

Beyond Moral Leadership: Edward H. Levi and the Need for Structural
Reform in the Attorney General's Office After Watergate

by

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ABSTRACT

In the aftermath of Watergate, President Gerald R. Ford nominated Dr. Edward H. Levi as Attorney General (AG) of the United States. Ford hoped Levi's appointment would symbolize a new tradition of an independent AG. As the nation's chief law officer and member of the Cabinet, the AG had become enormously influential since the position's creation in 1789. However, politics and ambiguous language concerning the roles and responsibilities of the AG did much to undermine the AGs independence. Ford, hoping the AG's character alone would restore the office's integrity, sought an AG who embodied independence, integrity, and professionalism. This thesis argues that although Levi epitomized these three traits, they did not ensure his success in establishing long-lasting structural reforms necessary to insulate the position from politicization and secure a nonpartisan AG in perpetuity.

DEDICATION

To Pop-Pop, L.P., and Grandpa—I finished the darn thing.

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INTRODUCTION

In November 2018, President Donald J. Trump demanded the resignation of his longtime supporter and Attorney General (AG), Jeff Sessions.¹ When Sessions left office, he left behind a Department of Justice (DOJ) rife with “discontent and infighting” where longtime career employees were concerned by the politicization of their “day-to-day work.”² When Session’s successor, William P. Barr, accepted Trump’s nomination, he assured Congress that no “political interference with the enforcement of law” would occur.³ However, once in office, Barr quickly gained a reputation as Trump’s “Hatchet Man,” who embodied the tenets of a “Nixonian Attorney General” and illustrated the dangerous realities of a politicized, and weaponized AG.⁴ For many, Barr represented everything an AG should not be. Rather than embodying the independence needed to ensure a separation of powers, Barr served as a “linchpin...to enable Donald Trump’s corruption.”⁵

¹ Peter Baker et al., “Trump Replaces Sessions with a Loyalist; Vows ‘Warlike’ Stance on House Inquiries,” *New York Times*, Nov. 8, 2018, A1, <https://static01.nyt.com/images/2018/11/08/nytffrontpage/scan.pdf>.

² Katie Benner, “Attorney General Fuels Discontent in the Ranks with a Shift to the Right,” *New York Times*, Oct. 20, 2018, A12, <https://www.nytimes.com/2018/10/19/us/politics/jeff-sessions-justice-department.html>; Katie Benner and Nicholas Fandos, “Barr Begins Second Stint Atop Justice Department,” *New York Times*, Feb. 15, 2019, A17, <https://www.nytimes.com/2019/02/14/us/politics/william-barr-confirmed.html>.

³ U.S. Congress, Senate, Committee on the Judiciary, Confirmation Hearing on the Nomination of Hon. William Pelham Barr to be Attorney General of the United States, 116th Congress, 1st sess., Jan. 15-16, 2019, np, accessed Aug. 18th, 2024, <https://www.congress.gov/116/chrg/CHRG-116shrg36846/CHRG-116shrg36846.htm>.

⁴ Mark Landler and Katie Benner, “Defended by Barr, President Gets Attorney General He Hoped For,” *New York Times*, April 19, 2019, A1, <https://www.nytimes.com/2019/04/18/us/politics/william-barr-robert-mueller-donald-trump.html>; David Leonhardt, “A Nixonian Attorney General,” *New York Times*, April 19, 2019, <https://www.nytimes.com/2019/04/19/opinion/mueller-report-barr-rule-of-law.html?searchResultPosition=17>; “New Book Makes the Case that Bill Barr Served as Donald Trump’s ‘Hatchet Man,’” *Rutgers Today*, June 14, 2021, <https://www.rutgers.edu/news/new-book-makes-case-bill-barr-served-donald-trumps-hatchet-man>.

⁵ This quote is pulled from an article on Barr’s role in enabling Trump’s argument that Russia did not interfere in the United States 2016 presidential election. See Paul Waldman, “William Barr and the

When President Joseph R. Biden took office in 2021, he gave the task of “repairing a beleaguered” DOJ to Barr’s “apolitical” successor, Merrick Garland.⁶ Garland inherited a department that had been “more politicized under President Trump than at any point since Watergate.”⁷ Once confirmed, Garland hung in his office a portrait of Dr. Edward H. Levi, “the first post-Watergate attorney general ... credited with restoring public trust in the department.”⁸ Garland was not the only one to recall Levi’s legacy fondly. Many political pundits felt that if Garland could revive “Levi’s ideals,” then the position that Trump’s politicization of justice had compromised could be repaired and prevented in the future.⁹ Thus, Levi became a touchstone for progress in a post-Trump America.

However, Garland’s tenure as AG was short-lived. In November 2024, Donald Trump became president-elect for a second time and quickly began preparations to succeed Joe Biden.¹⁰ In the days and weeks following, many in Washington and around the country, who witnessed both Trump’s first term and his campaign’s calls for retribution, were greatly concerned about his administration’s continued, blatant

Corruption of the Justice Department,” *The American Prospect*, Oct. 28, 2019, <https://prospect.org/politics/william-barr-corruption-of-the-justice-department/>.

⁶ Michael S. Schmidt et al., “Garland, a Judge With Centrist Views, Seen as Biden’s Attorney General Pick,” *New York Times*, Jan. 7, 2021, A18, Gale Academic OneFile.

⁷ Schmidt et al., “Garland, a Judge With Centrist Views, Seen as Biden’s Attorney General Pick,” A18.

⁸ Sadie Gurman and Aruna Viswanatha, “Merrick Garland, Three Special Counsels and a Justice Department Under Fire,” *Wall Street Journal Online*, June 4, 2024, <https://www.wsj.com/politics/policy/merrick-garland-special-counsel-justice-department-under-fire-4608467b>.

⁹ David Rohde, “Garland is the Last, Best Chance to Uncover Trump’s Role on January 6th,” *The New Yorker*, March 21, 2021, <https://www.newyorker.com/news/daily-comment/garland-is-the-last-best-chance-to-uncover-trumps-role-on-january-6th>; Andrew Kent, “The Man Who Should Be Merrick Garland’s Role Model,” *The Atlantic*, May 9, 2021, <https://www.theatlantic.com/ideas/archive/2021/05/doj-reform-levi-garland/618762/>.

¹⁰ Trump was declared the winner of the 2024 Presidential election in the early morning of Nov. 6th, 2024. He will not be sworn in until Jan. 20th, 2025, thus his nominations for cabinet positions would not become official until that time, and until the Senate confirms them, or they are passed through via recess appointment.

politicization of the AG and DOJ.¹¹ Additionally, a month earlier, Trump’s running-mate, JD Vance, argued that the AG “would be the second most important role” in Trump’s Cabinet, further broadcasting to the public their intention to politicize the investigatory and prosecutorial function of the DOJ while in power.¹²

Concerns increased tenfold after Trump announced his intention to nominate Matt Gaetz to the position. Gaetz, former Republican Congressman from Florida and staunch Trump loyalist, was an alarming pick.¹³ His potential appointment specifically incited passionate discussions surrounding the character of the AG given their duties and responsibilities.¹⁴ Roughly a week after Trump announced his intention to nominate Gaetz, the Florida Congressman withdrew his name from consideration. Subsequently, the President-elect named another loyalist, Pam Bondi—a former Florida AG—as his nominee.¹⁵

It is important to note that none of the concerns voiced in the past few months are new. Since the nation’s founding, scholars have debated the proper roles and functions of

¹¹ Karoun Demirjian, “Senate Republicans Alarmed by Gaetz Pick as Attorney General Nominee,” *New York Times*, Nov. 13, 2024, <https://www.nytimes.com/2024/11/13/us/politics/matt-gaetz-attorney-general-senate-republicans.html>; Josh Gerstein, “Many in Government are Worried about Trump’s Return. At DOJ, They’re Terrified,” *Politico*, Nov. 10, 2024, <https://www.politico.com/news/2024/11/10/trump-return-justice-department-00188623>.

¹² This Week (@ThisWeekABC), “Sen. JD Vance says the attorney general would be the second most important role in a Trump administration. ‘You need people to believe that if the attorney,’” X (Formerly Known as Twitter), Oct. 13, 2024, 10:12 AM, <https://twitter.com/ThisWeekABC/status/1845467621015110102>.

¹³ Alanna Durkin Richer and Eric Tucker, “Anxiety and Dismay Inside the Justice Department after Trump Taps Gaetz as Attorney General,” *Associated Press*, Nov. 16, 2024, <https://apnews.com/article/trump-attorney-general-gaetz-justice-department-852d3096a6f154fdb23581948f906e6>.

¹⁴ Robert Weissman via Public Citizen, “Matt Gaetz is ‘Uniquely Awful’ Pick for Attorney General,” *Public Citizen*, Nov. 13, 2024, <https://www.citizen.org/news/matt-gaetz-is-uniquely-awful-pick-for-attorney-general/>; Mark Joseph Stern, “No Matter How Bad You Think an Attorney General Matt Gaetz Would Be, He’ll Be Worse,” *Slate*, Nov. 13, 2024, <https://slate.com/news-and-politics/2024/11/matt-gaetz-donald-trump-attorney-general-disaster.html>.

¹⁵ Eric Tucker et al., “Trump Chooses Loyalist Pam Bondi for Attorney General Pick After Matt Gaetz Withdraws,” *Associated Press*, Nov. 21, 2024, <https://apnews.com/article/gaetz-trump-fbi-justice-department-248b46ba0c882dd46d661568e8bd3bd7>.

the federal AG. The office of the AG has historically, endured consistent scrutiny, especially following the terms of those the public understood to be distinctly partisan appointments. Considering current events, it would seem prudent to examine the tenure of Dr. Edward Levi—President Gerald Ford’s AG—whose friends and colleagues have consistently lauded as “the model of a modern” AG, and someone who “restor[ed] order after Watergate.”¹⁶

Ford’s nomination of Levi in 1974 symbolized national hopes for a new generation of non-partisan and professional AGs. Levi’s nomination came six months after Richard Nixon’s resignation, and one month after Nixon’s first AG, John Mitchell, was convicted of conspiracy, obstruction of justice, and perjury. As such, scholars have spoken highly of Levi’s leadership in office. They have asserted that he embodied the ideal qualities of an AG: qualities such as independence, integrity, and professionalism.¹⁷ Moreover, they have argued that Levi made considerable efforts to restore the integrity of the DOJ and was successful in defining the professional line between law and politics.¹⁸ However, in this thesis I argue that although Levi embodied the principles of independence, integrity, and professionalism, it was not enough to ensure his success in establishing long-lasting reforms which would be necessary to create a non-partisan, independent AG and DOJ.

