
The editors of The University of Chicago Law Review respectfully dedicate this issue to the memory of Edward H. Levi.

Hugo F. Sonnenschein†

Today we celebrate the life of one of the University’s and the nation’s great citizens, Edward Hirsch Levi. It is a tribute to his life and memory that so many of us have assembled here today to remember Edward alongside his wife, Kate, and their children, John, David, and Michael.

Edward Levi was the grandson of one of the University’s first faculty members, Rabbi Emil Hirsch; the son-in-law of one of its trustees, Frank Sulzburger; and—along with his two brothers, Julian and Harry—a graduate of the Laboratory Schools, the College, and the Law School. The family relationship with the University of Chicago spans a full century.

As is so often the case with great men, I knew about Edward Levi long before I met him. I knew that he was a giant, even among those who have led this great University and among those who have served in high office. I knew that he had a formidable, even fierce, intelligence. And I knew that he was in the habit of conducting entire conversations in the interrogative mode. And so it was with some trepidation that I walked into the first press conference of my time as president and saw Edward Levi sitting in the front row.

† President, The University of Chicago. These remarks were delivered at a memorial service for Edward Levi on April 6, 2000.
Almost immediately, a member of the press stood up and asked me: “So what would you have the University do for this community?” I looked over at Edward Levi, who, I knew, was my real audience. I took a deep breath. I said that the University and its members were citizens of this community. As such, they should and must care for the place where they make their home. This is our responsibility as neighbors. I stopped and looked over again at Edward. I took another deep and nervous breath, and continued: At the same time, the University must remain focused on its purpose, which is learning and discovery. Universities are the engines that drive human knowledge and understanding forward. Universities give direction and shape to our future, even as they shed light on our past. By reminding us where we have been and by leading us into the days yet to come, universities remain our best hope for improving the human condition. That is how they serve.

I looked out again at the audience, and particularly at Edward. I detected the slightest nod of approval, of welcome, and I knew that I was at home. I suspect that in some subtle way he had coached me through my response.

Edward Levi understood the purpose of this University and of all great universities. According to Edward, a university’s purpose is to serve humanity, and to do so through “its commitment to reason ... its search for basic knowledge ... [and] its mission to preserve and to give continuity to the values of mankind’s many cultures.” Edward also knew what a university was not. He once said: “A university which claims to be all things to all people, or as many different things as different groups wish it to be, is deceitful or foolish or both.”

Edward also once remarked: “In a world of conflict and enormous problems, deluged with voices of mistrust, enchanted with popular doctrines and with the techniques of persuasion and coercion, the symbol and goal of the university has never been more important. The way of the university is the way of reason. Its faith is in the highest intellectual powers of man. Its commitment is to that discipline which characterizes the open mind, to the values which arise from the human endeavor, to the achievement of the self-criticism and honesty which is the morality of the highest intellectual integrity.”

These words tell us as much about Edward Levi and his values as they tell us about the University he knew and loved so well. In a world of conflict, mistrust, and enormous problems, Edward Levi was a symbol of integrity. His way was the way of reason. His faith was placed in the highest intellectual powers of humankind. Edward Levi was committed to discipline of thought, to the value of human endeavor, and to the achievement of self-criticism and honesty—the characteristics of intellectual integrity.
And so Edward Levi was a true son of the University. At the same time, it is these values, so much at the core of a university—this attitude of mind, this integrity, this faith in reason—that enabled him to serve so well the needs of the world outside of the University—as Attorney General at a most difficult time in our nation’s history—and as our president during a time of redevelopment in our community.

Thus Edward Levi’s life is simultaneously a monument to the ideals of a great university and a demonstration of the practical value of those ideals for the betterment of humanity. His life is an answer to the question that was put to me seven-plus years ago by the press: Integrity and reason are a powerful basis for leadership and service.

No person was more shaped by this place, and there are none who helped more to shape it. Of the former fact we are most proud. For the latter we are most grateful.

We shall cherish his memory.
My first encounter with Edward Levi on a University of Chicago tennis court in 1934 misled me, for it was one of the rare occasions in which Edward did not reveal a master's touch. But there was a big change later in the year when, as a lowly first-year student, I saw him in the Law School. He was already a presence there. His fellow students had elected him Editor-in-Chief of our Law Review. The faculty was already treating him as a colleague and friend. And after his graduation, in 1935, he would be going to Yale Law School as a Sterling Fellow.

But Chicago kept its sights on him. Our Dean, Harry Bigelow, asked William O. Douglas, "Is Edward Levi just 'good' or really 'damn good'?" Douglas not only adopted the second formulation but also wrote an ode to Edward, extolling his remarkable capabilities and his extraordinary scholarly accomplishments. So, in 1936, the very young Edward became an assistant professor here.

