TO BE RELEASED AT CONCLUSION OF
ATTORNEY GENERAL CLARK'S ARGUMENT
EXPECTED AROUND 12:30 P.M.
TUESDAY, JANUARY 14, 1947

TEXT OF ARGUMENT MADE BY

ATTORNEY GENERAL TOM C. CLARK

BEFORE THE UNITED STATES SUPREME COURT

IN THE CASE OF

THE UNITED STATES OF AMERICA v. UNITED MINE WORKERS OF AMERICA AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA.

The jurisdiction of this Court is invoked under the provisions of Section 240(a) of the Judicial Code, as amended. The Court of Appeals has not heard, considered or decided the case. This Court has taken jurisdiction because in its view the public interest required immediate determination of the issues presented.

I shall endeavor to present to the Court the facts involved and shall describe the national emergency which existed by reason of the defendants' conduct. I shall also state the basic grounds on which the Government's position is predicated. Mr. Sonnett will document this presentation with a further discussion of the issues and decisions involved

I would like, at the outset of this case, to make it clear that the issue here is not a dispute between Government and labor. Nor is the Government seeking to infringe in the slightest upon the guarantees given by the Constitution and the statutes of the United States to labor generally. The application of the Clayton Act and the Norris-LaGuardia Act to ordinary conflicts between employers and employees is not here challenged. Wages, hours and working conditions of the miners are not here involved. The Government does not ask this Court to establish any principle which would interfere with the recognized rights of labor. The Government does seek, however, to uphold its right and authority to operate facilities, the possession of which it has taken for war purposes under a temporary wartime statutory authorization. And it seeks to vindicate the power of the Federal Judiciary by the issuance of a temporary restraining order to prevent irreparable injury to the people of the Nation; to prohibit interference with the sovereign functions of the United States and to protect the jurisdiction

of the courts to decide questions of law and fact pending final judicial determination.

Bituminous coal, richly bestowed upon America, is the life of our present-day industry. It is the great fountain-head of the Nation's industrial energy. The flow of soft coal--without interruption--from the rich seams underground to the furnaces is the life-line of our industrial might--almost too far-reaching and intricate for one man to grasp in its entirety. The industrial life of the Nation depends upon the steady, plentiful, unfaltering supply of soft coal. The characteristics of our economy make it completely vulnerable to a stoppage in coal production

In a normal week some twelve and one-half million tons are produced by some 400,000 soft coal miners. The court below found that approximately 43% of all energy produced in the United States came from bituminous coal. In our machine age---and during this vital period of reconversion---to lose this much energy would be catastrophic. It would mean, according to the evidence here, that in sixty days--and this strike continued for 17 days after the restraining order was issued--over 80% of our Class I railroads would be in the yards--stopped - idle--and over 60% of our public utilities and steel mills shut down. In fact, over 4/5ths of the energy used in operating such trains and in running the steel mills comes from soft coal, practically all of which is mined by the members of defendant union. Half of the energy developed by public utilities for lighting our cities--offices and homes--and for other purposes--comes from coal.

What would happen to employment during a 60 day coal stoppage? It would make idle some five million of our workers; the national income would drop 20 billion dollars, and wages paid to workers would decline by the

amazing sum of a billion dollars a month. The Government itself would lose in taxes two hundred eighty million dollars every 30 days. That is the evidence here of the irreparable injury that would come to the Nation--not to speak of the peril to the health and safety of our people.

The bituminous coal mines for the most part are worked by miners affiliated with the United Mine Workers of America, one of the defendants here. "The economic creed of the United Mine Workers"--so says the United Mine Workers Journal for June 1, 1946, is--"no contract - no work." If a new agreement has not been signed before the termination of the old, the men are advised that there is no contract--and they quit. In fact, the cry of "no contract" is the signal for "no work."

It is a matter of common knowledge that work stoppages have occurred at almost regular intervals in the last fewyears in the bituminous coal fields. In each instance it was announced that there was no contract, and the men quit work in the mines. Upon such an announcement, work stoppages occurred even in the most crucial days of the war. And one such stoppage occurred on or about April 1, 1946. That work stoppage was the predecessor of the stoppage of November 1946, which gave rise to these proceedings. The stoppage of April 1946, was in itself highly serious, even though it occurred in the spring of the year when the need for coal is not as great as in the winter. It resulted in the cessation in the flow of coal from the mines to the railroads, to shipping, public utilities, industrial plants, and the facilities owned and operated by the Government, as well as to its establishments overseas. The testimony shows that only ten per cent of the miners worked during the month of April.