¹⁶ Neil A. Lewis, “Edward H. Levi, Attorney General Credited with Restoring Order After Watergate, Dies at 88,” *New York Times*, March 8, 2000, C25, <https://www.nytimes.com/2000/03/08/us/edward-h-levi-attorney-general-credited-with-restoring-order-after-watergate.html>.

¹⁷ Lewis, “Edward H. Levi, Attorney General Credited with Restoring Order After Watergate, C25; Martin Weil, “Edward Levi Dies at 88: U.S. Attorney General After Watergate,” *The Washington Post*, March 7, 2000, <https://www.washingtonpost.com/archive/local/2000/03/08/edward-levi-dies-at-88/59ad2eaa-0c1b-4273-90e9-f9d2c6d61c82/>.

¹⁸ Lewis, “Edward H. Levi, Attorney General Credited with Restoring Order After Watergate, C25; Kent, “The Man Who Should Be Merrick Garland’s Role Model.”

The ambiguous nature of the office's directives, inherent in the original legislation, largely revolved around who the AG served. Instead of working towards a change in legislation itself, scholars have, over time, focused on the character of the man. Yet, as Levi's term demonstrated, laudable personal characteristics were not enough to discourage the emergence of another politicized AG. To demonstrate my argument, I have separated this thesis into three chapters. The first chapter will provide a summary of historiography by showcasing the existing literature on the AG. It will concentrate on how writers have, throughout time, understood the position's roles and responsibilities. Many who have written on the AG come primarily from fields such as law and journalism, with fewer coming from the historical discipline. Scholars have, over time, identified three key characteristics—independence, integrity, and professionalism—and argued that these traits are needed to ensure the effectiveness of an AG.¹⁹ Levi's tenure suggests that these ideal characteristics should be studied in connection with a secondary historiographical theme—structural forces. Rather than studying their separate impact on the tenure of an AG, scholars should explicitly consider the two in tandem.

The second chapter will provide an abbreviated study of the historical evolution of the AG, beginning with its creation in 1789 and ending around the 1970s. Rather than providing a comprehensive account, this chapter selectively focuses on several men whose tenures shaped expectations for the AGs personal character and role. Specifically, the tenures of those who most clearly demonstrated the importance of the office-holder's

¹⁹ See works such as: Albert Langeluttig, *The Department of Justice of the United States* (Johns Hopkins Press, 1927); and Nancy Virginia Baker, *Conflicting Loyalties: Law and Politics in the Attorney General's Office* (University of Kansas Press, 1992).

character, due to the original language in the Judiciary Act of 1789. The original legislation provided for a

meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments...²⁰

The ambiguous language concerning the client(s) of the AG created a potentially contradictory mandate which left the AG torn between multiple masters: he must consider the President, the country, and the law itself. Although this ambiguity was evident throughout the history of the position, it became more troublesome in the early twentieth century. As such, in this chapter I argue that the ambiguous nature of the AG's duties, inherent in the initial legislation, heavily impacted the evolution of the position. These contradictions have never been resolved and consequentially have exacerbated the ambiguity that lay at the heart of the office's mandate.

Chapter Three will begin by studying Levi's nomination. Levi became the sixth AG in five years and inherited a position that was nearly unrecognizable in terms of power and influence from its early form. As I will argue, Levi represented all the characteristics that had come to define a successful AG. Yet, while he set a moral example, he did not enact the structural reforms necessary to prevent further politicization of the position. Indeed, only a decade later, President Ronald Reagan's ex-campaign chief of staff and second AG, Edwin Meese III, resigned amidst perpetual

²⁰ *Judiciary Act of 1789*, 1 Stat. 73, sec. 35 (1789). In this context, to be a "meet person," means to be specifically adapted to a particular need or situation. For the AG, this means there will be an individual trained in legal matters to assume this unique and specific role. See *Webster's New World Dictionary*, 2nd ed. (Houghton Mifflin Harcourt, 2013) s.v. "Meet (adj.)."

scandal.²¹ Thus, as Levi's tenure demonstrates, until the ambiguity of the original legislation is addressed fully and explicitly, the position will continue to be exploited for partisan purposes. As such, determining why Levi was not more successful in achieving long-lasting reforms becomes even more imperative.

²¹ Meese finally resigned in late summer 1988. This was after many in government and the public had demanded that doing so was the only proper option considering his consistent "insensitivity to ethics." Carl Levin, "Opinion: A Record of Shame Why Meese Must Resign," *The Washington Post*, May 21, 1988, <https://www.washingtonpost.com/archive/opinions/1988/05/22/a-record-of-shame-why-meese-must-resign/57b1c6ab-8301-46b1-adee-605ddc5dfa52/>.

CHAPTER I

A Historiography of the US Attorney General

In the wake of Donald J. Trump’s presidency, law professors Patrick E. Longan and James P. Fleissner published their 2021 article, “Partisanship and the Attorney General of the United States: Timely Lessons from Edward Levi and Griffin Bell about Repairing a Politicized Department of Justice,” on “the proper role of the Attorney General (AG) of the United States.”¹ In it, they asserted that historical judgment has deemed that Levi (President Gerald R. Ford’s appointee) and Bell (President Jimmy Carter’s appointee) succeeded in restoring “the credibility and morale of the Department of Justice [DOJ] in the wake of Watergate.”² Their study explored how these men accomplished this goal, and how they set an example for the “independent tradition” which they believed could serve as a model for future Attorneys General (AGs) who would take office in the “aftermath of a period of politicization.”³

Their article was representative of a modern renewal of interest in the AG. This public and academic fascination with the AG can largely be attributed to the actions of Trump and his two AGs: Jeff Sessions (2017-18) and William P. Barr (2019-20).⁴ The two lawyers asserted that due to Barr’s actions while in office, “in the eyes of many observers, we have entered one of those times” in which the AG and the DOJ have

¹ Patrick E. Longan and James P. Fleissner, “Partisanship and the Attorney General of the United States: Timely Lessons from Edward Levi and Griffin Bell about Repairing a Politicized Department of Justice,” *Mercer Law Review* 72 no. 3 (May 2021): 731, https://digitalcommons.law.mercer.edu/jour_mlr/vol72/iss3/4/.

² Longan and Fleissner, “Partisanship and the Attorney General of the United States,” 735.

³ Longan and Fleissner, “Partisanship and the Attorney General of the United States,” 738-9.

⁴ Barr had previously served as AG under President George H.W. Bush, from November 1991 to January 1993.

suffered from a “period of politicization,” and that scholars and politicians ought to look to history to serve as a guide for moving forward.⁵

Longan and Fleissner’s argument, which highlighted Levi’s legal expertise, and his reputation as incorruptible and independent suggested that his short tenure was worthy of academic study. However, while they provided the most thorough analysis of Levi to date, their study failed to utilize historical evidence to explore whether the reforms by Levi (and Bell) did, in fact lead the DOJ “back from the wreckage of Watergate.”⁶ Instead, they stated a common argument consistent in literature concerning the AG: that, to preserve and maintain the legal and bureaucratic roles of the DOJ, the AGs most important attribute must be the moral rigor of their character, which should exemplify independence.⁷ In addition to independence, scholars have consistently highlighted two other traits—professionalism and integrity—as characteristics that are integral to the ideal AG.

Longan and Fleissner use Levi and Bell as a case study for the type of leadership they believed contemporary AGs should exhibit, and how their relationship to the President should operate. Secondly, they raise attention to structural factors that have affected the office, in addition to their primary focus on personal characteristics. Concentration on the structural forces that impact the behavior of the AG stems from scholars and writers who have argued that the position has always been innately troublesome in its anatomy. This type of literature was especially prominent post-Watergate and emblematic of conversations that have occurred increasingly in

⁵ Longan and Fleissner, “Partisanship and the Attorney General of the United States,” 731.

⁶ Longan and Fleissner, “Partisanship and the Attorney General of the United States,” 737.

⁷ Longan and Fleissner, “Partisanship and the Attorney General of the United States,” 789.

Washington concerning the structure and responsibilities of the AG and its relationship to the executive branch.⁸ However, most of the scholarship has not considered these two themes—the structural forces and personal characteristics—as equally impactful on the term of an AG. As I argue in this chapter, Levi’s tenure suggests that scholars should give both personal and structural forces equal weight.

While Congress established the position of the AG in 1789, histories did not appear until the mid-nineteenth century. In its infancy, the role of the AG “was not much of a job,” and the office itself was “marginal in importance.”⁹ Historical discussions from the mid to late nineteenth century, and early twentieth century prioritized providing surveys of the office’s legislative origin and organization written primarily as a listing of figures and responsibilities, rather than the quality of the men who held the office. The exception to this, is the consistent inclusion of William Wirt and Caleb Cushing as remarkable standouts among the list of incumbents.

Prior to any comprehensive history of the office of the AG or the DOJ, John Pendleton Kennedy—writer, politician, and friend of Wirt—published a two-volume biography titled *Memoirs of the Life of William Wirt, Attorney General of the United States* in 1849. Released fifteen years after Wirt’s death, Kennedy chronicled Wirt’s life, relying heavily on the use of Wirt’s diaries, letters and other personal material. As Kennedy asserted, President James Monroe’s nomination of Wirt was an appeal to a friend whose abilities he held in the “highest confidence,” and whose “private worth and

⁸ U.S. Congress, Senate, Committee on the Judiciary, Nomination of Edward H. Levi to be Attorney General, 94th Cong., 1st sess., Jan. 27-29, 1975, 13-14, <https://archive.org/details/nominationofedwa00unit>.