In the last quarter of my third year, not exactly the time of maximum student engagement, I was a student in his Corporate Reorganization course. I don't remember much about corporate reorganization, but I do remember my teacher. Edward pushed, stretched, and goaded us to educate ourselves, to look as hard at our own arguments as at competing ones, and to be as sure as we could be that we actually knew what we thought we knew. His range was broad but professionally rigorous. His quick intelligence and dazzling wit would shred a bad argument. But they also made something of a lark out of the process of creative destruction—at least for those not in the line of fire.

During 1940–45, Edward, in his first stint with the Justice Department, served with distinction in its antitrust and war divisions, while testing his learning against the reality of experience.

In 1945, Edward returned to the Law School, teaching Elements of the Law as well as Antitrust. He developed the themes of the Elements course in his classic book, *An Introduction to Legal Reasoning*. There, he described how the logic of our common law system permitted the law to adapt to new conditions while providing for limitations as well as leeways for adjudicative authorities. He defended the value of the idea of the rule of law, rejecting the claim that "law" was no more than a pretense for the achievement of partisan or personal pur-

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poses. Many students found his Elements course the greatest intellec-
tual experience of their lives.

Others gave that accolade to the Antitrust course. There, Edward
paired with Aaron Director, a provocative and tough-minded econo-
mist. They brought economics to bear on antitrust doctrine, or the lack
thereof. Their collaboration laid the foundation for the development
of law and economics—now a powerful and significant movement at
our Law School and throughout the world.

In 1950 Edward became Dean of our Law School, with the
unanimous and enthusiastic support of the faculty. The customary
search committee did not search; it merely ratified and cheered.

As Dean, Edward intensified the school's ongoing review of the
strengths and shortcomings of legal education and research. One re-
result was a volume reproducing his superb "Four Talks on Legal Educa-
tion." His talks were often subtle, elusive, and not easily summarized.
But a central theme of these lectures was clear and compelling. He
urged that the insights of the social sciences and of the humanities,
properly integrated with law, would not only enhance legal education
but would also increase the effectiveness of all legal institutions. With
enthusiastic faculty support, he implemented this theme, among oth-
ers, with stunning results. His vision and energy brought us our fa-
mously beautiful new building designed by Eero Saarinen, which
could accommodate the new initiatives and house the distinguished
teachers and scholars attracted to Chicago by the force of Edward’s
ideas and personality. He obtained funding for pioneering interdisci-
plinary empirical work designed to illuminate the workings of basic
but mysterious legal institutions, such as the jury. He attached a legal
clinic to the Law School, giving students an opportunity for both satis-
fying service and enriching their learning by the reality of experience.

I could go on. But it is enough to say that no one has been more
responsible for the preeminence of our Law School. Indeed, much of
the Law School’s present strength and distinction still has its roots in
Edward’s twelve years as Dean.

What was it that made Edward so revered and effective? What
was it that enabled him to draw out the best from his colleagues and
students alike? It was not merely his intellectual range, broad as it
was; nor his brilliance nor his wit, sparkling as they were; nor his enli-
vening irreverence and impishness, though all of these counted.
Rather, it was that he marshaled all of these strengths in an unsparing
search for excellence, not just for himself, but also for others and for
the institutions that they jointly inhabited. And so, others did reach to
meet his standards, drawn by his integrity and his almost instinctive
but deeply reasoned faith in the value of the law, of our Law School,
and the University that nurtured it.
Edward was not only a distinguished scholar, he was also a shrewd and practical person who understood the needs of institutions and of the individuals who constitute them. It was natural that he, together with his resourceful Kate, would try to help faculty members and spouses, and especially newcomers, with the practical problems of housing or developing new friendships. I was a beneficiary of their thoughtfulness even before Edward became Dean. When I joined the faculty in 1946, Edward and Kate introduced me to Kate’s sister, Jean. I was wise enough and lucky enough to marry her fifty-three years ago. And the lives of our families became closely and happily intertwined.

The Levis’ hospitality also helped create a sense of community among members of the law faculty and their spouses. The Levis naturally reached across academic disciplines and also brought town and gown together. They made Hyde Park a brighter and more interesting place.

Levi hospitality was, of course, enlivened by Edward’s omnipresent wit. The late Mary Jane Kurland used to love to tell this story. As she was leaving a Levi party, she said, “Oh, Edward, I’m so sorry that I talked so much.” Edward comforted her in his own fashion, saying, “Don’t worry, Mary Jane, you didn’t say anything.”

