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pository library system. I was speaking about the tremendous number of Government publications not printed at or procured by the Government Printing Office. Permit me to read my statement on the subject, which is as follows:

Mr. HAYS. Mr. Chairman, I think we ought to put in here some comment about why we did this. We did this because of publications in the scientific field, which the Government has gotten into, as you know, in a big way in the last 20 years. And we had no idea, and still have no idea, that they will be ordering all of these little "House" publications of the departments which have no general bearing, no general information that they would want. And should this develop into abuse, I think probably it could be handled either by amendment or perhaps by regulation from the Joint Committee on Printing. I do not think it will develop into an abuse, but I think the question being raised in the record is good enough to serve as a warning. Because certainly I would not be in favor of that kind of thing.

Mr. Speaker, I believe that the new section 10, as we have reworded it, should now be sufficiently flexible to permit a more economical and effective administration of this act. Specifically, no provision was made for exempting publications produced in small numbers for specialized use, thus requiring overproduction of such publications by several hundred percent in some instances. Also, many publications such as technical and training manuals, and various types of handbooks, while perhaps of some so-called public interest, could not justify the wide dissemination and high cost of maintenance that in books of broader interest would be practical. Clearer power of determination in such cases, and greater selectivity in those publications chosen for distribution to depository librarians, would unquestionably result in a great saving in Government funds and much more efficient administration of the depository library program.

Mr. Speaker, permit me to cite one specific item in the bill which requires clarification as to intent. It appears in lines 21, 22, and 23 of section 4. Concern has been expressed as to the applicability of this legislation to publications intended to be self-sustaining such as those of the Office of Technical Services of the Department of Commerce. The language, "; but shall not include so-called cooperative publications which must necessarily be sold in order to be self-sustaining," was intended to make it absolutely clear that all self-sustaining or self-liquidating publications such as those of the Office of Technical Services of the Department of Commerce are among those exempted from the requirement of free distribution. This means self-sustaining or self-liquidating publications resulting from either joint private-Government efforts or wholly Government-sponsored efforts.

Mr. Speaker, I have carefully read the testimony of the Public Printer, who, before April 1961, served as staff director of the Joint Committee on Printing for 10 years. He furnished very significant information about the printing plants located all over the world which are authorized by the Joint Committee on Printing and which do approximately $100 million worth of printing a year. The Subcommittee on the Library in the report of the Senate Committee on Rules and Administration felt that very little of this material is of interest to depository libraries. The Public Printer takes the position, and has so testified before the Senate Subcommittee on the Library and the House Subcommittee on Legislative Appropriations, that this small amount does not justify the cost to the taxpayers that would be required to get this non-GPO printing to the libraries.

He has surveyed many of these printing plants and knows the problems involved in complying with this legislation. In addition to their normal requirements, it will be necessary for each of these plants to print sufficient copies of every item not exempted from the act to meet the requirement of the libraries—not knowing at the time of printing which libraries will select which item; inventory and store them; furnish the Superintendent of Documents with a list of what has been printed; eventually ship to Washintgon what is selected; and throw away the vast majority not selected. This would be a cumbersome and costly procedure and, in many instances the effectiveness of the publications would be destroyed because they would be out of date before they got into the depository system.

The Public Printer does not wish to deny to the depository libraries any service that his Office can possibly give. If given the additional funds necessary to include in the depository program field publications along with those produced by the Government Printing Office, which the Superintendent of Documents now distributes, he will do his very best to accomplish it. He is most anxious, however, that the fine depository distribution system that now exists not be bogged down by the addition of this mass of material, over which the Government Printing Office has no control, in order to get from it the few things that might be of interest to a depository library.

In conclusion, may I call your attention to the very profound and significant testimony presented by Air Force Secretary Zuckert representing the Department of Defense. While the Defense Department voiced no objection to the provisions of the bill which would increase the number of depositories nor the basic objective of the bill to make Government information available to the general public, great concern was expressed as to the likelihood of increasing administrative costs of its implementation to such an extent as to render its enactment inadvisable.

I am certain that ample testimony has been received, voicing strong endorsement of the original proposal to expand the Federal depository library system. But equal attention must be given to the many misgivings mentioned in the hearings, that the incorporation into the library distribution system of all Federal printing can be undertaken without inflicting serious hardship on the agencies concerned. For that reason, the House and Senate committees worked out this new section 10, which we believe will effect practical implementation of the new act without impairment of the efficient services extended to the Federal printing and depository library programs at this time.

ANTITRUST CIVIL PROCESS ACT

Mr. CELLER. Mr. Speaker, I call up the conference report on 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, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

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

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of June 21, 1962.)

Mr. CELLER. Mr. Speaker, this bill is called the Antitrust Civil Process Act, sometimes known as the Civil Investigative Demand Act. Its purpose is to give authority to the Attorney General to compel production of documentary evidence required in civil investigations for the enforcement of the antitrust laws. It is not a bill to bring criminal prosecutions to enforce antitrust laws.

The Department of Justice must be able to make adequate investigations to ascertain the facts. This bill, the antitrust civil process bill, or the civil investigative demand bill, has no reference whatever to persons. It is directed to corporations, business entities, and partnerships.

This bill has passed the Senate on two distinct occasions. It has also passed the House. The bill was recommended by the Eisenhower administration, and it is recommended by the Kennedy administration.

Heretofore, when the Department of Justice sought documentary evidence or data, it availed itself of the impaneling of a grand jury, and in that way sought to get the necessary evidence for purposes of prosecuting a civil suit. That method has been severely criticized, and in order to do away with that criticism and not go through the cumbersome procedure of impaneling grand juries, this bill was devised to give the Department of Justice the right to issue a demand upon the corporation to furnish the necessary data.

Now, there is nothing new in this process. We have already given that very right to the Department of Labor, the Treasury, Agriculture; we have given it to the Federal Trade Commission, the Bureau of the Census, the Veterans' Administration, the Atomic Energy Commission, National Labor Relations Board, and the National Science Foundation. Some 17 States have statutes on their books which give this same right that we are now seeking for the Attorney General to the attorneys general or other constituted officers of these States: Arizona, Hawaii, Idaho, Kansas, Louisi-

ana, Maine, Missouri, Montana, Nebraska, New York, North Carolina, South Carolina, Oklahoma, Texas, Utah, Washington, and Wisconsin.

There are appropriate safeguards in the bill. No corporation need divulge legally privileged documents, and the bill provides that anyone aggrieved can go into court and challenge the demand made by the Department of Justice.

Now, the conferees made certain changes. The House struck out the criminal provisions of the Robinson-Patman Act. This was agreed to in conference. The House limited use of the civil investigative demand to corporations and entities under investigation. The conferees accepted the Senate version. Thus material obtained under civil investigative demands would include any other corporation which possessed essential documentary evidence, and the demand is not limited to the particular corporation under investigation.

The Senate bill would make available material to all antitrust law enforcement agencies. The House limited the material to the Department of Justice. The conferees compromised that issue and made the material available only to the Department of Justice and to the Federal Trade Commission.

Now, these investigations are difficult at best, as was stated so very eloquently on the debate of this bill originally by the distinguished gentleman from Ohio [Mr. MCCULLOCH]. As he truly said:

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.

Mr. Speaker, I could not improve upon that statement. It is very difficult completely to forge the links in a chain of an antitrust investigation.

Mr. Speaker, the amendment that was adoped on the floor, offered by the distinguished gentleman from Minnesota [Mr. MACGREGOR], would limit the securing of the evidence or the essential data to the particular corporation under investigation. That means if corporation A was under investigation, the material evidence that would be in the files or that would be in the possession of corporation B or C or D would not be available to the Department of Justice if there was no reason for the Department to suspect B, C, or D of any antitrust violations. Now, see what would happen if we had such a bill as is envisaged here today: In the case of the electrical manufacturers, say, the General Electric Co. in Philadelphia, the Department of Justice would be limited to examination of the files of the General Electric Co., but its competitors and the customers and those affiliated with the General Electric Co. would be impervious under the MacGregor amendment to the demand of the Department of Justice, unless the Department had some reason to suspect them, and the whole case would have fallen by the wayside. Then what would have happened? The Department might then go back to the old practice of impaneling a grand jury.

Mr. Speaker, there is something sinister about a grand jury, as far as the person under investigation is concerned. There is sort of a criminal taint attached, a criminal aura that surrounds the person who is to be investigated by a grand jury. Furthermore, testimony taken before a grand jury is in camera. It is secret. The attorneys and counsel for those under inquiry do not know what the questions are, and do not know what the answers are. They are like a blind man looking for a black hat in a dark room.

Mr. Speaker, we want to do away with that because that may involve injustice to the corporation under inquiry, hence this civil investigative demand bill.

Mr. Speaker, I do hope that the conference report will be adopted.

PURPOSE AND NATURE OF THE BILL

Mr. Speaker, the basic purpose of the bill is to give the Department of Justice power to obtain evidence in civil antitrust investigations comparable to the power the Department now has in criminal antitrust cases through the use of grand jury procedures.

I say "comparable powers" because the civil antitrust process provided in this bill is far more limited than a criminal grand jury subpena in three important respects:

First. The civil investigative demand, unlike a grand jury subpena, is limited to business firms, and natural persons have been carefully excluded.

Second. It is limited to documentary evidence. Prospective defendants and witnesses cannot be interrogated in camera and without the advice of counsel as they could be in a criminal grand jury proceeding.

Third. Many safeguards have been carefully prescribed in this bill to protect business firms against unreasonable or oppressive demands.

LEGISLATIVE HISTORY

A civil investigative demand bill was recommended in 1955 by the Attorney General's National Committee To Study the Antitrust Laws.

The Supreme Court's decision in *U.S.* v. *Procter and Gamble,* 356 U.S. 677 (1958), held that it would be an abuse of process in an antitrust case to proceed by way of grand jury investigation where the Department of Justice has no serious intention of bringing a criminal suit. Thus this bill becomes a virtual necessity.

Such legislation has been recommended in the Economic Reports of the President to the last four Congresses, by the Cabinet Committee on Small Business in two successive reports, and by the American Bar Association. Such legislation has been urged by both the Eisenhower and Kennedy administrations.

As a result of virtually unanimous support for such legislation, and after thorough public hearings and committee consideration, both Houses have approved this bill during the present Congress.

The bill was extensively amended in the Senate to incorporate a number of important safeguards proposed by the American Bar Association. Further, as approved by the House Committee on the Judiciary, this bill was perfected by 29 additional amendments.

Several House amendments were inserted to provide still further safeguards against any abuse of the civil investigative demand procedure, and to insure that this procedure would be used only in civil antitrust proceedings. For this reason, the House struck out a reference to a criminal statute, section 3 of the Robinson-Patman Act, and inserted an additional amendment expressly restricting the procedure to civil antitrust investigations.

ISSUES POSED BY THE CONFERENCE REPORT

The Senate receded from its disagreement to all of the amendments proposed by the House save two.

