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ADDRESS SCHEDULED FOR DELIVERY BY ELMER F. ANDREWS, ADMINISTRATOR
WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR

Before the

SOUTHERN PINE ASSOCIATION, NEW ORLEANS, LA.

MARCH 24, 1939 AT 2:30 P.M.

If Henry Wadsworth Longfellow were looking today for the forest primeval he would do well to turn his back upon his native stern and rockbound coast and look down upon the passing scene on a flight to New Orleans, as I have done.

It is a scene of sylvan splendor, and from the air it is difficult for the traveler to realize that this is not alone the peaceful haunt of the 'possum and the mocking bird but also a ponderable economic factor with troubles and problems of its own.

I am told that approximately 30 percent of the land in the South is still in forests, that 40 percent of the Nation's forests are here. Wood occurs in greater variety in the South than in any other section of the country.

Next to cotton, the forests are the second greatest source of wealth in the South. Only God, as the poet reminds us, can make a tree; but lumbermen make lumber and speak in terms of lumber. And in lumbermen's terms as recently as 1929 there still were 206 billion board feet of hardwoods and 200 billion board feet of softwoods standing in 16 southern States.

In 11 southern States there were 5,022 forest products establishments in 1935 employing 178,750 workers at a total wage bill of $83,667,253. California, Oregon and Washington had 1,592 such establishments, employing about half as many workers but paying in wages $15,000,000 more. The value of the manufactured forest products in the 11 southern States was only $19,000,000 more than that of your competitors on the Pacific Coast.

The Report to the President on Economic Conditions in the South which, as you know, was written by Southerners and not by envious rivals elsewhere, reminded us that in 1937 the average annual income in the South was $314, about half what it was in the rest of the country. A recent survey was cited showing an annual average industrial wage below the Ohio of $865, contrasted with an annual industrial average of $1219 in the rest of the States.

The report added, "Low wages have helped industry little in the South. Not only have they curtailed purchasing power on which local industry is dependent, but they have made possible the occasional survival of inefficient concerns." And again, "Unemployment in the South has not resulted simply from the depression. Both in agriculture and industry large numbers have for years been living only half employed, or a quarter employed, or scarcely employed at all."

In the face of a situation of that sort it might be supposed that any device that promises to raise wages would have the enthusiastic support of the South, and especially of its business men with whom the wages eventually are spent. But that hasn't been our experience. Enactment of the Fair Labor Standards Act was bitterly opposed by many Southern business men including a number of lumber men. We were told that any interference with supply and demand where human labor is concerned would be fatal to business -- though most of the countries of the world have been doing it for years, as have most of the 48 States.

But the law was enacted, nevertheless, and since that time we have had the comforting assurance that Southern business generally is patriotically complying with it, and that goes for the most responsible portion of the Southern lumber industry.

But there is a fly in the ointment. It is charged that non-compliance and evasion are widespread in the lumber industry and we hear warnings to the effect that unless the last backwoods sawmill is made to comply promptly even those who are now complying will be compelled to join the rebellion.

Typical of the charge of non-compliance, and non-enforcement, is this statement from the Southern Lumberman, which, though opposed to the law, has urged compliance:

" . . . some means should have been devised within the space of six months for enforcing the law in a more effective manner than now is being pursued. It is common knowledge that the law is being flagrantly violated in many industries; but so far the efforts of enforcement have been somewhat less effective than the frantic attempt of the old women who tried to sweep back the tide with her broom. Up to date, including a suit brought against an overall company in New York last week, there have been a grand total of two suits filed by the Administrator for the purpose of enforcing this law. Meanwhile, those employers who are honestly and conscientiously complying with the law are forced to compete with those who shrug their shoulders and say, 'Oh, it's just another NRA,' and go ahead on the old basis of wages and hours. Worst of all, the law-abiding employer finds it impossible to get any official interpretation of any of the law's

ambiguous provisions; and, through no fault of his own, he may be blundering into some technical violations of the statute for which he will have to pay a later penalty.

"Granting that Mr. Andrews has the best of intentions, that he has a tremendous job and that his department is inadequately financed and manned--granting all that, the time has come when he ought to be taking steps to crack down on wilful violators of the Wage-Hour Law and convince them, and all others, that the law has teeth in it and cannot be treated with the contempt so frequently accorded to codes of the NRA days."