⁹ John P. Frank, “Edward Bates, Lincoln’s Attorney General,” *The American Journal of Legal History* 10, no. 1 (Jan. 1966): 35, <https://doi.org/10.2307/844375>.

personal qualities” were greatly valued.¹⁰ Kennedy also commended Wirt for his non-political ambitions. While other men had occupied the office as a bridge to other influential government positions, Wirt “coveted no political honors,” and aspired only to “earn affluence and leisure from the diligent practice of his profession [of law].”¹¹ Kennedy went on to argue that Wirt’s commitment to the legal and operational duties of the AG, his “professional skill and enlarged experience,” and his demonstrated camaraderie with Madison, made him an ideal candidate for the position.¹² As such, these qualities that Kennedy highlighted—professionalism and apoliticism—directly factored into Wirt’s success as an AG, and set a standard for subsequent men.

Wirt’s accolades from his time in office derived from the initiatives he undertook to professionalize the office of the AG. This included his decision to compile and consolidate its canon of legal opinions. As Kennedy wrote, the sheer amount of Wirt’s official opinions is a legitimate “legal and constitutional history” of the US and nothing less than a testament to Wirt’s industriousness.¹³ Kennedy also acknowledged that one of Wirt’s lasting influences on the early evolution of the position involved a recommendation letter he wrote to Congress which suggested changes to the office of the AG.¹⁴ These very early histories, concerned with the position’s legal, operational, and definitional difficulties, highlighted Wirt, and subsequently Cushing, for their recommendations which eventually led to the creation of the DOJ.

¹⁰ John Pendleton Kennedy, *Memoirs of the Life of William Wirt, Attorney General of the United States* (Lea and Blanchard, 1849), 56.

¹¹ Kennedy, *Memoirs of the Life of William Wirt*, 55.

¹² Kennedy, *Memoirs of the Life of William Wirt*, 56, 58.

¹³ Kennedy, *Memoirs of the Life of William Wirt*, 60.

¹⁴ Kennedy, *Memoirs of the Life of William Wirt*, 60-5.

In 1904, DOJ attorney James S. Easby-Smith published a short monograph titled *The Department of Justice: Its History and Functions*.¹⁵ Therein he provided a brief history of the Office of the AG and the beginning of the DOJ. He asserted that the “growth of the Office of Attorney-General, both in its functions” and personnel, “had been so great during the first eighty years of the existence of the federal government that” by the late 1860s, it had become “in reality what it had always been in theory, one of the executive departments of the Government.”¹⁶ It was this phenomenon that necessitated the establishment of the DOJ, a suggestion which Easby-Smith noted was provided by the very first federal AG, Randolph.¹⁷ Randolph, despite being “prodigious,” extremely experienced, and dedicated to the office’s organization and operations, was not able to motivate Congress or the President to take action towards improving the position.¹⁸ Thus, despite Randolph’s commitment to the position, he had no legislative power, and as such could not make the institutional changes that he was convinced would allay many of the deficiencies that had been built into the position.

Easby-Smith also highlighted the explicit importance of singular AGs, by identifying the impact select individuals had on the role. He argued that Wirt, who served for twelve years, “did more to put the office of Attorney-General on a firm business basis than any other of its occupants.”¹⁹ Wirt’s role in professionalizing the office of the AG, was also echoed by other writers of this early era, such as historian Henry Barrett Learned, in his 1909 article “The Attorney-General and the Cabinet,” and administrative

¹⁵ James S. Easby-Smith, *The Department of Justice: Its History and Functions* (W.H. Lowdermilk & Company, 1904).

¹⁶ Easby-Smith, *The Department of Justice*, 1, 23, 30.

¹⁷ Easby-Smith, *The Department of Justice*, 16.

¹⁸ Easby-Smith, *The Department of Justice*, 7.

¹⁹ Easby-Smith, *The Department of Justice*, 15.

law scholar, Albert Langeluttig, in his 1927 book, *The Department of Justice in the United States*.²⁰

Learned began his article by noting that those who were concerned with the “place and functions of the attorney-general” were “thoughtful men.”²¹ Of those men, he argued that no one “more so than William Wirt and Caleb Cushing,” helped obtain measures of reform concerning these functions.²² Furthermore, Learned argued that as far “as the position of attorney-general” could be re-vitalized and molded by Wirt, it was.²³ Learned attributed his esteem of Wirt to his professionalization of the position, which led to the office receiving a clerk, a stipend for supplies, and a salary increase.²⁴ Additionally, Wirt’s industriousness, which Learned illustrated by emphasizing the five hundred pages of official opinions that Wirt wrote during his tenure, demonstrated a deep commitment to the success and future of the position.²⁵ During Wirt’s term, the position of AG “had certainly risen in importance and was considered as more closely allied to the whole executive administration than ever before.”²⁶ Similarly, Langeuttig echoed Learned’s assessment, by identifying the administrations of Wirt and Cushing as being most remarkable in terms of impact. In fact, he goes as far as to say that “without in the least

²⁰ Henry Barrett Learned, “The Attorney-General and the Cabinet,” *Political Science Quarterly* 24, no. 3 (Sep. 1909): 445; Albert Langeluttig, *The Department of Justice of the United States* (Johns Hopkins Press, 1927), 3-4; Learned would go on to work for the DOJ in the Bureau of Investigation from 1917-1919.

Langeluttig’s book was part of the series *Studies in Administration* for the Institute of Government Research (name later changed to the Brookings Institute).

²¹ Learned, “The Attorney-General and the Cabinet,” 445.

²² Learned, “The Attorney-General and the Cabinet,” 445.

²³ Learned, “The Attorney-General and the Cabinet,” 449.

²⁴ Learned, “The Attorney-General and the Cabinet,” 450.

²⁵ Learned, “The Attorney-General and the Cabinet,” 451.

²⁶ Learned, “The Attorney-General and the Cabinet,” 449-50.

detracting from the glory of his predecessors, William Wirt may be called the first great Attorney General.”²⁷

Aside from Wirt, Learned and Langeuttig also identified Caleb Cushing as an AG worthy of academic study. Cushing served as President Franklin Pierce’s AG from 1853 to 1857. Langeuttig praised Cushing as “the greatest Attorney General after William Wirt,” and Learned acknowledged Cushing’s relationship to the Pierce administration, writing that there was “no abler associate” and “no more trusted man in the cabinet.”²⁸ Langeuttig attributed two events to Cushing’s success, and both of them were “reports rendered to the President,” which were then “transmitted to Congress and printed.”²⁹ Langeuttig argued that the reports in question “greatly influenced Congress in the creation of the DOJ.”³⁰ He wrote that Cushing, “like Wirt” was “determined to understand the structure and functions of his office, so far as the laws and the practice of his predecessors could reveal them.”³¹ Cushing saw himself as different from his illustrious predecessor, considering himself to be “not only as the peer of his cabinet associates, but as “the head of a department, although “he occupied what was technically known as an ‘office’.”³² Cushing was committed to raising the image of the AG in the eyes of the rest of the government, having recognized that without that legitimization, his impact within the Cabinet would be minimal.

During this early period of the twentieth century, writing on Cushing also adapted to include a more fulsome discussion of his character. Learned argued that while Cushing

²⁷ Langeluttig, *The Department of Justice of the United States*, 3.

²⁸ Langeluttig, *The Department of Justice of the United States*, 7; Learned, “The Attorney-General and the Cabinet,” 456.

²⁹ Langeluttig, *The Department of Justice of the United States*, 7.

³⁰ Langeluttig, *The Department of Justice of the United States*, 7.

³¹ Learned, “The Attorney-General and the Cabinet,” 456.

³² Learned, “The Attorney-General and the Cabinet,” 458.

had considerable strengths as an AG which he demonstrated by his talent and experience with management, law, and politics, he was notably weak when it came to being “principle[d] in politics.”³³ Although, he exhibited consistent and unwavering diligence, he struggled to truly earn the trust of his political peers, the way he had earned the trust of others, like President Pierce.³⁴ This is significant to note because while Wirt had been commended for not being political in the past, Cushing was criticized for not being loyal enough to a specific political party.³⁵ While this was representative of the expectations of the administration he was serving, it contrasts the political independence scholars typically celebrate when studying the AGs. Despite this, researchers of the topic still remember Cushing as one of the original great AGs.

In 1939, Oliver Hammonds offered a new perspective on the topic of the federal AG, by studying its predecessor. In his book, *The Attorney General in the American Colonies*, he provided a history of the “development of this office in England up until the colonization in America,” before delving into the position’s adaptation in the colonies prior to “its incorporation” in 1789.”³⁶ Hammonds, himself a Special Asst. to the AG, wrote his study intending to understand the position according to the original framers. By doing so he sought to explain why defining the “power, duties, and privileges,” of the AG was “unnecessary and impractical as a matter of good draftsmanship.”³⁷ He argued that the federal office defined by the Judiciary Act purposefully resembled its colonial predecessors because it was the system the framers had been familiar with.³⁸ Hammonds’

³³ Learned, “The Attorney-General and the Cabinet,” 459.

³⁴ Learned, “The Attorney-General and the Cabinet,” 459.

³⁵ Learned, “The Attorney-General and the Cabinet,” 459.

³⁶ Oliver W. Hammonds, *The Attorney General in the American Colonies*, ed. Paul M. Hamlin (New York University School of Law, 1939), 1.

³⁷ Hammonds, *The Attorney General in the American Colonies*, 1.

³⁸ Hammonds, *The Attorney General in the American Colonies*, 24.

connection between the federal AG and its English and colonial predecessors, is one of the first efforts to understand the vague directives present in the original creation of the position. I will discuss these in detail in the next chapter.

