

ADDRESS by
SECRETARY OF LABOR W. WILLARD WIRTZ

The address was delivered by Mr. Wirtz at the annual meeting of the Association of American Law Schools held in Los Angeles on December 29, 1963. Because they were addressed to the particular group assembled and depended for their meaning upon circumstances existing at the time, certain introductory comments have been deleted.

The story of my leaving teaching is simply that I had gotten to the point where I realized I either had to get out or I was going to be a dean, and I took the lesser of the two evils. I return not wholly at ease. This is the second time I've addressed the Association as a whole. The other time was in 1946, and I can only conjecture as to the possible implications with respect to my teaching that the only time I am asked to speak to this group is when I'm on leave of absence from teaching.

I am asked repeatedly to compare the teaching situation with the government situation. In a good many ways it's the same. I used to deflate my own ego once in awhile by recalling the comment of the British jurist that the vanity of teaching often tempts a man to forget he's a blockhead. And I think that probably the difference between teaching and government is that we are reminded so frequently of that capacity, as far as we go. Whether you like the one or the other all depends on how things have gone that day and, if you'll forgive one canned story, it would be that story of the lady who got in touch with her deceased husband through a friendly medium and inquired of him as to how he was and he said: "*fine,*" and she said: "*do you miss me, John?*;" and he said: "*yes, I do,*" she said "*are you happy, John?*;" he said: "*yes, very happy.*" She didn't like that answer particularly. She said: "*John, are you happier in heaven than you were here on earth?*" and you know the answer that came back—"who's in heaven?"

Government, in its relationship to teaching, is a little like that, and from one day to another the answer would be different.

Now I had wondered a little what to talk about today and never came wholly to grips with that problem or to terms with the answer on it. I'd thought that I might make this a report of the Faculty of Law of the College of the Potomac, which has become a considerable body. You'll remember that when the New Deal went to Washington we sent our best students and when the New Frontier came, we went ourselves—to the advantage, it seems to me, of the New Deal and of the teaching profession. We are there in considerable number.

The Harvard Law School contingent, of course, is practicing law at the Department of Justice, the Department of Defense, the Department of State and the Treasury Department. The rest of us have found less exacting occupations and are moving along with the help of our solicitors of one kind or another. If I were to report upon the status of the situation there in the College of the Potomac it would bear a marked resemblance to this; there isn't much difference between Cabinet meetings and faculty meetings. I find a very close comparison. Our enrollment has been going up but is apparently being cut back for next year. Our salaries are low, by and large because the Congressmen haven't enough courage to vote themselves an increase; we don't get one either. Our library facilities are quite good, really, and our freedom is purely academic.

Approaching the more serious, when Walter Gelhorn spoke to me some time ago it was to hold out two hooks; one was baited with the suggestion that this might just happen to be the time for an important policy statement from the department of Labor, Well, there's a little of Walter Mitty in all of us, and I'm sure that at that point I was hooked, but he gave me another license which would be that if there wasn't anything important to say, and you can already see that there isn't, I could just come out to talk with and among old friends. It's that more modest license that I'd like to use today. In fact, my only hope is that you may, as taxpayers, appreciate or condone the degree of unpreparedness which I am now about to impose on you as an audience. And it's my completely modest thought just to discuss a little bit the one feature of government which has most impressed me in these last three years and which I think does have at least an apparent relevance to the teaching of the law, with what may prove to be detours suggested by the preoccupations of the last few weeks; and then I'd also like to say a little something about my reactions to the extraordinary statement of Walter Gelhorn's, which I read last night.

The little fact to which I refer is not a little fact, but I don't pretend any newness about it. The largest concern I feel is the fact of what seems to me the diminishing degree of the participation by good people in the decentralized decision making of the Democratic process. It's my feeling about this development that it's a completely understandable consequence of the increasing complexity of the society, of the fact that the society is getting larger, that the problems it faces are getting bigger, and then there's also the fact that the science of things has gotten so far out in front of the science of people that people are having a hard time keeping up with the decision making which is required. I should like to make it quite clear that I don't see

this situation as one involving any insuperable difficulties at all. My largest concern would be that this nonparticipation in this society may very possibly become a permanent reality just because it first became a habit as far as too many people are concerned.

