information through a civil process in a manner similar to that long granted the Federal Trade Commission and many other Federal agencies.

The grant of a civil process to the Attorney General does not mean, however, that he shall now be permitted to engage in fishing expeditions. Far from it. The fact that the Attorney General is the chief prosecuting officer of the Federal Government and the fact that an untrammeled right to obtain information could severely harm the rights of the individual have led the Committee on the Judiciary to strictly circumscribe the extent to which the civil process may be used.

First, a civil demand must clearly state the nature of the conduct alleged to constitute the violation and concisely describe the type of documents demanded.

Second, the use of a civil demand is restricted to situations where a concern "is or has been engaged" in an antitrust violation—not in some activity which may develop into a violation in the future.

Third, a civil demand is limited to the receipt of documentary evidence—not to the taking of oral testimony.

Fourth, a demand may only be made upon a corporation, association, partnership, or other legal entity. It cannot be used to obtain personal documents of a natural person.

Fifth, except in rare occasions, the Department of Justice may only inspect and make copies of documents. The original records of a business concern remain with the concern.

Sixth, the examination and copying of the documents requested is to be made at the principal place of business of the concern being investigated or at a place

more convenient to the concern if agreed to by the Department of Justice and the concern or if a court 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 subpena duces tecum, or upon any constitutional or other legal right or privilege.

Eighth, the Attorney General is prohibited from turning over to any other department or agency of Government documents received under a civil demand.

Ninth, the Attorney General may only use the civil process prior to the institution of a civil or criminal proceeding and not as a supplemental trial subpena.

And tenth, the bill provides a dual method for a business concern under investigation to seek judicial review. It may elect to withhold compliance with the civil demand and object to its issuance when and if the Attorney General decides to petition a court for an order of compliance. Or, the concern may directly go into court for a court order modifying or setting aside the demand.

Some mention has been made to the effect that documents obtained by a civil demand should not be later used in a criminal proceeding. Of course, the civil process should not be used when the Attorney General clearly knows in advance that he plans to seek a criminal indictment. But, it does not seem desirable to prohibit the use of civil demand documents in a subsequent criminal proceeding.

For one, evidence obtained by civil process may compel criminal prosecution such as in a price-fixing case or where predatory practices exist.

More important, the documents alone may not be sufficient to make out a case. They will have to be used in conjunction with the examination of witnesses before a grand jury.

In addition, limiting the use of documents to civil proceedings would give immunity to a concern which has engaged in criminal behavior.

In summation, it may be seen that the committee has sought to fashion a workable tool for aiding antitrust enforcement. In so doing, however, the committee has imposed effective safeguards to insure that the tool will not be converted into a weapon.

Finally, in conclusion, I am happy to say that both the subcommittee and the full Committee on the Judiciary made substantial improving amendments to the Senate bill.

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

Mr. McCULLOCH. I yield to the gentleman from New York.

Mr. SANTANGELO. Does the term "association" contemplate a labor union?

Mr. McCULLOCH. So far as I recall, that question was not discussed. The legislation was not aimed at labor unions. However, I would be glad if the chairman would answer that question.

Mr. CELLER. I think there is nothing in the bill that would preclude a labor union. The only one precluded is a natural person. But, I know what is in the gentleman's mind. I would say that labor unions are not within the antitrust laws. Labor unions are not presently within the antitrust laws. The bill covers only those subject to the antitrust laws. Since labor unions are not subject to antitrust law provisions, not directly subject to antitrust investigations, not subject to investigations by the Department of Justice Antitrust Division, and labor unions would not come directly under this statute whatsoever. Labor unions are unaffected. By that I mean this applies to labor unions only to the extent that the existing antitrust laws may apply. It does not by its provisions bring unions under the antitrust laws any more than they are now.

Mr. SANTANGELO. Mr. Chairman, will the gentleman yield for one further question?

Mr. McCULLOCH. I yield.

Mr. SANTANGELO. I understand, therefore, that this bill does not bring labor unions under the antitrust laws.

Mr. McCULLOCH. That was not my intention, and I do not think that that would be the result of this legislation.

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

Mr. McCULLOCH. I yield to the gentleman from New York.

Mr. LINDSAY. I think that this point is deserving of further clarification. The gentleman from New York is correct that this bill does not bring labor unions under the antitrust laws. However, as the gentleman knows, antitrust laws are presently applicable to any labor union which is engaged in a conspiracy in restraint of trade in which management or a company is a party. Under those special circumstances labor unions can be covered by the conspiracy section of the Sherman Antitrust Act, and to that extent labor unions would be covered by the word "association" in this proposed bill.

Mr. McCULLOCH. I thank the gentleman for his contribution.

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

Mr. McCULLOCH. I yield to the gentleman from California.

Mr. ROOSEVELT. The distinguished gentleman is not only a distinguished member of the Committee on the Judiciary but also of the House Small Business Committee. May I not inquire whether he would agree that this measure would be also of considerable help to the position of small business concerns in maintaining the position of fair competition under the Clayton Act which, perhaps, by themselves they today are not able to do?

Mr. McCULLOCH. Yes. It is my opinion that this legislation will be helpful not only in that field but in many fields in the industrial activity of this Nation.

Mr. ROOSEVELT. I thank the gentleman.

Mr. CELLER. Mr. Chairman, I yield 5 minutes to the gentleman from Colorado [Mr. ROGERS].

Mr. ROGERS of Colorado. Mr. Chairman, I rise in support of S. 167.

This legislation would empower the Attorney General or the Assistant Attorney General in charge of the Antitrust Division to issue a written civil investigative demand to a corporation, association, or partnership. The demand would require the entity on which it is served to produce documents for examination by duly designed representatives of the Department of Justice in connection with a civil antitrust investigation, instituted to determine whether the evidence warrants the filing of a civil antitrust suit.

Mr. Chairman, this bill provides many safeguards to the recipients of 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 designated by the 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—that is to say the original—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 time.