At the very moment when the editor of the Southern Lumberman was composing this broadside, which was published February 15, the Wage and Hour Division was laying the groundwork for prosecutions and injunctions. Since February 15 we have gone to court in a dozen cases. But I should like to repeat here, what I have said a number of times before, that we are primarily less interested in putting people in jail—as much as we know some of them should be there— than we are in winning for the workers of the country the benefits to which they are entitled under the law. We have agreed on occasion to consent decrees where, in our judgment, that method would bring about compliance and restitution to the workers concerned of wages due. Daily we receive reports of satisfactory adjustments being made by our inspectors in the field who, merely by pointing out violations, are bringing about compliance and the payment of overdue wages. But if anyone doubts that we can be tough when occasion requires, I refer you to a certain New England shoe manufacturer who was indicted, pleaded guilty, and fined $1,500 with the comment of the presiding judge that he hoped that penalty would be adequate to demonstrate to other employers the danger of playing with fire.

Now, if there are any employers in lumbering or any other industry, who imagine for a moment that they can get away for long with studied and intentional violations, that they can defy the enforcement machinery with impunity, I should like to point out to them a provision of the Act which they may have overlooked. When dealing with any law it is the part of wisdom to read all the fine print. I call your attention to Section 16 (b), which reads as follows:

"Any employer who violates the provisions of Section 6 or Section 7 of this Act (the wage and hour provisions) shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an ADDITIONAL EQUAL AMOUNT as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, IN ADDITION to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

In other words, the employer who undertakes wilfully to violate the law hasn't merely the Department of Justice and the Wage and Hour Division to deal with—he may have his own employees and the courts to deal with, and dealing with them may turn out to be a good deal more expensive in the long run than voluntary compliance. So far, we have counseled employees against hasty litigation. We have advised them that too many law suits at this time may prove an embarrassment to other methods of enforcement if undertaken rashly and before the enforcement machinery is perfected. But

it should be remembered that this provision is in the law and that it can be used, and we could not prevent its being used, even if we wanted to.

Let me warn that 25 cents an hour means exactly that and not 25 cents minus what a grasping employer can recapture in profits at the company store, or by renting shanties in the clearing at penthouse prices. The provision of the Act which permits the employer to include in wages the "reasonable cost" of furnishing board, lodging or other facilities does not, in our opinion, include a profit to the employer.

But as a matter of fact, there is this to be said concerning the complaint that the efforts at enforcement are no more substantial than those of the old woman who undertook to sweep back the tide: You gentlemen know the circumstances and the general lay-out of the forest products industries better than I do. Checking up on wage and hour conditions in a steel mill, by contrast, is relatively easy. It is big, it is out in the open where you can get at it readily. Usually it has time clocks and keeps complete and reliable records. The forest products industry is scattered in thousands of establishments, big and little, throughout the South. The logging and sawmill phase of the industry has a disconcerting way of refusing to "stay put." It is here today and somewhere else tomorrow. In the very nature of things it has to move about to where the trees are. There are big logging camps employing hundreds of men and keeping air-tight records, and there are little ones employing a dozen or so and where the boss keeps his records in his head. Sometimes you can get little help from the employees themselves. They may be unaware of their rights under the law. Some of them "disremember" how many hours they worked last week or week before last. In cases of that sort, I suppose, our inspectors have to hide behind a

tree somewhere and count off the hours worked. Under the best of conditions it is extremely difficult to work up complete cases which must tie in both the many small feeder operators and concentration yards and establish that goods have been produced for interstate commerce in violation of the Act. Yet, despite these handicaps, we are confident that violations can be established with sufficient certainty to insure success in litigation.

For some time now every field office in the South has been concentrating on investigations in the lumber industry. This work is bearing fruit. Shortly before I left Washington I received a report that 139 such cases were under investigation, and reports had been received in 42. There are 29 cases in one State alone. Several cases are almost ready to be taken into court. Understanding the magnitude of the job, I think you will agree that this represents something more substantial than an attempt to mop up the tide. There are likely to be prosecutions sooner than some of the violators may think.

If the lumber industry, South, North, or West, has encountered any unusual difficulty in getting official interpretations of any of the law's "ambiguous provisions," I do not know what they are. We have issued some eight or nine interpretative bulletins — always with the stipulation that, of course, the courts have the final say — to inform employers of the principles that guide the Administrator in the performance of his duties, and these are common property. One of them—Interpretative Bulletin No. 7—bears directly upon the lumber industry in that it interprets the exemption granted to forestry or lumbering operations "performed by a farmer on a farm as an incident to or in conjunction with such farming operations."

While "agriculture" is sometimes used in a broad sense as including the science and art of cultivating forests, it is our opinion that its application has been limited in Section 3 (f).