The Levis liked to escape occasionally from the bustle of the Law School and Hyde Park. One retreat was their home in Door County, Wisconsin, with its sunsets shimmering on the bay. Edward also had a powerboat, moored in Chicago and named JDM for his sons, John, David, and Michael, whom he always cherished and who made him proud as adults. Captain Edward could get the boat to go, but not necessarily to his intended destination. But where it really counted, his sense of navigation was unerring.

In concluding, I want to turn to a more somber time, when Edward’s great mind and voice were shut down. Kate, of course, responded gallantly. And Edward somehow managed to transcend the limits on his power so as to make one coherent statement. Almost every day, he would turn to Kate and say, “I love you.” Edward had always tried to find and voice important truths. And, even at the end, by that reaffirmation, he had managed to meet his own exacting standards.
“Not often in the story of mankind does a man arrive on earth who is both steel and velvet ... who holds in his heart and mind the paradox of terrible storm and peace unspeakable and perfect.”

Carl Sandburg (1959)

What Carl Sandberg, the prairie poet, said of Abraham Lincoln, the prairie lawyer and politician, might just as well apply to the Rabbi’s son from Chicago who has been called, justifiably, the greatest lawyer of his time. The law is a paradoxical discipline, both absolute and flexible, fixed and evolving. Conservative as precedent, and liberal as compassion, it demands respect for institutions. Yet it relies upon imperfect individuals to give them life.

In the summer of 1974, those institutions were badly tarnished. Needless to say, the rule of law requires respect for the law, especially by those who enforce it. This essential truth had been forgotten by some in the Nixon Administration. From my perspective, the Justice Department had become increasingly politicized for a quarter of a century. But the problem had reached crisis proportions by the time I became President.

History had thrust me into a place to which I’d never aspired. But however long or short my tenure in the White House, I hoped to restore popular confidence even as we drew off the poisons that had infected our public life because of Vietnam and Watergate. Within months of taking office, I found myself looking for a new Attorney General. No more critical decision would cross my desk. The situation demanded someone of towering intellect and spotless integrity. No campaign managers need apply, nor members of the family, official or political.

It was Don Rumsfeld who first suggested his fellow Chicagoan Ed Levi. The name wasn’t altogether unfamiliar to me. Ed’s antitrust record was the stuff of legend, as was his service with the House Judiciary Committee in the years after World War II. As Provost and President of this University, he had proven himself a superb administrator. As a scholar and teacher he had reminded us of the essence of liberal education—that so long as books—especially Great Books—are kept open, then minds can never be closed.
The more I read by and about this man, the more convinced I became that he was the perfect candidate. He was firm, fair—and unflappable—the last quality displayed not only when students occupied the President's office in the tumultuous Sixties, but when he and Kate were on an ocean liner that caught fire in the Caribbean. While everyone else ran around in confused panic, Ed puffed away on his pipe, utterly convinced that the crew would extinguish the fire. As usual, his instincts were sound.

Early in 1975, hoping to put out a much larger blaze, I invited him to the Oval Office. When asked to identify the Justice Department's most pressing need, he said point blank that it required a non-political head. Nothing, he added, was more important than regaining the trust that had been abused by domestic spies and a general erosion of ethics. Then I sprang my trap: Would he be willing to serve as Attorney General?

This came as a surprise, and not altogether a welcome one. I believe the exact words Ed used were to the effect that he needed this job like a hole in the head. Moreover, his beloved University had just launched a major fund drive, and he was reluctant to leave before its success could be assured. I subtly reminded him that I hadn't asked for my current position either. Facing an impending challenge from within my own party, I was in no position to offer job security. But I could and did promise Ed that no politician would encroach on the Department. I wanted him to protect the rights of American citizens, not the President who appointed him.

If he was no partisan, Ed Levi was, with every breath he drew, a great patriot. After a few days, he let me know of his willingness to serve. It seems hard to believe now, but some on Capitol Hill harbored reservations about this pipe-smoking, bow-tie-wearing academic. At one point the ranking member on the Senate Judiciary Committee asked whether we were getting another Ramsey Clark. This was the Committee member who once praised the Supreme Court nomination of G. Harrold Carswell on the somewhat novel grounds that even mediocre people need representation on the high court.

Clearly that argument wouldn't wash with Ed Levi. I quickly dispelled any doubts about the intellectual steel behind Ed's velvet courtesy. I reminded the Committee member of Levi's courageous stand against those in this very University who would trample on the rights of students and administrators alike. If anything, we had been told, the rap on Ed was that he was too tough, too demanding.

He was tough, all right. When he died, Robert Bork remembered him as "the intellectual version of a Marine boot camp drill instructor." At the other end of the political spectrum, Anthony Lewis praised his refusal to sign any wiretap authorization that he hadn't
personally scrutinized. But then, Ed was always a master at bringing people together. I didn’t know his politics when I appointed him. All I knew was that he shared my reverence for the Constitution—along with the view that America’s greatness lies, not in the power of its government, but in the freedom of its people.

