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LEGAL PROBLEMS RELATING TO THE OPA*

By BEN C. DUNIWAY

The title of this paper is "Legal Problems Relating to the OPA." Like most such titles, it was suggested before this paper was written. I then had in mind discussing certain contested issues which were of interest to me as an OPA lawyer, and which I assumed might also be of interest to you. However, as I began the review of statutes, orders, and decisions necessary for background, I became convinced that probably most practicing attorneys, busy as they must be with a multitude of matters unrelated to OPA, would find a collation and discussion of the basic legal foundation of OPA's powers, and their limits, more useful than a consideration of the difficult and interesting, but none the less peripheral, questions I had in mind. Accordingly, although I shall discuss certain of the more important questions still open, my main emphasis will be upon those basic sources which must be your starting point in advising clients as to their rights and obligations. If I were to attempt much more, I should be on this platform for a week instead of my allotted half hour.

Certain fundamental questions are now settled by recent Supreme Court decisions. However, if we are to understand our problems, and the effect of those decisions, we must go back a step, to the statutory framework upon which OPA rests.

OPA has been given two very vital jobs to do. One is to combat inflation by legal control of prices and rents. The other is to ration scarce commodities at the consumer level. The two are closely related in an economic sense. The need for price control arises from the scarcity of commodities for civilian consumption. If it were possible for us to have all out war production side by side with all out civilian production, there would be no need for price or rent control, or for rationing. Rationing assures a reasonably fair distribution of scarce goods. It assists in price control because scarcity, when not accompanied by control of distribution, tends to divert goods into the hands of those who can pay the highest prices, thus encouraging violations of price regulations. Price control, moreover, tends to strengthen rationing. The major inducement to the violation of rationing regulations is price. In spite of these facts, however, OPA got into rationing more or less by accident, because, when war began, it happened to be the one Federal Agency that even professed to be able to set up a nation-wide rationing system within a week, and proceeded to do so. At that time there was no statutory authority to control prices. There was, in the Priorities and Allocations Act, now part of the Second War Powers

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Act, authority to ration. Early in 1942, however, the OPA and its functions were given firm legal foundation. The present statutes are as follows. I shall first cover those dealing with price and rent control.

First: The Emergency Price Control Act of 1942. (Chapter 26, 77th Cong., 2d Sess.; 50 U.S.C. Appendix)

This is the basic OPA statute. It was approved January 30, 1942, and it was to expire June 30, 1943, or upon a date proclaimed by the President, or upon a date specified in a Joint Resolution of the two houses of Congress. It contains a saving provision as to acts committed or rights or liabilities incurred while it is in effect. It is a lengthy and detailed statute, outlining the authority and duties of the Administrator and prescribing sanctions and penalties for violations.

Second: The Second Price Control Act. (Chapter 578, 77th Cong., 2d Sess.; 56 Stat. 765)

This is the famous Stabilization Act of October 2, 1942. It relates to prices and wages and salaries, directing the President to issue a general stabilization order based "so far as practicable," on the September 15, 1942, levels, and authorizing adjustments to aid in the effective prosecution of the war or to correct gross inequities. It authorizes the President to exercise his powers through such agency as he shall direct. It expires June 30, 1944, or earlier, in the same way as the Price Control Act, and extends the latter to June 30, 1944.

Third: The Federal Reports Act of 1942. (Chapter 811, 77th Cong., 2d Sess.; 56 Stat. 1078)

This statute, in substance, requires Budget Bureau clearance of Federal Agency Public Reporting Forms, including, of course, those of OPA.

Fourth: The National War Agencies Appropriation Act, 1944. (P. L. No. 139, 78th Cong., 1st Sess.; 7/12/43)

This Act imposes penalties upon OPA employees who disclose certain confidential information obtained by them in the course of their work, restricts the use of OPA appropriations for subsidies, and redefines restrictions on the Administrator's authority to impose ceilings upon agricultural commodities. It authorizes OPA employees, when designated by the Administrator, to take or administer oaths. It also contains the "anti-professor" amendment.

