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LEGAL AND LEGISLATIVE ASPECTS OF DEFENSE MOBILIZATION

5 December 1952

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Mr. Charles H. Kendall, General Counsel of the Office of Defense Mobilization, was born in Buffalo, New York. He was graduated from Union College, Schenectady, New York in 1930; University of Buffalo Law School in 1933; and entered the practice of law in his home town in October 1933. In 1939 he argued a case before the United States Supreme Court. In 1941 Mr. John Lord O'Brian, another Buffalonian, brought Mr. Kendall to Washington to join his legal staff at the Office of Production Management. After three years with the OPM and WPB, Mr. Kendall took a reserve commission in the Navy. He was assigned to the State Department by the Navy in the spring of 1946 to assist in the disposition of surplus property overseas, Mr. Kendall continued with the Office of Foreign Liquidation Commissioner after release to inactive duty status and became General Counsel of that office in 1947. Since 1948 he has been successively General Counsel of the National Security Resources Board, the Defense Production Administration, and the Office of Defense Mobilization.

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COLONEL BARTLETT: Admiral Hague and gentlemen: You will recall that the first part of our vertical lecture series was given to you last week by Dr. Corwin, covering the constitutionality of the powers of the President in war and emergency. Logically we turn from that broad viewpoint to a consideration of the laws which govern our present mobilization planning and mobilization agencies. Consequently, our topic today is "Legal and Legislative Aspects of Defense Mobilization."

Our speaker, Mr. Charles H. Kendall, is certainly qualified to discuss this subject. During the war he was on the legal staff in the Office of Production Management and, its successor, the War Production Board. He was commissioned in the Navy and served in the Pacific until assigned to the State Department to assist in the disposal of surplus property overseas. He then became General Counsel of the Office of the Foreign Liquidation Commissioner. In 1948 he became General Counsel, first of NSRB, then of DPA; and now he is the General Counsel of the Office of Defense Mobilization. In other words, in one man we have the legal expert of the three agencies that have been directly concerned with our effort since the passage of the National Security Act.

He talked to us in 1949, and you will find his lecture in the library under the symbol "L49-111." However, although the title of this lecture is the same, we have now broadened the scope.

It is a pleasure to introduce Mr. Charles H. Kendall to you.

MR. KENDALL: Admiral Hague and gentlemen: Thank you for the welcome. It is a little like coming home to come back to the Industrial College. I am an alumnus of the institution myself. It was back during the war, when I was in uniform, that I did the four-week course, at the Pentagon, on the first floor. I worked pretty hard at it.

We had a final exam at the end of this four-week course. I was pretty sure I had hit those exams. In my innermost heart I thought I might be asked to join the faculty. Instead of that, they sent me to sea. Since getting out of the Navy, I have appeared before various Industrial College classes, here and in the field, a total of eight times; and before the Naval War College. Perhaps if I live long enough, I will qualify for the faculty yet.

We students of mobilization have a rather unusual opportunity at this point in history, by virtue of the Korean war. It is no war game, of course; but we must learn what we can from it.

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The circumstances that I was here in 1949 and talked about the planning then for legislation for mobilization, and that I am here now, while we are using legislative machinery of that sort in the present defense build-up, makes it overwhelmingly appropriate that we compare what we thought we would need in 1949 with what we've got in 1952, with appropriate footnotes as to whether what we have is as good as or better than what we thought we would need. So, if you will bear with me, I will run through the various suggestions that the NSRB had to make and compare them with what we have to work with now.

We turn to the working draft of the Emergency Powers act. It was with considerable sweat, some tears, no blood as I remember, that we worked on it along in 1947, 1948, and 1949. The first thing we said we were going to need if war came was authority for the President to coordinate the executive agencies of the Government. That was an authority that was granted in World War I and again in Second World War II, and on the basis of which the War Industries Board of 1918, and the War Production Board and other agencies during World War II, were created. It is a very broad provision in the draft that the Resources Board got together.

In the Defense Production Act we have something that roughly parallels it, though, of course--and you may be quite as familiar with this as I am--it is not so broad. There is authority, however, for the President, and I quote: "to delegate any power or authority conferred upon him by this Act to any officer or agency of the Government, including any new agency or agencies (and the President is hereby authorized to create such new agencies, other than corporate agencies, as he deems necessary), and he may authorize such redelegations by that officer or agency as the President may deem appropriate."

Thus we have a parallel in the Defense Production Act which has been used, of course, to set up in the various departments, such as Agriculture, Commerce, and Interior, what we call "delegate agencies," that deal directly with industry, like the Defense Electric Power Administration, the Petroleum Administration for Defense, the National Production Authority, and the rest of that group; and also to set up the independent Defense Production Administration and the Economic Stabilization Administration, together with the Wage Stabilization Board and the Office of Price Stabilization. All of those organizations have been set up under an authority roughly equivalent to the first thing that the NSRB recommended.

