

## Dean Edward H. Levi

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There ought to be a full-length biography of Edward H. Levi. His contributions have been very great in many fields—scholarship, educational administration, and government service—both as a role model and as a leader in many constructive activities. He has left many “fragments of [his] fleece . . . upon the hedges of life,”<sup>1</sup> and a full treatment of his life and work would be substantial and rewarding.

Fortunately, my assignment is a narrower one. I am asked to write about the period when he was Dean of the Law School at the University of Chicago, an office that he filled from 1950 to 1962. This is itself a substantial task, for his achievements there were great.

Levi received his law degree from the University of Chicago Law School in 1935, where he was an early editor-in-chief of *The University of Chicago Law Review*. He then went on to receive the J.S.D. degree at Yale in 1938. When the degree was awarded, he was already a member of the University of Chicago Law School faculty and had worked with two distinguished professors, Roscoe Steffen<sup>2</sup> and James W. Moore<sup>3</sup> on substantial and significant books.

In 1940, Levi went to Washington, where he served as Special Assistant to the Attorney General from 1940 to 1945. He was Chairman of the Interdepartmental Committee on Monopolies and Cartels in 1944 and First Assistant in the Antitrust Division of the Department of Justice in 1944-1945. In 1945, he returned to Chicago as Professor of Law, and it was shortly thereafter that he completed and published his *An Introduction to Legal Reasoning*.<sup>4</sup> There is no better way to conclude this prelude to Levi's deanship than to quote from the review of this book written by a great dean

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<sup>1</sup> O.W. HOLMES, *Preface* to COLLECTED LEGAL PAPERS at v (1920).

<sup>2</sup> R. STEFFEN & E. LEVI, *CASES AND MATERIALS ON THE ELEMENTS OF THE LAW* (1936).

<sup>3</sup> GILBERT'S *COLLIER ON BANKRUPTCY* (J. Moore & E. Levi 4th ed. 1937).

<sup>4</sup> EDWARD LEVI, *AN INTRODUCTION TO LEGAL REASONING* (1949).

and legal philosopher, Roscoe Pound. Dean Pound wrote of Levi's book that:

It is exceptionally well written in a clear style, with no attempt at brilliant paradox or challenging over-statement. In this respect it is an encouraging sign in contemporary juristic writing and is a promising beginning of what I confidently expect will prove a notable career in the science of law.<sup>5</sup>

After this sound prophecy, Dean Pound continued:

The real contribution of the book is its thesis that the choice of a starting point for legal reasoning, as well as the development of the starting point when chosen, is a logical process. That is, the judicial process is to be looked at as logical, not merely as psychological.<sup>6</sup>

And he concluded: "Along with Llewellyn's work upon the task of the legal order and the relation of sociology and jurisprudence, Dr. Levi's book promises a more real realism and augurs well for the science of law."<sup>7</sup>

Thus, Edward Levi had thoroughly shown himself to be a scholar of the law when he was appointed Dean of the University of Chicago Law School. He served in that office for twelve years, and they were years of continuous achievement. During his deanship, he spoke and wrote on numerous occasions. With his own contemporaneous thought available, much of the review of his work as dean can be set forth in his own words.

Very likely a one-time dean is a poor choice to write about the deanship of another dean. Because of his own experience, the writer may tend to think of all the minutiae, the differences of opinion, the difficulties, the disappointments, and all the other details of an active deanship. The record makes it plain that Dean Levi encountered such problems and that he dealt with them effectively. I knew that Edward Levi was a great leader in legal education when I was serving as a dean at the same time. His achievements are even more apparent in retrospect. Levi inherited an excellent faculty, and that got him off to a good start. But he consistently built it up, adding to the faculty such persons as Karl Llewellyn, Soia Mentschikoff, Nicholas Katzenbach, Francis Allen, Allison Dunham, and numerous others. He also gave a notable se-

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<sup>5</sup> Pound, Book Review, 60 *YALE L.J.* 193, 194 (1951).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 200.