Fifth: The Commodity Credit Corporation Extension Act. (P. L. 151, 78th Cong., 1st Sess.; 7/16/43)

This act adds Section 2 (j) to the Emergency Price Control Act, prohibiting the requiring of grade labelling, the elimination of brand or trade names, the standardization of commodities (with certain exceptions) and the fixing of prices with reference to certain types of standards.

The foregoing statutes relate to price and rent control. They have been implemented by certain very important *Executive Orders*. Execu-

tive Order of October 3, 1942, No. 9250, was issued immediately following the adoption of the Second Price Control Act. It establishes the Office of Economic Stabilization (then Mr. Justice Byrnes' office, now Judge Vinson's office), with directions for establishing a comprehensive national economic policy, and authority to issue directives to the Federal Agencies involved. It also somewhat more clearly defined the Price Administrator's authority regarding agricultural commodities, but required concurrence of the Secretary of Agriculture in his regulations. It directs the Price Administrator to fix price ceilings so as to prevent unreasonable or exorbitant profits, and authorizes the Director of Economic Stabilization to direct appropriate federal agencies to pay subsidies in aid of price control. The Director is authorized to delegate his authority, including authority to enforce his orders.

Executive Order No. 9328, of April 8, 1943, is the famous "hold the line" order. It directs that ceilings be placed on all commodities affecting the cost of living and that no further increases be permitted except to the minimum extent allowed by law.

These are the basic legal sources of OPA's authority in controlling prices and rents.

In the rationing field the structure is quite different. The basic statute is the Priorities and Allocations Act, as amended by the Second War Powers Act (56 Stat. 176, 50 U.S.C. Appendix). The Priorities and Allocations Act was adopted May 31, 1941. It contained the following sentence:

"Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material for defense or for private account or for export, the President may allocate such material in such manner and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

The Second War Powers Act was approved March 27, 1942, and inserted "facilities," in addition to "material" as being subject to allocation. The foregoing sentence, as so amended, is the *statutory* basis of OPA rationing programs. It is implemented by provisions in the Act for record keeping and reporting requirements, inspections, investigations, subpoenas, immunity from prosecution where self-incriminating testimony is given in response to a subpoena (provided the immunity is claimed), criminal prosecution (a misdemeanor, fines up to \$10,000 and imprisonment up to 1 year), and injunctions. There is a clause holding persons who comply harmless from damages or penalties, and a provision authorizing the President to delegate his authority. The Act expires December 31, 1944, or earlier, if the President, or Congress by concurrent resolution, shall so decide.

On January 7, 1941, by Executive Order 8629, the President had

created the Office of Production Management. On August 28, 1941, by Executive Order 8875 (6 FR 4483), he delegated his allocation powers under the Priorities and Allocations Act to OPM. OPM, on September 2, 1941, subdelegated this authority to its Director of Priorities (OPM Regulation No. 3, 6 FR 4865). Immediately after Pearl Harbor, it became apparent that we were in for an acute shortage of rubber. OPA agreed to set up the necessary organization to ration tires. It then existed only by virtue of an Executive Order (No. 8734, April 11, 1941). By Order M-15-C, OPM delegated rationing authority to OPA, for tires (December 27, 1941, 6 FR 6792, as amended). The order was approved by the President, and rationing began a few days later.

Meanwhile, on January 16, 1942, the President created the War Production Board (Executive Order 9024, 7 FR 329), and on January 24, 1942, he transferred to WPB the former authority of OPM. (Executive Order 9040, 7 FR 527). It was apparent that the Priorities and Allocations Act was greatly in need of strengthening. The sole available sanctions were non-statutory injunctions and withholding of rations by administrative order. It was for this reason that the Second War Powers Act was passed and approved on March 27, 1942.