Thanks to Ed Levi, American citizens protesting the policies of their government no longer had to fear illegal surveillance, improper wiretaps, or outright harassment. Indeed, it is no exaggeration to say that Attorney General Levi helped give us back our government. And that’s not all. Together we proposed common sense gun control—including a ban on the manufacture and sale of so-called Saturday night specials—long before it became fashionable. In recommending John Paul Stevens for the Supreme Court, Ed not only promoted one of the nation’s most distinguished jurists; he anticipated the extraordinary impact of the Chicago school of jurisprudence so ably represented by Justice Scalia and others in this audience.

With each passing year, it becomes more and more self-evident—Ed Levi is the Attorney General against whom all others are measured. At the same time, his influence was felt far beyond the confines of the Justice Department. In Cabinet meetings he proved the wisest of counselors. As his intellectual rigor raised our standards, so did his visionary spirit raise our sights. In 1977 he returned to this University where he was legendary, where he became a familiar and cherished sight around campus. Now he has left us, to find Sandberg’s peace, unspeakable and perfect.

Officiating at a wedding in 1931, Justice Benjamin Cardozo spoke of “three great mysteries . . . in the lives of mortal beings: the mystery of birth at the beginning; the mystery of death at the end; and, greater than either, the mystery of love. Everything that is most precious in life is a form of love. Art is a form of love, if it be noble; labor is a form of love, if it be worthy; thought is a form of love, if it be inspired.”

For Ed Levi, love found its highest expression in Kate, John, David, and Michael—in the profession he ennobled—the University he defined—and the nation he served with such distinction. Today we return that love, multiplied by the gratitude of countless admirers. The years will be different without Ed. But his legacy lives on, and so does his example. The lamp of his luminous mind, his unassailable integrity, and his profound humanity still casts its glow. And by that light we can all find our way home.
I believe you had to live through Watergate, as did people of our generation—and even more directly we at The Washington Post—to appreciate the combination of qualities Ed Levi brought to the Department of Justice and to understand the magnitude of his accomplishments as Attorney General.

When President Nixon finally resigned, I flew from my office in Washington to resume an August vacation on Martha’s Vineyard. When I arrived, I turned on the television and for the first time heard the wonderful words: “President Ford.”

It was as though a great weight had been lifted from the country’s shoulders, after two long years filled with astounding revelations of the most serious abuse of government powers in general and at the Department of Justice in particular.

If one of the Ford Administration’s greatest legacies is the restoration of a morally grounded government people could trust and believe—and it is—then Ed Levi deserves a great deal of the credit. We also must acknowledge President Ford’s insight in choosing the right person for this difficult assignment. And it’s a tribute to the University as well, as Ed was so completely a product of his lifetime here.

It’s been observed that the role of Attorney General at times has been to act as a political adviser to the President. Ed exemplified something different: the Attorney General as an independent figure, committed to the fair and impartial administration of justice.

In fact, Ed was the exact opposite of what had gone before him. He embodied integrity and was committed to the law. In a brief tenure of two years, he completely reconfigured the ethical landscape, set a new standard for government conduct, and helped restore the country’s faith in its institutions and in itself.

He was able to accomplish this by applying in Washington the qualities that made him so effective at the University of Chicago, where I first got to know him. Looking a little downtrodden, he appeared in my office in 1969 to persuade me to become a trustee of our alma mater. It couldn’t have been an easy mission. I’d originally been proposed in the 1950s. Harold Swift said he would resign from the Board rather than have a woman trustee. My husband was then chosen to serve in my place.

Chairman of the Executive Committee, The Washington Post Company; Life Trustee, The University of Chicago.
Ed extended a new invitation, but it was at the tumultuous time of the Vietnam War and student sit-ins. And the University was facing its own special problems.

Ed was in the process of salvaging Hutchins's notion of a liberal education by reorganizing the curriculum, strengthening the administration, and, most of all, by being an exciting leader.

Here, in my view, is what made him remarkable and effective.

First, the sheer intellectual brilliance that all of us here today held in awe. One of his younger associates—someone who saw him ten or twenty times a day—said he always walked into Ed’s office with a little trepidation because Ed would inevitably ask a completely unexpected, but highly pertinent—and tough—question. He always had an additional thought.

At the same time, Ed was disdainful of grandiose concepts and intellectual posturing. William French Smith once asked Ed to describe the job of Attorney General. Instead of waxing philosophic about the Founding Fathers and the principles of democracy, Ed replied: “It’s just one damn thing after another.”