ries of addresses to law school and other audiences. These included *What Can the Law Schools Do?*, delivered before the Legal Club of Chicago,<sup>8</sup> and *The Graduate Legal Clinic: Restoring Lawyers' Research Responsibilities*.<sup>9</sup> These, and two others, were reprinted in his small volume entitled *Four Talks on Legal Education*, published in 1952.<sup>10</sup>

Through such efforts, Dean Levi advanced the interests of his school and shed light on problems of legal education. In 1952, as a part of the Fiftieth Anniversary celebration of the University of Chicago Law School, he organized a Conference on the Profession of Law and Legal Education. This was a day-long symposium, with eleven participants. I was asked to give a paper on "The Future of Legal Education." Nearly a third of a century later, in preparing this tribute to Dean Levi, I read my paper again, with some trepidation. I note that I said in my introduction that "[t]he University of Chicago Law School has long been a leader in legal education. I hope it will continue to be so."<sup>11</sup> That hope has surely been fulfilled, and Edward H. Levi played a large role in that accomplishment.

When I first visited the University of Chicago Law School, it was crowded into a magnificent gothic building, with all the shortcomings and handicaps of a gothic building—long steep stairs, tall narrow windows, narrow corridors, and awkward angles. Dean Levi had introduced a national scholarship program that had increased enrollment by attracting more students with excellent qualifications. He then undertook the task of persuading the University to authorize a new building for the Law School, organizing the alumni to support it, and carrying out all of the many detailed steps needed to raise the money for the building. Dean Levi did this

<sup>8</sup> Levi, *What Can the Law Schools Do?*, 18 U. CHI. L. REV. 746 (1951), reprinted in EDWARD LEVI, *FOUR TALKS ON LEGAL EDUCATION* 27 (1952).

<sup>9</sup> Levi, *The Graduate Legal Clinic: Restoring Lawyers' Research Responsibilities*, 38 A.B.A. J. 189 (1952), reprinted in E. LEVI, *supra* note 8, at 13.

<sup>10</sup> The other talks included in this volume are *Legal Education Today*, delivered before the Chicago Bar Association in 1950, and *The Future of Legal Education*, given before the Cook County Bar Association in 1952.

In addition, it was during this period that Levi was a member of the Committee of Law Teachers Against Segregation in Legal Education, and he joined with six other law teachers (of whom I was one) in preparing and filing an amicus curiae brief in the Supreme Court in the case of *Sweatt v. Painter*, 339 U.S. 629 (1950), which was an important step on the road to *Brown v. Board of Educ.*, 347 U.S. 483 (1954). The amicus brief was reprinted in 34 MINN. L. REV. 289 (1950).

<sup>11</sup> Griswold, *The Future of Legal Education*, in CONFERENCE ON THE PROFESSION OF LAW AND LEGAL EDUCATION 99, 99 (University of Chicago Law School Conference Series No. 11, 1952).

with great skill and outstanding success. He also played a major role in selecting the architect for the building and in doing all the things that were necessary to make it a truly distinguished structure.

The theme of the fund-raising effort that Dean Levi led was "Scholarship and Craftsmanship." In the brochure that he produced for the project,<sup>12</sup> he said, "The old excitement is still present, for legal education when well done is exciting." And he went on to say, in this brochure, "It is right, of course, that law schools be concerned with principles. But law is an applied science. Its principles have meaning and importance to the extent that they are related to the world in which men are alive." And he concluded that the program that he was implementing "will put the Law School in a position where it can provide professional leadership and service to the Bar."

Like many other new deans, Edward Levi laid out plans for his deanship and discussed them with his alumni and with the bar. Reference may be made especially to the address—already mentioned—delivered before the Legal Club of Chicago, to which he gave the title *What Can the Law Schools Do?*<sup>13</sup> Although he discussed a number of problems of legal education, there are two to which he gave special emphasis. The first of these was clinical legal education, and the second was related to the development of substantial research facilities in law schools.