On January 24, 1942, Donald Nelson, as head of WPB, and with Presidential approval, issued Directive No. 1 (7 FR 562) which is a general delegation of allocation authority to OPA at the retail and consumer level. This directive is still in effect. The adoption of the Second War Powers Act was followed, on April 7, 1942, by Executive Order 9125 (7 FR 2719), issued by the President. This conferred upon WPB the allocation authority of the President under the Second War Powers Act, with further authority to delegate rationing and priorities powers to OPA. Included was authority in OPA to enforce regulations duly issued by it, with specific reference to the sanctions in the Second War Powers Act. Prior orders of WPB and OPM were confirmed. The rationing programs (except tires, the origin of which has already been given) stem from these orders. There exists, for each commodity rationed, an additional specific order delegating authority to OPA. The WPB orders are called Supplementary Directives and are as follows:

- No. 1-B, 7 FR 925, as amended, 7 FR 3387. (Tires)
- No. 1-Q, 7 FR 9121, as amended, 8 FR 9492, 9868. (Tires)
- No. 1-A, 7 FR 698, as amended, 7 FR 1493, 2229, 2729.
(Automobiles)
- No. 1-C, 7 FR 1669. (Automobiles)
- No. 1-H, 7 FR 3478, as amended, 7 FR 3877, 5216. (Gasoline)
- No. 1-G, 7 FR 3546. (Bicycles)
- No. 1-O, 7 FR 8418. (Fuel oil)
- No. 1-U, 8 FR 1835. (Firewood)

- No. 1-W, 8 FR 11900, Revoked 8 FR 15684. (Anthracite coal)
- No. 1-N, 7 FR 7730. (Rubber footwear)
- No. 1-T, 8 FR 1727, as amended, 8 FR 7440. (Shoes)
- No. 1-D, 7 FR 1792. (Typewriters)
- No. 1-S, 7 FR 10668, as amended, 8 FR 6018. (Stoves)
- No. 1-E, 7 FR 2965. (Sugar)
- No. 1-R, 7 FR 9684. (Coffee)
- No. 1-M, 7 FR 7234. (Meat)

There are several additional orders relating to rationing in the territories and possessions of the United States. In practice, OPA does not ration a commodity, except upon receipt of a directive from the appropriate agency, and it is that agency, *not* OPA, that determines the quantity of goods available for civilian rationing. I said "appropriate agency," not WPB, advisedly, because there are now other agencies which have legal authority over the supply and rationing of certain commodities.

First: Food

On December 5, 1942, the President, by Executive Order 9280, 7 FR 10179, transferred to the Department of Agriculture substantially all allocation authority as it relates to food. This order created two agencies within the Department, the Food Production Administration and the Food Distribution Administration. It provides for exercise of rationing authority through OPA. This order was supplemented, on March 26, 1943, by Executive Order 9322, creating the War Food Administration (8 FR 3807, amended 8 FR 5423). Acting under his authority, the Secretary of Agriculture, on February 15, 1943, issued Food Directive No. 3 (8 FR 2005), a general delegation to OPA, subject to separate determination by the Secretary of the need for and extent of rationing of particular commodities. Several such determinations have been made. They are called Food Directives, and the principal ones are as follows:

- No. 8—8 FR 7093 (Sugar)
- No. 6—8 FR 3471 (Fats, oils, cheese)
- No. 7—8 FR 3471 (Meat)
- No. 5—8 FR 2251, amended 8 FR 3469 (Processed foods)

Second: Rubber

The office of Rubber Director was created September 17, 1942, by Executive Order 9246, 7 FR 9379, with authority to direct OPA to carry out such duties as deemed necessary. Rubber Order R-1 was issued June 18, 1943, 8 FR 8454. It was revised, and is now in effect as amended: 9 FR 501, 9 FR 1485. It contains many provisions regarding production, quotas, etc., correlated to OPA ration orders.

Third: Petroleum

By letter dated September 25, 1942, Mr. Jeffers ordered nationwide gasoline rationing, OPA Service p. 112:13. Actual formal authority,

however, comes from WPB. Control of gasoline and oil supply is in the hands of the Petroleum Administration for War. It was established by Executive Order 9276, 7 FR 10091, December 2, 1942. It is the Petroleum Administrator who must fix quotas for OPA to ration, and this he does from time to time.