The first is the so-called McGregor amendment, proposed on the floor of the House and adopted on a close teller vote by a relative handful of Members.

This amendment would restrict the civil investigative demand to prospective defendants and deny its use in the case of prospective witnesses.

In my view, this amendment would make the bill unfair, ineffective and unworkable and bring back the much criticized grand jury investigation panels.

It would be unworkable because it is impossible in a preliminary investigation for the Department of Justice to forecast what its investigation will disclose. The Department generally does not know in advance whether an antitrust violation has occurred or how widespread it may prove to be. The recent electrical price-fixing cases illustrate this. It would be unrealistic therefore to require the Department to guess in advance what companies will ultimately be named as defendants and which companies will end up as witnesses.

The bill would be unfair if limited to persons "under investigation" because every company which receives a civil investigative demand would immediately be regarded as a probable violator of the antitrust laws. This might well hurt the company financially, even though an inspection of its documents might disclose that it was not guilty of any antitrust violation.

Finally, the MacGregor amendment would render the bill, to a large degree, ineffective for several reasons:

First. Many a sophisticated antitrust violator today destroys compromising files. Often essential evidence of antitrust violations may only be found in files of innocent companies with which the guilty company has been in correspondence.

Second. Much antitrust litigation entails a judgment as to the relevant market and the proportion of business in that market which is affected by the antitrust violation. Often this information can only be obtained or compiled from documents in the files of other companies in the same industry.

Third. For many firms the civil investigative demand will serve the office of a "friendly" subpena. Many small firms would gladly cooperate with the Department of Justice where they have been hurt by illegal practices of their

competitors, customers, or suppliers, but they are afraid to volunteer evidence for fear of retaliation or fear of being branded as stool pigeons in the industry. The Antitrust Subcommittee in the course of its hearings on this bill compiled a list of 29 instances of such refusals of cooperation.

If the civil investigative demand is to be a true civil alternative to grand jury proceedings, it should be equally effective.

Another House amendment which was modified by the conference report involves a compromise.

As approved by the Senate, the Department of Justice could make available documents obtained through a civil investigative demand to "other antitrust agencies." Principally, because of the vagueness of this phrase, the provision was stricken by the House. The conferees compromised and agreed that the Department of Justice could make documents obtained by a civil investigative demand available only to the Federal Trade Commission for use by that agency in the parallel enforcement of the antitrust laws.

This compromise reflects the recommendation in the report of the Attorney General's National Committee To Study the Antitrust Laws, that:

"2. To avoid duplicating investigations, the investigative files should, to the extent permitted by existing law, be made fully available to the other" (p. 377).

CONCLUSION

In conclusion, I earnestly commend this bill, as agreed to in conference.

I urge the House today to take a long step forward toward the fair, effective enforcement of the antitrust laws by approving this bill.

Mr. Speaker, I yield 5 minutes to the gentleman from Ohio [Mr. McCULLOCH].

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

Mr. McCULLOCH. Mr. Speaker, first of all I am pleased with the compliment that the distinguished chairman of our committee has paid to me, and I hope that by reason of the conditions which have changed since the time I made that speech the chairman of our committee will follow me in the logic as I present it today.

Mr. Speaker, at the proper time I will offer a motion to recommit the conference report to the committee, with the proper instructions. It is true that this general type of legislation was recommended by President Eisenhower and by both of his Attorneys General, as it has been by the present Attorney General. However, the recommendations of President Eisenhower and his Attorneys General were not in accordance with this conference committee report on which we are asked to vote today. For that reason I am going to offer a motion to recommit, as I have indicated.

Mr. Speaker, Members of the House will recall that this matter was before the House on March 13 or 14 of this year. There have been material changes in the economy and the climate of the economy in this country in the meantime. I need not remind a single Member of the House what happened immediately after the announcement of the steel price increases and what continued to happen for a while thereafter. I need not remind the House that there have been more home foreclosures in the last year than in any year since 1940. I need not remind the House that there were more bankruptcies in the last year among small business than in any year since 1939. I need not remind the House what happened on black Monday some 6 or 8 weeks ago. Of course, all of you heard last night or read in the papers this morning, that the Dow-Jones averages of selected industrials dropped more than 10 points yesterday.

Mr. Speaker, I regret the necessity of reciting these unpleasant facts, and I regret to say to the Members of the House and through them to the people of the country that our business climate is not now of the best and every proper act should be to improve, not worsen, it.

Business, particularly small business, is troubled and afraid. It is high time that we adopted a benevolent, helpful attitude, so that there be more employment, that there be more profits upon which more taxes are paid, that we bring to an end at the earliest possible moment these staggering deficits which, if we implement the recommendations of the executive department, as I have said before, will be greater in the next fiscal year even than they are in this year; and they approached $8 billion as I last saw the figures.

The conference committee report, to which I object, would strike out the MacGregor amendment which, after thorough debate on the floor of the House, was accepted as a necessary improvement to S. 137. Furthermore, the conference committee report, if adopted by the House, would authorize the Attorney General to make a demand for documents from every corporation, every business entity in the United States, in any antitrust investigation, and thereafter furnish those documents to other agencies of the Government for whatever purpose they might wish to make of them, without the company or the business upon which the demand had been made knowing the reason therefor, or the use to which they were to be put.

Mr. Speaker, I am sorry there is not enough time in the 1 hour allotted to both sides on this important matter, and the brief 5 minutes allotted to me, to go into all the ramifications of this most important legislation. For that reason I am bringing my presentation to a close since my able colleagues from Michigan, New York, and Minnesota will have some brief time to present other compelling facts on the issue before the House.

Before I close I wish to say to my friends on the other side of the aisle—I need not say it to my friends on this side of the aisle—that there is no Member of the House who has been more free of partisanship in matters that have come from the Committee on the Judiciary, or recommendations that have been sent up to the House for Judiciary Committee action by the President under three administrations, than the Representative from the Fourth District of Ohio. It is my studied judgment that the conference committee report, the parts thereof written in it by the Senate, are not presently in the best interests of the economy of this country. I therefore hope that when a motion is made to recommit, which I shall make, every person interested in the present welfare of this country and in improving the business climate in these uncertain times, join with me in sending the report back to the committee, where the House will have another chance to work its will.

Mr. CELLER. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey [Mr. RODINO].

Mr. RODINO. Mr. Speaker, the civil investigative demand bill, S. 167, has been regarded by many, including the head of the Antitrust Division, as one of the most important measures in the antitrust field in recent years. Members of both parties in the House, I am sure, are well aware of the importance of our antitrust laws to the preservation of our free competitive economic system. The effectiveness of those laws depends upon the effectiveness of their enforcement.

The ability to gather information to determine whether or not an antitrust complaint should be filed is, of course, essential to effective enforcement of the antitrust laws. Use of grand jury proceedings, with the consequent threat of criminal action, to obtain the necessary information, is no answer in cases where there is no reason to suspect criminal conduct or where, as in merger cases, only civil relief would be available. Furthermore, in such cases, prospective defendants and witnesses are confronted with secret, ex parte proceedings where they are not represented by counsel and cannot obtain a transcript of their own testimony. Indeed, the Supreme Court held in *U.S.* v. *Procter & Gamble*, 356 U.S. 677 (1958), that grand jury proceedings would be an abuse of process where no criminal prosecution was seriously contemplated.

Yet, the Department of Justice in the past resorted to grand jury procedures perforce because the Congress gave it no compulsory civil process to obtain the information needed to determine whether a civil suit should be brought. This has been in anomalous contrast to the grant of similar powers given to many Federal agencies, notably the Federal Trade Commission, and to the attorneys general of 17 States. There are few, if any, instances where such powers have been abused.

In recognition of all these factors the Attorney General's National Committee To Study the Antitrust Laws, in its report of 1955, advanced as one of its few legislative recommendations, a recommendation for a civil investigative demand bill.

Such legislation has been recommended by both the Eisenhower and the Kennedy administrations, and by the American Bar Association.

Bills to carry out that recommendation were introduced in Congress and today we stand at the threshold of bringing about a highly desirable reform in the administration of the antitrust laws. Both the Senate and the House have recognized the importance of this bill by giving it resounding support.

But the bill as it passed the House contains one provision that would strip this sorely needed legislation of much of its effectiveness. I refer to the so-called MacGregor amendment.

Under this amendment, proposed by Congressman MACGREGOR on the floor of the House and adopted on a close teller vote cast by a handful of Members, this bill wouuld be limited to examination of documents of the particular company suspected of violating the antitrust laws. The effect of the amendment would be to bar the use of the provisions of this bill to examine documents held by companies in the position of prospective witnesses in order to determine whether or not a prospective defendant has violated the antitrust laws.

Neither in the House nor in the Senate Judiciary Committees was any such destructive qualification to the bill proposed, although the bill was carefully considered and discussed at length both in subcommittee and before the full committees of the respective Houses. Both this and the preceding administration had recommended this measure without such a restriction. The bill was passed by the Senate without any such nullifying restriction. Accordingly, the majority of the conferees of the House and the Senate rejected the MacGregor amendment. There is no doubt in my mind that this amendment should be rejected by the House and that the conference report should be fully supported for the following reasons:

Throughout the consideration of this bill its proponents have had two major considerations in mind. One was to grant the antitrust authorities a much needed investigative tool, and the second was to do this in a way which would be fair to the company whose documents are sought. The bill therefore contains many safeguards carefully inserted to protect the rights of such companies.

If we do not pass an effective civil investigative bill we will merely continue the unfortunate existing situation where the Department must make a difficult choice between Scylla and Carybdis: it must either file a civil complaint based upon inadequate knowledge, where greater knowledge has been denied because of inability to look at documents in the possession of prospective witnesses, or it may strain to find evidence of criminality and resort to grand jury proceedings where only a civil proceeding would have been contemplated if a compulsory civil investigative process were available.

Hard as such a choice may be for the Department of Justice, these alternatives offer no better choice to prospective defendants. They will be confronted either by criminal proceedings or by civil litigation which would never have been brought, or which wil be more expensive and protracted than necessary, because the Department of Justice has been unable to obtain the information it needed prior to bringing suit. Yet these are the hard choices which will continue to confront the Department of Justice and prospective defendants alike if the MacGregor amendment should be reinserted into this bill.

This bill, and the compulsory process it authorizes, would be unnecessary, of course, if prospective defendants and witnesses would cooperate with the Department of Justice in making available evidence of their conduct. Naturally enough, however, few companies are willing to furnish evidence of suspected violations of the antitrust laws. At the hearings on this bill, the Department of Justice furnished 29 instances of such refusals to cooperate by prospective defendants and witnesses.

Moreover, as companies have become sophisticated in antitrust matters and have had the benefit of experienced antitrust lawyers, fewer and fewer compromising documents have been left to be found in their own files. Often necessary evidence of an antitrust violation will only be found in correspondence they have had with other companies which have retained such correspondence in their files. Thus, those who support the MacGregor amendment on the ground that innocent companies should not be subject to a civil investigative demand are really asserting that guilty companies should be immunized from the antitrust laws by denying to the Department of Justice access to evidence of their guilt in the files of other companies.