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 would be authorized to take the original 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, associations, or partnerships by making them produce documents throughout the United States. I assured the gentleman from Virginia that protection is given here not only to that feature of the matter but there must be a reproduction of the document and it

returned to the entity from which it was received. Then, if there should be any ambiguity in the civil demands that may be delivered, we provide a method whereby the individual may go to court and point out the ambiguity and the Department would be restrained.

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

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

Mr. SMITH of Virginia. It is my understanding and it is now perfectly clear from the debate as well as the bill that the Department of Justice cannot take original papers away from a corporation, association, or partnership.

Mr. ROGERS of Colorado. The gentleman is correct.

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

Mr. ROGERS of Colorado. I yield to the gentleman from North Carolina.

Mr. WHITENER. Mr. Chairman, I would like to ask the gentleman from Colorado, since he mentioned safeguards for the recipients of the civil demands, if he would tell the Members of the House what safeguards the legislation contains with reference to a subsequent criminal indictment and the subsequent use of information which the Government procures 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 in connection with 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 procedure the Attorney General would be in doubt as to whether he even had a civil case; otherwise he would not need to use this civil demand, would he? Is that right or not?

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 he 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 is in doubt 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—supposing 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 proceedings might be instituted.

The gentleman has mentioned something about constitutional immunity. I am sure the gentleman is well aware of the fact that the courts have universally held that once one has waived a constitutional privilege it is 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. We cannot nor can the Attorney General nor can all the thousands of lawyers throughout the United States anticipate whether a man through some inadvertence 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 Department wants to inspect to determine whether or not there has been a violation of the antitrust law, they may deliver those papers to an individual designated by the Attorney General and this person will make a copy of such papers.

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

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

Mr. CELLER. First, the gentleman is aware that there is no privilege of the type indicated that resides in a corporation. It does not even reside in a partnership.

Mr. WHITENER. But it does reside in the members of the partnership and the officers of the corporation as individuals, does it not?

Mr. ROGERS of Colorado. This is for the production of the papers of the partnership, not of the individual. We have gone overboard, so to speak, to say that the individuals do not have to deliver personal papers and they are not even required to disclose 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 situation to have 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 created by this legislation.

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 we do it with the discovery procedure, make a demand on the defendant and get the evidence demanded in that lawsuit.

The objective 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 on a fishing expedition in the court on record where the public and everybody knows that he is trying to prosecute somebody when he may not have the evidence.

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

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

Mr. MULTER. I think we ought to have clearly in mind here that there is nothing new so far as the question of immunity is concerned that is being introduced into the law by virtue of this bill. Under the situation, as it exists today, if you or I or any other lawyer issued a subpena, and the person who is subpenaed did not want to comply because of privilege or because he wanted immunity, when the person answers the subpena, if they plead that immunity or claim that immunity, the same thing would apply; is that not so?

Mr. ROGERS of Colorado. In that case, they can go to the Federal court and set it forth and the court would not direct them to produce the documents.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CELLER. Mr. Chairman, I yield the gentleman 2 additional minutes, and trust that the gentleman will yield so that I may reply to the gentleman from North Carolina.

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

Mr. CELLER. In the case of *U.S.* v. *Onassis,* 125 Federal Supplement 190, a criminal case, and in *United States* v. *Onassis,* 133 Federal Supplement 327, a civil case, it was held that as to partnership business records and papers, there is no privilege against incrimination.

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

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

Mr. ROGERS of Texas. As I understand the bill, as it has been explained, if the Attorney General makes the request for the documents or papers and the person from whom he seeks to get these documents or papers refuses to deliver them, then this bill provides a method by which the Attorney General can petition a court to force him to give those documents over.

Mr. ROGERS of Colorado. That is right and further, if the individual is dissatisfied with the determination, he can within the 20-day period petition the court and enjoin the Attorney General.

Mr. ROGERS of Texas. Yes, he could do that under any circumstances through an injunctive proceeding and as proposed in this legislation. But the point I am getting at is this—suppose the Attorney General does not want to do that. I want the record here to show that this bill is not intended as a vehicle for the Attorney General simply to get the refusal on the part of a company and then to undertake to prosecute that company under the criminal laws for undertaking to evade or avoid delivery of this information to the Attorney General. Am I correct in that statement?

Mr. ROGERS of Colorado. Of course, I am pointing out to the gentleman that we do provide a criminal penalty. On page 6 of the report, we have set out in accordance with the Ramseyer rule the changes proposed in the legislation, and for willful destruction of documents to evade compliance, a person could be prosecuted.

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 or papers and says, "I just simply will not comply with the request"—Is it the intention of the Committee on the Judiciary in reporting this bill favorably 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 procede 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.

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 from Texas propounding the question, 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 an order 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 the Attorney General go to court in compliance with the terms of this bill rather than to proceed under the criminal law?

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 Generals National Committee to study the antitrust laws. There were represented on that committee members of the bar from the country over, leading experts 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 this kind. Subsequently the bill was also endorsed by the present Attorney General.

One of the areas that troubled the Attorney General's Committee on 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 or not 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 grand juries knowing 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 had been 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 consistent with modern 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 in order to obtain documents that are 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 are entitled to. Documents given to a 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 warded 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 process that will open up the books to a firm's competitors, to Federal or State tax officials, to other agencies, and so on. None of this is possible in the bill as drafted. It has the same safeguards as do the present procedures that surround the grand jury process.

Those who are disturbed about overuse of the antitrust laws can be assured that, if anything, this will lead to the administration of the antitrust laws more by civil process than by criminal process. As I mentioned a moment ago, when the Government has been forced to use the grand jury 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 pinpointed and narrowed in its application. The bill will further the administration of the antitrust laws, and it may mark a new trend in the administration of antitrust laws toward civil rather than criminal prosecutions.