Lest anyone feel that in the foregoing list of delegations and sub-delegations he has found the legal Achilles' heel of the rationing programs, let me hasten to add that there are certain statutory provisions that tend to "button up" the delegations. The Price Control Act was in process of enactment when rationing began. It provides that the President may transfer to OPA any of the powers and functions relating to priorities or rationing conferred by law upon any other department or agency of the Government with respect to any particular commodity or commodities. (Section 201[b].) The Second War Powers Act, in Section 301, amends Section 2 (a) of the Priorities and Allocations Act by adding subsection (8) authorizing the President to exercise his powers "through such department, agency, or officer of the Government as he may direct." And the principal executive orders relating to rationing contain express delegations of basic rationing authority from the President direct to OPA.

The statutes in themselves do not control prices or rents, nor do they ration commodities. They must be implemented by regulations. However, the regulations depend for their validity upon the validity of the statutes. Certain basic issues, as they affect Price and Rent Control, have been settled by the Supreme Court. Those relating to rationing have not. The two most important decisions relating to the Price Control Act were handed down March 27, 1944. *Yakus v. United States*, and *Rottenberg v. United States*, Nos. 374 and 375, relate to Price Control. *Bowles v. Willingham*, No. 464, relates to Rent Control. They can best be discussed in connection with a consideration of the Price Control Act.

The Price Control Act is divided into three titles. Title I is headed "General Provisions and Authority." Section 1 (a) is a detailed statement of purposes. It is also a statement of standards governing administrative action, because in Section 2 (a) the Administrator is authorized to issue regulations whenever in his judgment prices have risen or threaten to rise to an extent and in a manner inconsistent with the purposes of the Act. The order or regulation must establish prices which in his judgment will be generally fair and equitable and will effectuate the purposes of the Act. So far as practicable, he is to ascertain and give due consideration to prices prevailing between October 1 and October 15, 1941. He is to make adjustments for relevant factors that he deems of general applicability, including speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general increases or decreases in

profits earned by sellers of the commodity. The regulation must be accompanied by "a statement of the considerations involved in the issuance of the order." Before issuing a regulation, he must consult, so far as practicable, with representative members of the industry. After issuance of a regulation, he must, at the request of a substantial portion of the industry, appoint an industry advisory committee, either national or regional, or both, and consult with it. The Administrator now has appointed and functioning nearly 400 such committees. The majority opinion in the *Yakus* and *Rottenberg* cases, just decided, holds that these provisions set up sufficient standards to guide the Administrator, so that the Act does not unconstitutionally delegate unfettered legislative power to the Administrator. Section 2 (b) contains somewhat similar standards relating to the issuance of rent regulations. The major difference is that rent regulations are local, not nationwide, being confined to those "defense-rental areas" which the Administrator designates. Defense-rental areas are defined in Section 302 (d). Housing accommodations are defined in Section 302 (f). The Administrator cannot regulate commercial rents. The base date that he is to consider is April 1, 1941, but he can fix earlier dates (not earlier than April 1, 1940) or later dates, upon determining when defense activities have resulted or threaten to result in increases in rents inconsistent with the purposes of the Act. The majority opinion in the *Willingham* case, just decided, holds that the foregoing provisions are sufficient standards to guide the Administrator. On this question, in both the *Willingham* and *Yakus* cases, the sole dissent is that of Justice Roberts, and he relies upon the *Schechter* case.

There is another very important portion of the Act, in Title II, which is involved in both cases, and relates directly to the issue of delegation. I refer to Sections 203 and 204. There are the sections which should be of most interest to lawyers. They set up an elaborate system for the review, first administratively and then judicially, of the Administrator's orders and regulations. Under Section 203 (a), any affected person may, within 60 days after issuance of the regulations, file a protest with the Administrator, stating his objections and accompanied by written evidence in support of them. A protest may also be filed at any time after the 60-day period, based upon grounds arising after the 60 days expire. The Emergency Court of Appeals (which I will refer to again), has recently held that, in the case of protests based upon new grounds, there is no time limit within which they are to be filed. (*R. E. Schanzer, Incorporated v. Bowles*, No. 114, March 17, 1944, OPA Service, p. 610:103.) The Administrator has issued Revised Procedural Regulation No. 1, implementing Section 203 (a) of the Act. (7 FR 8961.) The Administrator can grant or deny the petition, in whole or in part, and in denying, must state the grounds of the decision and the economic data or other facts of which he has taken

official notice. Section 203 (b) expressly authorizes him to take notice of economic data and other facts. Section 203 (c) authorizes him to limit the procedure to written evidence and briefs.