For as every trial lawyer knows, many a prospective witness is reluctant or downright unwilling to appear in court or otherwise become embroiled in a lawsuit. This same reluctance applies to antitrust cases as it does in negligence cases. Indeed, a company may be especially loathe to make available evidence against another company in the same industry for fear of being regarded in the industry as an informer or stool-pigeon.

There can hardly be a lawyer in this body who has not used the familiar discovery procedures of the Federal Rules of Civil Procedure after filing a complaint so as to elicit information from prospective witnesses. No one today calls this harassment. Such procedure is a matter of course in the Federal and State courts throughout the land. It seems anomalous indeed to say that the same process is "harassment" before filing a complaint where as after filing a complaint it is standard operating procedure.

In grand jury investigations not only are documents of prospective witnesses subpenaed but individual witnesses themselves are brought before a grand jury and interrogated ex parte without benefit of counsel. Under this bill, on the other hand, the company in the position of a prospective witness is required only to submit documents and is carefully protected by the safeguards in the bill from unreasonable or burdensome demands.

The McGregor amendment, moreover, would penalize companies which are willing to cooperate with the Government. I am told there have been frequent instances in the past and that currently there are a number of similar instances, where companies have been quite willing to make their documents available to the Government in an antitrust investigation, but because of fear of reprisal by the company under investigation they insist on the protection of a subpena before producing their papers. The small company may be particularly fearful of such reprisals by his larger competitor even though he has been badly hurt by the latter's antitrust violations.

Another untoward effect of the McGregor amendment would be to cast the finger of suspicion on any company whose documents are demanded under this bill. Since the McGregor amendment would limit the use of a civil investigative demand to companies under investigation the mere fact that process had issued under the bill would amount to a public announcement that this particular company was suspected of violating the antitrust laws. This might well cause serious financial effects for such a company even before the Department had determined whether a violation had occurred.

For all these reasons I say to the House that this bill as agreed to by the conferees will provide an essential tool for the Department of Justice in the effective enforcement of the antitrust laws, and will at the same time be eminently fair to the parties whose records are sought. Every conceivable safeguard has been written into this bill to protect prospective witnesses and defendants alike.

If the so-called McGregor amendment should be reinserted into the bill, however, its effectiveness will be jeopardized to the damage of both the public interest and those whose documents are sought in antitrust investigations.

With all the vigor at my command I urge the House to approve this bill as agreed in conference.

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

Mr. CELLER. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. MEADER].

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

Mr. MEADER. Mr. Speaker, we in the House of Representatives are the outer guards and we on the Judiciary Committee of the House of Representatives are the inner guards of the most precious treasure in the country, the rights and personal liberties of the American citizens.

Law enforcement agencies need tools, authority, power to discharge their responsibilities of protecting citizens generally from predatory, illegal activities of some citizens. But when we grant power to law enforcement agencies, we take that power from the reservoir of the political freedoms and individual rights of American citizens.

Mr. Speaker, I am sympathetic with the problems of the prosecutor and the investigator. I have been both. I was prosecutor of Washtenaw County, Mich.,

and I was counsel to two Senate committees—the Truman-Mead committee to investigate the national defense program and the Fulbright committee to investigate RFC loans.

I am fully aware of the tendency of the wily criminal to employ the Bill of Rights to delay and defeat the efforts of the police and the prosecutor to bring him to book. I sympathize with the impatience of dedicated, zealous law enforcement agents with the cumbersome procedures and obstacles they must overcome to investigate, to apprehend, to bring to trial, and to punish the criminal elements of our society. It sometimes seems to those who have had responsibility for enforcing the law that the scale is weighted in favor of the rascals. The presumption of innocence, proof beyond reasonable doubt, the rules of evidence, the privilege against self-incrimination, jury trial and the many other protections of individual rights hamper and make more costly and difficult the task of law enforcement agencies.

But, Mr. Speaker, these rights, these privileges, these immunities, these protections of the citizen from tyrannical behavior of the Government were the very core of the motivation of our Revolutionary War for independence from Great Britain and from the tyrannical oppression of a ruthless sovereign.

He has erected a multitude of New Offices, and sent hither swarms of officers to harass our people, and eat out their substance. (Declaration of Independence.)

The civil investigative demand bill, the conference report on which is before us today, invests the Attorney General with the power of subpena and the power without court proceedings to demand of our citizens documentary evidence claimed by him to be needed in the enforcement of the antitrust laws. This power is, in effect, the key to the door of every business office in the United States, admitting investigators to the company files and records of every business to rummage and snoop at will in the name of investigation of violations of the antitrust laws. This is an invasion of the right of privacy of individual citizens and a weapon to be used against our citizens to harass, abuse, and threaten them and it has not been proved to be needed for proper law enforcement.

This power would vest in a political officer of the Government the power of search and seizure without a warrant except his own, and subject the most intimate and confidential details of business operations in this country to the prying eyes of a powerful bureaucracy.

We would vest this vast inquisitorial authority to inquire into the private activity of our citizens in the Department of Justice at a time when the executive branch of the Government is denying to the elected representatives of the people the right of access to information in possession of executive agencies regarding the exercise of authority and the expenditures of public funds. I refer now to the so-called doctrine of executive privilege which bureaucrats have employed to deny information to congressional committees inquiring into the conduct of Federal affairs.

Mr. Speaker, I am willing to grant authority needed for law enforcement even though it be at the expense of the right of our people to be let alone. But my assent is conditioned upon the establishment of a case for the grant of such authority. The burden of proof is upon those who ask for more power. Until that proof is presented, until that case is established, I will resist further encroachments by the bureaucracy on the rights and privileges of citizens.

Mr. Speaker, this Congress has been altogether too generous in acceding to requests for additional power on the part of the Department of Justice.

To begin with, a minimum of 11 laws were passed during the first session of this Congress which may be considered as major pieces of criminal legislation. These are as follows:

First. 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.

Second. Public Law 87–368, amending section 1073 of title 18, flight to avoid prosecution or giving testimony.

Third. Public Law 87–216, amending chapter 50 of title 18, transmission of bets, wagers, and related information.

Fourth. Public Law 87–218, amending chapter 61 of title 18, providing 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.

Fifth. 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.

Sixth. Public Law 87–228, amending chapter 95 of title 18, prohibiting travel or transportation in interstate commerce in aid of racketeering enterprises.

Seventh. Public Law 87–371, amending chapter 713 of title 18, prohibiting transportation of fraudulent State tax stamps in interstate and foreign commerce.

Eighth. Public Law 87–336, amending section 5021 of title 18, the Federal Youth Corrections Act.

Ninth. Public Law 87–353, amending chapters 25, 31 and 47 of title 18, the forging, counterfeiting, embezzling or stealing of bonds and obligations of certain lending agencies, and the making of false statements thereof.

Tenth. Public Law 87–197, amending chapter 20 of title 49, violations of Federal Aviation Act.

Eleventh. Public Law 87–221, creating chapter 31 of title 15, destruction of property moving in interstate commerce.

During this session of Congress, there has already been another item of criminal legislation enacted:

First. Public Law 87–386, amending section 2385 of title 18, defining the term "organize" as used in the chapter on "advocating the overthrow of Government."

In addition, S. 1658, prohibiting the transportation of gambling devices in interstate commerce, has passed both this House and the other body and is now pending in conference, while the following four bills have passed the House and are awaiting action in the other body:

First. 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.

Second. H.R. 8140, amending various chapters of title 18, to strengthen the criminal laws relating to bribery, graft and conflicts of interest.

Third. H.R. 7037, amending section 3238 of title 18, providing for offenses not committed in any district.

Fourth. 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.

There is now pending in the House, reported favorably from the Judiciary Committee, H.R. 8845, to elevate certain Federal investigators to the stature of courts by making it a Federal crime to impede investigations. This bill has been scheduled on the calendar for debate three times and has been removed from the calendar the same number of times. In my opinion it ought never to be brought up.

In addition there are many bills pending before House committees requested by the administration to grant still further power to the bureaucracy at the expense of citizens' rights. These bills include first, authorizing grant of immunity of witnesses in labor racketeering cases; second, authorizing wiretapping including the authority to tap wires at the sole fiat of the Attorney General without court approval; third, premerger notification legislation; fourth, authorizing Federal Trade Commission preliminary injunctions; fifth, functional discount legislation; and sixth, quality stabilization legislation.

Mr. Speaker, I point out that once we grant the power we have no control over its use or abuse. The possibility of the employment of powers granted for one purpose for a wholly different purpose is well demonstrated by the manner in which this administration assembled various powers not only in the executive branch but also of committees of the Congress to fashion a weapon to bludgeon the steel companies into rescinding a price increase—a matter which the Government has had no direct authority to accomplish since the repeal of OPA and OPS.

The manner in which powers granted for one purpose were used in concerted action to accomplish a wholly different purpose than that for which the grant is made is summarized in a press release of the Senate-House Republican leadership of April 19, 1962, which I include at this point in my remarks:

STATEMENT BY THE JOINT SENATE-HOUSE REPUBLICAN LEADERSHIP

We, the members of the Joint Senate-House Republican leadership, deplore the necessity for issuing this statement, but the issues involved are too compelling to be ignored.

Beyond the administrative operations of the Federal Government, it is a proper function of a President, in fact it is a duty, to help American private enterprise maintain a stable economy. In our free society he must usually find his way by persuasion and the prestige of his office.

Last week President Kennedy made a determination that a 3½ percent increase in the price of steel would throw the American economy out of line on several fronts. In the next 24 hours, the President directed or supported a series of governmental actions that imperilled basic American rights, went far beyond the law, and were more characteristic of a police state than a free government.

We, the members of the Joint Senate-House Republican leadership, believe that a fundamental issue has been raised: Should a President of the United States use the enormous powers of the Federal Government to blackjack any segment of our free society into line with his personal judgment without regard to law?

Nine actions which followed President Kennedy's press conference of Wednesday, April 11, were obviously a product of White House direction or encouragement and must be considered for their individual and cumulative effect. They were:

1. The Federal Trade Commission publicly suggested the possibility of collusion, announced an immediate investigation, and talked of $5,000 a day penalties.

2. The Justice Department spoke threateningly of antitrust violations and ordered an immediate investigation.

3. Treasury Department officials indicated they were at once reconsidering the planned increase in depreciation rates for steel.

4. The Internal Revenue Service was reported making a menacing move toward United States Steel's incentive benefits plan for its executives.

5. The Senate Antitrust and Monopoly Subcommittee began subpenaing records from 12 steel companies, returnable May 14.

6. The House Antitrust Subcommittee announced an immediate investigation, with hearings opening May 2.

7. The Justice Department announced it was ordering a grand jury investigation.

8. The Department of Defense, seemingly ignoring laws requiring competitive bidding, publicly announced it was shifting steel purchases to companies which had not increased prices, and other Government agencies were directed to do likewise.