The next recommendation we made in 1949 was that there be authority for the Government to employ businessmen, persons of outstanding experience and ability, without compensation. The "without compensation" would have allowed them to keep their compensation from their companies, which, of course, was ordinarily several times what the Government was authorized to pay them.

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In that area we have done as well as the NSRB recommended. The draft provision was that the President "may authorize the head of any agency of the Government, notwithstanding the provisions of existing law, to employ any person of outstanding experience and ability without compensation. The following laws pertaining to the prosecution of claims against the United States" are in effect waived.

The Defense Production Act provides:

"The President is further authorized, to the extent he deems it necessary and appropriate in order to carry out the provisions of this Act, and subject to such regulations as he may issue, to employ persons of outstanding experience and ability without compensation; and he is authorized to provide by regulation for the exemption of such persons from the operation of"

So we were followed pretty closely there.

The next recommendation of the Board was that there be, in the military particularly, an emergency contracting authority which in effect set aside all this usual red tape, these usual contracting difficulties, of the Government, such as buying from the lowest bidder, advertising for bids, inability to change a contract without some compensation to the Government, and general limitations on advance payments and length of contract. That draft provision was modeled on the Second War Powers Act. That act was re-enacted in 1951. So there we have precisely the same thing available to us now, until June of next year, that the Board thought should be available.

The next two recommendations of the Board had to do with the creation of governmental corporations and the authority of the Government to build and operate plants for the manufacture of defense material. In that area we have not come up to the recommendation of the Board, and I venture to say that we have lost something by that failure. The Board's recommendations included that the corporations created should be authorized to make loans to and purchase the obligations of any business enterprise, for any purpose deemed by the President to be advantageous to the national defense. Further, the corporations should be authorized to produce, acquire, carry, sell, or otherwise deal in such materials as the President may designate; to build, and expand plants; and to purchase and provide equipment, facilities, machinery, and materials for the production, et cetera.

Now, in the Defense Production Act we have a fraction of that. Section 302 authorizes the President to make provision for loans (including participations in, or guarantees of, loans) to private business enterprise for the expansion of capacity. And Section 303 authorizes the President, first, to make provision for purchases of or commitments to purchase metals, minerals, and other materials; and, second, for the

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encouragement of exploration, development, and mining of critical and strategic minerals and metals.

It is further provided that such purchases and commitments to purchase and sales may be made without regard to the limitations of existing law, for such quantities, and on such terms and conditions, including advance payments, and for such periods--up to June 30, 1962--as the President deems necessary.

Thus there was granted a broad authority for the making of loans and guarantees; and an authority to make purchase commitments, which, of course, is very important, in the expansion of capacity.

However, there was very careful avoidance of any authority for the Government to build plants itself, that is, on the civilian side of the Government. You probably know that the military departments have some authority to build arsenal-type plants. On the civilian side we have no authority to build plants for the production of basic materials. That was left out. In general it was thought better to have capacity expanded by private enterprise so far as possible, assisted by the Government if necessary.

In general that is working very well, but it presents a problem. That problem is on us right now. When we were expanding our capacity to produce steel, aluminum, copper, things that the civilian economy was going to use in ever-increasing quantity as long as the economy continues to run on a high level, it was relatively easy through the encouragement of tax amortization and loans and long-term purchase commitments, to accomplish these changes. But when you get into other fields such as materials like titanium, for instance--titanium is selling for about five dollars a pound. It is lighter than steel, but not so strong--you don't have in the civilian economy many industries that can afford the price of five dollars a pound for their raw material. So, except in times like these, it is used almost entirely in the laboratory and for certain military uses, where the Government, because of the special characteristics of titanium, can afford to pay five dollars a pound.

We needed a very substantial expansion of the production of titanium, but nobody was interested in doing that for the two or three years of the expected defense build-up. So we ended up by getting our plant by giving advance payments in the full amount of the cost of building the plants, plus a contract to purchase all the titanium output, which in effect meant that the Government was not only paying for the plant, but giving the manufacturer a profit on the whole deal; and the manufacturer ended up with the plant.

That is a very expensive way to get the special production that we may need. We still may have to do that in certain other areas, in fact.

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It would be much cheaper for the Government to have the right, within limits that Congress may see fit to put upon it, to construct and operate the plants itself.

The next of the Resources Board's recommendations is entitled "Production Loan Guarantees." That is an authority particularly useful to the procurement agencies; and it is contained in the Defense Production Act virtually word for word.

The next recommendation was for the special amortization of emergency facilities, a provision authorizing the President to hasten the tax depreciation, or rather depreciation for tax purposes, of plants. You have heard about it in connection with World War II. Actually, we had it for World War I also, but the war was over before we got it.

The idea of it is, of course, that if private enterprise is willing to build a plant the use of which is more or less limited to the period of defense requirements, then it is not unfair to let them write off a substantial part of the value of that plant during the period of its great usefulness to the country and of assured profits which may not exist after the emergency is over.

In World War I that device was not used as extensively or as successfully as it might have been, because it was not in existence when the build-up was going on. It was brought into statutory existence after the Armistice and was used to attempt to do rough justice after the event where private enterprise had gone into production and construction in the hope that something would be done about this situation. In World War II it was available even before the war began and was used quite effectively, together with such other authorities as the Government had, that is, construction authorities.

