

Attorney General Edward H. Levi

Gerald R. Ford†

Edward H. Levi, Attorney General during my administration, is a man whom I hold in highest regard and whom I feel honored to have had in my cabinet. When he took over the Department of Justice, he faced the challenge of a heavy load of controversial, complicated, and politically sensitive problems. When Ed Levi departed the Department, he had successfully met the challenge. Under his thoughtful, nonpolitical, and highly principled leadership, the integrity and effectiveness of the Department of Justice were restored. Our nation is greatly indebted to him. I thank Ed Levi for his superb public service and personal friendship, which I cherish.

In the early 1970's, Watergate and the Vietnam War had a devastating impact on the record and morale of the Department of Justice. Allegations of partisan politics were rampant. Relations with Congress were at a low ebb. The Federal Bureau of Investigation had gone through a disturbing era. United States intelligence and counterintelligence activities were being seriously challenged by Congress, the news media, and the public.

A vacancy in the Department of Justice opened up on December 12, 1974, upon the resignation of William B. Saxbe, a former United States Senator from Ohio, who had become Attorney General on January 4, 1974, during the critical days of the Watergate turmoil. I subsequently appointed Bill Saxbe ambassador to India, where he served most ably. In my judgment, a new attorney general in the Ford Administration had to be someone of unquestioned integrity and impeccable legal abilities and background and ought to come from outside the traditional political arena.

On December 5, 1974, I first met Ed Levi. A slim, short, bow-tied, courtly gentleman came to the Oval Office accompanied by Donald Rumsfeld, my White House Chief of Staff. Don and Philip W. Buchen, the White House Chief Counsel, had agreed that my administration needed an attorney general who would be different, someone highly respected in the legal profession and uninhibited

† President of the United States, 1974-1976.

by partisanship.

As we informally conversed in the Oval Office, I was immediately impressed with Ed Levi. Soft spoken, reserved. Clear-eyed about the problems in the Department. Forthright in the approach he would take in handling the challenge. After we'd had a good give-and-take, I knew Ed Levi was the person to do the job.

Once the decision was made to go with Ed Levi, Don Rumsfeld and my White House staff initiated all the traditional congressional notifications with the Republican and Democratic leaders and committee chairmen. At my suggestion and request, Ed Levi himself participated in the "Hill Calls."

Several prominent senators asked why they had not been consulted before I made my choice. I was upset because this was an appointment to the presidential Cabinet and I had selected someone so eminently qualified. I liked Ed Levi's reaction to the idea of going up to Capitol Hill to be scrutinized and cleared by Senators James Eastland and Roman Hruska before I made my own decision. He is quoted to have said, "I would have gone if it was made clear that it was at the direction of the President . . . I didn't really think the president of the University of Chicago should go around looking for a job."

After the public announcement of my choice, rumbles came from the Senate of concern that Ed Levi in his early legal career had belonged to the National Lawyers Guild¹ and had been involved in the tape recording of jury deliberations in connection with a Ford Foundation research project in the 1950's.² At my request, Ed Levi went to the Hill, where he readily eased any concerns; but to end all reservations, Senators Eastland and Hruska met with me in the Oval Office, where all doubts were resolved.

Ed Levi's name was submitted to the Senate on January 16, 1975. After limited hearings before the Committee on the Judiciary, he was confirmed by voice vote in the Senate on February 5, 1975, and sworn in on the 7th of February.

It was most encouraging to me that the new Attorney General wanted his own team at the Department. He recruited Judge Harold R. Tyler of the federal bench to be his deputy. To head the

¹ See *Nomination of Edward H. Levi to be Attorney General: Hearings Before the Senate Comm. on the Judiciary, 94th Cong., 1st Sess. 29 (1975)* (discussing Mr. Levi's involvement with the Guild).

² The issues raised by the project were discussed at some length in Mr. Levi's confirmation hearing. See *id.* at 8-11. This jury project is the subject of H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* (1966).

Civil Division, he obtained Rex Lee, Dean of the J. Reuben Clark Law School at Brigham Young University. Richard L. Thornburgh, who had an outstanding record as a United States Attorney and later became Governor of Pennsylvania, was recruited to be in charge of the Criminal Division. Within the Department, Ed created the Office of Professional Responsibility, under Michael E. Shaheen, Jr., to oversee investigations of any alleged misconduct by Department employees, including the Federal Bureau of Investigation.

For his own part as Attorney General, Ed set an excellent example of how to behave in public office by wearing lightly the traditional trappings that go with being in that prestigious government position. In his quiet, admirable way, he disdained having Federal Bureau of Investigation agents serve and "protect" him at all times, as had been customary. And when they did occasionally accompany him, he obviously felt uncomfortable.

The substantive problems facing the new Attorney General were serious, complicated, and controversial. The Federal Bureau of Investigation's practice, going back nearly two decades, of placing wiretaps on telephones and implanting surveillance devices, such as microphones, in homes and buildings was embroiled in controversy. Unlike electronic surveillance conducted in criminal cases, no judicial warrant was sought for such surveillance in national security matters. The courts were raising penetrating questions about the legal basis for such operations amid public accusations that these operations were prone to abuse.