9. The FBI began routing newspapermen out of bed at 3 a.m. on Thursday, April 12, in line with President Kennedy's press conference assertion that "we are investigating" a statement attributed to a steel company official in the newspapers.

Taken cumulatively these nine actions amount to a display of naked political power never seen before in this Nation.

Taken singly these nine actions are punitive, heavyhanded, and frightening.

Although the President at his press conference made it clear that price and wage decisions in this country are and ought to be freely and privately made, there was nothing in the course of action which he pursued that supported this basic American doctrine.

Indeed, if big government can be used to extra-legally reverse the economic decisions of one industry in a free economy, then it can be used to reverse the decisions of any business, big or small, of labor, of farmers, in fact, of any citizen.

Most disturbing in its implications was the use of the FBI. Since the days of our Founding Fathers, this land has been the haven of millions who fled from the feared knock on the door in the night.

We condone nothing in the actions of the steel companies except their right to make an economic judgment without massive retaliation by the Federal Government.

Temporarily President Kennedy may have won a political victory, but at the cost of doing violence to the fundamental precepts of a free society.

This Nation must realize that we have passed within the shadow of police state methods. We hope that we never again step into those dark regions whatever the controversy of the moment, be it economic or political.

Mr. Speaker, I say that we had better watch these requests for additional authority in the departments downtown closely and insist that the burden of proof be met that these powers are needed and are not dangerously invading the personal liberties and the right to be let alone of the American people, before we grant these vast powers which can be used and misused against the American people by a zealous bureaucrat.

Mr. CELLER. Mr. Speaker, I yield 3 minutes to the gentleman from North Carolina [Mr. WHITENER].

Mr. WHITENER. Mr. Speaker, when this legislation was before the House on March 13 I participated in the debate and opposed the passage of the bill. I am delighted that some of those who took a different view at that time have now seen the error of their ways and are coming back to the side of freedom.

We hear a great deal about the authority of the Justice Department and the Government, but as I read the hearings, and I wish I had time to really talk at length on the bill, I find this, where the counsel of the committee is interrogating the Attorney General:

Now, isn't it correct that at the commencement of a Sherman Act investigation, it is not possible for the Department of Justice to know whether a criminal or civil proceeding or both might be brought?

Mr. KENNEDY. That is correct.

Then counsel asked:

In other words, you wouldn't know when you start a Sherman Act investigation whether you are going to bring a criminal suit or a civil suit, is that correct?

Mr. KENNEDY. That is correct.

Then our former colleague, Mr. Holtzman, asked this question:

Assume, Mr. Attorney General, that you commence an investigation, and at that point you are not mindful whether this may or may not result in criminal as well as civil proceeding. Would you under this legislation be permitted to use any evidence that you obtain in the criminal proceeding that might take place as a result?

Mr. KENNEDY. Yes. You mean if this bill was enacted?

Mr. HOLTZMAN. Yes.

Mr. KENNEDY. Yes; we could then use the evidence and information in a criminal case. If we came to the conclusion from evidence right at the beginning that we had only a civil case, then we would be precluded from using the grand jury.

So you see that this civil demand, which the Attorney General would make upon an individual or a business for the purported purpose of determining whether there was a civil action which may be brought in behalf of the Government for an antitrust violation could be used then as evidence in a criminal prosecution. My friends, we hear a great deal about civil rights and constitutional protection, but if this bill is enacted and regardless of who the Attorney General may be now or 20 years from now—it places the Department of Justice in a position to go in under the guise of a civil proceeding and get evidence from an unwilling citizen of this country which can be used in a criminal proceeding. I am not saying that—the Attorney General said that in his testimony. I think the conference report should be defeated.

The SPEAKER. The time of the gentleman has expired.

Mr. CELLER. Mr. Speaker, I yield 4 minutes to the gentleman from Minnesota [Mr. MACGREGOR].

Mr. MACGREGOR. Mr. Speaker, what about this MacGregor amendment that has been referred to? Is it something that the gentleman from Minnesota pulled out of thin air as the chairman and the gentleman from New Jersey suggest? No—nothing of that kind at all. It just simply seeks to enact into law the recommendations of the American Bar Association and its Subcommittee on Antitrust Legislation. These men have studied this matter for 7 years.

Why is it that the Attorney General and the Assistant Attorney General in charge of antitrust proceedings are unwilling to accept reasonable safeguards surrounding a grant of broad, sweeping new powers?

Mr. Speaker, I said on March 13 that as legislators we have an obligation to consider primarily the possibilities of an abuse of new executive power rather than the probabilities of its proper exercise. How prophetic those words were. Just over 4 weeks later, at 3 o'clock in the morning, through the exercise of unwarranted police power, witnesses were gotten out of bed.

What does my amendment seek to do? It seeks to place a safeguard against the issuance of this civil investigative demand on witnesses, and in so doing it merely carries out the recommendations of the American Bar Association. Would that not be the sensible thing to do? Of course, it would.

The Washington Post, which is not known for its support of amendments which come from this side of the aisle, said as follows in an editorial about the MacGregor amendment:

In addition the House added a Republican amendment which would have the effect of limiting the reach of the bill to companies under investigation. This seems to us a wise precaution despite the vigorous opposition it brought from the bill's sponsors.

The Department can always broaden the scope of an investigation, if it finds reason to do so, but it should not be allowed to reach into the files of corporations under no suspicion. Apparently this amendment brings the bill into line with the recommendations of the American Bar Association. It ought to be preserved by the House-Senate conference committee.

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

Mr. MACGREGOR. I yield to the gentleman from Michigan.

Mr. MEADER. I ask the gentleman if the version that the conferees have brought back is not in effect giving to the Attorney General the key to the door of every business office in the United States for his representatives to go in snooping around on a fishing expedition?

Mr. MACGREGOR. It will give him the key without having to bother to go into court or before a judge and explain why he wants to use that key.

We have seen not only that there can be an abuse of power by the Attorney General and by the staff in the Attorney General's office, but we have also seen, indeed, a contempt of proper legislative processes in this grant of new power to the Executive. We have seen an unwillingness to accept reasonable safeguards designed to curb the abuse of power.

I urge my colleagues in this House who are concerned over the proper relationship between the Government and the individual in our society and who are concerned about maintaining our governmental system of checks and balances, to support the McCulloch motion to recommit.

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

Mr. MACGREGOR. I yield.

Mr. MEADER. I believe the gentleman will agree with me that the need is to protect small business, since big business already closes their doors to the Antitrust Department.

Mr. MACGREGOR. The gentleman is dead right. As pointed out in the hearings, the gentleman from Massachusetts [Mr. DONOHUE] in questioning Witness Simon of the American Bar Association was concerned in keeping the small businessman from being unduly harassed by an abuse of bureaucratic power. This conference report would permit of such abuse—the very thing the gentleman from Massachusetts was concerned about. Here you would reach into the small businesses of this country with a key to open every lock they have.

Mr. Speaker, I include at this point a statement from the Association of the Bar of the City of New York:

REPORT ON S. 167, 87TH CONGRESS, 2D SESSION, ANTITRUST CIVIL PROCESS ACT

We understand that S. 167 has been passed by the Senate and, with some amendments, by the House, and that at a joint conference on May 28, 1962, the following two changes were made in the House bill by a vote of 6 to 4:

Section 3(a) of the bill, as passed by the House, defined the authority of the Department of Justice in making a civil investigative demand as extending only to persons under investigation. The conference report struck out the words "under investigation."

Section 4(c) of the bill, as passed by the House, limited to duly authorized representatives of the Department of Justice examination of documents obtained by the Department pursuant to a civil investigative demand. The conference report added the words "or the Federal Trade Commission" to this section, thereby making such documents available for examination by duly authorized representatives of the Federal Trade Commission.

1. Elimination of the words "under investigation" by the conference report indicates that a bill not including these words is intended to authorize the Department of Justice to use the demand to call for production of documents by companies not "under investigation" for an alleged civil antitrust violation or indeed not even suspected of violation. * * * Upon consideration of this point, we recommend retention of the words "under investigation" in section 3(a) of the bill.

We start with the basic premise that, under our system of government, private files should not be subject to the call of the Executive unless there is an overriding public necessity, and then only with appropriate safeguards. While the civil investigative demand is a considerable extension of the power of the Executive, the need for such a process against suspected violators to assist in effective enforcement of the antitrust laws has been well documented. However, need has not been demonstrated to require companies that are not suspected of violation to search for and produce from their files "a class or classes of documentary materials" in the course of a precomplaint investigation of some other company or companies.

Under these circumstances, account should be taken of the burden in terms of time, cost, and inconvenience to business operations which would be imposed upon those not suspected of violation in being required to respond to, or indeed to take court action against civil investigative demands addressed to them. Also to be taken into account is the fact that the Department of Justice has other means of obtaining information from those not party to the investigation, including detailed public data, voluntary disclosure, and the pretrial procedures under the Federal Rules of Civil Procedure when its complaint has been articulated and defined.

The balance of all these factors, in our judgment, is against application of the civil investigative demand to those not "under investigation." We believe inclusion of the words "under investigation" will properly require the Department to use the demand advisedly and discriminatingly only against those actually suspected of violation, while at the same time permitting it to utilize the already existing procedures for obtaining information from persons who are not the subject of its particular civil antitrust investigation and against whom it does not intend to proceed.

2. By the second change in the bill as passed by the House, the conference report would authorize the Federal Trade Commission to have access to documents received by the Department of Justice pursuant to a civil investigative demand. This is unnecessary, because the Federal Trade Commission in the performance of its duties and for purposes of its own proceedings already has independent authority to require companies to submit documents directly to it. It is also undesirable, because giving the Federal Trade Commission unrestricted access to documents submitted to the Department of Justice would have the result that if the Federal Trade Commission uses the documents for other purposes, then, despite the provisions in section 3(b)(1) of the bill,[1] the company supplying the documents would not know the possible charges against it.

We also note that existing law, section 8 of the Federal Trade Commission Act, provides that, when directed by the President, the Department of Justice shall furnish the Federal Trade Commission documents in the possession of the Department relating to any corporation subject to the Federal Trade Commission Act. We therefore suggest that if it is desired to carry section 8 of the Federal Trade Commission Act, with its reservation as to Presidential direction, over into the present bill, the words "or pursuant to section 8 of the Federal Trade Commission Act" should be substituted for the words "or the Federal Trade Commission."

Respectfully submitted.

Committee on Trade Regulation of the Association of the Bar of the City of New York, Roy H. Steyer, Acting Chairman; Albert C. Bickford, George H. Cain, J. Kenneth Campbell, Joseph V. Heffernan, John Howley, David Ingraham, Edward F. Johnson, Maximilian W. Kempner, John J. Scott, Frank A. F. Severance, Nelson F. Taylor, Allan Trumbull, Edward Wolfe.

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

Mr. CELLER. Mr. Speaker, I yield myself 1 minute to reply to what I believe was an inadvertence by the gentleman from Minnesota and the gentleman from Michigan [Mr. MEADER].