In this effort we have had to rely on that statute more than ever before, because we do not have the government construction authority now. A total of 23 billion dollars' worth of construction has been granted certificates as emergency facilities for some degree of rapid depreciation, of rapid amortization under the tax laws.

Don't let anyone tell you it will cost us 23 billion dollars or any large portion of that. We just don't know what it will cost the taxpayers to accomplish this expansion this way. Since in effect all this does is to put off the taxes that are due from a plant, if we assume that a new steel plant will be useful after the emergency, that it will continue to earn substantial profits from its operation, the right to write off most of the value of that plant during the emergency means that taxes after the emergency will be that much higher. They won't be able to write off the value of the plant then. It is gone.

If, on the other hand, the taxes are not higher then because the profits are not so large, this justifies writing it off when we need

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the output. In other words, win or lose, we can't lose very much. We don't know how much we will lose eventually by giving the right to put off taxes, perhaps no more than interest on the money.

In some cases industry thinks it is very important indeed--in fact, in most cases. There are a few notable exceptions. Some of the larger companies have declined even to apply for it, on the theory that they are not sure their taxes are going to be lower five years hence; and, if they are not, they would rather be able to write the plant off then.

The next provision is that for priorities and allocations. It is an extremely important piece of economic mobilization legislation, as you all know. I would like to go into just a bit of detail on this. I think it will be of interest to you.

The Resources Board's recommendation read this way: that in time of war, et cetera, the President may require performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense, which shall take priority over performance under any other contract or order, and for the purpose of assuring such priority he may require the acceptance of such contract or order by any person he finds to be capable of its performance; and (2) "the President may allocate materials and facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate to the national defense."

Now we read Section 101 of the Defense Production Act.

"The President is hereby authorized (1) to require that performance under contracts or orders (other than contract of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense."

Does everybody notice the extra line in that last one? There is an extra line in there. After the words "require acceptance" in order to assure such priority, you have: "require acceptance and performance of such contracts or orders in preference to other contracts or orders." Now, the words "in preference to other contracts or orders" do not occur in the Resources Board's recommendation.

The significance of that, I am afraid, is going to be something like this: Assume an electric power source. This power source has

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firm, long-term contracts for what is considered to be its firm power availability for public utility purposes and heavy industrial users. It has contracted away all its firm power.

Now, a proposal comes up for an aluminum plant to be added in the area. In order to accomplish the production of aluminum there, a requirement of power exists. The Government attempts to help private enterprise to go in and build the plant and get power for the plant from this power source. The power source, however, has already contracted away its entire supply. Under the allocation section, the second phrase or paragraph--"to allocate materials and facilities in such manner as he shall deem appropriate"--the President may require that power source to make power available to this aluminum plant.

But I doubt very much if you can make that power available under that authority after the term of the statute itself. So a man who goes in and builds that aluminum plant knows that he is taking a chance of getting power only as long as the statute stays on the books. Well, since it costs about 90 million dollars to build a standard aluminum reduction plant these days, he is going to think twice about putting that much investment in if he doesn't know whether he will get power except up to June 30th, or the year after if Congress extends the act. So there the first portion of the paragraph comes in, as to priority in the acceptance of contracts.

Now, this power contract is presumably a long-term, firm power contract. If the President should require that the power supplier make a contract with the new producer over a substantial period of time, then the investment in the plant would look a lot better. The Resources Board's recommendation for the priority language was that the President could require the acceptance of contracts--period. The language now in the statute is that the President may require the acceptance of contracts in preference to other contracts. I fear that under that language this particular power source may reject entirely any new proposal, since it has already contracted its whole power supply away. So there is a weakness, I believe, in the statute as it exists composed to recommendation of the Resources Board back in 1949.

Incidentally, such weakness might also show up in recalcitrance on the part of producers to take government defense contracts, which sometimes happens.

The next recommendation of the Resources Board is entitled "Plant Seizure." You will remember that last June there was a strike in the steel industry. I trust you remember also that, after consideration for several days, the President issued an order seizing the steel mills and some of the ore facilities that were on strike. No doubt you remember that the Supreme Court later invalidated that order and said it was without lawful force and effect.

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When the President issued that order, he was not entirely without statutory authority for seizing. There is in the Selective Service Act, section 18, the following language; and this is now in effect:

"Whenever the President after consultation with and receiving advice from the National Security Resources Board determines that it is in the interest of the national security for the Government to obtain prompt delivery of any articles or materials the procurement of which has been authorized by the Congress exclusively for the use of the Armed Forces of the United States, or for the use of the Atomic Energy Commission," he is authorized to place with such persons an order for such articles.

In case any person with whom an order is placed pursuant to the provisions of this section refuses or fails either to give such order precedence, or to fill such order within the period of time prescribed by the President, or to produce the kind or quality of articles ordered,

"the President is authorized to take immediate possession of any plant, mine, or other facility of such person and to operate it, through any government agency, for the production of such articles or materials as may be required by the Government."