The new Attorney General testified ably before the Church Committee in the Senate during its investigation of the intelligence community. Similar questions were raised in the House of Representatives by the Pike Committee. Ed Levi skillfully defended the use of warrantless national security wiretaps in appropriate cases, pursuant to the President's implied constitutional authority. In order to avoid future difficulties, he worked out a system whereby wiretapping by the Federal Bureau of Investigation was to be authorized, only after careful scrutiny, by him personally as my trusted representative and was to be subject to his periodic review while the wiretaps remained in place.

But these administrative safeguards on warrantless electronic surveillance were not certain to place federal wiretapping practices beyond constitutional challenge. Ed Levi, with my full support, cooperated with the Senate Judiciary Committee in drafting legislation that struck a balance among the need for secrecy, citizen privacy, the requirements of national security, and the reassurance

afforded by judicial review of such operations. The legislation, eventually enacted in the Carter Administration as the Foreign Intelligence Surveillance Act of 1978,³ departed in certain limited instances from Ed Levi's proposal. He deserves major credit, however, for the legislative effort that has made electronic surveillance for national security purposes virtually noncontroversial.

With Oval Office concurrence, Ed Levi worked on litigation procedures and a legislative proposal to ensure that, in school desegregation and civil rights cases, drastic remedies would be limited to the violation found. I was always apprehensive about government imposition of massive school-busing programs. The proposed legislation would have confined the remedy to school districts that had been directly involved in illegal segregation. Although the proposal was not adopted by Congress, I believe that today this approach is the one generally favored.

On wiretapping and busing, issues of major controversy and importance, Attorney General Levi had challengers in my administration. For example, Secretary of Transportation William T. Coleman, Jr., a leading civil rights advocate before the federal courts, favored broader remedies in school desegregation cases. At one cabinet meeting there was a confrontation between these two outstanding barristers: the stimulating give-and-take between articulate men with honest differences of opinion helped to clarify the issues for all of us who were present.

Edward Bennett Williams, a highly successful and well-thought-of Washington, D.C., attorney, was my appointee to the President's Foreign Intelligence Advisory Board. Members of the PFIAB, especially Ed Williams, were very curious about the impact of Ed Levi's new guidelines on foreign intelligence operations. Here again, in a cabinet meeting, the Attorney General skillfully handled the reservations expressed by Edward Bennett Williams and others.

One of the most critically important responsibilities I assigned Ed Levi was to assist in choosing a nominee to the United States Supreme Court. A seat on the Court became vacant when Justice William O. Douglas, after more than thirty-six years of service, submitted his resignation for health reasons on November 12, 1975.

I immediately requested that the Attorney General undertake a comprehensive search for the best possible candidate. In an Oval

³ Pub. L. No. 95-511, 92 Stat. 1783 (codified at 50 U.S.C. § 1801 (1982)).

Office conference, we discussed the guidelines. We wanted a top-flight legal mind and, of course, someone with unquestioned integrity. Ed suggested that we survey personnel in the federal and state judiciary and the law schools of the nation, but that our search should not be limited to these categories. We also agreed that he should contact the American Bar Association for any suggestions and comments.

As I recall, in about a week or so Ed Levi submitted a list of approximately ten potential nominees. It was a broad group of highly regarded judges, eminent legal scholars, and respected practicing lawyers. We went over the list in an Oval Office meeting, winnowing it down to about five names. Ed said he wanted to study the decisions of the judges, read the writings of the academicians, and analyze the performance of those in private practice.

His final recommendation was that I nominate one of two outstanding federal judges, whose major opinions he sent to me for my own analysis. I took this material to Camp David for the weekend, and on my return, we had our final Oval Office review. It was a close call, for both were superb jurists. My final choice was John Paul Stevens, whose name I submitted to the Senate for approval on November 28, 1975.

Judge John Paul Stevens had served with distinction on the United States Court of Appeals for the Seventh Circuit, where his well-written opinions and judicial performance had been highly respected by the legal profession, the news media, and the public generally. Because of his outstanding judicial record on the Court of Appeals, the Senate Judiciary Committee and the Senate as a whole easily and quickly approved his nomination. Although I haven't subsequently discussed Justice Stevens' performance on the Supreme Court with Ed Levi, I think we can all take pride in the quality of my nominee's record on our nation's highest judicial tribunal.

Other important policy initiatives undertaken by Attorney General Levi included criminal-sentencing reform to give the system more fairness and uniformity. He sought to upgrade prosecutorial guidelines to determine when to charge an accused and when to bargain a plea. He formulated standards and procedures for Federal Bureau of Investigation operations, including guidelines for the tricky area of handling informants. His insistence on a high standard of conduct resulted in published guidelines for the Federal Bureau of Investigation and all other agencies in the Department of Justice.

In summary, Ed Levi totally restored a sense of trust, credibil-

ity, and reassurance in the office of Attorney General and the Department of Justice. The atmosphere of recriminations and accusations disappeared. Under his stewardship, law-enforcement decisions were highlighted by sound legal reasoning, adherence to constitutional principles, and the application of essential rules of integrity and decency.

As President of the United States, I was proud of the superb accomplishments of Attorney General Ed Levi during a most difficult period. I will be forever grateful for his exemplary service in my Cabinet. All Americans, of every political persuasion, should be thankful for his fair, principled, and untarnished leadership in the Department of Justice.