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

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. 167, entitled the Antitrust Civil Process Act, is an important bill which would greatly implement the efficiency 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. 167

It is a curious fact that the Department of Justice at present 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 the bill notes, it is an abuse of process 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 to obtain information upon which to base a civil proceeding.

Thus, S. 167, in providing the Department with civil authority actually works in behalf of prospective defendants in that, first, it removes the potentiality of a miscarriage wherein the grand jury is used to secure information upon which to base a civil proceeding; and second, it removes the temptation for a criminal case to be brought where a civil case would be more appropriate.

CERTAIN ANTITRUST LAWS CAN ONLY BE ENFORCED CIVILLY

One of the most significant areas of antitrust activity during the past decade has been antimerger actions. This has been made possible by the amendment to section 7 of the Clayton Act embodied in the Celler-Kefauver Act. This has proved a very effective instrument in forestalling undue increases in concentration of economic power and has done much to preserve a competitive framework in many of our basic industries.

Section 7 of the Clayton Act, however, can only be enforced civilly. Thus in an area of antitrust enforcement where comprehensive market investigation is essential, the Division has no power to collect information prior to filing a complaint.

VOLUNTARY PROCEDURES SET UP A GRESHAM'S LAW WHEREIN THOSE WHO COOPERATE ARE PENALIZED IN FAVOR OF THOSE WHO DO NOT COOPERATE

The question may well be asked, How is it that the Antitrust Division has been able to bring so many antimerger cases without civil demand authority? The answer is that fortunately many business people have been willing to cooperate with their Government and supply information as to the competitive characteristics of the industries which might be affected by a merger which they contemplate. However, as the report points out:

> Some companies will fully cooperate under such circumstances, but others will not. At the public hearings before the Antitrust Subcommittee of the Committee on the Judiciary on August 23, 1961, the Attorney General furnished the subcommittee with a large number of instances where such cooperation was not forthcoming. In some instances this caused a complete frustration of the investigation. This method of investigation is unsatisfactory, since it leaves the public interest in the enforcement of the antitrust laws subject to the will of those who violate the laws.

It is clearly unfair to those public-spirited business firms who are willing to cooperate in supplying information to the Antitrust Division to be penalized in favor of those who refuse to cooperate. It is only reasonable to expect that as time goes on fewer and fewer prospective defendants will be willing voluntarily to submit information. S. 167 would bring about equal treatment, so that the uncooperative would not stand to benefit.

S. 167 WOULD ENABLE ANTITRUST DIVISION TO DEVELOP FACTUAL PICTURE BEFORE FILING COMPLAINTS

Most important of all, it is essential that the Antitrust Division be more informed as to the facts in any given situation before filing a complaint. Certainly no one would think it wise for the Division to file a complaint in order to get facts to determine whether a violation of the antitrust laws has occurred.

OTHER AGENCIES HAVE AUTHORITY TO PROCURE DOCUMENTS

It is strange indeed, that the Department of Justice, the primary enforcer of the antitrust laws, alone lacks authority to procure documents for investigative purposes. The Federal Trade Commission has such power, as do the Department of Agriculture, the Department of the Army, the Department of Labor, the Federal Maritime Commission, Treasury Department, National Science Foundation, and the Veterans' Administration; moreover, more than 15 States have expressly granted such authority in connection with antitrust investigations.

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 legislation requires that the documents requested be described in enough detail to facilitate compliance. As the report points out:

> The demand must set out the nature of the conduct constituting the alleged antitrust violation which is under investigation and the applicable provision of law. It must also describe the classes of documents to be produced with such definiteness and certainty as to permit such material to be fairly identified. Privileged documents may not be demanded, and existing law is expressly invoked to protect against unreasonable demands.
>
> The Department must apply to the district court where the recipient does business to enforce the demand if the recipient does not comply with it. The recipient may also apply to the court to vacate or modify the civil investigative demand. The reasonableness of the demand would be determined upon the same test as the reasonableness of a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged antitrust violations.
>
> The proposed legislation provides for service of the civil demand and return of service similar to the provisions for service of complaints in civil cases under the Federal Rules of Civil Procedure.
>
> Copies of documents may be made but originals may be substituted therefor.

In short, prospective antitrust defendants are protected against any investigative abuses under the Antitrust Civil Process Act, and at the same time would be reassured that unwarranted criminal suits would not be filed where civil cases would be more appropriate.

S. 167 is a good bill and should have our wholehearted support.

Mr. McCULLOCH. Mr. Chairman, I yield 10 minutes to the gentleman from Michigan [Mr. MEADER].

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

Mr. MEADER. Mr. Chairman, this bill unquestionally would vest greater authority in the Attorney General and the Department of Justice than they now possess.

This is one of a series of bills in which the Justice Department has requested the Committee on the Judiciary of the House of Representatives to grant them more power and more authority.

The effect of this bill is to give subpena power to the chief law enforcement officer of the United States.

Frankly, I sat through the hearings on this measure and I was not satisfied that a case had been made showing for the necessity for this additional grant of authority to the Depratment of Justice.

I would like to call the attention of the committee to the colloquy with Mr. James McI Henderson, General Counsel of the Federal Trade Commission, accompanied by Mr. Sherman Hill, assistant to the General Counsel of the Federal Trade Commission, on page 57 and following of the committee hearings.

I asked the Counsel of the Federal Trade Commission whether it was not true that under existing law the Attorney General could call upon the Federal Trade Commission to undertake an investigation under its existing authority of possible violations of the antitrust laws and make the resulting evidence available to the Department of Justice. He seemed to be in some doubt about the matter, but on page 59, as you will notice, our counsel, Mr. Maletz, quoted section 6 of the Federal Trade Commission, which in relevant parts provides as follows:

> That the Commission shall also have power, upon the application of the Attorney General, to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

Mr. Maletz proceeded to obtain the admission of the General Counsel for the Federal Trade Commission that that section did empower the Federal Trade Commission upon the application of the Attorney General to conduct such an investigation. The head of the Antitrust Divison of the Justice Department, Judge Loevinger, recognized the existence of this authority but asserted that it was administratively unworkable.