The trouble with that provision is that the Government doesn't ordinarily buy iron ore; nor does it buy steel in the form of reeds and bars. The Government is buying tanks for the armed forces; various devices for the military. But government orders for steel from the plants are very few and far between. It would have been necessary for the President, in using this authority, to place with all the steel plants involved in the strike government orders for some part of their output. Then he would have to wait a reasonable time to see whether they would produce those things with the workers on strike, unless he found that such wait was unnecessary because they were on strike. Only then could the President seize them under this statutory authority.

The Resources Board in 1949 recommended that there be a plant seizure authority in time of emergency, provided: that whenever the President finds that (1) a contract or order for materials or services necessary or appropriate to promote the national defense and identifiable as such has been placed with or offered to a person operating a plant; (2) that such person has failed or is likely to fail to produce or furnish such materials or services within a reasonable time; (3) that such failure will seriously impede the national defense effort, and (4) that the public interest requires the operation of such plant, he may take immediate possession of the plant and operate it.

Note that the Resources Board's recommendation did not require government contracts or orders.

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Let me say something about the Supreme Court's decision. I think you would be well-advised to read all of the opinions of the steel case if you are going to try to reach any conclusions as to what it meant. Unfortunately, to my way of thinking, at least one of the opinions made it sound as though the reason the order was no good was because it was legislative rather than executive, and "Never the twain shall meet." That isn't a good reason, in my mind, for invalidating the order, unless you are prepared to say that the President never could have such authority. I think that would be a very dangerous conclusion.

Others of the opinions of the justices put the decision more squarely, I would say, on the fact that the emergency which was then existing was not such as to bring to the President the type of authority he was trying to use. That is a matter of judgment, and presumably the court considered it carefully.

The point is that the first type of decision would do away with what for lack of a better word I have called the self-defense theory of the Presidential authority. If you are walking along the street with your wife, mother, or girl friend, and some fellow comes up and slaps her face, you are entitled to do something about it under the law. The law doesn't tell you what you can do about it. What the law says is that you can prevent damage to the young lady, or the older lady, with such force as may be necessary. In other words, the circumstances determine what you can do if someone in your care is threatened with harm.

And so in the last analysis it is with the President. He is the Commander-in-Chief of the armed forces. He is in position to take immediately such action as may be necessary if the country is threatened. If the circumstances are such that to save the country he must act, then the Constitution allows him to do so, for surely the Constitution would not do away with the country. It was never intended to do that. It was intended to provide measures for protecting the country. So, if the situation is serious enough, the President can do what he tried to do last spring. I will not argue with the Supreme Court whether under the circumstances it was necessary. That is part of somebody else's lecture.

The next Resources Board recommendation was for exemption from the antitrust laws for certain voluntary actions requested of industry by the President. Some of you may be familiar with the use that the military departments make of that authority in their Integration Committees, which are very important to them.

In section 708 of the Defense Production Act the President is authorized--

"to consult with representatives of industry, business, finance, agriculture, labor, and other interests, with a view to encouraging the making by such persons with the approval by the President of

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voluntary agreements and programs to further the objectives of this Act.

"No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) and found by the President to be in the public interest as contributing to the national defense shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act of the United States."

That makes possible a cooperation with the Government on the part of private industry which under normal circumstances would clearly be in restraint of trade and in violation of the statute. The authority given by the act is not so easy to use as the one the Resources Board recommended, but it accomplishes, though in tortuous ways, the same result.

Next is the authority to requisition. That is provided in the Defense Production Act adequately and is taken almost word for word from the Board's recommendation.

Then there was a recommendation for import and export control, to be provided in a single sentence. It simply authorizes the President to curtail either exports or imports.

During World War II we did not have a specific import-control statute, and the priority and allocation powers were used to accomplish that purpose. That has been repeated in this effort. We accomplish import control by using the priority and allocation authority. Export controls are being exercised by a division of the Department of Commerce under the Export Control Act of 1949. So in effect we have both parts of that recommendation available to us.

The next is censorship of communications. I don't know whether I should express any opinion as to when that is necessary. I don't think it is necessary now; but, of course, it would be in time of all-out war.

The next section is about price and wage stabilization. As you know, we have had something by way of price and wage stabilization authority since we first got the Defense Production Act on 8 September 1950. But there has been considerable weakening over the years of that authority, through exempting various items and guaranteeing profit margins. It is not true in every case, but exemptions have been made in certain areas. Fresh fruits and vegetables were exempted. Professional services were exempted.

So the act is not a strong general instrument with which the stabilization effort can be applied fairly to the entire economy; for if

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you exempt some substantial parts of the economy from controls, you do injustice almost automatically to some other parts of the economy in using the broken monkey wrench with which you are left.