With respect to clinical training, he referred to those who support the method, now long followed, of exposing the young lawyer to the nuts and bolts of practice through experience in a law office:

The law school[s] ought to concentrate on those things they can do well; that is on the preliminary theoretical training. The law office, the bar association, or the young lawyer on his own, can concentrate on the practical side. There is, of course, a great deal of merit in this point of view. For one thing, it has worked. Despite the shortcomings of the law schools, the bar is well trained.<sup>14</sup>

And he added that "[t]he job of legal education is to turn out law students who will continue to learn."<sup>15</sup>

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<sup>12</sup> A Law School for a Learned Profession (undated brochure on file with *The University of Chicago Law Review*).

<sup>13</sup> See *supra* note 8.

<sup>14</sup> Levi, *supra* note 8, at 747, E. LEVI, *supra* note 8, at 29.

<sup>15</sup> *Id.*

But he went on to discuss further aspects of the problem. He pointed out that "vast and important areas of the law have developed outside of the common-law proceedings,"<sup>16</sup> and he added that "[t]he result is that vast areas of the problems of the law do not come into contact with the law school at all."<sup>17</sup>

Though clearly recognizing the incompleteness of conventional legal education, he did not welcome the idea of more extensive clinical work in the regular three-year course. Instead, he proposed the establishment of graduate legal clinics, where young lawyers, already admitted to the bar, would work on cases, under the supervision of faculty members and other lawyers.<sup>18</sup> In his words, "[a] clinic as part of a research center is most appropriately, I believe, a graduate clinic. . . . The graduate legal clinic can be one co-operative enterprise that will help restore the lawyer to his research responsibilities."<sup>19</sup>

These talks gave his view shortly after he started his deanship. After ten years of experience in the task, he spoke again. He started out with a disclaimer: "Then I was a new dean of a law school, and, as I must now admit, I did not have a correct appraisal of the magnitude of the problems which lay ahead."<sup>20</sup>

This seems unduly modest. In the intervening period he had brought about a magnificent new building for his law school. He had enlarged and improved its faculty. He had established a new relationship between his school and the American Bar Association, particularly through its close contact with the American Bar Foundation. He had organized and found ways to finance substantial research projects, including, in particular, the innovative research into the work of juries, under Professors Harry Kalven and Hans Zeisel, which has told us more about juries than had ever been known before.<sup>21</sup> Indeed, he was called upon to defend this project before a congressional committee, and he did so stoutly and suc-

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<sup>16</sup> Levi, *supra* note 8, at 747, E. LEVI, *supra* note 8, at 30.

<sup>17</sup> *Id.* at 749, E. LEVI, *supra* note 8, at 31.

<sup>18</sup> Levi, *supra* note 9.

<sup>19</sup> *Id.* at 255, E. LEVI, *supra* note 8, at 24, 25.

<sup>20</sup> Levi, *Legal Education, A Ten Years' Perspective*, 42 CHI. B. REC. 218, 218 (1961).

<sup>21</sup> H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* (1966); H. ZEISEL, H. KALVEN & B. BUCHHOLZ, *DELAY IN THE COURT* (1959); *see also* Friendly, Book Review, 33 U. CHI. L. REV. 888 (1966) (reviewing *THE AMERICAN JURY*).

The important role that Dean Levi played in the jury project is fittingly recognized in the Preface to *THE AMERICAN JURY*, where the authors say, "[t]he Project owes a distinctive debt to Edward H. Levi, now Provost of the University of Chicago. He is the principal architect of the whole venture; it was his energy and his insight that sparked it and his enthusiasm that did much to sustain it." H. KALVEN & H. ZEISEL, *supra*, at vii.

cessfully. He had promoted conferences and institutes of many sorts at his law school and had brought the school into much closer contact with its alumni and with the local bar. This had led to a number of cooperative ventures in law revision. He had effectively participated in stimulating the organized bar to greater activity in the field of continuing legal education. He had encouraged and found ways to establish new journals, such as *The Journal of Law and Economics* and the outstanding volumes of *The Supreme Court Review*. Along with this, *The University of Chicago Law Review* continued to develop in quality and to expand its usefulness.