The work stoppage continued into May. On May 21st, 1946, the President of the United States "in the interest of the war effort and to preserve the national economic structure in the present emergency" issued Executive Order 9728. The order, based on the powers vested in the President under the Constitution and laws of the United States, particularly the War Labor Disputes Act, directed the Secretary of the Interior to take possession of those mines which had been interrupted in their operation by the work stoppage--and to operate or arrange for their operation in such manner as he found necessary.

The Secretary of the Interior, on the same date--May 21st--took possession of practically all the bituminous coal mines of the Nation--some 2200 mines--and the United States has been in possession of them since that time.

The Secretary immediately began negotiations with the representatives of the miners, to bring about a return to work. Thereafter an agreement, commonly referred to as the Krug-Lewis Agreement, was executed on May 29th by the Secretary as Coal Mines Administrator and the defendant, John L. Lewis, as President of the United Mine Workers. The Government then applied to the National Wage Stabilization Board, pursuant to Section 5 of the War Labor Disputes Act, for permission to pay substantial increases in wages, and to make certain changes in the terms and conditions of employment of the miners, all of which were contained in such agreement. This application was approved by the Board on May 31st, in an order incorporating the changes made by the Krug-Lewis Agreement, and was approved by the President of the

United States on the same date. The miners then returned to work and coal operations were resumed.

The Krug-Lewis Agreement by its terms--

> " . . . covers for the period of government possession the terms and conditions of employment in respect to all mines in Government possession which were subject on March 31, 1946, to the National Bituminous Coal Wage Agreement dated April 11, 1945."

The defendant Lewis fully realized this, for on the occasion of his signing the contract he stated in a Newsreel--

> "A contract has just been covered by execution in the White House. It is a national bituminous agreement by and between the Government as represented by Secretary of the Interior Krug and the United Mine Workers of America. It settles for the period of Government operation all the questions at issue. It should be sustained and supported by the entire country, and I am confident that it will result in the immediate volume production of bituminous coal sufficient to fulfill all the requirements of the country. Telegrams are being sent to all local unions at once instructing them accordingly."

Until October 1946 there was no dispute as to the duration of the contract--that is, it was to continue so long as the Government remained in possession of the mines. On October 21st the defendants wrote to the Secretary of the Interior calling for a conference on November 1st, to commence negotiations regarding wages and other terms and conditions of employment. In that letter they contended that the Krug-Lewis Agreement had incorporated by reference section 15 of a prior agreement--the National Bituminous Coal Wage Agreement of April 11, 1945--and that under section 15 of the prior agreement the miners could give notice in writing of a desire to begin negotiations, and that they could terminate their contract if they so desired after 20 days of negotiation. This provision of the old agreement was the very provision which had been used by the defendants in bringing about the work stoppage of April 1946.

The position of the Government was that section 15 of the old agreement was not incorporated in the Krug-Lewis Agreement, and that under the War Labor Disputes Act the defendants were without power to interfere by strike or work stoppage with the Government's operation of the mines. Secretary Krug so advised the defendants. He advised them that the Krug-Lewis Agreement was in full force and effect and that it was by its terms to continue for the full period of Government possession and operation. He agreed to talk over any disagreements under the contract--and to discuss any grievances--advising the defendants that they should apply as provided by law to the National Wage Stabilization Board if they wished to obtain any changes in the terms and conditions of employment.

On November 1st negotiations began--without prejudice to the contentions of either party as to section 15. The defendants' proposals for changes

in terms of employment were first advanced on November 11th--11 days after the negotiations had begun. The demands made were substantial. They would have increased the cost of coal at the pits about 300 million dollars on an annual basis. Under the circumstances the Secretary of the Interior advised the defendants that pursuant to section 5 of the War Labor Disputes Act they were entitled to make application to the National Wage Stabilization Board. He also pointed out to them that they could negotiate directly with the mine operators with a view to enabling the Government to return the mines to private operation. Such return had been described by both the defendants and the operators as being a desirable objective.