Nevertheless, I think the controls that are still in effect have accomplished and are accomplishing something by way of avoiding inflation. There is substantial success in the area of basic materials. For instance, some parts of the aluminum industry want to increase their price ceilings--virgin aluminum and fabricated aluminum--and the copper industry is pushing against its ceiling because foreign copper is selling at a higher price, as high at one time as twice as much as domestic copper. It is an unfortunate situation, politically and otherwise.

But the point is that there is still some pressure in specific areas, which would presumably be relieved by the removal of controls, at least at this time. But we have no good reason to believe that the pressure will be less in April. So you may expect, I think, a recommendation at least from the Director of Defense Mobilization to the President that there be continuation of the authority to control prices. Of course, the Price Administrator would like to get rid of some of these crippling amendments. As to the success of that I have no advance predictions.

In the hope that we may have allies if war ever comes again, the Resources Board provided for emergency foreign assistance. It is sort of a lend-lease act that we find in the draft Emergency Powers Act. As you know, we have presently in effect a program of mutual security, which is being worked on day and night by the people assigned to it. There we have a fair coverage.

The next is renegotiation of contracts. We have never lacked authority on that. The act of 1944 was in effect until the act of 1948 took its place. Then the act of 1950, which is now in full flower, took its place. The act of 1950 is remarkable, I think, primarily because it creates an independent board. I say it is remarkable. I don't know whether it is good or bad; but it is in keeping with the recommendations of many, particularly industry people who had their contracts renegotiated during and after the late war.

Then the next is the Selective Service title. As you know, we have one of those today.

Selective Service supplies a legislative base for mobilization that we don't need to spend an awful lot of time discussing. It is one of those things so important that we sort of assume them. When I talk to you about the legislative and legal aspects of mobilization, I spend my time talking about the ignition coil, the condensers, the cam shaft, the valve lifts, and that sort of thing, and say nothing about the frame and the wheels. Actually, of course, the legislative foundation of

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mobilization that is perhaps the most important is the creation of the military departments themselves, the constitutional authority for Congress to maintain military forces, the constitutional authority for Congress to declare war, and, perhaps most important, to make large numbers of large appropriations! These are legislative bases for mobilization that we must not overlook.

The young fellow who has an automobile spends his time thinking about the cam shaft and the spark gap and a lot of features that let him drive faster and smoother. We are like him. We hope our car will be a little faster than the next guy's, and we assume good tires, a strong frame, and so forth. Selective Service is an essential. We cannot fight a war or try to prevent one without soldiers, sailors, and airmen.

The next recommendation, one which has no counterpart this time, is the Resources Board's recommendation for employment control. It is a very tricky subject, of course. It is a matter of moving, in a sense, the Selective Service concept from the uniform to the overalls. It is the notion that in time of war an obligation extends beyond those who may be carrying guns to those who carry wrenches or hammers to do what is required for the successful conduct of the war.

In the draft of the Resources Board there is provision for control by limiting the number of employees a plant may have; by controlling the employment of new employees; by requiring all employees, when they are out of work, to proceed to get new work only through the Employment Service, which would be, for the purpose, Federalized. That, I think, should be reasonably effective. It leaves a certain amount of choice to the individual.

A choice in the individual might be important. You may have had experience with the very fine effort of the armed forces to put the men who were coming into the service into their proper places. We have today, I think, in the armed forces 8,000 different types of jobs. We had during World War II some 10 or 11 million people to put in those 8,000 different types of jobs. Once in a while a mistake was made! Now, if you have a 60-million work force, and we have 25,000 types of jobs to put those 60 million workers in, you can imagine the type of bureaucracy you would need to try to operate the thing, and also the number of mistakes that it would make. So we would be willing to go at the thing not only with a certain respect for what choice we can leave in the individual, but also in such a way as to avoid putting too much authority and responsibility in the Government. We have nothing of the sort now.

The next recommendation of the Board was that there be an emergency labor board in time of war whose job it would be to settle strikes, the

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conclusions of the board to be obligatory on the parties to the strike. In the Defense Production Act, Title V is called "Settlement of Labor Disputes." I will read the important parts of it.

"It is the intent of Congress, in order to provide for effective price and wage stabilization pursuant to title IV of this Act and to maintain uninterrupted production, that there be effective procedures for the settlement of labor disputes affecting national defense.

"The national policy shall be to place primary reliance upon the parties to any labor dispute to make every effort through negotiation and collective bargaining and the full use of mediation and conciliation facilities to effect a settlement in the national interest. To this end, the President is authorized (1) to initiate voluntary conferences between management, labor, and such persons as the President may designate to represent government and the public, and (2) subject to the provisions of section 503, to take such action as may be agreed upon in any such conference and appropriate to carry out the provisions of this title."

That is all there is by way of authority. It does not amount to the creation of what in effect would be a court of last resort to decide, for purposes of keeping production on its feet, how a strike issue should be settled.

Finally, the Resources Board recommended various administrative measures and authorities for the President, such as examination of books, the taking of testimony, and that sort of thing. All of those authorities have been given the President by the Congress currently in the Defense Production Act.