Overall, these early works highlighted individuals for their impact on the office of the AG. Scholars focused primarily on the individuals who most impacted the structure of the office and professionalization of the position, making note of how the position had evolved. Even those monographs which were more a listing of names and dates followed changes to the duties and responsibilities of the AG. To a lesser extent they focused on the character of the AG, but professionalism, independence, and integrity were still discussed features.

The next wave of literature concerning the AG occurred in the 1950s and 60s: decades defined by the Cold War, the Korean War, and the Civil Rights movement. Beginning in 1952, Sidney Warren, an American historian, wrote four articles under the series “Corruption in Politics.” Each piece covered a different era: Pre-Civil War, President Ulysses S. Grant’s administration, Roscoe Conkling and the “Spoilsmen,” and President Warren G. Harding’s administration. Warren argued his work was in response to the “flagrant corruption in the national government,” which had led citizens to wonder “whether the moral fiber of the nation had disintegrated.”³⁹ Warren portrayed his studies as a moral imperative, focusing on whether there were “pattern[s] of corruption” and their conditions for existence.⁴⁰ Of special note was his fourth article on “The Harding Era.”

³⁹ Sidney Warren, “Corruption in Politics: I. Before the Civil War,” *Current History* 22, no. 126 (Feb. 1952): 65, <https://www.jstor.org/stable/45308094>.

⁴⁰ Warren, “Corruption in Politics: I.,” 65.

Harding's AG Harry M. Daugherty, a member of his "Ohio Gang," had been rewarded with the position after helping Harding claim the White House.⁴¹ Although he was versed in the law, his "real business," according to Warren, "was politics."⁴² Daugherty's inclination for loaning out "all the facilities of the Department of Justice" to "the highest bidder," in addition to his indispensability to the President, led Warren to describe Daugherty as the "Rasputin of the Harding administration."⁴³ Thus, Warren emphasized the importance of integrity to the effectiveness of an AG, by introducing the reader to an AG who utilized their influence for material gain.

In addition, the budding search for the origin of difficulties inherent in the office of the AG continued with the reappraisal of the federal AGs predecessors. Political scientist Rita W. Cooley's 1958 article "Predecessors of the Federal Attorney General: The Attorney General in England and the American Colonies" narrated the origin of the AG in England. She illustrated how, upon the position being transferred to the American colonies, "little attempt was made to define or enumerate duties" due to the role already possessing "the common law powers of the English Attorney General."⁴⁴ She argued that when the "Americans replaced their royal predecessors," individual state constitutions continued to leave the duties of their AGs largely undefined.⁴⁵ As a result, the First Congress, who were only familiar with this system, imprinted the lack of definition onto

⁴¹ The Ohio Gang was the moniker given to the Ohioan "political henchmen and cronies, a palace guard whose venal conduct corroded public morals and eventually caused the premature end of their hapless tool" that President Harding had brought with him to Washington; they had been awarded influential positions in Harding's government due to their long-term loyalty. Sidney Warren, "Corruption in Politics: IV. The Harding Era," *Current History* 22, no. 130 (June 1952): 349, <https://www.jstor.org/stable/45308161>.

⁴² Warren, "Corruption in Politics: IV," 349.

⁴³ Warren, "Corruption in Politics: IV," 349.

⁴⁴ Rita W. Cooley, "Predecessors of the Federal Attorney General: The Attorney General in England and the American Colonies," *The American Journal of Legal History* 2, no. 4 (Oct. 1958): 309, <https://doi.org/10.2307/844539>.

⁴⁵ Cooley, "Predecessors of the Federal Attorney General," 312.

the federal office of the AG in 1789.⁴⁶ Cooley supported Hammonds' earlier argument, which held that the colonial AGs' vague directives influenced the federal AG's ambiguous nature.

Transitioning into the 1970s, literature on the AG became more concerned with the “tension between law and politics,” or the politicization of the AG and the character of those who would engage in this behavior.⁴⁷ This trend is evident in two books from the time. The first was written by *New Yorker* staff writer Richard Harris in 1970, and the second followed a year later by journalist Victor Navasky.⁴⁸ Harris focused on the 1968 election, and the official introduction of Mitchell to President Richard Nixon's administration. He argued that when Nixon named “his campaign manager to the post of Attorney General,” he was “bound to produce complaints that the Department was a political arm of the White House.”⁴⁹ With Mitchell as AG, “he appeared to be turning the Department of Justice into a political mechanism overnight.”⁵⁰ He did this by appointing specific political allies to “the most crucial posts” and by consistently and openly allying himself with Nixon.⁵¹ The line between Mitchell's duty as Attorney General and Nixon's campaign manager was almost nonexistent, so much so that by 1969, Harris asserted that “Mitchell's behavior had begun to suggest” that he had ambitions for “more than a few million Southern votes for President Nixon in 1972.”⁵² By highlighting “this behavior,” Harris was alluding to Mitchell's influence in the appointment of conservative Justices to the Supreme Court, his support for weakening revisions to the Voting Rights Act, and the

⁴⁶ Cooley, “Predecessors of the Federal Attorney General,” 312.

⁴⁷ Victor S. Navasky, *Kennedy Justice* (Atheneum, 1971), xii.

⁴⁸ Richard Harris, *Justice: The Crisis of Law, Order, and Freedom in America* (E.P. Dutton, 1970).

⁴⁹ Harris, *Justice*, 108.

⁵⁰ Harris, *Justice*, 158.

⁵¹ Harris, *Justice*, 158.

⁵² Harris, *Justice*, 225.

withdrawal of federal funds from school desegregation.⁵³ In addition, Mitchell could “buy” political loyalty by providing “large numbers of patronage jobs” and money (sometimes in the form of “new government installations” and “new Southern government defense contracts”).⁵⁴ According to Harris, Mitchell and Nixon potentially wanted to kick off “the most managed revision of American political alliances in our time or any other.”⁵⁵

While Harris demonstrated that John Mitchell was an AG who utilized the position as a means of political influence, Navasky showed that Robert F. Kennedy (RFK) was an AG who was willing to put politics and familial ties aside to manage the DOJ and administer justice effectively. Navasky noted that “the increasing political significance” of the AG was “underlined by the number of recent Attorneys General who came to their jobs via deep involvement in Presidential politics.”⁵⁶ He highlighted President John F. Kennedy’s controversial appointment of his younger brother RFK as an example of an AG, who followed “the political tradition.”⁵⁷ He juxtaposes this tradition with Robert Kennedy’s decision to “staff the Department in the legal tradition.”⁵⁸ Indeed, Navasky was cognizant of the fact that “Robert Kennedy’s bloodline to the White House meant that the Attorney General’s office became a strategic way station for petitioners” to persuade the president; and as a result the growing DOJ would serve “as a 32,000-man addition to the White House’s staff for random Presidential business.”⁵⁹

⁵³ Harris, *Justice*, 225.

⁵⁴ Harris, *Justice*, 225-6.

⁵⁵ Harris, *Justice*, 225.

⁵⁶ Navasky, *Kennedy Justice*, xiv.

⁵⁷ Navasky, *Kennedy Justice*, xii.

⁵⁸ Navasky, *Kennedy Justice*, xii.

⁵⁹ Navasky, *Kennedy Justice*, xiv.

However, Navasky argued that three elements of the “Kennedy Justice” system kept RFK from joining the ranks of past AGs like Harry Daugherty: the code of the FBI, the code of the “Ivy League Gentleman,” and the code of the Kennedys.⁶⁰ Navasky relates the code of the FBI with independent and autonomous “bureaucrats”; the Ivy League code with “reasonable men” known for their instincts for “compromise” and a “talent for intellectualization; and the Kennedy code with a motivating, “charismatic authority system.”⁶¹ It was these personal and professional codes of ethics, Navasky asserted, which defined RFK’s moral character and guided him away from being the stalwart political operative that many expected him to be.⁶² This enabled RFK to strengthen the image of the office of the AG. Both Navasky and Harris highlighted the rampant concerns over politicization during this time, but these early 1970s works would be the last time Mitchell, and the AG, would be assessed without the specter of Watergate.

Post-Watergate, literature on the AG elaborated on and refined the conditions for what made an ideal AG, wrapped in discussions as to how to better insulate politics from law. Joseph Kraft, a popular political columnist, distinguished between two “traditions” of AGs: the “dignified” and the “effective.”⁶³ Kraft’s definitions were distinctly different from the standards presented in this paper, as his interpretation saw the AGs “main job as

⁶⁰ Navasky, *Kennedy Justice*, 329.

⁶¹ Navasky, *Kennedy Justice*, 354-55, 446-47.

⁶² Navasky does however, argue that this system is not easily replicable, because while any new AG could maintain the code of the FBI, and the code of the Ivy League Gentleman, the “code of the Kennedy’s requires Kennedys.” It is the combination of these three codes working together, or sometimes despite each other, that enabled RFK to be an effective AG; Navasky, *Kennedy Justice*, 447

⁶³ Victor S. Navasky, “The Politics of Justice: Loyalty to a President or Loyalty to the Law?” *The New York Times*, May 5, 1974, SM18, ProQuest. Kraft borrowed the terms from 19th century English journalist Walter Bagehot, who explored “dignified” and “efficient” in relation to government. Walter Bagehot, *The English Constitution* (Virtue and Co., 1967).

[sic] to execute the President's will."⁶⁴ On the other hand, the "dignified" tradition of AG was rooted in the idea that "the sovereign as well as the citizen is subject to the law of the land."⁶⁵ In that sense, Kraft argued that the "ideal Attorney General is an upright man, learned in the law, and with the most delicate sense of fairness, who acts less as a player on the Government team than as an umpire exerting a legal check on arbitrary action of the executive."⁶⁶ Kraft's definitions did not create a new widespread language for categorizing AGs, but he did enunciate distinct expectations for any incoming AG.