Another attribute that made Ed so effective was his judgment and courage. He knew when to act and, what is often harder, when to wait. During the Vietnam protests, more than two hundred students occupied Ed’s University office. Instead of using force to evict them, he moved out and let the students sit there until they got tired and left. Then Ed reasserted the University’s rights and administered discipline in the form of suspensions and expulsions.

Above all, Ed had an infallible moral compass. No one who knew him could conceive of asking Ed to do something inappropriate. It was this unambiguous sense of right and wrong that guided the far-reaching reforms he brought to the FBI and Department of Justice, codes of conduct that continue to guide those agencies today. The present Attorney General, Janet Reno, on the way in today emphasized this.

While Ed embraced the highest ethical and intellectual standards, he was wonderfully down to earth. Kate told me that Ed often walked around at home with a book in his hand, but occasionally it was upside down. He and Kate were unusually close and formed an effective team. She’s wonderful.

The Department of Justice is full of WPA murals, of which there are (or were) two in the Attorney General’s very grand conference room. As you enter, you see a group of people working happily, the title of which is Justice Liberated. As you leave, you see a mural picturing people in chains and being whipped, the title of which is Justice Enslaved. Ed used to joke that he wished he could reverse the murals, so people went out feeling liberated.
Ed, you did reverse the murals. You left an extraordinary legacy for the University, the community, the law, and for the nation.
Antonin Scalia†

I have been asked to talk about Edward Levi’s views concerning the separation of powers. It will be hard to do that in five minutes. Indeed, it would be hard to discuss Ed Levi’s views about anything in five minutes. He was not one to simplify.

In a sense, Edward Levi’s tenure as Attorney General was all about the separation of powers. He took over a discredited Justice Department, in a beleaguered Executive Branch, immeasurably weakened in the competition between the two political branches—the ambition countering ambition—that characterizes the American system. I will discuss briefly three areas in which Attorney General Levi struggled to maintain the sphere of independence accorded to the Executive.

First, there was the proposed legislation to establish an independent prosecutor—which ultimately became law, in the form you are all familiar with, as part of the so-called Ethics in Government Act of 1978. Attorney General Levi did not support the legislation. Instead of a temporary special prosecutor appointed by the courts in a highly public proceeding to investigate a private allegation of wrongdoing on the part of a particular high-level official, he proposed on behalf of the administration a permanent special prosecutor who would investigate all allegations of wrongdoing by all high-level officials, in the confidential and unpublicized manner in which all Justice Department investigations are conducted. This permanent special prosecutor would be appointed for a term of three years in the ordinary constitutional fashion—by the President with the advice and consent of the Senate—and would be insulated from removal “to the maximum extent permitted by the Constitution.”

Attorney General Levi’s predictions of what the proposed congressional bill would lead to might have been called prophetic—were it not so obvious. He said in his testimony:

This procedure enables any individual to convert a private allegation against a high Government official into a highly publicized investigation. . . . The fact that such charges would be disseminated and dignified by the process established by the bill would inevitably encourage those who wish to use it for partisan or other improper purposes.

† Associate Justice, Supreme Court of the United States.
In enabling the criminal investigative process to be transformed into a media event each time high State or Federal officials or members of Congress are involved [Congress had the good sense to leave itself out of the final bill, by the way], the bill casts aside one of the most decent traditions of our criminal law system. This procedure for spreading improper charges contributes to a public attitude of cynicism and distrust of Government officials—again a problem which the bill is intended to help solve.

As an abstract matter, I am not sure that Edward Levi thought that even a permanent special prosecutor was a very good idea—but he knew that something would be enacted, and it seemed the lesser of the evils.

The second matter involving separation of powers that I wish to discuss is much less prominent than the independent counsel law—indeed, it has long since been forgotten by most of Washington. In the 1970s, the Arab countries were conducting a secondary boycott of Israel, refusing to do business with companies that did business with that country. The United States opposed this boycott, of course, and provided in the Export Administration Act that all domestic companies that received requests for the furnishing of information or the signing of agreements relating to the boycott report the fact to the Secretary of Commerce. The act provided that “[n]o department ... or official exercising any functions under the Act shall publish or disclose information obtained hereunder which is deemed confidential ... unless the head of such department ... determines that the withholding thereof is contrary to the national interest.” The quarterly boycott reports were subject to this confidentiality provision.