Nevertheless, Dean Levi remained concerned. From his ten-years' vantage point, he wrote:

There is no assurance whatever that the new research activities of bar centers or law schools will continue to be financed. Indeed, the prior history of such projects going back thirty years suggests that projects are begun only to be abandoned, and thus become part of the folklore of jurisprudence rather than solid contributions to knowledge. If this happens, of course, much of the effort will have been wasted.<sup>22</sup>

Looking behind this, one can see many hundreds of hours of effort on the part of Dean Levi—preparing presentations, persuading members of the faculty to undertake substantial research, appearing before foundations and other potential donors, experiencing some success and many disappointments. Some of this is evidenced in his further observations:

The bustle, the excitement, the difficulties and frustrations, and the inevitable busy work which accompanies the growth in law school and bar center activities, all serve as a warning that it is essential at this time for us to do what we can to make sure this growth is soundly based. We could end up by having momentarily pleased ourselves in a frenzy of popular activities only to find long run disappointment with the results.<sup>23</sup>

One lesson he felt he had learned was the overriding importance of the basic educational task of the law school. "The task of legal education is large," he said, "because the role of the lawyer is great. . . . A variety of modes of training and experience, therefore, should be included within the crowded three years given to

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<sup>22</sup> Levi, *supra* note 20, at 221.

<sup>23</sup> *Id.*

formal legal instruction. But we cannot do the whole job. And we should not be asked to do it.”<sup>24</sup>

He was also greatly concerned about the quality of teaching. He said:

[I]n a period when we are emphasizing everything else, I think we should also speak up for the importance of teaching and also in favor of learning for the sake of finding out. We have an important cultural heritage which we should be avid to grasp; we have the fascinating story of intricate institutions and legal structures created through centuries of law making and evolution.<sup>25</sup>

During the ten years of his deanship, Dean Levi had become more skeptical and, perhaps, less optimistic. On this fact he wrote:

In some ways I think American law schools have not been sufficiently receptive to new ideas. But the working out of new ideas is somewhat different from announcing them . . . . Good ideas in legal education grow very much as does the common law, imperceptibly and over time, utilizing the contributions and experience of many schools and many minds.<sup>26</sup>

After his ten years of experience, he felt the need to encourage diversity rather than uniformity among law schools. He was concerned that there might be too many law schools, and he questioned whether “the shape of legal education is not such as to make it difficult to achieve more than minimum standards.”<sup>27</sup> He expressed the belief that law schools should be closely integrated into universities and that the universities should themselves be strong.<sup>28</sup> He felt that the developments of the 1950’s had “put pressure upon us to rethink our values and our programs.”<sup>29</sup> He added that “[i]n shaping the future of legal education, the bar can be of enormous aid if it takes the larger view, and while sympathetic and patient with our mistakes . . . also reminds us that the goal for professional education must be an inner integrity based upon respect for the discipline of the craft and concern for the enduring values of our legal instructions.”<sup>30</sup>

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<sup>24</sup> *Id.* at 222.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 223.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 224.

<sup>30</sup> *Id.*

Dean Levi has always been a leader in action and in ideas. He is innovative but never bizarre, and he is articulate in advancing his proposals. He is quiet and unassuming, though not overly modest. During his deanship, he made many friends, both in Chicago and throughout American legal education. And along with all his educational and administrative activities, he continued his productive scholarship, chiefly in the field of trade organization. With Aaron Director of the economics faculty at Chicago, he wrote an important article on trade regulation.<sup>31</sup> He also wrote on the *du Pont* case,<sup>32</sup> and in 1960 he wrote a comprehensive article on resale price maintenance.<sup>33</sup> Thus, he accomplished what few deans are able to do—produce significant scholarly work despite the harassments and details of administration.