The defendants refused to take either step. By their refusal to make application under section 5 of the War Labor Disputes Act, they ignored the remedy which Congress had provided for the peaceful settlement of exactly this type of problem.

Both the Secretary of the Interior and the Department of Justice advised the defendants of their remedy under section 5. They remained adamant.

One of the most striking things in this case is the continued defiance of the defendants toward the law, the courts, and the rights of the people of the United States.

Instead, the defendants wrote a letter to Secretary Krug on November 15th, part of which is as follows:

> "Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis agreement as of 12:00 o'clock, P.M., midnight, Wednesday, November 20, 1946."

It is manifest that the defendants wrote and sent that letter as a signal--"no contract" meant "no work."

Secretary Krug replied the same day:

> "You have no power, under the Krug-Lewis Agreement of May 29 or under the law, by unilateral declaration to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment'."

In addition, the Secretary urged the defendants not to take this arbitrary action. He stated that they could not terminate the agreement at will or whim. But the defendants insisted on following their own course, ignoring the rights of the other party to the contract--the Government of the United States. They refused to recall the "notice" they had given.

The strike signal was out--on the 20th of November the miners would be out too. To make that more certain the defendants, on the same date, mailed copies of their letter of November 15th to all of the members of the United Mine Workers. At the bottom of each copy, over the signature of the defendant Lewis, was typed "The foregoing is for your official information." That was the signal. Copies were posted in conspicuous places at or near the mines. The notice was tantamount to an order to strike--and it had that very result.

On November 16th the country faced a desperately critical situation. If the "notice" became effective on November 20th, the coal mines would be shut down again--creeping paralysis would seize the country's industrial machine--an estimated five million men would soon be out of work; our commitments to devastated countries could not be met; our armed forces in occupation could not be properly maintained; our foreign relations would be impaired. The struggle had world-wide implications. The sovereignty of the Government of the United States was being put to the test. On the domestic scene, income would drop twenty billion dollars; wages a billion dollars every month; production during a most vital period would be down 25%; government revenues would fall 280 million dollars every 30 days. The supply of coal then on hand would last 37 days of normal consumption--if in one stockpile--but it was scattered

over the country and could not be adequately controlled.

What was the duty of the Government? Should it sit by and permit this strike to occur? -- Or should it proceed at once to obtain a judicial determination that the contract was still in effect, and that the purported notice issued by the defendants was a nullity. That was the course the Government determined to take--the only course which held promise of immediate relief and of preventing irreparable injury to the Nation. Seeking to avoid the pending disaster to the country,,the Government resorted to the courts--where every American should go for a determination of his rights.

The complaint was brought under the Declaratory Judgment Act and alleged the undisputed facts of the controversy. It prayed for a declaratory judgment, seeking a determination that the defendants had no right or authority to terminate the Krug-Lewis Agreement, and that the notice issued by the defendants on November 15th was unlawful and void. As ancillary relief we sought a temporary restraining order to prevent irreparable injury to the United States and its people, and to preserve the jurisdiction of the court. This was to maintain the status-quo--to keep the defendants from stopping the operation of the mines by inducing or coercing the miners to leave their work. The complaint and the affidavits supporting the prayer for an injunction set forth specifically the irrep· able injury which would result to the United States from the action of ne defendants in causing a work stoppage.

In seeking this relief the defendants say our position is inconsistent with our statement in the millwork and patterned lumber case from California. (Carpenters' Union v. United States) I tried that case in the lower court. It was an indictment under the antitrust laws. That case affected only

the San Francisco Bay 'rea; did not involve the temporary war powers of the President; was not an equity suit; and the main issue involved had already been decided by this Court in the Allen Bradley case. There is as much analogy between it and this case as there is between a firecracker and the atomic bomb. Counsel do not yet seem to realize that the action of the defendants here fell little short of causing a national disaster. The Carpenters' case was but a ripple in the industrial life of the San Francisco Bay Area.