Where I quarrel with the record is this: You presently have two agencies, the Federal Trade Commission, an in-

dependent regulatory Commission, and the Justice Department, a Department of the Government in the executive branch of the Government, both with authority to enforce the antitrust laws. And, I raised the question that if they both were investigating the same company, seeking the same 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 Federal Trade Commission Act to ask that the information be obtained by the Federal Trade Commission.

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 inadequate. Existing sanctions for the production of information should have been tried before they come in here and ask us to give to the Attorney General, the chief law enforcement officer of the United States in the executive branch of the Government, the same subpena power we have given to the regulatory commissions and boards.

These administrative tribunals, as we all know, are unusual creatures outside the executive branch of the Government in which we have combined legislative, judical, and administrative powers and have erected certain safeguards to avoid the abuse of that extraordinary power.

In other words, I believe a case has not been made for this request for authority.

But my primary concern is with the facility with which the Department of Justice has come to our House Judiciary Committee asking for one additional grant of authority after another. I am more disturbed that our House Judiciary Committee has been extremely generous in granting those requests.

Mr. Chairman, I point out that in the 1st session of the 87th Congress we passed eight bills at the request of the Department of Justice which have already become public law, and when we return to the House, I shall ask permission to insert a list of these laws in the body of my remarks.

Mr. Chairman, I point out that in addition, in the last session, the House of Representatives passed five other bills which are now pending in the other body and on which no action yet has been taken.

But, that is not the end. The gentleman from New York, the distinguished chairman of the Judiciary Committee, Mr. CELLER, mentioned that he thought he would not press for the premerger notification bill which has been requested, but we have other bills on which there may or may not be action taken. We have pending before our committee now a bill to elevate the investigations of the FBI, the Narcotics Bureau, and the Internal Revenue Service with respect to certain criminal offenses to the same stature 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.

Members of the House may recall that 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 House in its judgment saw fit to reject that particular bill.

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 having been an investigator and 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 another tool or another weapon and 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:

LAWS PASSED DURING 1ST SESSION OF 87TH CONGRESS AMENDING TITLE 18 (CRIMES AND CRIMINAL PROCEDURE) OF UNITED STATES CODE

Public Law 87-338—Amending section 35 of title 18—(conveying of false information concerning the doing of any act violating those chapters of title 18 dealing with aircraft, shipping, and railroads).

Public Law 87-368—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 87-218—Amending chapter 61 of title 18—(to provide means for the Federal Government to combat interstate crime and to assist the States in the enforcement of their criminal laws by prohibiting the interstate transportation of wagering paraphernalia).

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, stations, and systems).

Public Law 87-228—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 87-336—Amending section 5021 of title 18—(Federal Youth Corrections Act).

BILLS PASSED BY HOUSE IN 1ST SESSION OF 87TH CONGRESS AND PENDING IN SENATE CONCERNING AMENDMENTS TO TITLE 18 (CRIMES AND CRIMINAL PROCEDURE) OF THE UNITED STATES CODE

H.R. 3247—Amending section 2385 of title 18—(defining the term "organize" as used in section which concerns "Advocating Overthrow of Government").

H.R. 6691—Amending sections 871 and 3056 of title 18—(providing penalties for threats against the successors to the Presidency and to authorize their protection by the Secret Service).

H.R. 8140—Amending various chapters of title 18—(to strengthen the criminal laws relating to bribery, graft, and conflict of interest).

H.R. 7037—Amending section 3238 of title 18—(providing for offenses not committed in any district).

H.R. 8038—Amending section 491 of title 18—(prohibiting certain acts involving the use of tokens, slugs, disks, devices, papers, 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 proper individual rights and using the authority we vest in them 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 should 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?

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. MEADER. Mr. Chairman, I yield myself 1 additional minute.

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

Mr. MEADER. I yield to the gentleman from Colorado.

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 unworkable because of the inability of the Department's attorneys to maintain control of such investigation on the one hand, and the drain on the Commission's budget and 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 unworkable, 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 Commision or inaction of the Federal Trade Commission. The fact that the Federal Trade Commission has been inexistence since 1914 and that all of the Attorneys General have not cooperated, as the gentleman indicated by his argument, is no argument as to 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 to institue 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 all of the antitrust laws and then you are hesitant to give him at least the right to go in and ask a suspected violator, especially an association, a corporation or partnership, for inspection of documents necesary for him to enforce those laws.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. MEADER], has again expired.

Mr. McCULLOCH. Mr. Chairman, I yield the gentleman 3 additional minutes.

Mr. MEADER. Mr. Chairman, the point I was trying to make, which apparently I did not make it clear, and I would like to make crystal clear, is that 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 does not accomplish the results, it seems to me they are in a poor position to come in here and say that there is a strong case for granting extra power.

Mr. CELLER. Mr. Chairman, I yield myself 1 minute to reply 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 agents of the Federal Trade Commission from pursuing Federal Trade Commission suits. It would be most awkward and most cumbersome to have one group, the Federal Trade Commission, making investigations and then have another group, the Department of Justice, taking over the case and building up an actual proceeding by way of antitrust. 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; there would be diversion 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. MACGREGOR. 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. WHITENER] and the distinguished gentleman from Michigan [Mr. MEADER]. We have seen 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 into the hands of the executive branch of the Government more and more authority and responsibility. This particular proposal seeks to shift into the hands of the executive, authority and responsibility traditionally reserved to the judiciary. I have general reservations about the merits of this legislation; it would shift to a prospective defendant the burden of going forward in a court action by giving the right to the Attorney General to issue a civil investigative demand, and would then require a responsible defendant to come into court saying that this demand is improper. However, the purpose of my present remarks is to rectify a specific defect in the legislation.