Civil liberties lawyer Mitchell Rogovin's 1978 article "Reorganizing Politics out of the Department of Justice," lambasted the practice of appointing "men who had been successful campaign managers to head" the DOJ.⁶⁷ He suggested that this only exacerbated the AG's "existing conflicting roles."⁶⁸ These conflicts were, Rogovin emphasized, due to the immense tension between the bureaucratic demands, legal duties, and the character of the individual AG; tensions which had originated with the creation of the office, and only exacerbated throughout its evolution. Additionally, for him, Watergate damaged the illusion that a member of high office in the DOJ could be a political pragmatist.⁶⁹ He was concerned that due to the influence the executive had on the DOJ leadership, the AG, for example, would never be able to operate outside of any

⁶⁴ Navasky, "The Politics of Justice," SM18.

⁶⁵ Navasky, "The Politics of Justice," SM18.

⁶⁶ Navasky, "The Politics of Justice," SM18.

⁶⁷ Mitchell Rogovin, "Reorganizing Politics Out of the Department of Justice," *American Bar Association Journal* 64, no. 6 (June 1978): 855, <https://www.jstor.org/stable/20744630>.

⁶⁸ Rogovin, "Reorganizing Politics Out of the Department of Justice," 855.

⁶⁹ This concept of political pragmatism implies someone will be "driven largely by regard for good consequences." The good pragmatist, it is said, will be indifferent to which side of the political spectrum champions a policy, and asks only how well will the policy work." Steven Ross, "Pragmatism, Philosophical and Political," *The Brooklyn Rail*, Feb. 2009, <https://brooklynrail.org/2009/02/express/pragmatism-philosophical-and-political/>; Rogovin, "Reorganizing Politics Out of the Department of Justice," 855.

party's political agenda. Thus, Rogovin argued that changes would immediately need to be made to deter these abuses from happening again.⁷⁰

Where Rogovin supported his argument using the history of patronage practices, legal scholar Philip B. Kurland focused on constitutional questions in his discussion of Watergate.⁷¹ In his 1978 book *Watergate and the Constitution*, Kurland argued that it was the “aggrandizement of the executive and judicial branches that...put us in our contemporary difficulties.”⁷² He also opposed the view that the abuse of the accumulation of executive power could be blamed on any one individual. Instead, he argued that the “tragedy” lay in “the continued failure of the nation to take steps first to cabin and then to dissipate that accumulated power.”⁷³

Furthermore, Kurland emphasized that the existence of future Watergates will depend on “who happens to be” the AG.”⁷⁴ He argued that “the independence of the Department of Justice turns upon the independence of the Attorney General.”⁷⁵ If the AG is “a political relative of the White House...or a moral weakling...” it will not matter what institutional mechanisms are in place to prevent politicization and abuse of power.⁷⁶ Here, Kurland makes the argument that specific character traits are not enough by themselves to protect the office of the AG from abuse; without considering structural forces, the future integrity of the AG's office cannot be guaranteed. Rex E. Lee, who served as an Asst. AG for the Civil Division under Levi reviewed Kurland's work and

⁷⁰ Rogovin, “Reorganizing Politics Out of the Department of Justice,” 855.

⁷¹ During Watergate, Kurland also consulted for the Senate Judiciary Committee. David Binder, “Philip B. Kurland, 74, Scholar Who Ruled on Nixon Tapes,” *The New York Times*, April 18, 1996, B9, <https://www.nytimes.com/1996/04/18/us/philip-b-kurland-74-scholar-who-ruled-on-nixon-tapes.html>.

⁷² Phillip B. Kurland, *Watergate and the Constitution* (University of Chicago Press, 1978), 8.

⁷³ Kurland, *Watergate and the Constitution*, 5.

⁷⁴ Kurland, *Watergate and the Constitution*, 197.

⁷⁵ Kurland, *Watergate and the Constitution*, 197.

⁷⁶ Kurland, *Watergate and the Constitution*, 197.

argued that he believed that it would “be a long time before” there is a “repetition of the improprieties of the Nixon-Mitchell era.”⁷⁷ He argued that Levi’s tenure, together with the work of the OPR, put in place “a level of lawyer-client insulation and independence” between himself, the White House and Congress.⁷⁸

Political scientist Cornell W. Clayton also credited Levi’s creation of the OPR as one of the post-Watergate reforms which sought to “decentralize decision-making” within the DOJ and “buffer personnel from direct political influence.”⁷⁹ However, he argued that many of these post-Watergate reforms which “aimed at ‘depoliticizing’ the Department of Justice,” were “short-lived” due to the policy goals of President Ronald Reagan’s administration.⁸⁰ Clayton’s 1992 book *The Politics of Justice: The Attorney General and the Making of Legal Policy* was published directly in the aftermath of the “extraordinary controversy” surrounding the Reagan administration’s systematic politicization of legal policy.⁸¹ Clayton said he was inspired by *Kennedy Justice* and the questions Navasky had raised “about the mixture of law and politics in the Justice Department.”⁸² He argued that the position’s evolution from a quasi-judicial “elite barrister” into a political “administrator of a massive executive branch bureaucracy” had created “fundamental tensions in the office’s role.”⁸³ The AGs development from a legal position to a political one became more apparent as Presidents began to view the DOJ “as a partisan instrument

⁷⁷ Rex E. Lee, “Book Review: Watergate and the Constitution,” *Brigham Young University Law Review* 1978, no. 3 (1978): 782, <https://digitalcommons.law.byu.edu/lawreview/vol1978/iss3/11/>.

⁷⁸ Lee, “Book Review: Watergate and the Constitution,” 782.

⁷⁹ Cornell W. Clayton, *The Politics of Justice: The Attorney General and the Making of Legal Policy* (M.E. Sharpe Inc., 1992), 35.

⁸⁰ Clayton, *The Politics of Justice*, 35.

⁸¹ Clayton, *The Politics of Justice*, 221.

⁸² Clayton, *The Politics of Justice*, xiii.

⁸³ Clayton, *The Politics of Justice*, 6.

for effecting their policy agenda.”⁸⁴ He noted that after Watergate, Presidents Ford and Carter promised to “restore political neutrality and professional integrity” at the DOJ which included appointing Levi and Bell, respectively, as their AGs.⁸⁵

President Ford appointed Levi, who would be the “the first legal scholar” since Harlan Stone, who had been appointed in the wake of the Teapot Dome scandal.⁸⁶ Levi promised to “reestablish integrity and impartiality” in the DOJ, and emphasized the “independent role” that he “thought the Attorney General should play.”⁸⁷ Clayton argued that for Levi, “independence” meant that the AG would not be entirely insulated from presidential policy, making “policy choices in a vacuum,” but that only “unethical or improper influences should be eliminated.”⁸⁸ Levi understood there was to be a natural “interaction of law and policy,” but wanted to avoid “the manipulation of law enforcement for political advantage.”⁸⁹

In that same year, political scientist Nancy Virginia Baker provided the first schema for categorizing AGs in order to judge their performance while in office in her book *Conflicting Loyalties: Law and Politics in the Attorney General's Office*.⁹⁰ She categorized the AGs as either an Advocate or a Neutral. An Advocate AG was a trusted advisor who promoted their president's agenda as well as their own interests.⁹¹ On the other end of this spectrum was a Neutral AG, whom she characterized as the “eminent

⁸⁴ Clayton, *The Politics of Justice*, 4.

⁸⁵ Clayton, *The Politics of Justice*, 5.

⁸⁶ Clayton, *The Politics of Justice*, 142.

⁸⁷ Clayton, *The Politics of Justice*, 142.

⁸⁸ Clayton, *The Politics of Justice*, 142-3.

⁸⁹ Clayton, *The Politics of Justice*, 143.

⁹⁰ Nancy Virginia Baker, *Conflicting Loyalties: Law and Politics in the Attorney General's Office* (University of Kansas Press, 1992), 35-36.

⁹¹ Baker, *Conflicting Loyalties*, 35.

professional—capable, cautious, thoughtful, legalistic, nonpolitical.”⁹² Where the Advocate is loyal to the president and the administration that gave them the position, the Neutral is loyal to the law. By Baker’s standards, Cushing was “consistent with the Advocate model,” because of his “major advisory role on a broad range of issues,” which included foreign policy.⁹³ Additionally, she placed him in this category for his continuous usage of the “law as a tool,” to support and encourage policy decisions by the Pierce administration and Southern interests.⁹⁴ Baker also asserted that the “worst government scandals—Teapot Dome and Watergate—occurred during the tenures of Advocate officers,” which dramatically affected the public’s perception of this type.⁹⁵

Baker considered all the other AGs, “Neutral.” She argued that these AGs embodied “professional eminence, nonpartisanship, and widely recognized integrity.”⁹⁶ In the aftermath of Watergate, during which time an Advocate had been in office, Baker argued that President Ford “needed to restore faith in the presidency as well as in the Department of Justice.”⁹⁷ This led him to nominate “a man who embodie[d] more of the Neutral characteristics than any of his predecessors.”⁹⁸ According to Baker, Levi was the model Neutral AG, on account of his singular independence while in office.⁹⁹

Emphasis on the importance of the AG’s independence persisted into the twenty-first century, as demonstrated by legal scholar and professor Norman W. Spaulding in his

⁹² Baker, *Conflicting Loyalties*, 35.

⁹³ Baker, *Conflicting Loyalties*, 74.

⁹⁴ Baker, *Conflicting Loyalties*, 75.

⁹⁵ Baker, *Conflicting Loyalties*, 107.

⁹⁶ Baker, *Conflicting Loyalties*, 124.

⁹⁷ Baker, *Conflicting Loyalties*, 141.

⁹⁸ Baker, *Conflicting Loyalties*, 141.

⁹⁹ Baker, *Conflicting Loyalties*, 141.