The Subcommittee on Oversight and Investigations of the House Commerce Committee subpoenaed these confidential reports from the Secretary of Commerce, Rogers Morton. The Secretary requested the Attorney General’s opinion as to whether the law permitted him to turn them over. Relying on the consistent administrative interpretation of the confidentiality provision over the years, the existence of congressional-committee exceptions to confidentiality provisions in other statutes, and the failure of several proposed amendments that would have added such a provision to the Export Administration Act, Attorney General Levi advised Secretary Morton that the law made no exception for congressional committees. A great interbranch dispute ensued. When Morton, in reliance upon the Attorney General’s opinion, declined to turn over the reports, Congressman Moss, the subcommittee chairman, initiated contempt proceedings against him. One of the witnesses in those proceedings, a former colleague at the University of Chicago Law School, described Attorney General Levi’s opinion as “sophistical.” Worse still, no less a legal mind than Anthony
Lewis pronounced that “[t]he involvement of Attorney General Levi in the affair of the Arab boycott inquiry is one of its most troubling aspects. Many have counted on him to bring principle, scholarship and independence to that office. But this opinion is of rubber-stamp character, reflecting not scholarly detachment but a predilection for executive secrecy.”

Quite the contrary. As was his practice, Attorney General Levi had not taken the easy course, but the honest one. The law, which had a status above that of a committee subpoena, enjoined confidentiality, and it was the duty of the Executive to obey the law. The affair ultimately ended as most of these interbranch disputes do: the Executive backed down. Rogers Morton made the necessary “public interest” finding and released the reports.

As the third and last example of Edward Levi’s courageously defending Executive prerogatives in our system of separated powers, I must mention an encounter, not with the legislature but with the courts. For many years the Executive had been conducting warrantless wiretaps and warrantless physical entries in matters involving foreign intelligence and counterintelligence. Such activity is a practical necessity. When counterintelligence agents have an opportunity to copy a codebook in the room of Colonel Abel, a Russian spy, they do not want to leave a warrant advising him that they have been there. Indeed, there would probably be no legal basis to obtain a judicial warrant for such an entry. The practice had been to have these highly unusual warrantless taps and warrantless entries personally approved, under authority of the President, by the Attorney General. The Fourth Amendment, after all, does not require a warrant; it requires reasonableness does not demand the service of a warrant.

During Edward Levi’s tenure, the D.C. Circuit Court decided a case called United States v Ehrlichman—one of the post-Watergate prosecutions involving a break-in by the so-called Plumbers. Ehrlichman defended on the ground that the activity he authorized was a national security, counterintelligence operation. The three-judge panel rejected that defense because Ehrlichman could show no presidential authorization for him to approve such activities. Two of the judges, however, wrote a separate concurrence, praising the court for taking a narrow ground, but expressing their view (a view of the majority of the panel) that no intelligence or counterintelligence exception to the warrant requirement existed. This irresponsible action had the effect of placing Attorney General Levi at considerable personal risk with regard to all intelligence and counterintelligence approvals for the rest of his administration. He did not shrink from doing his duty.
It was not until the next administration, by the way, that the Foreign Intelligence Surveillance Act was passed, which set up a special Article III court to approve warrantless foreign intelligence and counterintelligence activities, taking this burden (and this risk) off the shoulders of the Attorney General. It only applies, however, to electronic surveillance, so that physical intrusions still require an Attorney General willing to proceed without the guaranteed immunity of a warrant.

So much for Edward Levi and the separation of powers. To tell the truth, however, I would rather say a few words about Edward Levi the man. Washington never did know what to make of him. For one thing, he was too genuinely unpartisan. There is a wonderful passage in his confirmation hearing when Senator Hruska says, “I have been asked, Dr. Levi, whether you are a Republican or Democrat, and I have been unable to answer that question. Can you answer it for us?” And Edward, in his best on-the-one-hand, on-the-other-hand fashion, replies:

Senator, I am not in any better position than you are on that. I cannot answer that question. I think there is no doubt that during the 1940s . . . I would have been regarded, partly because I was in the Department of Justice, . . . as a Democrat. But as to later years I find it difficult to know what to say. I do have very good friends in different parties, and having been in a position in the university where alumni, distinguished alumni, have been in both parties, and where I have felt that it was inappropriate for me as a dean or a president to take a position because it would be misunderstood as an institutional position, I find myself now in a situation where I cannot—the truthful answer is that I do not know. I do not know.

Edward Levi had a sharp tongue, which he often deployed to devastating effect upon the self-important and the self-assured. He could be forgiven that fault (if it was such) because in himself there was not an ounce of pomposity or arrogance. He was in fact much too mild and self-deprecating to fit in with the giant egos that populate Washington. I believe it is true that on one occasion, early on in his tenure, he was denied entrance to the Justice Department building because the guard failed to recognize him and would not believe that this unpretentious fellow was the Attorney General. He never did lose a certain air of scholarly detachment—and a scholarly habit of supreme indifference to unimportant details. One evening, for some reason, I had occasion to drive him home (usually, of course, he had a driver). I knew the general neighborhood in which he lived, but not the precise street and house. As we neared our destination, I asked
him to give me directions. He said he didn’t have the slightest idea; the driver just let him off every night, and he went in.