I call your attention to line 11 on page 4 of the bill. The legislation, as drawn and submitted to this committee, proposes to give to the Attorney General, and more specifically to the Assistant Attorney General in charge of the antitrust division, a right to serve a civil investigative demand not just on a corporation, association or partnership under investigation but to serve a demand on any person and that means to any prospective witness as well as to any company under investigation—a grant of authority very broad, indeed. I do not suggest that this Attorney General or, perhaps, any Attorney General or his assistants would abuse this tremendous grant of authority, but I think we should concern ourselves with the possibilities of its abuse rather than with the prospects and probabilities of its proper exercise.

Much has been said about the need to avoid an unilmited fishing expedition. Much has also been said about the recommendations of the American Bar Association; a careful reading of the hearings, and of the testimony of Mr. William Simon appearing on behalf of the American Bar Association, will clearly show the recommendation of the ABA that this power, the power to draft and serve these civil investigative demands, be limited to companies under investigation. The ABA position, given in testimony on pages 79 and 80 of the hearings, expresses the strong feeling that this power, if granted, should be limited in scope and should extend only to those companies which are under investigation.

Thus, Mr. Chairman, at the appropriate time I will move to amend the bill at this point—on page 4, line 11, so as to insert after the word "person" the words "under investigation." This would be a legitimate and proper restraint on the exercise of newly given power. If future experience demonstrates, should this legislation pass, that a broader grant of power is necessary, this body can always, acting in its wisdom, grant that power.

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

Mr. MACGREGOR. I yield to the distinguished gentleman from Colorado.

Mr. ROGERS of Colorado. The gentleman has made reference to section 3(a) appearing on page 4, line 11, to which he said he would offer an amendment. I direct the gentleman's attention to the same page, line 17, where it states:

(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;

Does not the gentleman think that that meets the requirement that the man who is served with this demand knows 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 innocent third parties, to allow a civil investigator 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 them 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 subpena 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 that is the only 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 can do now. All we are asking is that the same power that resides in the Federal Trade Commission should likewise reside in the Department of Justice.

Mr. Simon answered that question:

Yes, sir. There is no dictinction made in section 9 of the Federal Trade Commission Act as to a prospective——

Mr. MALETZ. As between 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 do what the gentleman wants to do, 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 or have disclosed or made manifest to it the contents of certain documents which would be necessary to a successful prosecution against corporation A.

I ask him, what would happen, for example, in the famous Philadelphia case involving the General Electric Co.? The corporation under inquiry was the General Electric Corp. Yet there were other corporations whose 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 subcontractors could not be under inquiry, the competitors and customers of General Electric could not be inquired into. So that while that was a grand jury investigation in Philadelphia, all 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, are 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 could not examine a second 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 looks at the books, records, and papers of the second corporation that may have conspired with or dealt with 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 we do not allow them to do 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 been criticized for using 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. WHITENER].

Mr. WHITENER. Mr. Chairman, and members of the committee, I regret that 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. I personally, as a lawyer, cannot see why the Department of Justice needs this legislation to assist it in preparing and handling civil actions.

Why should the Department of Justice be given this unusual power in this limited field if it is not wise to give it in all litigation in which the Government is a party plaintiff against a private citizen who is a party defendant? If our friends believe that this is a good departure to take, then they ought to come in here and say that in any civil action, or at any time the Attorney General of the United States or his assistant feels that he has a civil action against a citizen, that that entitles the Attorney General to bring the prospective defendant in and make him show everything he has so that the Government can decide whether it does have a maintainable civil action.

We have rules of civil procedure applying to the Federal courts; they are very definite rules, and they give the right of discovery in proper cases. I would like to just read to you here a quotation from a law review article that is referred to on page 354, rule 28 of the Rules of Civil Procedure, United States Code Annotated. It says:

The type of fishing which the rules do not tolerate is fishing before action to try to discover some ground for bringing suit. No discovery process can be used by the plaintiff before he has filed his complaint, and the provisions for perpetuating testimony are not designated for discovering grounds for bringing action, but only for perpetuating evidence already known.

Now, that is taken from 15 Tennessee Law Review 737. In the commentary on the adoption of rule 27, the discovery or deposition rule, we find this at page 353, under rule 27, United States Code Annotated:

With respect to whether this rule may be used for purposes of discovery before the filing of a complaint * * * commentators have disagreed. Former Attorney General Mitchell, a member of the advisory committee, stated that the committee did not intende the rule to be "misused" as a means of discovery.

Prof. Edson R. Sunderland agreed as to the intention, but expressed some doubt as to whether the rule might not be otherwise interpreted. Later, however, Professor Sunderland, without mentioning rule 27, expressed his opinion that discovery might not be used as a direct aid in drawing a complaint. Prof. William W. Dawson, on the other hand, felt that Rule 27 might be so used.

Mr. Chairman, that comes from 7 University of Chicago Law Review 321.

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

Mr. WHITENER. I shall be happy to yield briefly, and stress the word "briefly."

Mr. ROGERS of Colorado. Mr. Chairman, the gentleman is an outstanding lawyer from North Carolina and I am sure he is familiar with the fact that "the Attorney General of the State of North Carolina," according to the statute, "shall have power, and it shall be his duty, to investigate, from time to time, the affairs of all corporations doing business in the State, which are or may be embraced within the meaning of the statutes of this State defining and denouncing trusts and com-

binations against trade and commerce."

Mr. Chairman, if the State of North Carolina authorized it, why should the gentleman from North Carolina [Mr. WHITENER] object to the Attorney General's having the same authority?

Mr. WHITENER. Do I understand 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 Antitrust Law?

Mr. ROGERS of Colorado. 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 the court. 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 the lawsuit if he follows the suggestion made by the gentleman from North Carolina. But if the Attorney General must go to a grand jury or he must file a lawsuit in order to get the evidence, he has the authority to do it.