I'd like to pose the problem I have in mind a little more precisely, in terms of what I think of as the enigmas, or perhaps the two posings of the same enigma which I believe history will identify with the Presidency of John F. Kennedy. The one enigma which is freshest in our minds is of course the enigma of his death—of how in the world you can fit what happened five weeks ago into democracy's story on any basis that doesn't make it a completely senseless and brutal irrelevancy. Now, I know there are those who say forget it, that the best thing to do is to cross it off as a fluke, as a freak, and that it is most unfair to find in it any reflection of any weakness or of any sickness in the society. Those of us who have any interest in the sense of things find that an impossible path to follow. As teachers, as lawyers, as theologians, and as officers of government who feel, not that we have to find meaning in what has already happened, but that we can find sense in what has happened *only* if we find some indication as to how to prevent a recurrence of it in the future, there is a good deal more to be said about that situation. I think some of us questioned it first in terms which came very close to approaching rejection of the sense of things and even malediction.

It was easiest at first to wonder how, or whether, there is any real validity in the whole ideas of love, and of reason, especially when unreason can degenerate to that extent and hatred can arm itself from the nearest mail order catalog. There was reason to wonder whether freedom isn't too fragile for common use; whether there's any truth at all outside of a laboratory; whether freedom isn't just a farce when one can use its license to generate, to permit it to degenerate into anarchy.

We're past that stage now. There was a lot of self-pity in it. We realize that we should have known in the beginning, that it's sometimes tough to have to live history and we're looking now for some sterner lessons about the whole thing. As far as I'm concerned the real question is a much broader one. It's not the question of whether the merchants and the mongers of bitterness and hate were the approximate cause of that particular occurrence. It's important, rather, that whether it's cause or just a significant coincidence, there's too much of that kind of thing in the society today. We'd better take the warning.

I like to think of it in a broader sense, not in terms of what caused what happened in Dallas but, rather, in terms of whatever is sug-

gested there about the whole relationship of individuals in a free society. And if there is anything in that relationship, it is something which works not only for evil but for good. Washington sort of came back to its senses on December 6 when there was, at the White House, the first ceremony in which the new Presidential Medal of Freedom was conferred upon some 33 of the Americans who have accomplished the most in their lifetimes. It was good to be able to sit at that meeting and to hope to be able to identify a little with those people who received that award, as a kind of neutralizing feeling from the necessity of having to identify with some of the villainy which had occurred just two weeks before. Because I don't propose to find the measure of my service of life's purpose in the mirror, I like to think that I am entitled to find it reflected in what some people do. I think that's why most of us are teachers. And I think that's why it is very important to most of us to try to find out what there is about the idea of shared responsibility for good and for evil.

Now, if that's a strained question in terms of what happened at Dallas and some of the other problems we face, I suggest that it's not a strained question at all as far as some of the broader problems in the country are concerned. I am convinced that there will be full employment in this country only when a working majority of the people in this country accept responsibility for the condition and the action of everybody else in the country and it won't come before that. I am convinced there will be peace, in this country and in the world, only when it's possible to some way translate the feeling which flows between individuals into the relationship between nations. I am convinced that there is infinite value in the identification of what is personal and human in the democratic system.

The other phrasing of what I think was exactly the same enigma came in President Kennedy's Inaugural Address. You know it should have been the merest commonplace, not noteworthy at all in a country which has talked for a hundred years about being a government of the people, by the people, and for the people, for the President to get up and say: "Ask not what your country can do for you, but what you can do for your country." And yet it wasn't commonplace at all, and as hundreds of speeches have been made about it subsequently and millions, I suppose, of letters have been written inquiring about what we can do to help our country, that utterance has taken on almost delphic dimensions. I think what it poses is exactly the same enigma as the other, exactly the same basic question as to what the relationship can be between people who want to find their significance in what happens as a result of what they do in other people's lives. And there is today a depressing development in the