It is not true that every business office would be open to the Attorney General, and it is not true that the Attorney General could go roving all over the land without a court order. If the gentleman will look at page 10, section 5, he will see that when any person fails to comply with any civil investigative demand, the Attorney General must go to court to obtain an order enforcing the demand. Or, if the recipient wants to get the drop on the Department of Justice he can go into a court before the Department of Justice acts and resist the demand. In either case, a person subject to a civil investigative demand can have his day in court, to assert any objection he may have to the legality and reasonableness of the demand. Therefore it is not true that all offices would be open to the hand of the Attorney General. The court can intervene to see that no injustice is done.

Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. ROOSEVELT].

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

Mr. ROOSEVELT. Mr. Speaker, it seems to me that instead of harming small business, this bill is really aimed at, or has as one of its major aims, the very needed help to small business which is required by small business because it does not have available to it the kind of legal setup which enables it to protect itself in monopoly or antitrust matters.

It seems to me that this bill should be thought of primarily in the context of monopoly and antitrust matters. It is primarily aimed at preventing the tremendous cartels, the tremendous corporations, from overpowering those they would crush simply because they will not make or produce the evidence which would prove the case were that evidence available to them.

I speak with a great deal of knowledge of this because, thanks to the chairman of the House Small Business Committee, I have been entrusted with the particular field of the small businessman in the petroleum industry.

[1] Sec. 3(b)(1) requires that each civil investigative demand shall "state the nature of the conduct constituting the alleged antitrust violation which is under investigation and the provision of law applicable thereto."

Time and again our committee has received complaints from small businessmen in that industry in which certain allegations are made. We turned them over to the Federal Trade Commission or the Department of Justice, and inevitably the reply comes back: There are no available papers or documents upon which we can proceed to protect this small businessman. If that protection does not come from the Department of Justice or from the Federal Trade Commission, who can it come from? Therefore, it seems to me a vital necessity that a bill of this kind be passed.

I have studied it as carefully as I can, and I have reached the conclusion that the chairman of the Committee on the Judiciary is correct when he states that safeguards have been put around the possible abuse of power under this bill. There is the right to prove this is not a proper investigation of antitrust matters, in which case, of course, it would be protected. It has also been said it is not necessary to produce privileged matters. If these are not privileged matters, why should any business not be willing to bring them forth and make them publicly available in order that the protection of the antitrust laws against monopoly be made possible?

I sincerely trust the conference report will be agreed to.

Mr. CELLER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. McCULLOCH].

Mr. McCULLOCH. Mr. Speaker, in reply to what my good friend and colleague from California has said with respect to small business, I must say I respectfully disagree with him. If small business ever has information that would be helpful to the Justice Department in antitrust investigation and wants to give it to the Department of Justice, the simple and easy thing for the Attorney General to do is to ask for it, or small business may send it to the Department without request.

On the other hand, small business does not want to be harassed and burdened by innumerable requests and demands for information that it might not wish to disclose, or that might take long hours of work to assemble. The only protection for small businesmen, under the conference committee report if you please, with no full-time general counsel, is to go to the U.S. district court. In some places, even in California, that would entail, we are told, traveling 150 or more miles to present its objections to the court.

There is authority to get the information where it wants to be given from small business. The conference report is not legislation that will make it easy for small business.

Mr. HARVEY of Indiana. Mr. Speaker, will the gentleman yield?

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

Mr. HARVEY of Indiana. Mr. Speaker, I want to commend the gentleman from Ohio on his very forthright stand and say that I agree with him wholeheartedly and hope this conference report will be recommitted.

Mr. McCULLOCH. Mr. Speaker, may I say to the Members of the House I have not had a single request from small business within my section of Ohio, a great industrial State, which requested me to support the conference report.

Mr. CELLER. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. ROOSEVELT].

Mr. ROOSEVELT. Mr. Speaker, may I say to the gentleman from Ohio that he has misinterpreted what I said. I did not say that small business was not willing to give information to the Justice Department. It is the inability of small business to get from the large corporations, from the cartels, the information upon which they can go forward and be protected by the antitrust laws. Therefore, he must appeal to the Department of Justice or to the Federal Trade Commission, which he does by writing to the Small Business Committee, or Members of Congress. It is then that the Department of Justice tells him, "We have no power to get the evidence upon which we can protect you."

That, it seems to me, is the fundamental point at issue here.

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

Mr. ROOSEVELT. Of course. Gladly.

Mr. McCULLOCH. Mr. Speaker, I should like to say in reply to the comment of the gentleman from California that if the bill is finally adopted by the Congress with the MacGregor amendment, with the FTC authority stricken out, which was put in by the other body, the Attorney General, under the mechanics of this bill, could get every bit of information about which the gentleman is speaking.

Mr. CELLER. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. LINDSAY].

Mr. LINDSAY. Mr. Speaker, let us be very clear here that what we are trying to do in opposing this conference report is not to kill the bill but to insist that the House version be adhered to. This is very important to remember.

Now, I begin with the proposition that when there is no case or controversy of any kind pending, no charge, that under those circumstances private files should not be subject to the call of the Executive or the roaming examination of the FBI, unless there is an overriding public necessity.

Now, there is an overriding public necessity in the important field of antitrust enforcement, and therefore the bar of the United States accepted a limited proposal for a civil investigative demand bill but under limited safeguards. One of those is now at issue in the MacGregor amendment. Another is that the confidential nature of documents given voluntarily or after court test as to scope, and so forth, be held confidential. The theory was that other governmental agencies, congressional committees and competitors should not be given access. Yes, congressional committees are excluded from access. We agree to this because we know the importance of limiting this power.

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

Mr. LINDSAY. I will if he will give me more time.

Mr. CELLER. Is it not a fact that the Federal Trade Commission already has this power?

Mr. LINDSAY. I am going to touch on that point. It has the power in its field of jurisdiction.

Mr. CELLER. So what difference does it make?

Mr. LINDSAY. Hold on here. The Federal Trade Commission has a different area of operation and enforcement of laws than does the Antitrust Division. This bill before us in this conference report provides that in any demand the Antitrust Division shall "state the nature of the evidence constituting the alleged antitrust violation which is under investigation." Now, what the Senate has done is to put in the Federal Trade Commission as another governmental agency that can have access to documents which are produced, which means that whoever submits the documents, particularly if the MacGregor amendment is not included, will have no idea of the possible charges against him. The bar, which really initiated this proposal, insisted that if papers are going to be given to the FBI or the Antitrust Division of the Department of Justice, that their confidential nature be protected. They are not to be given to the FTC, the Internal Revenue Service, the Commerce Department, the CAB or the other myriad organizations in the Federal Government; nor are they to be made available to the competitors, or to the Congress. Do not forget that there is no case begun or pending. This is to determine whether there is a case, and therefore it is extremely important, we think, that the House version be adopted to protect individual liberties. This is a new power. Therefore it must be carefully drawn.

Mr. Speaker, under leave of the House I should like to include at this point an excellent report prepared by the Committee on Trade Regulations of the Association of the Bar of the City of New York, which regards the importance of adhering to the House version of this legislation and points to the dangers of the two amendments in question:

COMMITTEE ON TRADE REGULATION REPORT ON S. 167, 87TH CONGRESS, 2D SESSION "ANTITRUST CIVIL PROCESS ACT"

We understand that S. 167 has been passed by the Senate and, with some amendments, by the House, and that at a joint conference on May 23, 1962, the following two changes were made in the House bill by a vote of 6 to 4:

Section 3(a) of the bill, as passed by the House, defined the authority of the Department of Justice in making a civil investigative demand as extending only to persons "under investigation." The conference report struck out the words "under investigation".

Section 4(c) of the bill, as passed by the House, limited to duly authorized representatives of the Department of Justice examination of documents obtained by the Department pursuant to a civil investigative demand. The conference report added the words "or the Federal Trade Commission" to this section, thereby making such documents available for examination by duly au-

thorized representatives of the Federal Trade Commission.

1. Elimination of the words "under investigation" by the conference report indicates that a bill not including these words is intended to authorize the Department of Justice to use the demand to call for production of documents by companies not "under investigation" for an alleged civil antitrust violation or indeed not even suspected of violation. This highlights a substantive point which was not commented on by this committee in its June 21, 1961, report on S. 167 to the Antitrust Subcommittee (Subcommittee No. 5) of the House Committee on the Judiciary. Upon consideration of this point, we recommend retention of the words "under investigation" in section 3(a) of the bill.

We start with the basic premise that, under our system of government, private files should not be subject to the call of the Executive unless there is an overriding public necessity, and then only with appropriate safeguards. While the civil investigative demand is a considerable extension of the power of the Executive, the need for such a process against suspected violators to assist in effective enforcement of the antitrust laws has been well documented. However, need has not been demonstrated to require companies that are not suspected of violation to search for and produce from their files "a class or classes of documentary materials" in the course of a precomplaint investigation of some other company or companies.

Under these circumstances, account should be taken of the burden in terms of time, cost, and inconvenience to business operations which would be imposed upon those not suspected of violation in being required to respond to, or indeed to take court action against, civil investigative demands addressed to them. Also to be taken into account is the fact that the Department of Justice has other means of obtaining information from those not party to the investigation, including detailed public data, voluntary disclosure, and the pretrial procedures under the Federal Rules of Civil Procedure when its complaint has been articulated and defined.

The balance of all these factors, in our judgment, is against application of the civil investigative demand to those not "under investigation." We believe inclusion of the words "under investigation" will properly require the Department to use the demand advisedly and discriminatingly only against those actually suspected of violation, while at the same time permitting it to utilize the already existing procedures for obtaining information from persons who are not the subject of its particular civil antitrust investigation and against whom it does not intend to proceed.

2. By the second change in the bill as passed by the House, the conference report would authorize the Federal Trade Commission to have access to documents received by the Department of Justice pursuant to a civil investigative demand. This is unnecessary, because the Federal Trade Commission in the performance of its duties and for purposes of its own proceedings already has independent authority to require companies to submit documents directly to it. It is also undesirable, because giving the Federal Trade Commission unrestricted access to documents submitted to the Department of Justice would have the result that if the Federal Trade Commission uses the documents for other purposes, then, despite the provisions in section 3(b)(1) of the bill[1], the company supplying the documents would not know the possible charges against it.

We also note that existing law, section 8 of the Federal Trade Commission Act, provides that, when directed by the President, the Department of Justice shall furnish the Federal Trade Commission documents in the possession of the Department relating to any corporation subject to the Federal Trade Commission Act. We therefore suggest that if it is desired to carry section 8 of the Federal Trade Commission Act, with its reservation as to Presidential direction, over into the present bill, the words "or pursuant to section 8 of the Federal Trade Commission Act" should be substituted for the words "or the Federal Trade Commission."

Respectfully submitted.

Committee on Trade Regulation of the Association of the Bar of the City of New York: Roy H. Steyer, Acting Chairman; Albert C. Bickford, George H. Cain, J. Kenneth Campbell, Joseph V. Heffernan, John Howley, David Ingraham, Edward F. Johnson, Maximilian W. Kempner, John J. Scott, Frank A. F. Severance, Nelson F. Taylor, Allan Trumbull, Edward Wolfe.