That completes my review of the Emergency Powers Act, and I have very little more to say about it except perhaps this: That from the way the program has progressed--and, believe me, I think there has been very substantial accomplishment in the defense program--I think we have borne out very substantially the planning that the Resources Board was doing between the wars.

Now, that is of some importance if you remember that the mobilization plans of the Army and Navy Munitions Board between World War I and World War II were, at least in the initial stages, to a large extent ignored in World War II, although the final setup that arrived through trial and error was pretty close to the 1939 Plan. If you remember that, then you see the importance of finding that in this case some action was based upon the planning that was done by the planning agency.

Secondly, I think it is important that the provisions which we framed, and which were in large part made the law of the land, have worked

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quite effectively; and that in several cases the changes which were made in the drafts of the Resources Board have worked, if they made any difference at all, to the detriment of the program.

We can be proud of the work we are doing when we see that it plays a part in the defense of the country when that defense becomes necessary.

That is all I have.

QUESTION: When they try to encourage a plant by giving it a tax write-off or amortization, does that apply only to the Federal tax, and is that corporation still liable for the state and local taxes, public utility district taxes, and so on?

MR. KENDALL: It applies only to the Federal income taxes. The provision is a part of the Internal Revenue Code, via the Revenue Act of 1950, and has no application to local taxes, state, or county.

Its operation, of course, is not to exempt but to delay. For purposes of tax payments to the United States Government, it allows the owner of the plant, instead of saying that the plant will have a life of 30 years and taking a depreciation of 3 and a fraction percent a year, to charge off the plant at as much as 20 percent each year.

That charge-off means that his gross profits are not cut into so much, and he puts that money into the cost of the plant. It is in the nature of a loan without interest. He may eventually have to pay pretty much the same amount, but he will pay it five years later.

QUESTION: I have two questions. The first is: To what extent did the NSRB participate with the Congress in writing the provisions of the Defense Production Act? The second question is this: You said nothing about the points at which Congress took the initiative in writing these things in which were not recommended by NSRB. There may be an insignificant number of them, but I notice that there is a Joint Committee on Defense Production, which is not an NSRB idea. Will you comment on those points?

MR. KENDALL: The question was, what part did NSRB take in the legislative history of the Defense Production Act itself, if I may rephrase the question some, and whether Congress put some things in of their own initiative?

At the time of Korea we were able to get the bill before Congress within a couple of weeks of the crossing of the 38th parallel. The first hearing was held in July. That was pretty fast for a large group of legislators.

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The Resources Board was originally given, for a period of about six months very heavy assignments under the Defense Production Act. It presented the bill before the Senate Committee in July. While the bill was in on the floor and in conference, the Resources Board's staff was continuously in touch with the congressional staffs.

Congress did put some things in that they wanted themselves, including, as you have noted, the Joint Committee, which has worked pretty well. The Joint Committee has had a good staff, which has been willing to listen to our problems and has really gone along with what we suggested, if we thought the solutions out carefully before we suggested them.

I think the committee's work has been quite admirably done. Its actions have been dictated, so far as my knowledge goes, entirely by its ideas of what was best for the program. The committee, on both sides, both the Republican and Democratic forces, has generally supported us. They have criticized us to some extent, but we probably deserved that criticism. Maybe they didn't criticize us quite as much as we deserved.

The provisions that the Congress put in, that have been most peculiarly their own, at least according to us, have been the ones that have limited the price-control title, which was a congressional idea. It was required in the original act that price control should be used only when wage controls are used also, which is at times quite impractical. As you know, in general, once you get full price control, full wage control is quite workable. But if we try next spring to get along with very selective controls, controls over key materials and products, you can see the difficulty of trying to control wages in just a few industries. That sort of thing has been tried, but it has not worked. If we keep the selective price control law, and Congress in the spring decides that it will extend it in only a limited way, in certain portions and certain areas, then we will certainly have to beg Congress to let us off the hook on wage control at once.

COLONEL BARNES: It is my understanding that when the Presidential recommendations were made for this legislation, price and wage controls were excluded from it, and Congress actually inserted them. Can you tell us anything about the background of how that happened? You in your address included that as one of the items that the National Security Resources Board had included in the legislation.

MR. KENDALL: That is correct. What went into the act was in very substantial part taken from the NSRB's recommendations, as embodied in the emergency powers draft. It is a fact, however, that the President did not ask for any price and wage title.

The reasons for not putting that in--I don't feel that I am able to say. They were in part political and in part a feeling that this program

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might not be big enough to put a substantial strain on the economy. It obviously was that large, and I think the President was very glad subsequently that the authority existed.

Whether the original recommendation had anything to do with the delay that occurred in getting price controls into effect, I actually doubt. I think most of the delay was in getting together a staff of people who could operate the price control mechanism. It is a very complicated thing to operate. It takes a large staff, trained staff. You just can't, despite Mr. Baruch's recommendations, put price control in the day it is needed simply by saying that there will be no further price increases. You must have a staff ready immediately to relieve industry of the difficulties that occur when you put in a general price freeze. The flow of papers the day after a price freeze would be tremendous. It could not be handled by a small staff.