attitude of most people in this country in terms of an increasing feeling of the individual's own insignificance. I've tried to think why this is. I think, ironically, one reason is that, despite the tragedies and so on and so forth, things have gone remarkably well, by and large, so that there hasn't been occasion for the kind of sacrifice that gives people a feeling of significance. I wouldn't change that. But there are some other problems too, or some other reasons for it, too. The problems are getting larger, more difficult to understand. I should think that almost anybody could have understood the Monroe Doctrine. It's very hard for very many people to understand the problems of NATO, and SEATO and Viet Nam and Cyprus and multilateral force or whatever it may be. It's also true that the sum total of human knowledge is growing so rapidly that it is very hard for a good many individuals to keep up with it. I find statements to the effect that the sum total of human knowledge is now doubling every ten or fifteen years. I don't know what that means; it must average what is happening in the law with what is happening in science, proving I suppose the proposition that the law of averages establishes only the fact that if man is standing with one foot in a refrigerator and the other on a stove, he is on the average comfortable.

I do know that there is increasing reason to be concerned about the gap between the understanding of most people and the problems with respect to which they are supposed to be making decisions. And I think the situation is changing very markedly. You'll remember that it was at a meeting very much like this in England that C. P. Snow suggested several years ago—in fact he almost precipitated a national controversy—by asserting that England was creating two cultures that were incapable of communicating with each other. He said that the scientific and the literary communities were drawing apart so that neither is able to benefit from the work of the other. And I think in a very real sense we don't appreciate the importance of the fact that more and more problems are of a kind which fewer and fewer people are able to participate in. In the attempt to understand what is going on, too, as far as my own particular field or area is concerned, I realize that the psychology of automation is having an extraordinary effect. Most of the working people in this country today are scared of machines, and don't dismiss the implications of that at all. And well they might be, because when they go back to work tomorrow, about 5,000 of them who worked on Friday, day before yesterday, will have been replaced by machines. Now most of them will get some other jobs, but not all of them, at the rate at which the thing is going. We have now situations in which two men do all the work on engine blocks that 400 did ten years ago. Almost all the light bulbs in the country are made on a few machines that

are operated by just a handful of men. This is going on in all fields, in all areas. Among the more athletic set, you know, there are now robots which can play checkers expertly, can play chess pretty well except for the end play, with which they have difficulty, and play quite a fair hand of bridge. And we are exposed recently to the report even of cybernetic sacrilege, with some computer getting in cahoots with some Scottish Pastor and proving that St. Paul wrote only 5 of the 14 Epistles with which he has previously been credited. I think it is only a matter of time until some clanking robot will pull himself erect and announce very proudly *cogito ergo sum*.

The problems are getting more complicated; the concerns are of larger proportions. The other side of this problem which I have tried to suggest in terms of individual reactions is reflected in the operations of government. There is nothing new, of course, about this. It was in book 8 of *The Republic* that Plato said: "In a democracy the drones are almost the entire ruling powers and while the keener sort speak and act the rest keep buzzing about the bema and do not suffer a word to be said on the other side. Hence, in democracies, almost everything is managed by the drones."

Well, I suppose the best answer to Plato is several centuries, several thousand centuries of success in this kind of program. And yet, of course, as Mr. Khrushchev boasted, he'll bury us for this very reason. The problems are not beyond human solution, but they are beyond solution by the processes which we pursue.

I see the same difficulty in attempting to mount a full employment program of one kind or another. You can't get people in the country interested in 6% unemployment when the other 94% are doing so well. And I thought often of Lord Halifax's statement that men seldom understand any laws, but those they feel themselves. It's been very hard to translate a tax cut into the increased jobs which would help so much as far as full employment is concerned. I can't think my way through the fact that in a poll that is taken, a responsible poll, 9 out of 10 people say they would be in favor of a Youth Employment Act, which would put boys into camps of one kind or another. And yet we could not get to first base with that kind of a program before the Congress this year. It is very hard for me to understand how Congress has fallen as short as it has this year of the expression of what I think are well held views—strongly held views.