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Our Bulletin No. 7 holds that: "Under Section 3 (f) forestry or lumbering operations are within the agriculture exemption when performed by a <u>farmer</u> or <u>on a farm</u>, but only 'as an incident to or in conjunction with such farming operations.' This precludes logging or sawmill operations on a farm undertaken on behalf of the farmer or on behalf of the buyer of the logs or the resulting lumber by a contract logger or sawmill owner, unless it can be shown that these logging or sawmill operations are clearly incidental to farming operations on the farm on which the logging or sawmill operations are being conducted. For example, the clearing of additional land for immediate cultivation by the farmer or the preparation of timber for construction of his farm buildings would appear to constitute operations incidental to farming.

"Many inquiries have been made as to whether the Act applies to employers engaged in forestry or lumbering operations having a small number of employees. The Act provides no exemption for employers on the basis of the number of their employees. If employees in the industry are otherwise entitled to the benefits of the Act, they are not excluded from its coverage by reasons of their small number."

We believe both the intent of Congress and our interpretation of that intent are clear enough.

The Northern branches of the logging and sawmill industry came to us asking for exemption on seasonal grounds. The exemption was denied, and our findings and determination were set forth at length in 12 pages. That, too, we believe, is clear.

In addition, to meet insistent demands, we have poured out a stream of press releases and of question-and-answer material which is yours for the asking. Yet if there are still other problems upon which you want our opinion, you have only to send them in to us and I will undertake to guarantee that we will do our best to supply the answers.

Fairly representative of some Southern arguments against the Fair Labor Standards Act is this from a recent issue of the Washington Post:

"One of the principal industries in the South is the manufacture of lumber. It is estimated that excessive freight rates in lumber alone have cost the South not just millions but probably billions of dollars since 1900. It is next to impossible for the small lumber manufacturer to pay the present freight rates and raise the wages of his employees. Of course the employees really have paid the freight by working for lower wages. Remove this discrimination, and the difference can and will go to the employee.

"Prior to the wage-hour law many of the smaller sawmills were operating on a 60-hour week. Since this law went into effect these mills are now operating on a 44-hour week. The price of lumber remains practically the same while, of course, the cost of production has advanced. The wage advance in the cost of production has been approximately $4 per thousand feet. This represents an increase in the cost of production of about 25 percent. It is obvious that the smaller mills cannot afford to continue operation if excessive freight rates are not removed or the price of lumber considerably raised."

Now this matter of discriminatory freight rates on goods shipped Northward is one which I cheerfully lay upon the doorstep of the Interstate Commerce Commission. I have enough to worry about without that. But when I travel in the South I see things which make me wonder why it should be necessary year after year to ship the cream of your lumber crop into the northern markets.

The Report to the President on Economic Conditions in the South--and again I call attention to the fact that this was an expression of the

knowledge and opinion of <u>Southern</u> economists and publicists--paints a far from pretty picture of Southern housing conditions. It points out that in 19 southern cities 40 percent of all dwellings rent for less than $15 a month or are valued at less than $1,500. It found that houses in the rural areas are the oldest, have the lowest value and are in greater need of repairs of any farm houses in the United States. It estimates that two and a half million homes are below any reasonable minimum standard of convenience and decency, and asserts that 4 million Southern families should be entirely rehoused. Why isn't the South then, with so great a need for new houses, the natural market for the Southern lumber industry? Why should it be necessary to ship your lumber out to build homes and repair houses elsewhere when the requirements of your own friends and neighbors here at home are so very great?

I think I know the answer to that, and so do you. It is the fact that in a section of the country where the average annual income is only $314, there just simply isn't any money to invest in new houses and repairs. The Southern lumber industry should be among the first to get behind any effort to raise wages. Your prosperity and the welfare of the South depend upon it.

There is recognition of this fact in the comment of Lyle Motlow, vice president and secretary of the Williams & Voris Lumber Co. of Chattanooga, published in the Southern Lumberman last October. Mr. Motlow was opposed to the Wage and Hour Law prior to its enactment. "But now that we have it," he wrote, "we sincerely believe that we should all give it a fair and reasonable trial, cooperating in every possible way to make it work out for the general good, rather than finding fault and trying to prevent favorable results."

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And he adds, significantly, "We have noticed one very interesting fact, in that we always sell a much larger percent of lumber, flooring, cedar lining, etc., in the section where we pay 32 cents minimum, than we do in other sections having the lower prevailing wage rate, and this convinces us that there is a real possibility that with uniformly higher wages all over the South we will have a much greater market right here at home for our lumber and lumber products and will not be handicapped so much by the unfavorable freight rates to other markets, such as we have had to contend with in past years."