Section 204 provides for review of the Administrator's decision by a special court, created by the Act, called the Emergency Court of Appeals. Section 204 (c) creates the court. It consists of three or more judges designated by the Chief Justice of the United States from District and Circuit Court Judges. The court can sit in divisions, and at such places as it may designate. It has in fact sat in various parts of the country, including Seattle. It has power to issue, and has issued its own rules of procedure. (OPA Service p. 300:102.) Aggrieved parties must apply to the court, by filing a complaint, within 30 days after the Administrator's decision. The Administrator must then file a transcript of the protest proceeding. The court can consider only objections set forth in the protest, and no evidence can be considered except that in the transcript. However, application can be made to present additional evidence, and if the application is granted, the evidence is presented to the Administrator, unless he requests that it be presented to the court. The Administrator may then present additional evidence also.

Section 204 (b) defines the court's authority. It can set aside or enjoin a regulation only if the complainant establishes that it is not in accordance with law, or is arbitrary or capricious. Moreover, no judgment invalidating a regulation is effective for thirty days, during which application to the Supreme Court may be made for certiorari. If this application is made, the judgment is stayed until decision by the Supreme Court.

In the *Yakus* and *Rottenberg* cases, and in the *Willingham* case, these provisions were considered, and were held to present a generally adequate scheme for judicial review of the Administrator's action. In neither case had the defendants protested. Accordingly, the court refused to pass upon certain contentions as to possible ways by which the Administrator might, by taking arbitrary positions as to issues, evidence, oral hearings, etc., attempt to block a fair review. Such issues were held not to be before the court, which refused to presume arbitrary action, and indicated that if such action should occur the Emergency Court and the Supreme Court could correct it. A reading of the majority opinions discloses that the existence of this system of review, providing a means whereby a court can see that the Administrator does in fact comply with statutory standards, weighed heavily in persuading the court to uphold the general validity of the Act as against the claim of unlawful delegation. This is indicated by the fact that the Chief Justice and Justice Douglas, writing the majority opinions, point out that under the scheme a person affected by the regulation

need not test it by violating and contesting a prosecution, but may protest in advance of any enforcement action. It is also pointed out that the Act, in Section 4 (d), expressly provides that no one can be required to sell or rent, and that a seller who claims he will lose money can refrain from selling. Justice Roberts, in his dissent, vigorously attacks the whole scheme, as providing a system of review that is really illusory. Perhaps I should say here that we in OPA do not consider it illusory. It is true that so far the Emergency Court has reversed the Administrator, on the merits, only once, but the Administrator has many times issued amendments to regulations because of facts presented in protests. I might add that the formal protest is not the sole way for the regulated citizen to get relief. Many regulations contain provision for adjustment upon individual application, and the Administrator has provided for protest of his action, which is reviewable by the Emergency Court. That court has held that when the citizen brings himself within the terms of an adjustment provision in the Administrator's regulation, the adjustment must be granted. (*Armour and Company v. Brown*, 137 Fed. (2d) 223.) The Administrator has also provided a procedure for petitions for amendment. The denial of such a petition, however, is not subject to protest or review. (*Bogart Packing Co., Inc. v. Brown*, 138 Fed. (2d) 422.) Procedures are governed by Revised Procedural Regulation No. 1 (7 FR 8961) in price cases, and by Revised Procedural Regulation No. 3 (8 FR 526, 1/12/43) in rent cases. There are additional Procedural Regulations for specialized types of cases.

We now come to the most interesting provisions of the Act, from the lawyer's standpoint. Section 204 (d) contains the following provision:

"The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."