2008 article, titled “Professional Independence in the Office of the Attorney General.”¹⁰⁰ Published at the end of George W. Bush’s second presidential term, Spaulding noted that his work was in response to “nearly ubiquitous” twenty-first century calls for a “lawyer who would bring greater professional independence” to the office, and thus, provide “more strict observance of relevant legal restraints.”¹⁰¹ Spaulding has observed that the ideal of “independence” has been “easy to invoke,” yet there is “no obvious definition.”¹⁰² Additionally, he noted that independence, as an “evaluative criteria for the office of the Attorney General,” increasingly appears in the wake of AG-involved legal scandals.¹⁰³ Spaulding argued that the professional independence with which discussions of politicization concern themselves, emerged “after and often in resistance to the Federalist and Whig civic republican ideal.”¹⁰⁴ By interrogating this ideal, he concluded that American professional independence required a “kind of virtuous mean between discipline and self-reliance.”¹⁰⁵ Independence has been a required attribute for the AG, especially since Watergate; however, Spaulding’s examination of the term in connection with the evolution of American political values, remains singular in its existence.¹⁰⁶

Through the Bush and Obama administrations, the independence of the AG continued to be of significant political concern. This was especially true for discussions of Levi, who has been consistently lauded for his independence and integrity.¹⁰⁷ For

¹⁰⁰ Norman W. Spaulding, “Professional Independence in the Office of the Attorney General,” *Stanford Law Review* 60, no. 6 (April 2008): 1931, <https://www.jstor.org/stable/pdf/40040428.pdf>.

¹⁰¹ Spaulding, “Professional Independence in the Office of the Attorney General,” 1932.

¹⁰² Spaulding, “Professional Independence in the Office of the Attorney General,” 1932.

¹⁰³ Spaulding, “Professional Independence in the Office of the Attorney General,” 1935.

¹⁰⁴ Spaulding, “Professional Independence in the Office of the Attorney General,” 1936.

¹⁰⁵ Spaulding, “Professional Independence in the Office of the Attorney General,” 1952.

¹⁰⁶ Spaulding, “Professional Independence in the Office of the Attorney General,” 1935.

¹⁰⁷ Neil A. Lewis, “Edward H. Levi, Attorney General Credited With Restoring Order After Watergate, Dies at 88,” *New York Times*, March 8, 2000, C25, <https://www.nytimes.com/2000/03/08/us/edward-h-levi-attorney-general-credited-with-restoring-order-after-watergate.html>.

example, criminal justice professor Samuel Walker argued in his 2012 book *Presidents and Civil Liberties from Wilson to Obama: A Story of Poor Custodians*, that Ford's decision to nominate Levi was "the best thing he ever did for civil liberties" because Levi "was a strong voice of integrity," and "arguably, the most politically independent attorney general in decades."¹⁰⁸ Walker argued that Levi demonstrated independence through the number of times he had public disagreements "with his boss in the White House."¹⁰⁹ Walker also suggested that because Levi's guidelines, which limited "domestic security investigations," only remained "internal Justice Department policy," reform "could be easily changed and weakened by future attorneys general."¹¹⁰ Thus, Walker suggested that Levi's moral character, not his post-Watergate reform efforts, defined his legacy.

In 2019, law professor Jed H. Shugerman proposed a new classification tool for AGs in his article, "Professionals, Politicos, and Crony Attorneys General: A Historical Sketch of the US Attorney General as a Case for Structural Independence." His categories were based on the background and experience of the men who were nominated for the position. He noted that the political normalization of the "crony or partisan campaign-insider" AGs was a twentieth-century phenomenon.¹¹¹ According to Shugerman, professionals were those lawyers who came to the position from private practice, government service, or the judiciary. In contrast, politicians were elected officials with some level of "established political clout," and cronies were those friends or close

¹⁰⁸ Samuel Walker, *Presidents and Civil Liberties from Wilson to Obama: A Story of Poor Custodians* (Cambridge University Press, 2012), 324, 327.

¹⁰⁹ Walker, *Presidents and Civil Liberties*, 325.

¹¹⁰ Walker, *Presidents and Civil Liberties*, 326.

¹¹¹ Jed H. Shugerman, "Professionals, Politicos, and Crony Attorneys General: A Historical Sketch of the U.S. Attorney General as a Case for Structural Independence," *Fordham Law Review* 87 (2019): 1966, https://scholarship.law.bu.edu/faculty_scholarship/3588/.

supporters of the president who gained power and influence through this connection.¹¹² According to his framework, Levi was a professional.¹¹³ Thus, both Shugerman (2019) and Baker (1992) concluded that there should be, and is, a shorthand tool to describe the AG, structured around their levels of loyalty to the president. Within their models, every AG fits into one of the categories they identified. Although, the author's respective systems of categorization differ in the data used, both operate on the assumption that each AG is significant to assess and classify. Baker made her conclusions after studying the entire term of each AG, whereas Shugerman focused primarily on the experience of an AG when they were appointed to the position.

A couple of years later, Longan and Fleissner turned to the actions of Levi and Bell after Watergate to serve as instruction "whenever the time comes to "win anew" the goal of a nonpartisan, depoliticized" DOJ.¹¹⁴ They make the case that Levi and Bell's successive terms allowed them to set a remarkable example of how AGs should act following intense politicization.¹¹⁵ Clayton wrote that Levi and Bell's consecutive terms had established a set of "norms and conventions" regarding nonpartisanship and departmental integrity, but that the Reagan administration had undone this practice with the appointment of Edwin Meese.¹¹⁶ The use of the phrase "Levi-Bell model," was first put forward by Meador in 2010 when he argued that it was the "successive appointments of Levi and Bell" which "gave rise to the hope that thereafter attorneys general would be in that mold."¹¹⁷ The "mold" that Meador refers to relied heavily upon the "character of

¹¹² Shugerman, "Professionals, Politicos, and Crony Attorneys General," 1968.

¹¹³ Shugerman, "Professionals, Politicos, and Crony Attorneys General," 1971.

¹¹⁴ Longan and Fleissner, "Partisanship and the Attorney General of the United States," 737-738.

¹¹⁵ Longan and Fleissner, "Partisanship and the Attorney General of the United States," 737.

¹¹⁶ Clayton, *The Politics of Justice*, 221.

¹¹⁷ Daniel J. Meador, "Griffin Bell at the Intersection of Law and Politics: The Department of Justice, 1977-1979," *The Journal of Law and Politics* XXIV, no. 4 (Fall 2008): 539, HeinOnline.

the person holding the office.”¹¹⁸ In his words, they must be a “person of integrity” as well as independent, non-political, and well-learned in the law.¹¹⁹

The credit for the DOJ’s rehabilitation after Watergate was similarly attributed to Levi and Bell by journalist David Leonhardt in 2018.¹²⁰ President Joseph Biden’s AG Merrick Garland subsequently reinforced this during his 2021 nomination acceptance speech.¹²¹ With these discussions, the traits of an ideal AG have solidified. Pulitzer-Prize-winning journalist David Rohde’s book, *Where Tyranny Begins: The Justice Department, the FBI, and the War on Democracy*, published in August 2024, emphasizes the urgent democratic threat present in the politicization of the DOJ. He asserted that during Trump’s presidency and post-presidency, he “successfully used conspiracy theories, co-option, and threats to bend DOJ and FBI officials to his will.”¹²² Trump’s attempts to use the office of the AG as a “political weapon,” provide clear and compelling evidence that the “post-Watergate reforms,” which Rohde asserts were designed “to prevent the use of the DOJ and FBI for political meddling,” were once again unraveling.¹²³

According to Rohde, it was Levi who reinforced the “dual, and contradictory, duties” of the AG.¹²⁴ These duties included the ability to “enact the broad policies of the President” while also maintaining the independence to “investigate, in a fair and

¹¹⁸ Meador, “Griffin Bell at the Intersection of Law and Politics,” 540.

¹¹⁹ Meador, “Griffin Bell at the Intersection of Law and Politics,” 540.

¹²⁰ David Leonhardt, “The Sense of Justice We’re Losing,” *New York Times*, April 29, 2018, <https://www.nytimes.com/2018/04/29/opinion/the-sense-of-justice-that-were-losing.html>

¹²¹ Thomas Franck, “Biden Introduces Attorney General Pick Merrick Garland as He Promises DOJ Independence,” CNBC, Jan. 7, 2021, <https://www.cnbc.com/2021/01/07/biden-introduces-attorney-general-pick-merrick-garland-vows-doj-independence.html>.

¹²² David Rohde, *Where Tyranny Begins: The Justice Department, the FBI, and the War on Democracy* (W.W. Norton & Company, 2024), xxvii.

¹²³ Rohde, *Where Tyranny Begins*, xxvii-xxviii.

¹²⁴ Rohde, *Where Tyranny Begins*, 14.

nonpartisan manner, potential crimes or corruption by presidents.”¹²⁵ Using contemporary examples such as the sentencing of Republican political strategist Roger Stone and the Mueller Report, Rohde demonstrated that under Trump’s administration, with the aid of his AGs, there had been significant erosion of Levi’s “post-Watergate reforms.”¹²⁶ These reforms refer to initiatives such as Levi’s “Attorney General Guidelines,” which had been the reason many considered him to be the “model of the post-Watergate attorney general.”¹²⁷ Most importantly, Rohde highlighted Levi’s independence, professionalism, and integrity as traits desperately needed in the post-Watergate era, and similarly needed in modern AGs.¹²⁸

Consistently in the study of the office of the AG, scholars have emphasized the importance of personal characteristics in determining effectiveness. These traits: integrity, independence and professionalism, were developed from the example first set by William Wirt, and reiterated over the course of the twentieth and twenty-first centuries. However, a second group of writers have also regularly examined the structural forces that have deleteriously affected the office. In the following two chapters, I suggest that without considering these issues in tandem, the contradiction that sits at the heart of the office of the American AG will never be resolved.

In order to make this point, the next chapter will provide a brief history of the federal AG, and it will explore how the ambiguous nature of the AGs duties, which arose from its initial legislation, heavily impacted how the position evolved. The third chapter will then utilize the context provided by the AGs history to examine Levi’s term in office.

¹²⁵ Rohde, *Where Tyranny Begins*, xvii, 14.

¹²⁶ Rohde, *Where Tyranny Begins*, xxvii.

