

FOR IMMEDIATE RELEASE
FRIDAY, JULY 1, 1955

DEPARTMENT OF JUSTICE

Attorney General Herbert Brownell, Jr., today asked Congress to enact legislation enabling the Department of Justice to compel corporations, partnerships and associations to produce documents required in civil antitrust investigations. The proposed "civil investigative demand" process would not permit calling of individuals for testimony.

A bill to accomplish the proposed process was sent to the Vice President and the House Speaker by the Attorney General who asked early introduction and action. He said:

"The Department of Justice presently has no powers to obtain in advance of filing a complaint, documents for examination in civil antitrust investigations. As a result, the Department must rely on:

"1. Those under investigation to voluntarily permit access to their records, or

"2. File a civil complaint in a federal district court and then make use of the discovery processes under the Federal Rules of Civil Procedure, or

"3. Initiate grand jury proceedings and use the court's powers of subpoena to obtain documents, even though the Department eventually may proceed only civilly.

"This situation greatly handicaps the Antitrust Division of the Department of Justice which has the responsibility of enforcing the antitrust laws."

The proposed civil investigative demand process substantially follows a proposal by the Attorney General's National Committee to Study the Antitrust laws. The Study Committee report noted that the Judicial Conference of the United States has held that no plaintiff, including the Government, may

"pretend to bring charges in order to discover whether actual charges should be brought," The Committee said:

"We recognize that the Department has been handicapped and accept the Judicial Conference conclusion that present civil investigative machinery is inadequate for effective antitrust enforcement."

The proposed bill, which has safeguards of the type recommended by the Committee, would provide for issuance by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, of civil investigative demands whenever they have reason to believe that any person may be in possession, custody or control of any documentary material bearing on any antitrust investigation. Each demand would contain a statement of the statute which allegedly is being violated and a description of the class or classes of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified. It also would prescribe a return date providing a reasonable time within which the evidence demanded may be assembled and produced, and identify the custodian to whom such evidence is to be delivered.

The bill would prohibit any requirement which would be held unreasonable if contained in a court-issued subpoena duces tecum in aid of a grand jury investigation. It also would bar any requirement for production of any documentary evidence which the recipient can show would be privileged from disclosure if demanded by a subpoena duces tecum.

Provision also is made to:

1. Permit the Department to ask a Federal District Court to issue an order to enforce a demand for documents.

2. Permit a person upon whom a demand is served by the Department to petition a Federal District Court within 20 days of such service for an order

modifying or setting aside such a demand.

Any disobedience of any final order by a court would be punishable as a contempt.

The Bill also provides for criminal penalties not exceeding \$5,000 fine, five years' imprisonment, or both, for anyone convicted of wilfully removing, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any material in his possession, custody or control with the intent to avoid, evade, prevent or obstruct compliance in whole or in part with any civil investigative demand.

Mr. Brownell, in emphasizing the need for the proposed process, recalled that the Study Committee report said in part:

"The inevitable generality of most statutory antitrust prohibitions render facts of paramount importance. Accordingly, effective enforcement requires full and comprehensive investigation before formal proceedings, civil or criminal, are commenced. Incomplete investigation may mean proceedings not justified by more careful search, and study. Public retreat by the prosecutor may then be difficult, if not impossible, and the result may be a futile trial exhausting the resources of litigants and increasing court congestion. Thus the adequacy of investigatory processes can make or break any enforcement program."

The Attorney General said that the process proposed would mean "a real saving in time and expense not only for the Government, but for private parties."

A copy of the proposed bill forwarded to the Vice President and the House Speaker is attached.