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

Mr. CELLER. Mr. Speaker, I yield 4 minutes to the gentleman from Texas [Mr. PATMAN].

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

Mr. PATMAN. Mr. Speaker, this will be the only important vote that we will be able to cast at this session of Congress and be recorded in favor of small business. This is a real, genuine small business proposal.

Mr. Speaker, small business, the lifeblood of our medium size and small communities throughout the Nation, has a vital stake in the passage of the Antitrust Civil Process Act—S. 167—the so-called civil investigative demand bill.

Anyone who has critically examined the historical growth of economic concentration and the expansion of giant monopolies knows that such concentration and monopolies were achieved in virtually all cases not by greater efficiency but by various noneconomic means often involving predatory action. Small and medium size business can often outmatch the giant corporations in efficiency. But it has little chance when the giant corporations exert raw economic power to crush small business.

This is the basic reason why our antitrust laws are so often referred to as the American charter for economic freedom. Sincere supporters of small business know that if the antitrust laws are not properly enforced it is the small businessman who suffers.

ANTITRUST AGENCIES CANNOT PERFORM ASSIGNED DUTIES WITHOUT PROPER TOOLS

It is the height of hypocrisy to speak in favor of vigorous antitrust enforcement but at the same time thwart such enforcement by failing to provide our antitrust agencies with proper implements with which to carry out their programs. As so many of my colleagues know full well, antitrust enforcement was very small until the late 1930's—and largely for one simple reason: Congress did not provide the antitrust agencies with sufficient funds to carry out a sincere antitrust program.

LACK OF FUNDS, LOOPHOLES, AND INADEQUATE POWERS RESPONSIBLE FOR GROWTH OF MONOPOLY

It was only under the leadership of such forthright antitrust chiefs as Judge Thurman Arnold that the country was finally awakened to the need for a strong antitrust program, and then Congress supplied sufficient funds to build up a good antitrust staff.

It was a full 60 years after the passage of the Sherman Act, and 36 years after the passage of the Clayton Antitrust Act, that the loophole in the antimerger statute was closed by Congress, so that monopolistic mergers could be checked in their incipiency. Only a few weeks ago the first case under the Celler-Kefauver Antimerger Act was decided by the Supreme Court. Now it is clear that the courts must follow the will of Congress to protect small business from the ravages of monopolistic mergers.

EFFECTIVE LITIGATION AND VIGOROUS ENFORCEMENT CAN BE NULLIFIED BY LACK OF INVESTIGATIVE POWERS

Now, 72 years after the passage of the Sherman Act, 48 years after the passage of the Clayton Antitrust Act, and 26 years after the passage of the Robinson-Patman Act, Congress has at last realized that it must close the gap in antitrust enforcement by passing the civil investigative demand bill, so as to permit the Antitrust Division to secure facts upon which to base its civil cases, prior to filing a complaint.

Mr. Speaker, in this morning's CONGRESSIONAL RECORD, at pages 12878 and 12879, I have listed a number of key questions and answers regarding the Antitrust Civil Process Act, S. 167. These questions and answers go to the very heart and merit of the bill and demonstrate how important it is to small business.

CONCENTRATION IS INCREASING

Mr. Speaker, the Senate Antitrust Subcommittee, under the chairmanship of Senator KEFAUVER, who with our colleague from New York [Mr. CELLER] authored the Celler-Kefauver Antimerger Act, has just issued a new report on concentration. This report shows that between 1947 and 1958 there has been a sharp increase in concentration in manufacturing. According to this study:

The share held by the 200 largest companies of total industrial output, as measured by value added by manufacture, rose 27 percent. In 1947 the 200 largest companies accounted for 30 percent of the value added by manufacture; by 1958 their proportion had risen to 38 percent.

MERGERS LARGE CONTRIBUTORY FACTOR TO INCREASE IN CONCENTRATION

A report which the House Small Business Committee will issue in the near future indicates that mergers and acquisitions of the top industrial corporations are largely responsible for this increase in concentration.

Year after year, the number of independent firms disappearing because of mergers and acquisitions mounts and mounts.

[1] Sec. 3(b)(1) requires that each civil investigative demand shall "state the nature of the conduct constituting the alleged antitrust violation which is under investigation and the provision of law applicable thereto."

GROWTH IN BUSINESS POPULATION LAGS SERIOUSLY BEHIND GROSS NATIONAL PRODUCT

One key index of the welfare of small business is the trend in the business population. It is not widely enough realized that the growth of the number of businesses is lagging seriously behind the growth in general economic activity. During the early years after World War I, the business population increased at a rate of about 4½ percent a year, while the gross national product—in constant dollars—increased at a rate of about 1½ percent per year. However, in the decade since 1952 the growth rate in the business population dropped to 1½ percent while that in gross national product rose to 3½ percent.

The situation is much more grave in manufacturing than in the case of all business combined. As a matter of fact, the number of manufacturing concerns has actually declined sharply since 1959, to reach the lowest level since 1948. Couple this decline in the number of business enterprises in manufacturing with the increase in concentration shown by the Kefauver report, and you can see how serious are the inroads being made in small business at this time.

Concentration of economic power has affected a wide spectrum of industries, but it is perhaps most significant in the manufacturing area, and it is there that we have such underutilization of capacity and underemployment of workers.

SMALL BUSINESS HAS VITAL STAKE IN ENFORCEMENT OF THE ANTITRUST LAWS

In my discussion of the questions and answers relating to the Antitrust Civil Process Act, I have attempted to make clear why small business has such an important concern with the provision of adequate investigative authority for the Antitrust Division. I have also attempted to show that any restriction on this authority, confining it merely to prospective defendants, would do great harm to small business.

As a matter of fact, those who wish to so limit this authority must be misguided, for to do so would severely injure small business.

Let me illustrate by a few examples in recent antitrust cases.

SMALL WIRE ROPE PRODUCERS FACED "SQUEEZE" IF BETHLEHEM-YOUNGSTOWN MERGER WERE CONSUMMATED

In the much-noted Bethlehem-Youngstown steel merger case, successfully prosecuted by the Antitrust Division, a group of small businessmen producing wire rope faced an economic squeeze. Youngstown represented one of the few remaining noncompeting sources of supply for rope wire, the raw material out of which wire rope was fabricated. Moreover, Youngstown, an important factor in the oilfield supply business, was also an important customer for small fabricators of wire rope. Bethlehem, on the other hand, did not sell rope wire to the small independent wire rope fabricators. It was in the business of producing and selling wire rope itself.

Thus, the small business independent wire rope fabricators faced the prospect of losing an important independent, noncompeting source of supply for their raw material, rope wire, and at the same time an important customer for their wire rope. This was a serious squeeze that the merger would have placed on the independent wire rope producers.

But because these independent wire rope producers had such a delicate source-customer relationship with Youngstown, they did not reveal the extent of their jeopardy to the Antitrust Division voluntarily, and only fully disclosed it under the compulsion of testimony at trial.

BROWN SHOE CASE ALSO ILLUSTRATES NEED FOR CID AUTHORITY TO SECURE INFORMATION FROM THIRD PARTIES

A somewhat analogous picture developed in the famous Brown Shoe-Kinney merger case, just decided by the Supreme Court. Here, independent small business suppliers of Brown Shoe Co. were reluctant to give testimony or evidence except under subpena, because they had existing business relationships with the defendants in the action. Similarly, independent shoe retailers were reluctant to testify because Brown Shoe was an important source of supply for their shoes.

NONDEFENDANTS IN GROCERY CHAIN MERGER CASE REVEAL DATA ONLY UNDER COURT ORDER

In the pending Von-Shopping Bag merger case, involving two of the largest grocery chains in the Los Angeles area, nondefendant grocery chains refused to supply data needed to round out the market picture except under a court order.

These are only a few typical illustrations of the many cases faced by antitrust where the longrun interest of small business is to support the antitrust action and to provide the antitrust agencies with much-needed information, data, and testimony. But these small businesses are reluctant to "stick their necks out" for fear they will be chopped off by their big business sources, customers, or rivals.

COMMON MARKET ANTITRUST PROGRAM PROVIDES POWER SIMILAR TO CID

Mr. Speaker, many of us are looking with great interest at the antitrust activities being developed in the Common Market. There is underway an attempt to rid the Common Market of cartels. Whether it will be successful we do not know.

In any case, however, it is interesting to note that the commission set up to investigate restrictive trade practices is not limited the way our own Antitrust Division is. It has full power to investigate and get documentary evidence whether from prospective parties to a hearing or third parties.

In other words, CID would do more than provide our own Antitrust Division with the kinds of investigative powers that are possessed in the Common Market Authority.

CID IS A MUST BILL FOR SMALL BUSINESS

In conclusion, I cannot overemphasize the point that small business and those who believe in small business and its survival, must support the CID authority for the Antitrust Division, with no crippling amendments which would nullify its basic purpose.

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

Mr. PATMAN. I yield to the gentleman from Pennsylvania.

Mr. TOLL. Would the gentleman say that the purpose here is to prevent monopolies? Would that be a fair statement: To prevent the creation of monopolies?

Mr. PATMAN. Certainly; the gentleman is exactly right.

Mr. CELLER. Mr. Speaker, I yield 1 minute to the gentleman from Ohio [Mr. McCULLOCH].

Mr. McCULLOCH. Mr. Speaker, I wish my good friend, the gentleman from Texas [Mr. PATMAN], would listen carefully to what I am about to say because if I speak incorrectly I want to be corrected. I understood the distinguished gentleman from Texas, the chairman of the Select Committee on Small Business, to say that my motion to recommit would kill the bill. If the gentleman said that, I respectfully submit that the statement is not correct. If my motion to recommit is adopted it will mean that we are standing by the version of this bill as passed by the House on March 14, 1962. Furthermore—this is a matter of opinion and I shall let the statement stand on the record—my distinguished chairman said that a vote for my motion would be against small business. I submit to the Members of the House that the record will not justify that statement. I am sure the Members of the House know my regard and concern and constructive action for and on behalf of small business.

Mr. CELLER. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. PATMAN].

Mr. PATMAN. Mr. Speaker, if this bill is recommitted it will pull its teeth. It may do a lot of barking, but will not be able to do any effective biting. The motion to recommit, if adopted, will destroy the usefulness of this bill. It will be ineffective; it will be no good.

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

Mr. PATMAN. I yield.

Mr. McCULLOCH. As a matter of fact, Mr. Speaker, does not this bill as it passed the House give every remedy against the big fellow, as the gentleman calls him, that the Attorney General asked for; that the large corporations must submit their records whenever demanded?

Mr. PATMAN. Only if the conference report is adopted will it be sufficiently and adequately effective. So let us keep it as it is, as the conferees have recommended, and vote against the motion to recommit, which will destroy the bill.