QUESTION: There seem to be two opposing forces in the Government with respect to industry, particularly large industry. On the one hand you have one segment of the Government, that is, the Administration, that is interested in having very complicated, big projects accomplished in industry, requiring large outlays of capital, and consequently the companies must be very large. They may possibly have to have combinations of large companies in order to accomplish those projects. On the other hand, there is another portion of the Government that is quite afraid of the antitrust aspect of big business. I am aware that it is essential to have big business to do certain things and that there must be controls put on big business to avoid any antitrust aspects. However, it seems to me that big business is right in the middle quite frequently. Would you care to comment on those things?

MR. KENDALL: The fact is, of course, that big business is in the middle, and frequently we are in the middle with it, by reason of those opposing forces. The Smaller Defense Plants Administration--which, incidentally, is another thing that was created by Congress without recommendation from the executive branch--has for its job the attempt to get certain contracts away from big business and into the hands of small business.

The difficulties, of course, are tremendous, as most of you know. The more experience you have had with military procurement, the more you will realize that to try to get small business, or a number of small businesses, to handle any substantial contract doubles or triples the amount of supervision required and delays production substantially; and that you frequently end up with unsatisfactory production. Yet something has to be done to avoid the loss of that very important segment of the economy, the small business segment, in time of defense of the country.

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It is just one of those problems that is not easy to answer. We have just got to work on it. Congress has twice now indicated that it feels some independent group--like the Smaller War Plants Corporation, that we had in World War II, or the Small Defense Plants Administration, that we have in this effort--should be created to see that those fellows down in the procurement services don't just ignore the little fellow.

I don't think we can say that they want to ignore the little fellow. But they want to get the job done as quickly and easily as possible. With that concept of doing the job quickly and easily, including small business in the doing of it is frequently difficult; and we do have to worry about it.

I think some accomplishment has been made. There is this agreement that presently exists between some procurement services and the small business agencies for letting substantial parts of certain types of contracts to small business, for instance, ammunition boxes.

Actually this agreement has not worked without a considerable amount of trouble. Right now there is the question of how we can justify giving an amortization certificate to a small business to increase its capacity for the production of ammunition boxes when there is in existence large business with ample capacity to produce ammunition boxes. The statute tells us to use the tax incentive when capacity is needed. Here is a situation where the capacity exists without spending any of the taxpayer's money, and yet there is a requirement that 70 percent of the ammunition boxes be manufactured by small business. Small business does not have the capacity to do the job. I leave that problem with you.

QUESTION: I believe that during World War II there was a Defense Plants Corporation, and that these synthetic rubber plants were constructed under that program.

MR. KENDALL: That is right.

QUESTION: I believe you said in your talk that right now there is no authority to construct any such plants. Who handles the synthetic rubber plants at the present time?

MR. KENDALL: The RFC is still handling that operation.

The hang-over from World War II of a large number of plants has been very useful to us in this period. The national industrial reserve, with which you are familiar, is handled by the General Services Administration. We have put several of those government plants back in service in this effort. Several other plants were released under the security clause, subject to the right of the Government to come back, move in, and use the plant for whatever it was originally used during the war; they too have been taken advantage of. The difficulty is that we have been unable to go beyond that.

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Incidentally, I understand that currently the synthetic rubber plants are to be reactivated in some parts of the country, and that they are presenting another insoluble problem, because they need petroleum derivatives that are also used in making aviation gas, and we don't have enough for both purposes. So we need additional capacity. But we don't have use for all those methanes except for aviation gas, and there isn't any assured long-term sale for that material. Therefore the industry isn't anxious to increase its capacity.

QUESTION: Assuming the present state of emergency and that the same state of emergency continues, would you care to give your view as to the feasibility of combining ODM with NSRB?

MR. KENDALL: I will be happy to give you my view. I think it would be a very good idea to combine ODM and NSRB. How it could be done is, of course, a matter of some complication.

There are now in existence several groups working on that problem. Nelson Rockefeller, Milton Eisenhower, and Arthur Flemming—that committee is working on the question of reorganization, which would probably include the question that you raise.

There is also a fine young man, Charles Stauffacher, who in the last couple of years has given a very distinguished performance as assistant to Charles E. Wilson. He is currently working on that problem with General Clay, who, I understand, is surveying it. So other people are thinking about it, and the problem might have some sort of reasonable solution, I would say.

There are too many agencies in the high policy situation, in the high policy sphere. At the present time the kind of program in which we are engaged has reached a plateau. We are still trying to increase capacity in certain areas, the highest point of procurement, we think, has not yet been reached, but a great many of the heaviest problems have been solved. So the number of daily problems is not enough to keep ODM, ESA, DPA, and NSRB all busy wrestling with policies. There should be some sort of consolidation there, and I am very much in favor of it. But I don't know how that will be done.

QUESTION: It is my understanding that the Defense Production Act of 1951 expires next spring.

MR. KENDALL: The act passed in 1950 expires in part, the price and wage control, in April, and the rest of the act in June.