I'm interested more broadly in the implications of the fact that it is the judiciary who are becoming the innovators in government today. Why is that? Because they're furthest removed from the process of direct election? Why is it that in the field of civil liberties,

the field of civil rights, it's the judiciary who prove to be the larger innovators than the legislature? The same is true with respect to reapportionment and to other things that you could name. There is nothing new about this, I suppose, in a sense. Mr. Marshall was certainly judged as just. Mr. Justice Marshall, certainly was one of the great innovators, and yet I find it distressing and a reflection of the proper basis for concern, that it is the judiciary today who seem freer to develop new ideas than it is other parts of the government.

Now briefly, what to do about it. And I've saved just enough time that whatever I say will be too much to be discreet and too little to be persuasive. And I'd just like to run a list of the possibilities and retreat on the basis of the excuse of the exigencies of time, when probably time wouldn't have helped very much because I don't know the answers to this problem at all. I can state what I think would be the ideal condition of mind as far as people are concerned. I can be concerned about the fact that increasingly I realize that we are so much clearer in this country about our freedom and our rights, than we are about our responsibilities and our obligations, although obviously freedom and right have no basis except as a converse of obligation and responsibility. Our treasured pronouncements are a Declaration of Independence, a Constitution containing a Bill of Rights and the enunciation of Four Freedoms. We have no comparable documents, cornerstones of our policy about our responsibility. We think of our freedoms in this country in terms of a great charter. We think of our responsibilities in terms of the fine prints of laws about crimes and misdemeanors and taxation and military service. I think the general prevailing assumption in the country is that if I obey the laws I am entitled, as a matter of right, to full rights and full freedoms. Well, it won't do. I think of Oliver Goldsmith's pregnant couplet: "how small a part of all that human hearts endure, that part which kings and laws can cure." I suspect the answer to both of the enigmas which I attributed to the Presidency of President Kennedy lies in the acceptance of the working majority of the people in this country of a full share of responsibility for what happens to every other individual. And in an acceptance of responsibility, as the converse, the necessary converse, of right and in the recognition that the free society is much more a matter of moral than of legal obligation. I suspect that we have got to somehow get across to people again, or at least in terms of continuation, their importance as individuals. I don't know how to do it. You can try in speeches to point out that if there is a choir of a hundred people, if one of them stops singing, no particular problem develops, but if two do, or three, or four, pretty soon then the whole thing stops. And yet when you say all of that, you have a little of the feeling that you got only about as far

as Will Rogers did when he suggested, during the war, that the obvious answer to the submarine menace was to heat the Atlantic Ocean to 212° F., which would mean that the submarines would have to surface and then could be picked off one by one, and he answered quite petulantly, you remember, when somebody asked him how you'd do it, that he's a policymaker and that's a matter of detail. And I don't know how to accomplish those purposes. If there were more time I'd like to talk about some things that could be done privately. I'd like to talk about the possibility of substituting for our program of enunciating our national purposes, on which I think we are almost entirely agreed, a program of trying to develop a national ways and means committee of one kind or another, because that's what we really need in this country. I conjecture what would happen in this country if you took all of television for four days and asked it to do, on peace and on freedom and on full employment, what it did so marvelously after the tragedy in November. What would happen in this country if we just took 4 days of saturation television to try to bring home some of these problems? I think that these things could be done about it. And yet, in the ultimate analysis, my answer comes back, as always in times of desperation and council of despair, to an answer which is pegged almost entirely in terms of education. Self education first; people just don't know what's going on in the country. I suppose as a Democrat I should take consolation in that report several weeks ago, that identification poll conducted by Mr. Gallup, which showed recognition of Mark Hatfield by 7%, Thurston Morton by 13%, George Romney by 33%, and Barry Goldwater 58%, Nelson Rockefeller 84%, Richard Nixon 84%, John Glenn 89%, and Elizabeth Taylor 91%. I suppose I should take satisfaction as a Democrat; it makes me sick at my stomach as an American that that's the truth of the situation.