It first came before the Supreme Court in *Lockerty v. Phillips*, 319 U. S. 108. The Court held the provision valid in so far as it withdrew from all Federal Courts jurisdiction to enjoin enforcement of regulations, at the suit of parties regulated. It expressly left other questions open. In the *Yakus* and *Rottenberg* cases, the question left open,

as to Federal jurisdiction, was decided. In that case the defendants were indicted for and convicted of willful violation of Maximum Price Regulation No. 169. They filed no protest as permitted by the Act. The trial court refused to permit them to present evidence showing that the regulation was invalid. This decision was affirmed by the Circuit Court of Appeals (137 Fed. (2d) 850) and has now been affirmed by the Supreme Court. On this issue alone, Justices Rutledge and Murphy dissented. It is their view that Congress, having given District Courts jurisdiction of crimes against the Act, could not carve out of that jurisdiction the question of the validity of the regulation. The majority, through Justice Stone, holds that Congress can do, and has done, just that. The opinion, however, leaves two questions open: (1) Where the regulation is unconstitutional on its face, as for race discrimination, and (2) Where the defendant is prosecuted while he is diligently prosecuting a protest. In the *Willingham* case the converse of the issue is presented—whether Congress can validly withdraw from state courts authority to adjudge a regulation invalid. There the Administrator was held entitled to an injunction, in the Federal Courts, against an action in and decision by a state court in an eviction case, that the rent regulation is invalid. Various state courts have also passed on the provisions of Section 204 (d). See, for example, *Kittrell v. Hatter*, 243 Ala. 472, 10 So. (2d) 827; *Ritchie v. Johnson*, Supreme Court of Kansas, Jan. 22, 1944, OPA Service, p. 622:303. It would appear that save for the questions left open by the Supreme Court, the general validity of Section 204 (d), as it applies to both State and Federal Courts, is now established. Broadly stated, the rules are these: (a) No court can entertain an action to enjoin enforcement of a regulation, except the Emergency Court upon proper protest, nor can any other court entertain such action based upon grounds of the invalidity of the Act. (b) In actions by OPA to enforce its regulations or by a consumer or tenant for treble damages, or to prevent evictions, or for other relief enforcing the Act, no court can pass upon the validity of the regulation, but it can pass upon the validity of the Act. Compare *Miller v. Municipal Court of Los Angeles*, Calif. Supreme Court, Sept. 30, 1943, 142 Pac. (2d) 297, OPA Service p. 620:231.

So much for the basic statutory authority of OPA in the fields of price and rent control. Subsidiary legal questions, many of them of the greatest interest, are legion. They would furnish ample material for a legal institute lasting a week. I pass them only for lack of time.

In the field of rationing, legal controversy centers almost entirely around one issue. Has the Administrator legal authority to issue administrative orders suspending a person from dealing in rationed commodities when that person has violated the regulations? OPA's position (the position of WPB, WFA, and PAW is the same) is that it has. The argument is simple. Power to allocate a commodity necessarily