Mr. CELLER. Mr. Speaker, I yield 5 minutes to the gentleman from Virginia [Mr. SMITH].

Mr. SMITH of Virginia. Mr. Speaker, I have followed the course of this legislation both in this Congress and in previous Congresses when, under another administration, it was attempted to be brought up. I have favored it all the time. I favor it and I favor this conference report in the form in which it has been brought here. Of course, we can do a lot of criticizing about anything that comes up. We can pick a lot of holes in almost anything that comes up. But I regard this as a rather practical question.

Everybody here, I believe, is opposed to monopoly. That is what the antitrust law is about, to prevent monopolies. How are you going to do that if you do not give the Department of Justice the power and the tools that are necessary to bring about those things you seek to do in the antitrust laws? All this does, as I understand it, is to give to the Department of Justice exactly the same power you have already given to the Federal Trade Commission, that you have already given to various other departments, such as the Federal Power Commission, to make these investigations; also the Atomic Energy Commission. I just wonder why there should be so much picking at this particular problem. I think it is a practical problem, and I shall tell you why.

When the Department of Justice suspects that a corporation is getting to be a monopoly you give them the power to examine the books of that corporation, but you are not going to find out in that corporation's books, you have to go to other corporations, you have to go to their competitors to find out whether or not the business of this monopoly is taking away the business of the little fellow. That is what we are interested in trying to do here now.

It is surrounded by every safeguard, because if it is an unreasonable request he has the right to go into court, and he is specifically given that right.

I am a little bit puzzled because of the fact that this thing was sought by the Republican administration and it is now sought by the Democratic administration. You cannot get the evidence unless you go to the people who have the evidence, and they are the corporations who are not under suspicion. What harm can it do them?

I do not think I have any reputation here for trying to trample on business and injure business. I am not, and I am not doing it here now. I remember, though, a very specific instance that happened. If they do not get it through a civil proceeding they can go to a grand jury. About 2 years ago they empaneled a Federal grand jury in the city of Alexandria, Va., to investigate a number of the oil companies in the United States. That grand jury sat there and forced people to come there from all over the United States for a period of a year—a year—and they finally indicted them all; and after they got through indicting them they moved the case out to Oklahoma and tried it, and then it all went up in smoke. There was a waste of time. They were all acquitted. If the Department of Justice had the opportunity to go to these companies and look at the books and see if the evidence was there before starting the grand jury, they would have saved a lot of time and money, and it would have been good for everybody, the corporations as well as the Government.

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

Mr. SMITH of Virginia. I yield to the gentleman from Michigan.

Mr. MEADER. Those oil companies were under investigation, and under the MacGregor amendment this power would have been available against them.

Mr. SMITH of Virginia. Yes; they were under investigation, and they wasted a whole lot of time and everybody's money.

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

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

Mr. GROSS. I was intrigued to note the gentleman from Texas [Mr. PATMAN] bleeding at every pore and valve today for small business. I hear a lot these days about monopolies and cartels in foreign countries. If I am not incorrect, the gentleman from Texas voted for the free trade bill the other day, that will ram all kinds of foreign products, the products of cartels and monopolies overseas, down the throats of small business in this country.

Mr. SMITH of Virginia. Well, we all make our mistakes.

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

Mr. ROGERS of Colorado. Mr. Speaker, it is my thought that the gentleman from Virginia adequately pinpointed the situation you are dealing with here. Remember that a U.S. attorney under the direction of the Attorney General can at any time he believes that a law has been violated from the criminal angle ask a district judge to impanel a grand jury and issue subpenas. That is settled, and there is no question about it. Unless there can be a question of a criminal violation of the law it is not thought proper that with antitrust violations which are civil in their nature, the United States should impanel a grand jury and issue subpenas to bring people into the grand jury room. Because we all know if you are subpenaed to a grand jury room, it is not one of the best kept secrets in a community. And there was the situation that existed, as the gentleman from Virginia outlined, about an investigation of an oil company that started in Alexandria, Va., where they subpenaed papers from throughout the United States and impounded them in the Federal District Court of Northern Virginia. The Eisenhower administration recognizing that something had to be done in that regard said, therefore, that the orderly procedure would require that the Department of Justice should not necessarily impanel the grand jury to investigate every suspected violation of the antitrust law and, hence, the Attorney General should be given about the same power as 12 other agencies of the United States now have to investigate and look at books where people may be suspected of violating the law. It was with that in view that this legislation was proposed—not only by the present Attorney General but by both of his predecessors. With that in view, we propose in this bill, all the adequate safeguards that anybody could fairly ask. We provided, in effect, that if a company's records were subpenaed, they had the right to make a duplicate of them and have the records returned to them and that the Department of Justice would have to go to the office of the company and have copies made.

Now what is the real fuss about the question of the so-called MacGregor amendment? The MacGregor amendment might tie the hands of the Justice Department. This is how it might tie the hands of the Justice Department. It, in effect, says that before you can issue a subpena you must designate the company that is being investigated and only that company's records can be investigated. That is just like saying, if you are going to investigate properly a matter, you are going to tie the hands of the investigating agency and limit them to an investigation of only that one company that is under suspicion. If the MacGregor amendment is adopted, there is one of two things that is going to happen. You could go back to the old system of impaneling a grand jury and subpenaing all the records. Or, if they follow it to the logical conclusion, instead of investigating one company, all the Attorney General has to do is to say, "I am investigating X company and investigating Y company and I am investigating all other companies in this particular, and cause them to be investigated when in truth and in fact, only X company is suspected of a violation." So you can see, if the MacGregor amendment stays in, then you may have tied the hands of the Department of Justice. You have not resolved anything and at the same time, you have not accomplished the purpose that is intended.

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

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

Mr. LINDSAY. I think it is important to point out that this whole thing originally came from a recommendation made by the Attorney General's Committee To Study the Antitrust Laws, which Committee was put together consisting of leading members of the bar—of the antitrust bar—of the country during the Eisenhower administration and they recommended this civil investigative demand approach.

I want to assure the gentleman that the Committee was very specific in saying that any documentary material that is given to the Department of Justice should be for the eyes only of the Department of Justice, and specifically recommended that it not go beyond.

Mr. ROGERS of Colorado. May I ask the gentleman if he has any objection if a matter comes under the jurisdiction of the Federal Trade Commission and the Attorney General determines that there has been a violation where the action could proceed from the Federal Trade Commission that you should again compel the Federal Trade Commission to subpena the same documents? Why cannot the Attorney General turn it over to them and let them proceed if a man is violating the law?

Mr. LINDSAY. Does not the gentleman recognize the importance of this provision that we put in to give the organization some idea of the nature of the conduct that is under examination?

That is wiped out by the provision placed in the bill by the other body.

Mr. ROGERS of Colorado. The answer is just like saying to a man: "I suspect you of murder, or, if I do not suspect you of murder I suspect you of burglary." That is just an analogy of what you are talking about here. If on the other hand this is limited to corporations it does not affect individuals and it cannot violate any rights the individual may have. We go all the way in protecting the individual.

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

Mr. ROGERS of Colorado. I yield.

Mr. MACGREGOR. In view of the fact the gentleman has castigated the MacGregor amendment, let me ask the gentleman one simple question: Is it not correct to say that the MacGregor amendment has been included in all of the American Bar Association recommendations for legislation in this area? Was it not specifically recommended by Mr. Simon, a witness for the American Bar Association? All it does is carry out the recommendation of the American Bar Association.

Mr. ROGERS of Colorado. Mr. Simon appeared before the committee and testified.

Mr. MACGREGOR. But the gentleman will admit that my statement is correct, will he not?

Mr. ROGERS of Colorado. I would not agree that it went that far.

Mr. MACGREGOR. But the language is in the draft bill of the American Bar Association.

Mr. ROGERS of Colorado. In response to what the gentleman from Minnesota said, regardless of the recommendation made by the bar association, I am sure that you do not intend to tie the hands of the Department of Justice in finding out who is violating the antitrust law, do you?

Mr. MACGREGOR. I intend to place reasonable safeguards that the gentlemen on the other side of the aisle have said should be placed in the bill. That is the position of the American Bar Association.

Mr. ROGERS of Colorado. Is it not unreasonable that you must confine yourself to suspect companies alone in an investigation?

Mr. MACGREGOR. We are talking about new powers. Was there anything unreasonable about the FBI getting reporters out of bed at 3 o'clock in the morning?

Mr. ROGERS of Colorado. There is another instance of dragging in something that has nothing to do with the case in order to try to inflame the situation. The FBI has its authority to proceed regardless of this. This is an effort to do it in an orderly fashion so that he will not be compelled to go forward, as you say, in violation of somebody's rights.

The SPEAKER. The gentleman from New York has 2 minutes remaining.

Mr. CELLER. Mr. Speaker, mention has been made of the views of the American Bar Association. On page 72 of the hearings we find the following interesting colloquy. It concerns the so-called MacGregor amendment, although at that time it was not known as such:

Mr. MALETZ. If you provided such a limitation, would you not in effect be leaving unsolved certain of the problems that are presently existent?

Mr. SIMON. Yes.

So that you would leave unsolved a great many programs and would force the Attorney General to go back to the old practice, noxious as it is, of impaneling a grand jury. If you include in this bill the so-called MacGregor amendment, you would simply give to the Attorney General a paper sword. You would stymie him.

With reference to the case in Alexandria, the gentleman from Virginia [Mr. SMITH] spoke of, where a number of corporations were brought before the grand jury, if you pass this bill with the MacGregor amendment, the Department of Justice would have to proceed seriatum against each of a dozen of such corporations as their conspiracy unfolded—as one set of files implicated another conspirator—rather than obtaining all the facts and putting them together in an orderly fashion so that the Department could have a full view of the matter and then determine which companies should be made defendants in a civil antitrust suit. In such a case, the Department of Justice might have to proceed against all of those corporations before a grand jury, as was the case in Alexandria.

The SPEAKER. All time has expired.

Mr. CELLER. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER. The question is on the conference report.

Mr. McCULLOCH. Mr. Speaker, I offer a motion.

The SPEAKER. Is the gentleman opposed to the conference report?

Mr. McCULLOCH. Yes, Mr. Speaker, I am opposed to the conference report.

The SPEAKER. The Clerk will report the motion.

The Clerk read as follows:

Mr. MCCULLOCH moves to recommit the conference report on the bill S. 167 to the committee on conference with instructions to the managers on the part of the House to insist on the amendments of the House numbered 2, 4, 7, 14, and 18 through 23, inclusive.

Mr. CELLER. Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

The SPEAKER. The question is on the motion to recommit.

The question was taken; and on a division (demanded by Mr. MCCULLOCH) there were—ayes 103, noes 127.

Mr. McCULLOCH. Mr. Speaker, on that I demand the yeas and nays.

The years and nays were ordered.