And as far as the educational system as a whole is concerned, I wish there were time to talk about how basic it seems to me to be as far as employment, peace, and so forth are concerned that education has changed as little as it has, and is presently so far behind the times for reasons that are not very good.

About legal education, it has been the measure of my discretion that I come to it with only 5 minutes left to talk about it. Yet, it seems to me that it could play a much larger part than it has. I assume you are still arguing about teaching ethics as a separate course and I was in a few minutes yesterday afternoon on your discussion of whether there should be a teaching of professional responsibility. It seems to me the problem is so much more basic than that. I noticed in Walter Gelhorn's address, his report to his constituents, two

things which I would like to talk a great deal more about. I think it is an appalling fact that Mr. Carlin has found that half of New York's lawyers have clients with median incomes below \$5,000 and that that represents only 5% of the New York bars' clients. More and more, I realize that poverty and unemployment and ignorance are closely interlocked in this country. Most unemployment today is 2nd and 3rd generation unemployment. Poverty is an awful thing as it exists, and we are accepting it, in a way that does us terrible discredit. And if the legal profession is contributing only 5% of its time to the problem that is represented by that group, the legal profession has got something to answer for.

Second, your concern, from that report, about the fact that you cannot get enough good young lawyers to come to the law schools. I'll give you two answers to it. One is in the recent issue of the Harvard Law Record in which you listed the things that employer firms are interested in, positively and negatively. Negro has a minus 3.5 which is surpassed only by those who are in the lower one half of the class, those who are female, and those who are badly groomed. And we made a study recently, or a survey, to find out how many integrated law firms there are in the country. We were able to find 35 in the whole country. Well you are kidding yourselves if you think you are going to get good Negro boys to come to law school when they are going to be ruled out because their race is next to their being badly groomed as far as employers are concerned and they can not go into integrated law firms. And if you are saying I'm getting the cart before the horse, I'm not, because it was three years ago I tried to find employment for an outstanding graduate of our law school in Chicago and I could not find a single one because he wanted to work in an integrated law firm. This isn't in protest against this group. I think this group has done the most magnificent job of any group I know as far as breaking down the racial barriers is concerned. But I think the legal profession has got a lot to answer for on this particular score—that today it is the worst segregated group in the whole economy or society. And we had better stop taking our signals from those whom we are serving as far as some of these things are concerned. I wish there were time to go on along that line. I suppose it is a good thing that there is not time to say how much of a major operation I think it would take to bring law teaching up to the demands which this situation places on it. I will give you some impression of the heresy I would have developed if I had had more time when I say that my feeling today about a law school curriculum is that it probably ought to have one good year of very, very tough courses in torts and contracts, in Constitutional Law, probably property. That we ought to take everything else that we

have been doing and put it into cram courses, just enough to get past the bar. And I resent the degree to which the bar examiners control the curricula in the law school, when the country as a whole needs so much from the legal profession by way of architecture. I would put all the rest of it in cram courses and satisfy the bar examiners and get on with the important business. I would take a whole full semester or maybe a year to study the understanding and the use of the English language because I am getting so tired of the fraudulent use of the English language and the effect it has upon the development of these things in this country. It appalls me. There is chicanery of the worse sort going on, just in the use in the English language, and lawyers know better and could improve the whole situation. I'd take a full semester or probably a year for the study of economics and science because frankly, today, I think the economists are more influential in Washington than the lawyers, which is either good or bad depending upon the economists and the lawyers. But they are, because they are developing their profession along lines which make it a useful instrument of public policy. In one way or another, I would develop law school curriculums so it becomes a course in the architecture of change.

In conclusion this half hour has been as pleasant for me as any I have had in a very long time. You know the affection I have for this group of people. If there is anything in the thesis which I have tried to develop, which is that everybody shares the responsibility for everybody else; if there has been anything of accomplishment in my career, I know that a good deal of it is attributable to those of you in this room. I appreciate this opportunity to come back. Thank you.