As to the Washington Post writer's contention that the 44-hour week means an increase in production costs of $4 a thousand board feet, I should be interested to know how the figure was arrived at. Students of the industry estimated the average production cost for 1929—long before the NRA—at $25.80 a thousand board feet. Under the NRA code, which imposed restrictions not wholly unlike those required by the Wage and Hour law, the production cost was estimated at $24.04. In 1937, when the lumber code had become all but a memory, and the Fair Labor Standards Act had not yet been enacted, the production cost had gone up to $24.99, according to the secretary-manager of the Southern Pine Association. I think that estimate of a $4 increase in cost deserves a little more scrutiny.

Most of you are old enough to remember when the steel industry universally enforced a 12-hour day. And you will recall that many good people considered that fact a national scandal, and along about 1919 the Federal Council of the Churches of Christ in America investigated the industry and came out with a scathing denunciation of the "heartless" steel barons who imposed such inhumane working conditions. And you will remember that the

steel men said in defense that an eight-hour day in steel would bankrupt most of the companies, and if it didn't bankrupt the companies it would at least increase the price of steel to a point where, along with rubies and diamonds, it would just have to be cataloged as luxury goods. The idea of an eight-hour day in steel was unthinkable. Why, steel always had been made under 12-hour-a-day conditions, and it was absurd to suppose that it could be made otherwise.

Nearly two decades have come and gone since the steel industry harkened to public opinion and went over to the 8-hour shift. And what happened? Was less steel made? On the contrary, steel production rose from 42 million gross tons in 1920 to 56 million in 1929. Did the price to the consumer go up? On the contrary, there was no appreciable effect upon price at all. Automobiles, made largely of steel, have grown cheaper and better under the 8-hour day.

What is the answer? There are a variety of possible answers, all economically sound. One is that the industry was forced to re-examine its costs and eliminate waste. It had to become more efficient. Another is that because of the fatigue factor, the effectiveness of human labor reaches a point of diminishing returns. If a given worker can do so much work in one hour, it doesn't necessarily follow that he will do 12 times as much in 12 hours. Beyond the eighth hour it may very well happen that he will be so tired that he will unwittingly destroy more goods than he satisfactorily completes. You can test this for yourselves. Try sticking to your desk 10 or 12 hours a day, day after day, and you will probably find that you are beginning to slow up long before the quitting whistle blows. Management found the fatigue period began earlier in the 12-hour day than it did in the 8-hour day, and that labor actually produced more in 8 hours than it did in 12.

A good deal of research has been done on this problem and there is abundant evidence that the shorter workday is as beneficial to the employer as it is to the employee.

In 1915 the United States Tariff Commission examined production costs of several newsprint paper mills after they had reduced hours from 12 to 8 with no reduction in daily wages. The figures showed a reduction in the labor cost per ton of paper from $4.35 to $3.73, despite a 33 percent addition to the hourly wage bill.

An oil refinery switched over to the 40-hour week throughout its entire system and later reported that the change had not resulted in any loss of productivity.

A nationally-known food manufacturer changed experimentally from an 8- to a 6-hour day in 1930. After 5 years' experience with the new order he made the 6-hour day permanent and said, "We have found that, with the shorter working day, the efficiency and morale of our employees are so increased, the accident and sickness rates are so improved, and the unit cost of production is so lowered, that we can afford to pay as much for six hours' work as we formerly paid for eight."

The Fair Labor Standards Act became the law of the land exactly five months ago today. It would have been illogical to expect instant compliance from the hundreds of thousands of employers whom it affects. No statute is absorbed into the customs and folkways of the people as quickly as that. The wonder is not that there are a few violators here and there; the really heartening thing is that the vast majority of business men everywhere, as in the lumber industry, support the law and are complying with it without waiting to be persuaded.

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It is also natural that the occasional violator should attract more attention than the thousands who conform. A rogue always is more conspicuous in a community of honest men.

Our efforts at enforcement might have been more impressive if we had hired a brass band. We have chosen instead to proceed with due caution, to remember that we are laboring in a field in which we must establish our precedents as we go along. If success in enforcement is to be measured by the number of people we can drag into court and thence off to jail, then we must confess failure. But if success is measured by a constantly applied pressure for compliance, a pressure that is going to increase until the last law breaker is brought into line, then we have a right to claim some success.

I am well aware that the lumber industry in the South did not want this law. But since it is the law, I am grateful for the fact that the vast majority in the industry have both preached and practiced compliance. I urge you not to relax your efforts now on the excuse that, since conformity is not everywhere unanimous, then nobody need conform.

I expect your continuing support. In return, I promise you that we shall eliminate those chiselers on the marginal fringe of your industry for your own good, for the good of the South, for the good of the country and its toiling millions. To the best of my ability, I will keep that covenant.