QUESTION: That being the case, then would you care to comment on the possibility of Congress extending this act; and, if it does, the possible changes to it that you might recommend and which might go into effect?

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MR. KENDALL: I have been asked that question before, and I don't know too much about what is going to happen. There are a few things that I know with a reasonable degree of certainty; others are very questionable.

I do believe that there will be an extension of the priorities and allocations power in some form or another, because there is so much of the procurement program left to be accomplished and military purchasing must be protected, and there must be some protection on the supply of specific materials for the civilians. There should be authority in the civilian area to see to it that the remaining supplies go to the most important uses.

There may or may not be a continuation of the requisitioning authority. That has only been used once in this effort. But it is like a big stick behind the door. It has helped us to do the most with the least drastic control, because everyone knew that if he didn't do what he was supposed to do, his property could be taken over on requisition. So I honestly think that it has served a greater purpose than its actual use would suggest. I don't think there will be any substantial opposition to the extension of those controls by Congress.

Title III should be extended, because the expanded goals which we have set have not been met in several important areas. Again I don't expect there will be substantial opposition to that.

Title IV is the price and wage title. I don't know just what is going to happen to that. As I told you earlier, if in April we have the same situation we have now, it seems to me we should ask for an extension. There will be considerable opposition to that. There will be a good deal of industry opposition, and pressure on both Congress and ourselves to get rid of controls. I would say that the chances of getting price control, not in its present form but with full powers, are a little less than half. But the chance of getting some sort of price control, somewhat in its present form--I think something of that sort will be found to exist after April 30. I think the chances of that are a good deal better.

The administrative title, which authorize you to use the other titles, of course, will have to continue if any of the others are continued.

Title V is settlement of labor disputes. Probably nothing will be done about that.

Title VI is credit controls. I am inclined to believe that credit controls may be continued in their present rather limited form. We no longer are allowed to use consumer-type controls, as you probably know.

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We are still given the right to limit credit on new housing; I think probably that is an extension we will ask for.

There is rent control authority which exists in another bill. There is substantial opposition to that. I think the rent control principle will be continued. There were 2,400 cities that could continue it under the authority given them last June; 1500 of them asked to continue it. Local action was required and they took such action; 1500 communities, including cities like Wilmington, Chicago, San Francisco, and South Bend, seem to feel that they need it. I doubt that Congress will want to say, "You are not going to have it." I think that will be continued.

COLONEL BARNES: We have done a lot of wondering here, many of the students, as to what extent public opinion is a real influence initially in the kind of legislation put in the program, and, after the legislation is passed, what its effect is on what the governmental agencies actually establish and put into effect. It is a two-way question really. One is the problem itself of trying to feel out public opinion to see what the public wants and keep the program and the laws in step with the main wishes of the people. The other one is trying to get the people to accept something where the Government says, "This is what you ought to have. We know you don't like it, but we can see further ahead about this than you can." Would you care to comment on that?

MR. KENDALL: I am not particularly well qualified to comment on that, but I can't resist saying a few words about it.

Public opinion is, of course, a very important consideration in a government that governs essentially by the consent of the people. But in this area of national defense, perhaps more than in most other areas, the special knowledge of the people who spend their lives in the national defense effort, like most of you men here, is not available to the public as a whole; and what the country needs for its defense is not reliably told by a Gallup poll.

Now, where we choose between two ways of doing what we know must be done, and one of them is just as good as the other, we can let public opinion decide. But that doesn't happen in my experience very often. One is generally preferable over the other, because of its greater effectiveness or ease of use. It may often be necessary to convince the public that what you are doing is not done simply to harass them, but to accomplish something which is for the national defense.

I would say that public opinion in its most accepted sense is probably not very effective in the shaping of a defense program. But in any action that is taken it is Congress that makes the final decision and speaks for the people.

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You might argue that in the last analysis, if the people want to commit suicide, they are entitled to do it. It is a fact that in any government that has as its basic concept that what the people vote for they can do, the government can be made totalitarian by the vote of the people. It is not a violation of the democratic principle for the people to get together and vote for totalitarianism if they want it. However, we don't expect that to happen. Likewise I think we can rely on public opinion to go along with informed opinion in the national defense area.

COLONEL BARNES: Mr. Kendall, I regret to say that the end of the period has arrived. I want you to know that we are deeply indebted to you for this splendid lecture and discussion. The approach that you have used in comparing the proposed mobilization legislation as planned by NSRB with the actual provisions authorized by Congress is an evaluation that is very helpful to us. It is an approach that has not been presented to the college by any previous speaker, so far as I know. Thank you very much.

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DEFINITION

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The first paragraph of the definition states that the term "definition" is used in a broad sense to include all definitions, whether they are formal or informal, and whether they are given in a dictionary or in a text. The second paragraph states that a definition is a statement which asserts that a certain word or phrase has a certain meaning. The third paragraph states that a definition is a statement which asserts that a certain word or phrase has a certain meaning, and that the meaning is determined by the context in which the word or phrase is used.

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