To return to the case at bar--the District Court granted the relief prayed for, restraining the defendants from permitting to remain outstanding the notice issued by them on the 15th, or from issuing any further notice that the Krug-Lewis Agreement was terminated, or from coercing, instigating, inducing, or encouraging the mine workers at the mines in the Government's possession to interfere by strike, slowdown, walkout, cessation of work, or otherwise with the operation of the mines. The defendants were served with the order of the Court on the day it was issued--November 18th--but they took no steps to recall or vacate their notice of November 15th. They completely ignored the order of the United States District Court. On November 20th, a strike in all of the bituminous coal mines in the Government's possession went into effect. Production of coal virtually ceased. "The economic creed of UMWA"--no contract - no work--meant just what it said.

And so on November 21st, the following day, we realized that America's ability to administer its own laws was on trial. We filed a petition advising the court that the defendants had wilfully and unlawfully disobeyed and violated the order of the court. The Government asked for a rule to show cause why the defendants should not be punished for contempt. The

defendants were cited to appear on November 25th--one week subsequent to the filing of the suit. They appeared on that date, and admitted orally in open court that they had done nothing with reference to the notice. The defendants told the court:

> "The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto."

An admission that for eight days they had deliberately violated the order of the United States District Court. They had filed no motion or other paper to vacate the order or to appeal from it.

They defied it. To hold a United States court in contempt is an insult to the United States itself; it compromises all law and invites mob rule.

On the next day, November 26th, they filed a motion to discharge and vacate the rule, alleging lack of jurisdiction. After full argument and consideration, the court overruled the motion. The defendants then pleaded not guilty on the contempt charge, and the court proceeded to trial. The Government presented eight witnesses who supported the allegations as to contempt. No witnesses were called by the defendants. The court found each defendant guilty of criminal, as well as civil, contempt. It found that the defendants, by permitting the notice of November 15, 1946, to remain outstanding had instigated, induced and encouraged the miners to interfere with the Government's operation of the mines; had completed the calling of the strike by failing to obey the court's order; had interfered with and obstructed the exercise of governmental functions by the Secretary of the Interior; and had interfered with the court's jurisdiction. The court found that bituminous coal was indispensable for the continued operation of our national economy and that the work stoppage caused and continued to cause irreparable injury to the United States, to the people of the United States, and to its industry and economy. Thereafter, the court imposed a fine on defendant UMWA of $3,500,000 and on defendant John L. Lewis of $10,000. The Government's prayer for a preliminary injunction was granted.

The fine imposed on the Union was based on the injury resulting from its action as well as on its ability to pay. The testimony showed

that the Government would lose some $280,000,000 a month in taxes, not taking into account the billions that would be lost by industry and labor. The fine on defendant Lewis was based on the same principles.

The Government was acting in its sovereign capacity, by virtue of express congressional authorization, when it took possession of the coal mines to prevent a national calamity. But taking the mines was not enough. To carry out its functions the Government had to operate the mines or cause them to be operated. The unilateral termination of the Krug-Lewis Agreement by the defendants was a direct obstruction to the exercise of this governmental function. Must those charged with the duty of protecting the Government and the people stand by and see this threat bring national chaos? Surely Government has the authority and the power to defend itself against destruction from within--as it has the duty to defend the country from destruction from without. When that issue is involved no one is immunized--no person or group is beyond the reach of the arm of the court. No person is above the law--and this is a country and government of laws.

As was so well said by the late Senator Norris, in referring to wartime labor problems:

> "No man, representing either management or labor, should resort to strike methods in order to enforce demands in time of deadly national peril. It seems to me that the miners have forgotten the blessings and the rights given them by the anti-injunction law, and have followed false leaders who care more for their own ambitions than they do for freedom and civilization in the world.
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> "Nothing contained in the provisions of the Norris-LaGuardia law, however, made it possible for the striking miners to take the course mapped in the recent crisis by

> miner leadership. Nothing in the fundamental decent principles embodied in that law--a law that attempts to safeguard and protect the liberties of the individual man--justified anyone in staying the hands of government in its glorious, noble attempts to save a civilized world from European dictatorship."

Let me repeat: The Government does not seek the infringement of constitutional or statutory guarantees.

It respectfully submits that in view of the evidence before the District Court at the time of the hearing the arm of that court should be upheld; that its decision that the Government was entitled to relief it sought should be affirmed; and that the judgments of contempt should not be disturbed.