includes power to withhold as well as to grant. That is the essence of all rationing. Included in that power is the power to make the right to receive or deal in rationed goods conditional upon compliance with the regulation under which receipt is authorized. As to the method of withholding, we take this position. The regulation could validly provide that a person who violates in a substantial way shall not thereafter be entitled to receive rationed commodities. If he does so, that in itself is an offense which will subject him to penalties. However, we have not gone so far. We believe that it is better to have a determination, after a full hearing, that a violation has occurred, before there is any withholding of the commodity; that the extent and duration of the withholding should depend upon the facts of the case, the test being whether and to what extent, in the light of past conduct, the respondent is to be trusted to handle rationed commodities properly in the future; and that only after such a hearing has been had, by an officer qualified to hear and decide after a sifting of evidence, with full opportunity for administrative and judicial review, should the power to withhold be exercised. To this end the Administrator has issued General Order No. 46 (8 FR 1771), setting up within OPA an office of administrative hearings, and Procedural Regulation No. 4 (8 FR 1744). Complete separation of prosecution and adjudication is preserved throughout. The procedure is simple and expeditious, but it provides the essentials of due process, notice, opportunity to appear by counsel, present evidence, cross-examine witnesses, and argue, appeal to the National Hearing Administrator, and court review by injunction. It has been violently attacked in certain newspapers, by some bar associations and elsewhere. OPA was one of the first of the Federal agencies to try to put into full effect the recommendations of the Attorney General's Committee on Administrative Procedure. It is ironical that we were not attacked until we did so, and that then the attack was based upon all the arguments about combining the functions of judge, jury and prosecutor that were the reasons for the Attorney General's Committee's recommendations. It makes one wonder whether the real reasons behind the attack are those expressed. Be that as it may, the legal validity of our regulations and procedures has been upheld by nearly every court that has passed upon the questions. It has yet to reach the Supreme Court. The only Circuit Court Decision is *Brown v. Wilemon*, C.C.A. 5, 139 Fed. (2d) 730, decided January 13, 1944. The decision upholds OPA's position in all respects. The Court of Appeals for the District of Columbia is in accord. *L. P. Steuart & Bro., Inc. v. Brown*, Feb. 18, 1944, (OPA Service p. 621:102); *The Country Garden Market, Inc. v. Bowles*, March 6, 1944 (OPA Service p. 621:113). Eleven District Courts agree; two have held otherwise. These decisions are *Wilemon v.*

Brown, N. D. Tex., (51 F. Supp. 978) and *Sims v. Talbert*, E. D., S. C., (52 F. Supp. 688).

As I have said, there are innumerable other interesting problems. Since we have not time to discuss them, perhaps it will be helpful if I suggest how to get at them. There are several excellent Loose-Leaf Services dealing with OPA, among them C.C.H., Prentice-Hall, and the OPA Service. The latter is unique. It was created at the request of OPA's General Counsel, by contract with private publishers. We in OPA use it as our bible. It contains many court decisions, interpretations and rulings not found elsewhere. Some idea of the size of our problems can be gotten by glancing through it. It now runs to some fifteen fat volumes! The enormous scope of our problems has produced a very large number, not merely of regulations, but of *kinds* of regulations. You will find them well discussed, with an exposition of the principles upon which they are grouped in an article in 42 *MICH. L. REV.*, at page 235. This article has been revised and brought up to date, and is reprinted at page 700:204 of the OPA Service. Finally, the OPA district offices and boards are there to serve the public—including the lawyers. One thing we have done for which I think we deserve more credit than we get. Our offices are staffed with attorneys, one of whose jobs is to issue interpretations upon doubtful questions. If your client follows such an interpretation, he is protected under our regulations and under Section 205 (d) of the Act, against penalties, even if the interpretation is later overruled by OPA or by a court. We are not here to tell you how to evade the regulation, but we will tell you what they do and what they don't do.

I cannot refrain from making a few suggestions. First, when you come to us with a problem, don't make the mistake of assuming that our regulations are something different from law, to be treated rather casually and without careful study. You will help your client, and you will help us, if you make sure that you understand the problem before you present it to us. Any other approach hurts your client's cause. Second, however difficult your client's position may appear—however queer a particular regulation may look when you first read it—don't jump to the conclusion that the regulations was dreamed up by some theorist who didn't know what he was doing. We usually have a good reason to do what we do. Third, and perhaps most important, remember that OPA is an agency born of the exigencies of war, and given a truly Herculean task to perform. It has done its job almost overnight, and I think that in view of the obstacles it has had to meet, it has done the job very well. Most of us are not professional bureaucrats. We look forward eagerly to the time when we can get out and be on the "giving" end of criticism, rather than the receiving end. But the twin jobs of combating inflation and rationing scarce goods have got to be done by somebody. We happen to be "it." We must

look to you to so advise your clients that that job can be done with a minimum of pain and a maximum of effects. Easy tolerance of black markets and chiseling can lead to disaster. There is no group in the community who can do more to beat the black market than the lawyers, if they will. I am confident that you will help us. I can assure you that we know that one of our jobs is to help you.