The question was taken; and there were—yeas 202, nays 200, not voting 33, as follows:

[Roll No. 162]

YEAS—202

Abbitt	Forrester	Murray
Abernethy	Fountain	Nelsen
Adair	Frelinghuysen	Norblad
Alexander	Fulton	Nygaard
Alger	Gavin	O'Konski
Andersen, Minn.	Glenn	Osmers
Anderson, Ill.	Goodell	Ostertag
Andrews	Goodling	Pelly
Arends	Grant	Pillion
Ashbrook	Griffin	Pirnie
Auchincloss	Gross	Poage
Avery	Hagan, Ga.	Poff
Ayres	Haley	Purcell
Baker	Hall	Quie
Baldwin	Halleck	Ray
Barry	Halpern	Reece
Bass, N.H.	Harrison, Wyo.	Reifel
Bates	Harsha	Rhodes, Ariz.
Battin	Harvey, Ind.	Riehlman
Becker	Harvey, Mich.	Roberts, Tex.
Beckworth	Henderson	Robison
Beermann	Herlong	Rogers, Tex.
Belcher	Hiestand	Roudebush
Bell	Hoeven	St. George
Bennett, Mich.	Hoffman, Ill.	Saylor
Berry	Horan	Schadeberg
Betts	Hosmer	Schenck
Bow	Huddleston	Scherer
Bray	Jensen	Schneebelli
Bromwell	Johansen	Schweiker
Broomfield	Jonas	Schwengel
Brown	Judd	Scott
Broyhill	Kearns	Seely-Brown
Bruce	Keith	Selden
Byrnes, Wis.	Kilburn	Short
Cahill	Kilgore	Shriver
Cederberg	King, N.Y.	Sibal
Chamberlain	Kitchin	Siler
Chenoweth	Knox	Smith, Calif.
Chiperfield	Kornegay	Smith, Iowa
Church	Kunkel	Springer
Clancy	Kyl	Stafford
Collier	Landrum	Stephens
Colmer	Langen	Taylor
Conte	Latta	Teague, Calif.
Corbett	Lennon	Teague, Tex.
Cramer	Libonati	Thomson, Wis.
Curtin	Lindsay	Tollefson
Curtis, Mo.	Lipscomb	Tuck
Dague	McCulloch	Tupper
Davis, James C.	McDonough	Utt
Davis, John W.	McIntire	Van Pelt
Derounian	McMillan	Van Zandt
Derwinski	McVey	Waggonner
Devine	MacGregor	Wallhauser
Dole	Martin, Mass.	Walter
Dominick	Martin, Nebr.	Weaver
Dooley	Mason	Weis
Dorn	Mathias	Westland
Durno	Meader	Whalley
Dwyer	Michel	Wharton
Ellsworth	Miller, N.Y.	Whitener
Fenton	Milliken	Whitten
Findley	Minshall	Widnall
Fino	Moore	Wilson, Calif.
Fisher	Moorehead, Ohio	Wilson, Ind.
Ford	Morse	Younger
	Mosher	

NAYS—200

Addabbo	Chelf	Feighan
Albert	Clark	Finnegan
Anfuso	Coad	Flynt
Ashley	Cohelan	Fogarty
Ashmore	Cook	Friedel
Aspinall	Cooley	Gallagher
Bailey	Corman	Garmatz
Baring	Cunningham	Gary
Barrett	Daddario	Gathings
Bass, Tenn.	Daniels	Giaimo
Bennett, Fla.	Dawson	Gilbert
Blatnik	Delaney	Gonzalez
Boland	Dent	Granahan
Bolling	Denton	Gray
Bonner	Diggs	Green, Oreg.
Brademas	Dingell	Green, Pa.
Breeding	Donohue	Griffiths
Brewster	Dowdy	Hagen, Calif.
Brooks, Tex.	Downing	Hansen
Buckley	Doyle	Harding
Burke, Ky.	Dulski	Hardy
Burke, Mass.	Edmondson	Harris
Burleson	Elliott	Hays
Byrne, Pa.	Everett	Healey
Cannon	Evins	Hechler
Carey	Fallon	Hemphill
Casey	Farbstein	Holifield
Celler	Fascell	Holland

July 18,

Hull	Montoya	Rogers, Fla.
Ichord, Mo.	Moorhead, Pa.	Rooney
Inouye	Morgan	Roosevelt
Jarman	Morris	Rosenthal
Jennings	Morrison	Rostenkowski
Joelson	Moss	Roush
Johnson, Calif.	Multer	Rutherford
Johnson, Md.	Murphy	Ryan, Mich.
Johnson Wis.	Natcher	Ryan, N.Y.
Jones, Ala.	Nedzi	Santangelo
Jones, Mo.	Nix	Shelley
Karsten	Norrell	Sheppard
Karth	O'Brien, Ill.	Shipley
Kastenmeier	O'Brien, N.Y.	Sikes
Kee	O'Hara, Ill.	Slack
Kelly	O'Hara, Mich.	Smith, Miss.
Keogh	Olsen	Smith, Va.
King, Calif.	O'Neill	Staggers
King, Utah	Passman	Steed
Kirwan	Patman	Stratton
Kluczynski	Perkins	Stubblefield
Kowalski	Peterson	Sullivan
Lane	Pfost	Thomas
Lankford	Philbin	Thompson, N.J.
Lesinski	Pike	Thompson, Tex.
Loser	Pilcher	Thornberry
McDowell	Powell	Toll
McFall	Price	Trimble
Macdonald	Pucinski	Udall, Morris K.
Mack	Rains	Ullman
Madden	Randall	Vanik
Magnuson	Reuss	Vinson
Mahon	Rhodes, Pa.	Watts
Marshall	Riley	Wickersham
Matthews	Rivers, Alaska	Wright
Miller, Clem	Rivers, S.C.	Young
Mills	Roberts, Ala.	Zablocki
Moeller	Rodino	Zelenko
Monagan	Rogers, Colo.	

NOT VOTING—33

Alford	Hébert	Saund
Blitch	Hoffman, Mich.	Scranton
Boggs	Laird	Sisk
Bolton	McSween	Spence
Boykin	Mailliard	Taber
Curtis, Mass.	May	Thompson, La.
Davis, Tenn.	Merrow	Williams
Flood	Miller,	Willis
Frazier	George P.	Winstead
Garland	Moulder	Yates
Gubser	Rousselot	
Harrison, Va.	St. Germain	

So the motion was agreed to.

The Clerk announced the following pairs:

On this vote:

Mr. Winstead for, with Mr. Hébert against.

Mr. Williams for, with Mr. Willis against.

Mr. Scranton for, with Mr. Davis of Tennesee against.

Mrs. May for, with Mr. Frazier against.

Mr. Rousselot for, with Mr. Boggs against.

Mr. Curtis of Massachusetts for, with Mr. George P. Miller against.

Mrs. Bolton for, with Mr. Sisk against.

Mr. Merrow for, with Mr. Spence against.

Mr. Laird for, with Mr. Flood against.

Mr. Gubser for, with Mr. St. Germain against.

Mr. Mailliard for, with Mr. Yates against.

Mr. Garland for, with Mr. Saund against.

Mr. Harrison of Virginia for, with Mr. Moulder against.

Until further notice:

Mr. McSween with Mr. Taber.

Mr. Thompson of Louisiana with Mr. Hoffman of Michigan.

Mr. FALLON changed his vote from "yea" to "nay."

Mr. CAREY changed his vote from "yea" to "nay."

Mr. MORSE changed his vote from "nay" to "yea."

Mr. POWELL changed his vote from "yea" to "nay."

Mr. SANTANGELO changed his vote from "yea" to "nay."

Mr. HERLONG changed his vote from "nay" to "yea."

The result of the vote was announced as above recorded.

Mr. GROSS. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. GROSS. Was the vote by which the motion to recommit carried reconsidered and that motion laid on the table?

The SPEAKER. It has not been yet.

Mr. GROSS. I so move, Mr. Speaker.

The SPEAKER. Without objection the motion to reconsider will be laid on the table.

There was no objection.

BILL RESTORED TO PRIVATE CALENDAR

Mr. ANDERSON of Illinois. Mr. Speaker, I ask unanimous consent that notwithstanding the action taken in the House yesterday the bill, S. 2147, be restored to the Private Calendar.

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

There was no objection.

COMMITTEE ON HOUSE ADMINISTRATION

Mr. JONES of Missouri. Mr. Speaker, I ask unanimous consent that the Subcommittee on the Library of the Committee on House Administration be permitted to sit during general debate tomorrow afternoon.

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

There was no objection.

FEDERAL-AID HIGHWAY ACT OF 1962

Mr. MADDEN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 723 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to 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. 12135) to authorize appropriations for the fiscal years 1964 and 1965 for the construction of certain highways in accordance with title 23 of the United States Code, 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 Public Works, 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. MADDEN. Mr. Speaker, I yield myself such time as I may consume.

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

Mr. MADDEN. Mr. Speaker, House Resolution 723 provides for the consideration of H.R. 12135, a bill to authorize appropriations for the fiscal years 1964 and 1965 for the construction of highways in accordance with title 23 of the United States Code, and for other purposes. The resolution provides for an open rule with 2 hours of general debate.

H.R. 12135 provides for the usual biennial authorizations for fiscal years 1964 and 1965 for the A B C Federal-aid highway program, as well as authorizations for these fiscal years for the several classes of Federal domain roads. It is essential that funds be authorized for these fiscal years for the Federal-aid primary and secondary highways systems and their extensions within urban areas in order that the States may have sufficient time for planning their individual road construction programs, including any financing procedures necessary to provide the required State matching funds under the Federal-aid highway program.

It is essential that these authorizations be made at this time so that in 1964 and 1965, work can continue on the national highway construction program. Plans, construction, drawings, financing procedures in the various States and the preliminary work on mammoth highway construction projects of this type takes considerable time; hence, the enactment of this legislation is necessary in order to keep our national highway construction program for future years up to schedule.

The Federal-aid highways which would be aided by this bill extend into every county of the United States. The present extent of the Federal-aid primary system is 224,860 miles, exclusive of Interstate System mileage, of which 205,370 miles are in rural areas and 19,490 miles are in urban areas. The Federal-aid secondary system at this time consists of 601,364 miles, including 587,659 rural miles and 13,705 urban miles. At the present time, therefore, the total mileage of highways covered under the A B C program is over 826,000 miles, carrying almost half of the total of all highway traffic in the Nation.

These funds would be apportioned among the States in the manner now provided by law, and would be available for expenditure in the same manner as funds for these highways are made available under present law, that is, for 2 years after the close of the fiscal year for which such funds are authorized.

The continuance of this Federal highway program without interruption will mean a great deal to our national economy. Construction of highways calls for tons and tons of steel, cement, brick, lumber, and dozens of other materials which keeps factories running and salaries expanded so that prosperity can continue in all sections of our Nation. First-class highways connecting all producing areas of our country will aid greatly not only to accommodate our increased population but provide transportation for defense in cases of national emergency.

Mr. Speaker, I urge the adoption of House Resolution 723.

Mr. Speaker, I reserve the balance of my time and now yield 30 minutes to the gentleman from Ohio [Mr. BROWN].