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

Mr. WHITENER. Is the gentleman from Colorado about through?

Mr. ROGERS of Colorado. That he has the right to investigate as to whether he should file a lawsuit or whether he should take it to the 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—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 and recommend it in all cases 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 raised 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. Let me answer your first question. Your first question was whether or not the Attorney General from the State of North Carolina——

Mr. WHITENER. No; I do not yield any 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.

I will say this to the Members of the House, that as the gentleman from Michigan 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 American people are things about which we should be concerned. If these new philosophies can be engrafted in one field of the law you know that they are later used as arguments for doing it somewhere else. Today someone says the Federal Trade Commission can do something and therefore everybody else ought to be able to do it. This is a serious matter. Some of the same people who would argue that this ought to be done because you are talking about antitrust cases will argue otherwise when some other issue is involved. Those of us who are today opposing this, as we have some other legislation that has come to us, are being consistent and being realistic about it. I see no reason why the Attorney General or the Federal Government should be in a different procedural situation in one type of civil action from another type of civil action. I see no reason why the Government of the United States as a party plaintiff should have rights which a citizen bringing an action against the Government, where the Government is a party defendant, does not have. The citizen should have that same right of discovery or whatever right of procedure you give to 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 acquaintanceship with anyone that has ever been even investigated for violating the antitrust laws. But I do know this. I know many American citizens who have come into contact with the Federal Government, the State government and the local government in the courts.

If the State of North Carolina has bad civil procedure that does not justify the Federal Government having it. I urge you seriously 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 listen, because here is what the statute of his State provides:

> In performing the duty required in section 75-9, the attorney general shall have power, at any and all time, to require 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 for his inspection any of the 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 of the 50 that have a provision 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 all of his papers. Hence I see no reason 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. ROGERS]. 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 fine young lawyer who spent almost 1½ years collecting information which resulted in a certain suit, which I do not care to mention on the floor today. In some other cases, it has taken longer than that to collect the evidence justifying the commencement of the suit. I ask the members of this committee whether they prefer a suit against a constituent, with attendant unfavorable publicity where desired information may be secured by subpena duces tecum, or

whether they prefer a request or demand from the Department of Justice so that a constituent may furnish this information 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.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCULLOCH. Mr. Chairman, I have no further requests for time.

Mr. CELLER. Mr. Chairman, I yield back the balance of my time.

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 of America 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 entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730, as amended; 15 U.S.C. 12), commonly known as the Clayton Act;

(2) The Federal Trade Commission Act (15 U.S.C. 41 and the following);

(3) 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 (U.S.C., title 15, sec. 13), and for other purposes", approved June 19, 1936 (49 Stat. 1528; 15 U.S.C. 13a), commonly known as the Robinson Patman Act; and

(4) 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 the duty of enforcing or carrying into effect any antitrust law;

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

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

(i) The term "custodian" 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 Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an antitrust investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, 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 made available for inspection and copying or reproduction; and

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

(c) No such demand shall—

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

(2) require the production of any documentary evidence which would be priveleged from disclosure if demanded by a subpena 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 any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

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

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

(f) A vertified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. 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 such additional antitrust investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(b) Any person upon whom any demand issued under section 3 has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(c) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this Act. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General, to have access to such material for examination. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than a duly authorized officer, member, or employee of the Department of Justice, or any antitrust agency. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary 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.

(d) Whenever any attorney 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 such case or proceeding on behalf of the United States. Upon the conclusion of 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.

(e) Upon the completion of (1) the antitrust investigation for which any 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 any court, grand jury, or antitrust agency through the introduction thereof into the record of such case or proceeding.

(f) When any documentary material has been produced by any person under this Act for use in any antitrust investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General or upon the Assistant Attorney General in charge of the Antitrust Division, 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)) so produced by such person.

(g) In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material produced under any demand issued under this Act, or the official relief of such custodian from responsibility for the custody and control of such material, the

Assistant Attorney General in charge of the Antitrust Division shall promptly (1) designate another antitrust investigator to serve as custodian thereof, and (2) transmit notice 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 have with regard to such materials all duties and responsibilities imposed by this Act upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or direction which occurred before his designation as custodian.

JUDICIAL PROCEEDINGS

SEC. 5. (a) Whenever any person fails to comply with any civil investigative demand duly served upon him under section 3 or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, 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, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this Act, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains 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 the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this Act, or upon any constitutional or other legal right or privilege of such person.

(c) At any time during which any custodian is in custody or control of any documentary material delivered by any person 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 such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this Act.

(d) 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 matter 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 1291 of title 28 of the United States Code. And disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

(e) To the extent that such rules may have application and are not inconsistent with the provisions of this Act, the Federal Rules of Civil Procedure shall apply to any petition under this Act.

CRIMINAL PENALTY

SEC. 6. (a) Section 1505, title 18, United States Code, is amended to read as follows:

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

"Whoever corruptly, or by threats or force, or by any theatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or

"Whoever injures any party or witness in his person or property 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 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 endeavors 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 inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the 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, line 6, following the "semicolon" insert the word "all".

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

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

Page 2, line 17, strike the words "or antitrust agency".

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

Page 3, lines 1 through line 3, strike all of the language therein.

Page 3, line 4, strike subparagraph "(c)" and insert in lieu thereof subparagraph "(b)", also on line 4, after the word "means" strike "any final".

Page 3, line 5, strike the words "order of any antitrust agency, or".

Page 3, line 9, strike subparagraph "(d)" and insert in lieu thereof subparagraph "(c)".

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

Page 3, line 16, strike subparagraph "(f)" and insert in lieu thereof subparagraph "(e)".

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

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

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

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

Page 7, line 5, after the word "writing" and before the parenthesis, 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"; also after the word "General" strike "to have 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".

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

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

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

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

Page 9, line 13, strike out "or any antitrust agency".