¹²⁷ Rohde, *Where Tyranny Begins*, 14.

¹²⁸ Rohde, *Where Tyranny Begins*, 14, 150.

It will argue that although Levi embodied the ideal characteristics of an AG, he was unable to bring about the structural reform necessary to ensure that the position would not continue to be exploited.

CHAPTER II

Rooted in Ambiguity: An Evolution of the U.S. Attorney General, 1789-1974

During the earliest years of the office of the Attorney General (AG), the position itself was just a “germ of a great department” whose evolution was “still going on.”¹ However, when Dr. Edward Levi assumed the role of the United States’ (US) chief prosecutor 186 years after its creation, he inherited an office that had ballooned in importance and responsibility. In 1975, the AG oversaw tens of thousands of employees within the Department of Justice (DOJ), handled millions of dollars in its budget, and maintained several legal, investigatory, and prosecutorial divisions throughout the country.² Since 1789, several AGs have stood out to scholars in their study of the position’s evolution due to their impact on the duties or perception of the office. This chapter examines the terms of AGs such as William Wirt, Caleb Cushing, Harry M. Daugherty, and John N. Mitchell, who, during their time in office, significantly shaped expectations for the character and role of the AG. The tenures of these men most clearly illustrate how the idea of character increasingly became a defining attribute in the men who assumed the office of the AG.

The previous chapter noted that scholars of the subject have consistently judged ideal AGs in terms of their professionalism, integrity, and independence. They have also pointed out that the language that mandated the creation of the position in the Judiciary Act was insufficient, as there was no “detailed attempt made to define the powers, duties,

¹ Charles Willis Thompson, “The Evolution of Federal Justice in the United States,” *New York Times*, Jan. 31, 1937, 107, ProQuest.

² Victor S. Navasky, *Kennedy Justice* (Atheneum, 1971), xiii.

and privileges.”³ The ambiguity inherent in the original legislation has never been addressed, yet the position has continued to evolve, depending on how each President or AG defined the office and its responsibilities.

In this chapter I argue that the ambiguous nature of the AGs duties, and specifically the indeterminate client which the office represents—a contradiction set forth in the original Judiciary Act—heavily impacted the evolution of the position. As some scholars have noted, the imprecise language did not account for the office’s growth of influence and responsibilities.⁴ Most problematic was the continued lack of clear definitions, thus enabling potential conflicts of interest due to the President’s power over appointments and dismissals. This left the AG torn between serving the larger interests of the United States and serving as the personal legal officer for the President.

The American model of the AG was a direct descendant of the English AG, instituted during British colonial rule as an advocate for the Crown in matters of legislation and litigation. Each colonial AG was thus, a “delegate of the attorney general of England,” whose powers and duties “rested largely upon the common law and the needs of the province.”⁵ In a 1690 Royal order to the Governor of New York, the Crown requested that:

Whereas we conceive it very necessary for our service that there be an attorney general appointed and SETTLED, who may at all times take care of our rights and

³ Oliver W. Hammonds, *The Attorney General in the American Colonies*, ed. Paul M. Hamlin (New York University School of Law, 1939), 1.

⁴ Rita W. Cooley, “Predecessors of the Federal Attorney General: The Attorney General in England and the American Colonies,” *The American Journal of Legal History* 2, no. 4 (Oct. 1958): 312; Cornell W. Clayton, *The Politics of Justice: The Attorney General and the Making of Legal Policy* (M.E. Sharpe Inc., 1992), 4; Hammonds, *The Attorney General in the American Colonies*, 1.

⁵ The common law (as opposed to civil law) is the body of law established “by case law and precedent rather than codified law.” The Robbins Collection, “The Common Law and Civil Law Traditions,” Berkeley Law, 2017, <https://www.law.berkeley.edu/wp-content/uploads/2017/11/CommonLawCivilLawTraditions.pdf>; Hammonds, *The Attorney General in the American Colonies*, 6.

interests within our said province, YOU are with all convenient speed to nominate AND APPOINT a fit person for that trust.⁶

The first AGs were, as a group, notoriously unfit “for that trust.”⁷ These men were often merchants by trade, who did not set aside their businesses when assuming the office.⁸ The governor of New York complained in 1699 that he lacked “a good Attorney General to advise” him on “behalf of the king.”⁹ He lamented that his AG was “bred to trade” rather than being learned in “the law.”¹⁰ Furthermore, in 1701, he wrote that anyone could bribe his AG at “any time,” with “10 pieces of eight.”¹¹ The need for a reliable, legal representative of the English Crown who would be “faithfully ingaged [*sic*] and authorized” to command, prosecute, administer, and advise was a significant priority that concerned the maintenance of the colonies.¹² When the American colonies gained independence, the position did not disappear; instead, it was modified and a new federal office was created.

⁶ Emphasis in original letter. Royal Order to the Governor of New York Colony, Letter, 1690 in Hammonds, *The Attorney General in the American Colonies*, 8.

⁷ Hammonds, *The Attorney General in the American Colonies*, 8.

⁸ Hammond noted that this was typically the case up to 1780. Hammonds, *The Attorney General in the American Colonies*, 5.

⁹ Governor Earl of Bellomont to the Council of Trade and Plantations, Letter, May 1699, in Hammonds, *The Attorney General in the American Colonies*, 8.

¹⁰ Governor Earl of Bellomont to the Council of Trade and Plantations, Letter, May 1699, in Hammonds, *The Attorney General in the American Colonies*, 8.

¹¹ In British North America, colonists primarily used Spanish silver dollars as currency, as they were not allowed to mint their own money. The silver dollar was equivalent to eight Spanish “Reales.” Colonists would cut these coins to make change, quite literally having “pieces of eight.” National Maritime Historical Society, “Pieces of Eight,” Sea History, accessed Dec. 8, 2024, <https://seahistory.org/sea-history-for-kids/pieces-of-eight/>; Governor Earl of Bellomont to Unknown Recipient, Letter, January 1701 in Hammonds, *The Attorney General in the American Colonies*, 8.

¹² Each colony slightly differed in the specific duties and responsibilities given to their AG. In Virginia, the duties of the AG were to draft bills and “investigate and prosecute treasons, murders, felonys [*sic*], piracy, breaches of the peace, misdemeanors, contempts, [*sic*] prosecute officials who should break any penal laws, appear in [*sic*] behalf of the commonwealth in disputed land claims, and put in suit shipping and custom bonds. He also seems to have exercised a large degree of control and supervision over the collection of the public moneys and revenues.” Hammonds, *The Attorney General in the American Colonies*, 20-1; Act of General Court, May 23, 1650, in Hammonds, *The Attorney General in the American Colonies*, 16.

By the late eighteenth century, the First Congress (1789-91) had become increasingly aware of the need for a centralized body that could represent the government's legal business. Still, they were hesitant to establish a strong federal AG, cognizant of the possibility it could become an "engine of oppression" that would threaten the rights of independent states and individuals.¹³ The Judiciary Act of 1789, which outlined the federal court system and its lines of jurisdiction and responsibility, therefore briefly defined the duties of the new federal AG as such:

there shall be appointed a meet person, learned in the law, to act as Attorney General for the United States...whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned.¹⁴

Thus, the Judiciary Act designated the AG as the nation's chief law officer. The First Congress also outlined scant qualifications for the AG, stating that they must have legal expertise and experience. The AG would also prosecute suits before the Supreme Court in which the US' interests were concerned and provide legal opinions, primarily to the President, but also to other executive department heads.¹⁵ Thus, from its first days the federal AG was tasked with serving multiple masters. In this case, what was meant by the "United States" was extremely vague and provided no clarification as to whether one

¹³ Griffin B. Bell, "The Attorney General: The Federal Government's Chief Lawyer and Chief Litigator, or One Among Many?" *Fordham Law Review* 46, no. 6 (1978): 1050-1, https://ir.lawnet.fordham.edu/events_programs_sonnet_articles/4/.

¹⁴ *Judiciary Act of 1789*, 1 Stat. 73, sec. 35 (1789).

¹⁵ The pronoun 'he' is used throughout this thesis. The first female AG was not appointed until 1993, when President Bill Clinton appointed Janet Reno. As of 2023, there have only been two female AG's: Reno, and Loretta Lynch (2015-17), who was the first Black woman to serve as AG, and only the second Black AG; Carl Hulse, "Janet Reno, First Woman to Serve as U.S. Attorney General, Dies at 78," *New York Times*, Nov. 7, 2016, <https://www.nytimes.com/2016/11/08/us/janet-reno-dead.html>; Timothy M. Phelps and Michael A. Memoli, "Attorney General Pick Loretta Lynch Would be First Black Woman in Post," *Los Angeles Times*, Nov. 7, 2014, <https://www.latimes.com/nation/la-na-attorney-general-lynch-20141107-story.html>; Caleb Cushing, "Office and Duties of Attorney General," *The American Law Register* 5, no. 2 (Dec. 1856): 65-94, <https://doi.org/10.2307/3301930>.

should interpret it as the President's interests, since the AG already provided legal counsel to the executive, or to the country and its citizens.

Beginning with President George Washington, the AG served as a member of the President's Cabinet, and joined the Secretaries of War, Treasury, and Foreign Affairs (known now as the State Department). However, there would immediately be significant discrepancies between the AG and his Cabinet counterparts.¹⁶ The Secretaries headed "executive departments," and were paid \$3,000-\$3,500, whereas the AG only made \$1,500, was considered part-time and only head of an "office."¹⁷ With these features in mind, the President sought a nominee whom they could trust and rely on, who also aptly demonstrated their knowledge of the law. In addition, the ideal candidate would not be discouraged by the position's lack of benefits, or the work which lay ahead in establishing a federal office. In this case, Washington turned to Edmund Randolph.