One of the more embarrassing incidents in my Washington career occurred when Maureen and I had my new boss and Mrs. Levi, and Solicitor General Bork and Mrs. Bork, over for dinner. After taking their orders for a before-dinner drink, I went over to the floor-level cabinet where the liquor was kept and found that the key was not in the lock as it usually was. Worse still, the cabinet was locked. The key had been there only a few minutes before. The obvious culprit was our toddler, who had evidently taken the key and dropped it who knows where. I will never forget the image of the Attorney General, the Solicitor General, and I—and I think Kate joined us—crawling around on our hands and knees on the living room oriental rug, feeling for the missing key.

It was one of my life’s great privileges to work with and learn from Edward Levi. I will always remember him with that characteristic Mona Lisa smile—faithfully reproduced in the photograph on the program for this memorial service—which I think reflected perpetual bemusement at the complexity of things and perpetual amusement at the incapacity of others to realize the complexity of things. May he rest in peace.
The day that Edward invited me to join his staff in the Justice Department, I called Phil Kurland of the Law School to ask what I would be getting myself into. "You may hear," he said, "that Edward is cold and calculating. This is not the case. Edward is warm and calculating."

He was right, but heroically understated. Warm does not begin to capture the quality of Edward's friendship.

All of us who worked on his staff in Washington felt it. It was simply astonishing that he would bring in a half-dozen young people of an age that today seems to me almost adolescent—nobody had yet reached thirty—and include us in the most delicate decisions of a supremely delicate moment in the history of federal justice.

Part of it, surely, was that children blurt out what is on their minds, which suited him, because he wanted the discussion to be open and robust. He believed in what one of my colleagues described as government by discussion, and he could count on his young assistants not to be inhibited by too refined a sense of propriety. But also, I think, he simply liked being around young people. He drew energy from teaching them. When he was President of this University, he made a point of teaching undergraduate courses. And so as Attorney General he enrolled us in the most extraordinary seminar anyone has ever given.

It was not all about law and government, either. It was about how one should live one's life. In matters of personal ethics he was, to say the least, punctilious. I can recall several of us, including Justice Scalia, spending hours one time attempting to determine the proper way to dispose of a fancy shirt presented to him by the attorney general of another country. On another occasion, my wife and I took a vacation in Great Britain, during which David Levi entertained us at his father's suggestion and expense. We sent Edward a couple of fancy jars of jam from Fortnum and Mason as a thank you. But when I returned to the office, they were sitting on my desk with a note stating that he did not think it was right to take gifts from his staff but that I should rest assured that the sense of moral superiority that he felt in saying so was the best gift I could possibly give.

In a deeper sense he showed us what to steer by in a morally ambiguous world. One day he was interviewed by a friend of mine, who

† President, Tribune Publishing Company; Trustee, The University of Chicago.

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was then writing for the *Atlantic Monthly*. After the conversation my friend came by my office to tell me about it. “He is not like any public official I’ve ever spoken to,” he said. “At some point I told him that it sounded to me as if he was making decisions for history. He looked at me quizzically and said, ‘What else is there?’”

We also learned by example that it was possible to balance achievement and intimacy, seriousness and Swiftian wit. Edward’s love of his family was manifest. Kate and their sons were the strong center of his life. With them he led not only the life of the mind but of the heart. And it was not exclusionary. To our lasting good fortune, he drew us into that family as well. And as to the humor, well, suffice it to say that he found a lot to be amused with in the stuff of the earth. And especially in pomposity. There is one particular notable about whom I can no longer think without remembering Edward’s description of him as “an empty hatbox with a powdered wig in it.”

When Alyce and I returned to Chicago, a couple of years after Edward and Kate did, they introduced us to the life of the University of Chicago. Dinners at the Levis’ were always a delightful, if daunting, intellectual challenge. It might be George Stigler or Saul Bellow or William McNeill or Edward Shils. Alyce and I, of course, represented not just the *Tribune* but the media in general. Always a pleasure in such formidable company, as you can imagine. And always an education.

Edward simply never stopped teaching. At some point he called and suggested that the two of us give a course in the College together.

“What kind of course?” I asked.

“A course on utopias and dystopias,” he said.

“I don’t know anything about utopias and dystopias,” I said.

“Neither do I,” he said. “That’s what will make it so interesting.”