Page 14, line 10, 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 fishing expeditions by the Deputy Attorney General who will be in charge of antitrust actions under this legislation.

Lest there be any 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 council 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 corporations, partnerships, or associations under investigation, for purposes of inspection and copying of relevant unprivileged documents possessed by them, and to vest 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. Maletz, the committee counsel, said:

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

Mr. SIMON. That is correct.

Mr. MALETZ. 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 scope 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 the Government.

I urge the committee to adopt this amendment.

Mr. CELLER. 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 it would have a very far-reaching effect. No agency which has the power to use the investigative demand has such limitations upon its powers as envisioned by this limitation.

The Federal Trade Commission has no such limitation, the Atomic Energy Commission has no such limitation, the Department of Agriculture 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 Veterans' Administration 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 investigative demand is served on the officials of corporation A and corporation B has some very pertinent documents that are necessary to build up the case against corporation A, then 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.

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 copies secreted somewhere. Letters are important links in the chain of evidence against corporation A, letters are important to sustain an antitrust suit against corporation A.

It would be absurd to say to the Attorney General, "You cannot make a demand upon corporation B as a witness to produce those letters in the proceedings against corporation A," and that the Attorney General has no such power. The case falls by the wayside.

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

I should think the corporations 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 when the matter 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 tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. MACGREGOR and Mr. ROGERS of Colorado.

The committee again divided, and the tellers reported that there were—ayes 55, noes 52.

So the amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. PERKINS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration 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, pursuant to House Resolution 558, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the third reading of the bill.

The bill was ordered to be read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

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

The SPEAKER. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 338, nays 58, not voting 40, as follows:

[Roll No. 34]

YEAS—338

Abbitt	Buckley	Dole
Adair	Burke, Ky.	Donohue
Addabbo	Burke, Mass.	Dooley
Addonizio	Byrne, Pa.	Downing
Albert	Byrnes, Wis.	Doyle
Alger	Cahill	Dulski
Anderson, Ill.	Cannon	Durno
Anfuso	Carey	Dwyer
Arends	Casey	Edmondson
Ashley	Cederberg	Elliott
Aspinall	Celler	Ellsworth
Auchincloss	Chelf	Everett
Ayres	Chenoweth	Evins
Bailey	Chiperfield	Fallon
Baker	Clancy	Farbstein
Baldwin	Clark	Fascell
Baring	Coad	Feighan
Barrett	Cohelan	Fenton
Barry	Collier	Findley
Bass, N.H.	Colmer	Finnegan
Bass, Tenn.	Conte	Fino
Bates	Cook	Flood
Battin	Cooley	Fogarty
Becker	Corbett	Ford
Beckworth	Corman	Fountain
Bell	Cramer	Frazier
Bennett, Fla.	Cunningham	Frelinghuysen
Betts	Curtin	Friedel
Blatnik	Curtis, Mass.	Fulton
Boggs	Curtis, Mo.	Gallagher
Bolling	Daddario	Garland
Bonner	Dague	Garmatz
Bow	Daniels	Gary
Boykin	Dawson	Gathings
Brademas	Delaney	Gavin
Bray	Dent	Gilbert
Breeding	Denton	Gonzalez
Brewster	Derounian	Goodell
Brooks	Derwinski	Goodling
Broomfield	Devine	Granahan
Brown	Diggs	Gray
Broyhill	Dingell	Green, Oreg.

Green, Pa.	Mahon	Rostenkowski
Griffin	Mailliard	Roush
Griffiths	Marshall	Rutherford
Gubser	Martin, Mass.	Ryan, Mich.
Hagen, Calif.	Mathias	Ryan, N.Y.
Haley	Matthews	St. George
Halleck	May	St. Germain
Halpern	Merrow	Santangelo
Hansen	Miller, Clem	Saund
Harding	Miller, George P.	Saylor
Hardy	Miller, N.Y.	Schadeberg
Harris	Milliken	Schenck
Harrison, Va.	Mills	Scherer
Harrison, Wyo.	Moeller	Schneebeli
Harsha	Monagan	Schweiker
Harvey, Ind.	Montoya	Schwengel
Hays	Moorehead, Ohio	Scranton
Healey	Moorhead, Pa.	Seely-Brown
Hébert	Morgan	Selden
Hechler	Morris	Sheppard
Henderson	Morse	Shipley
Herlong	Mosher	Shriver
Hoeven	Moss	Sibal
Hoffman, Ill.	Multer	Sikes
Holifield	Murphy	Siler
Holland	Murray	Sisk
Horan	Natcher	Slack
Hull	Nedzi	Smith, Calif.
Ichord, Mo.	Nix	Smith, Va.
Inouye	Norblad	Springer
Jarman	Nygaard	Stafford
Jennings	O'Brien, Ill.	Staggers
Joelson	O'Brien, N.Y.	Steed
Johnson, Calif.	O'Hara, Ill.	Stratton
Johnson, Md.	O'Hara, Mich.	Stubblefield
Johnson, Wis.	O'Konski	Sullivan
Jones, Ala.	Olsen	Taber
Jones, Mo.	O'Neill	Taylor
Judd	Osmers	Teague, Calif.
Karsten	Ostertag	Teague, Tex.
Karth	Patman	Thomas
Kastenmeier	Pelly	Thompson, Tex.
Kee	Perkins	Thomson, Wis.
Keith	Peterson	Thornberry
Kelly	Pfost	Toll
Keogh	Philbin	Tollefson
Kilburn	Pike	Trimble
Kilgore	Pillion	Tuck
King, Calif.	Pirnie	Tupper
King, N.Y.	Poage	Udall, Morris K.
King, Utah	Poff	Ullman
Kluczynski	Price	Vanik
Kowalski	Pucinski	Van Pelt
Kunkel	Purcell	Van Zandt
Laird	Quie	Vinson
Lane	Reece	Wallhauser
Lankford	Reifel	Walter
Latta	Reuss	Weaver
Lesinski	Rhodes, Pa.	Weis
Libonati	Riehlman	Westland
Lindsay	Rivers, Alaska	Whalley
Lipscomb	Rivers, S.C.	Wharton
McCulloch	Roberts, Tex.	Wickersham
McDonough	Robison	Widnall
McDowell	Rodino	Wilson, Calif.
McFall	Rogers, Colo.	Wright
McIntire	Rogers, Fla.	Yates
McSween	Rooney	Young
MacGregor	Roosevelt	Younger
Mack	Rosenthal	Zelenko
Madden		
Magnuson		