Dean Levi served as dean for twelve years, until he became Provost of the University in 1962. What he would have done had he stayed at the Law School for another twelve years can never be known. He went on to other significant accomplishments, but there is no doubt that he would have raised the Law School to even greater heights had he stayed there. Late in his deanship, he gave an address to the Law Club of Chicago, in which he recounted the extremely rigid view of legal education that was taken by Professor Joseph H. Beale, Jr. (who was seconded from Harvard as the first Dean of the University of Chicago Law School). Beale, who wanted Chicago to “teach *law* in the strict sense of the word,”<sup>34</sup> objected to expanding the curriculum with courses from the departments of political science or sociology and said that “[t]he policy of the school shall be formulated in the first instance by a faculty consisting *only* of lawyers.”<sup>35</sup> Beale was supported by Dean Ames of the Harvard Law School, who said that “no one, but a lawyer, teaching law, should be a member of a Law Faculty.”<sup>36</sup> From Dean Levi’s account, it appears that it was Professor Ernst Freund who pushed

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<sup>31</sup> Director & Levi, *Law and the Future: Trade Regulation*, 51 NW. U.L. REV. 281 (1956).

<sup>32</sup> Levi, *The du Pont Case and Section 7 of the Clayton Act*, 3 ANTITRUST BULL. 3 (1958) (discussing *United States v. E.I. du Pont de Nemours & Co.*, 353 U.S. 586 (1957)).

<sup>33</sup> Levi, *The Parke, Davis-Colgate Doctrine: The Ban on Resale Price Maintenance*, 1960 SUP. CT. REV. 258.

<sup>34</sup> Levi, *The Political, the Professional, and the Prudent in Legal Education*, 11 J. LEGAL EDUC. 457, 464 (1959) (quoting letter of Apr. 2, 1902, from Professor Joseph H. Beale, Jr., of the Harvard Law School to President William Rainey Harper of the University of Chicago) (emphasis in original).

<sup>35</sup> *Id.* at 464-65 (emphasis in original).

<sup>36</sup> *Id.* at 465 (quoting letter of May 31, 1902, from Dean James Barr Ames to President Harper).



for a much broader curriculum. Dean Levi wrote that, at a later date, "Professor Freund made a public speech in which he said that things had worked out better than one might have expected," and he concluded that "[i]n retrospect, most would agree it was highly fortunate Beale's view prevailed, but it was most important also to have Freund's influence felt."<sup>37</sup> Still, Dean Levi recognized that the changes that had come about since Beale's day were not unalloyed improvements. He noted, probably with more foresight than he realized, that

[t]he involvement of the bar in law revision, and in basic research, to the extent it is involved, the intrusion of the government into private affairs through all kinds of regulatory statutes and administrative discretion, the shrinking globe, the affairs of business in foreign countries . . . all seem to push lawyers and legal education into matters it would be nice to leave alone—matters national and international, economic, political, and, I guess, one would say even sociological. Perhaps in the short run, it would be prudent to leave them alone if we could, but we can't. . . . Some group concerned with the affairs of the community must sift the ideas with understanding and skepticism. Some group must make the institutions—private and governmental—work.<sup>38</sup>

Shortly after he wrote these words, Dean Levi moved on to a higher role, a role of accomplishment that was surely foreshadowed by his work as dean. He came to a great school in 1950, and he turned it over to others as a much greater school in 1962. His contributions are not merely to the University of Chicago and its Law School. For he is surely an outstanding leader in American legal scholarship and legal education generally.

One of the nice things about the law is that it is often fun. It is constantly stimulating, with the excitement of the chase, the lure of problem solving, and the opportunity to make contributions, many of them quite small, but some occasionally significant. Edward Levi's approach as dean was one of zest and vitality, and I am sure he found a large measure of fun in his work as a leader in legal education. I can truly say that it has been a privilege to know him and that it is a continuing pleasure to watch him in operation.

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<sup>37</sup> *Id.* at 467.

<sup>38</sup> *Id.* at 468-69.