It was one of the very few of Edward’s suggestions I did not follow. I didn’t know how my work at the paper would permit me to prepare enough to be up to my own standards, let alone Edward’s. But now, years later, I wish I had found a way. I know I would have learned something. With Edward, you always did.
Not too long after Edward had returned from his service as Attorney General of the United States to the faculty of “our” Law School (as I still like to think of it), the FBI paid me a visit to make inquiries about Edward. I was then the Dean. He had been appointed to some federal commission or board, whose membership required an FBI background check. Taken aback by this government routine, I asked the agent why he had come to see me about the person who, until recently, had, in effect, been his boss. He responded: “In this questionnaire, Mr. Levi says you are his supervisor.” Bemused, if not amused, I settled down to answer the usual questions about loyalty to the United States, drinking habits, and the like. But first I had to state for how long I had known Edward. I said since 1966—Edward was Provost at the time and Phil Neal, then our Dean, had wanted to make life interesting for me by suggesting that I co-teach a seminar on legal theory with Edward during my very first quarter as a new faculty member. “In what capacity did you know Mr. Levi?” “Oh,” I said, “he was my supervisor.”

God knows, even if government does not, that “supervision” is not the way to lead within the university. Nobody understood this better than Edward.

Edward led by being one’s colleague. Edward led by being learned. Edward led by agonizing over the limits of knowledge. At times, Edward led by being Delphic.

Maurine Campbell, who at the Law School was secretary to Edward, Phil Neal, Norval Morris, and me, tells the story of how she had typed a speech for him and afterwards commented: “Mr. Levi, I did not understand one word.” To which Edward responded: “I am much relieved, because if you had, I would have had to rewrite the speech.”

In the footsteps of the man whom he admired and loved, Robert Hutchins, Edward led through his emphasis on the College student and the excitement and brightness that are generated by unroutinized minds. Edward was at his most eloquent when he talked about the role of the College at the University of Chicago.

Edward led by educating. His speeches were part of an educational effort to counter the confusion, carelessness, and folly which, he wearyly saw, too often ambushed the educational enterprise. “Education, when it is at its best,” he said, “is both a disruptive and fulfilling

† President, Stanford University.
process. The question-asking is never ended. We pretend, at least, to welcome these questions.” The irony is classic Edward. As is his “stout denial” to The New York Times, in 1975, that as President he had dabbled in academic politics: “[Mr. Levi] acknowledged familiarity with academic politics, but as an observer, not a participant.”

And, indeed, Edward led by never misleading about or wavering in his commitment to the bedrock principles of the University. Against those who seek to use universities for political and social purposes, he dared to say that “the object of the University is intellectual, not moral.” Of course, for Edward, adherence to reason partook of the highest morality.

Let me return to my first point. Edward led by being one’s colleague—if at times a forbidding one. From our first days at the University, Regina and I were treated as his colleagues by Edward. “A charmer,” to quote Richard Stern, “uncertain of both his charm and his gifts,” Edward knew how to make one feel that one counted. So did Kate. He and I had disagreements, but once I followed Phil Neal and Norval Morris in his footsteps as Dean, and ever after, he and Kate supported Regina and me unflinchingly.

And, as the President of Stanford, I have looked to the presidential colleague for guidance. Edward’s influence extends beyond the University of Chicago. He continues to lead higher education through his example and, foremost, through his seriousness of purpose. It was his conviction that the university which “pretends to be all good things to all people is on the road to mediocrity.”

As I prepared for this afternoon, I made use of contemporary technology to search for quotations from his speeches in my own. There are many such quotations. Indeed, I am embarrassed to say, re-reading some speeches critically, they sound to me as if I should have given even more credit to Edward than I did.

Most frequently I have quoted something he said in his inaugural address as Chicago’s President: Universities “are the custodians not only of the many cultures of man, but of the rational process itself.”

However, let me conclude with observations that I invoked after a difficult spring of student protests early in my own presidency. In 1967, Edward told Chicago’s entering class:

The life of reason requires clarity, intellectual rigor, humility, and honesty. It requires commitment and considerable energy. It requires that we ask questions, not only of others but of ourselves. It requires that we not only examine the beliefs of others but those newly acquired doctrines which we are all prone to believe because they are held by the group we favor, or are the cherished aspirations that come to us in the middle of the night and which
we are certain cannot be wrong. Habits of thought and searching
intellectual honesty must be acquired and forever renewed.

Edward saw himself as a fiduciary, in the university setting, for
the life of reason and the morality of reason. The task—is it too much
to call it “the mission” of this son and grandson of rabbis?—requires
great intelligence, deep commitment, and considerable energy. Ed-
ward had these and something else, something indefinable: the great-
ness that comes from what is perhaps best called in his own words “a
magical sense of wholeness.”