NAYS—58

Abernethy	Forrester	Michel
Alexander	Gross	Minshall
Ashbrook	Hagan, Ga.	Moore
Ashmore	Hall	Nelsen
Beermann	Harvey, Mich.	Passman
Belcher	Hemphill	Pilcher
Berry	Hiestand	Ray
Bolton	Johansen	Rogers, Tex.
Bromwell	Jonas	Roudebush
Bruce	Knox	Rousselot
Burleson	Kornegay	Scott
Chamberlain	Kyl	Short
Church	Landrum	Smith, Iowa
Davis, James C.	Langen	Stephens
Davis, John W.	Lennon	Utt
Dominick	Loser	Waggonner
Dorn	McMillan	Whitener
Dowdy	Martin, Nebr.	Williams
Fisher	Mason	Winstead
	Meader	

NOT VOTING—40

Alford	Glaimo	McVey
Andersen, Minn.	Glenn	Macdonald
Andrews	Grant	Morrison
Avery	Hoffman, Mich.	Moulder
Bennett, Mich.	Hosmer	Norrell
Blitch	Huddleston	Powell
Boland	Jensen	Rains
Davis, Tenn.	Kearns	Randall
Flynt	Kirwan	Rhodes, Ariz.
	Kitchin	Roberts, Ala.
Shelley	Thompson, N.J.	Willis
Smith, Miss.	Watts	Wilson, Ind.
Spence	Whitten	Zablocki
Thompson, La.		

So the bill was passed.

The Clerk announced the following pairs:

Mr. Kirwan with Mr. Avery.

Mr. Willis with Mr. Bennett of Michigan.

Mr. Alford with Mr. Rhodes of Arizona.

Mr. Glaimo with Mr. Glenn.

Mr. Thompson of New Jersey with Mr. Jensen.

Mr. Thompson of Louisiana with Mr. McVey.

Mr. Morrison with Mr. Andersen of Minnesota.

Mr. Powell with Mr. Hoffman of Michigan.

Mr. Shelley with Mr. Kearns.

Mr. Zablocki with Mr. Hosmer.

Mr. Macdonald with Mr. Wilson of Indiana.

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

COMMITTEE ON RULES

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 Virginia?

There was no objection.

SUBCOMMITTEE ON MINES AND MINING

Mr. EDMONDSON. Mr. Speaker, I ask unanimous consent that the Subcommittee on Mines and Mining of the Committee on Interior and Insular Affairs may sit during general debate this afternoon.

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'BRIEN of New York in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

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

Mr. Chairman, a large part of this proposal has been approved by the House last year, pursuant to a message the President sent to the Congress on July 21, 1961. The House passed the bill, H.R. 8291, under which three programs of assistance to certain migrants and refugees were taken out of the Mutual Security Act of 1954, as amended, and proposed to be reenacted in accordance with the President's request. H.R. 8291 failed of enactment due to unresolved disagreement between the House and the other body.

Two of the three programs of assistance apply to the activities conducted by the United Nations High Commissioner for Refugees, and to a related unilateral program, operated by the United States, under which certain refugees from behind the Iron Curtain are assisted in obtaining resettlement overseas or are integrated into the economies of the respective countries of first asylum.

The activities authorized under both programs have been conducted in the last 10 years under continuous scrutiny of the Committee on the Judiciary.

The third program, also previously authorized under the now repealed Mutual Security Act, relates to our participation in the Intergovernmental Committee for European Migration—ICEM—an organization erected at the initiative of the Congress in 1951. Our participation in ICEM is similarly surveyed by the Committee on the Judiciary, the members of which participate in the U.S. delegation to the semiannual sessions of the governing body of ICEM.

It might be appropriate to point out at this time that ICEM has so far moved to new homes and to new employment upward of 1,150,000 European migrants who otherwise would not have been moved. As an illustration of what ICEM is doing in just one field; namely, the settlement of migrants in countries in need of development of their agriculture, I wish to include at this point of my remarks an article which appeared in the February 1962 issue of a publication of the International Catholic Migration Conference.

THE SUCCESS OF THE DUTCH SETTLEMENT HOLAMBRA IN BRAZIL

(By C. J. J. Hoogenboom (Brazil))

"The earth was void and empty". These words from the first chapter of the Holy Bible are called to my mind, when considering the history of the Dutch agricultural settlement "Holambra" to date. Void and empty until the Dutch farmers started by the sweat of their brows, to cultivate this waste land which, a hundred years ago, belonged to the rich coffee region of the state of São Paulo. However, coffee cultivation died out here because the quality of the soil was rather poor and the output not very high. So when keener competition and other factors on the world market caused price cuttings, this region was one of the first to be abandoned by its owners and left to run wild.

Thirty years ago the completely abandoned Fazenda (estate) Ribeirão was purchased by Armour do Brazil, a United States firm of beef-packers from Chicago. This undertaking used only part of Ribeirão, as a rest station for the beef cattle they had bought in the State of Minas Gerais. These cattle, called Zebu, had to make a journey of hundreds and hundreds of miles and were able to recuperate here for some months before going to the slaughterhouse. The rest of the Fazenda was abandoned and left to erosion, while the poor crop of grass was burned every year, which further impoverished the structure of the soil. In 1948—13 years ago now—there were six men living on the Fazenda, namely, one Brazilian administrator and five