Randolph had become acquainted with Washington when he served as Washington's *aide-de-camp* in 1775; additionally, Randolph had established himself as an influential figure in early American politics, evidenced by his participation the 1787 Constitutional Convention and his introduction of the Virginia Plan.¹⁸ Randolph had ably

¹⁶ R. Gordon Hoxie, "The Cabinet in the American Presidency, 1789-1984," *Presidential Studies Quarterly* 14, no. 2 (Spring 1984): 209-14, <https://www.jstor.org/stable/27550068>.

¹⁷ In their original deliberations, the Senate had decreased the Attorney General's salary from \$2,000 to \$1,500. The members of the Cabinet that received the higher salaries were the Secretary of War, Secretary of Treasury, and Secretary of Foreign Affairs (aka State). Arthur Sackley, "Salaries of Major Federal Officials, 1789-1965," *Monthly Labor Review* 87, no. 10 (Oct. 1964): 1144-1145, <https://www.jstor.org/stable/41835528>.

¹⁸ An *aide-de-camp* is a military officer assigned to help a higher-ranking officer. *Collins English Dictionary*, 14th ed. (New York: Penguin Random House, 2023) s.v. "aide-de-camp."; Randolph had an illustrious political career, and has been described as a "forgotten Founding Father." See Revolutionary Gazette, "Edmund Randolph – Forgotten Founding Father," YouTube, April 19, 2021, video, <https://www.youtube.com/watch?v=6IrXaioAH8>. Randolph participated in the Constitutional Convention (which was a meeting to craft the Constitution) as a Virginia delegate. He is also noted for his work as a primary writer (with James Madison) of the Virginia Plan, a proposal for the composition of the new American government, which largely became the basis of the Constitution. For more information on Randolph and the Constitution see: Kevin R.C. Gutzman, "Edmund Randolph and Virginia

demonstrated his legal and administrative skill as the AG of Virginia (1776-82), and later, as its governor (1786-88).¹⁹ Furthermore, his loyalty to Founding Fathers such as Washington, Thomas Jefferson (who was his second cousin), and James Madison had already been proven, and thus made him a trusted associate.²⁰ This loyalty to the President was one of the more important qualifications during the office's earliest existence, since the AG relied on the President for the job, and was providing the bulk of legal opinions at his request.

Randolph's letters and memos reveal his diligence and attention to the office of the AG, but he also wrote openly about his frustration with the lack of financial and material support, the absence of any jurisdiction over district attorneys, and the necessity of maintaining a private practice upon acceptance of the position.²¹ Randolph even noted to the President that these deficiencies, as they were, were "injurious to the public service."²² His concern was that the lack of structural support delegitimized the office of the AG and could discourage future officeholders from ever fully committing themselves to the position, which would be detrimental to the legal well-being of the nation and its citizens. Nevertheless, Randolph worked diligently to fulfill his role and duties, serving as AG from 1789-1794.

Constitutionalism," *The Review of Politics* 66, no. 3 (Summer 2004): 469-497, <https://www.jstor.org/stable/414919>; Mary K. Bonsteel Tachau, "George Washington and the Reputation of Edmund Randolph," *The Journal of American History* 73, no. 1 (June 1986): 15-34, <https://doi.org/10.2307/1903604>; Edward J. Drake, "The Men Who Didn't Sign the Constitution," *American Bar Association Journal* 49, no. 11 (Nov. 1963): 1101-1103, <https://www.jstor.org/stable/25722585>.

¹⁹ John J. Reardon, *Edmund Randolph: A Biography* (MacMillan Publishing Co., Inc., 1974), 34, 87.

²⁰ These were all men who he had worked with in early American politics. Patrick Henry, Jr. and Thomas Jefferson to George Washington, July 26, 1775, in Moncure Daniel Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph* (G.P. Putnam's Sons, 1883), 24; Tachau, "George Washington and the Reputation of Edmund Randolph," 16.

²¹ Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph*, 133-4.

²² Edmund Randolph to George Washington, Dec. 26, 1791, American State Papers: Miscellaneous 1:45-6. <https://memory.loc.gov/cgi-bin/ampage?collId=llsp&fileName=037/llsp037.db&recNum=53>.

In 1790, Congress directed Randolph to provide a set of recommendations for a revised Judiciary Act, to which he responded with three proposals: 1) to have Congress provide the necessary funds so that his office could employ a clerk for transcription and correspondence; 2) to grant the AG authority over the federal district attorneys, and 3), to authorize the AG to advocate for US interests in any case in which the US was involved.²³ However, Congress rejected the proposal, likely due to lingering concerns about the potential for abuses of power should there be further consolidation of legal authority within the office. Randolph's concerns did not motivate Congress or the President to act at that time, and the challenges he faced continued to trouble subsequent AGs.

Simultaneously, he worked to shape the identity of the new office. Washington utilized him as a nonpartisan political adviser. He looked to Randolph for a "middle position" in the escalating feud between Jefferson and Alexander Hamilton.²⁴ While historians have primarily interpreted Randolph's "middle-of-the-road" approach as a measure of his independence, his "waffling" chafed his peers.²⁵ Jefferson confided in an August 1793 letter to Madison that the AG was

the poorest chameleon I ever saw, having no color of his own, and reflecting that nearest him. When he is with me he is a whig [*sic*], when with H he is a tory [*sic*], when with the P he is what he thinks will please him. The last is his strongest hue...²⁶

²³ Susan Low Bloch, "The Early Role of the Attorney General in Our Constitutional Scheme: In the Beginning There Was Pragmatism," *Duke Law Journal* 1989, no. 3 (June 1989): 587, <https://www.jstor.org/stable/pdf/1372580.pdf>.

²⁴ Reardon, *Edmund Randolph: A Biography*, 150, 189.

²⁵ Edmund Randolph to George Washington, April 19, 1794 in John Garry Clifford, "The Muddy Middle of the Road: The Politics of Edmund Randolph, 1790-1795," *The Virginia Magazine of History and Biography* 80, no. 3 (July 1972): 287, <https://www.jstor.org/stable/4247732>; Reardon, *Edmund Randolph: A Biography*, 150; Tachau, "George Washington and the Reputation of Edmund Randolph," 16.

²⁶ "H" refers to Alexander Hamilton and "P" refers to President George Washington; "From Thomas Jefferson to James Madison, August 11, 1793," Founders Online, National Archives, <https://founders.archives.gov/documents/Jefferson/01-26-02-0599>.

In this case, while Randolph's political independence had made him valuable to Washington as an adviser for a time, he eventually alienated many of his peers with what presented as his "undependability."²⁷

Furthermore, when Jefferson resigned as Secretary of State, he cautioned Washington against appointing Randolph as his successor, and alleged that he knew of "the embarrassments in his [Randolph's] private affairs," which had "obliged him [Randolph] to use expedients which had injured him with the merchants and shopkeepers and affected his character of independence."²⁸ Jefferson was particularly critical of Randolph in the latter part of his term, and this attack on his character, although not entirely substantiated by historical evidence, does identify early expectations for the federal AG. Jefferson alluded to Randolph's financial issues, which had only been exacerbated by his responsibilities as AG.²⁹ There was the implication that the low salary could have motivated Randolph to partake in extraneous activities to support himself and his family, which discredited his honesty and impartiality and allowed others to attack his reputation as an independent AG.

Despite this, Randolph made an industrious effort to carve out a distinct space for the office of the federal AG in the newly formed Cabinet, and represented the new model of AG, which would be required to be "learned in the law."³⁰ While he failed to bring

²⁷ Tachau, "George Washington and the Reputation of Edmund Randolph," 16.

²⁸ Expedients in this context referred to actions which are immediately advantageous but are done with disregard for one's ethics and principles. These "embarrassments" which Jefferson alluded to, probably are in reference to the poor health of his wife, and his inability to take on clients as he was so devoted to the Washington administration. Thomas Jefferson, *The Anas of Thomas Jefferson, 1791-1809*, ed. Franklin B. Sawvel (Round Table Press, 1903), 165; "Edmund Randolph to James Madison, March 15, 1790," Founders Online, National Archives, accessed May 8, 2024, <https://founders.archives.gov/documents/Madison/01-13-02-0076>.

²⁹ Jefferson, *The Anas of Thomas Jefferson, 1791-1809*, 165.

³⁰ *Judiciary Act of 1789*, 1 Stat. 73, sec. 35 (1789).

legislative changes to the office of the AG, Randolph's commitment to Washington and his position made him unique from many of his successors in this early period. Given the limitations of the early office structure, many of his successors did not commit to the role in the same manner as he had, and as a result, the office saw little change during its formative years.³¹ It would not be until the terms of William Wirt and Caleb Cushing that the office of the AG would undergo several changes, and its mandate for the office would be somewhat clarified and expanded.

Wirt served for twelve years (1817-29) under the administrations of President James Monroe and John Quincy Adams.³² According to several historians, Wirt "did as much to shape the position" of the AG "as anyone before or since."³³ Historians have attributed the majority of his legacy to his role in normalizing the AG as the executive branch's chief interpreter of the law, and initiating the professionalization of the office.³⁴ Despite Madison's wishes to pass a residency requirement bill to keep the AG "at the seat of Government during the session of Congress..." Wirt opted to continue his general practice and keep a residence in Baltimore.³⁵ However, even without occupying the position full-time, Wirt committed himself to the organization of the office as a legitimate government entity.

³¹ Many of these early AGs were more committed to their private practices, and as such did not prioritize their responsibility to public service. Paweł Laidler, "The Attorney General of the United States: The History of the Office from the Very Beginning to 1870," *Ad Americam* 5, (2004): 75, <https://ruj.uj.edu.pl/server/api/core/bitstreams/2e34f4e6-dceb-4622-80ae-689ec4b416bd/content>.

³² James Monroe to William Wirt, Oct. 29, 1817, in John Pendleton Kennedy, *Memoirs of the Life of William Wirt, Attorney General of the United States*, vol. 2 (Philadelphia: Lea and Blanchard, 1849), 28-9; Henry Barrett Learned, "The Attorney-General and the Cabinet," *Political Science Quarterly* 24, no. 3 (Sep. 1909): 447-8.

³³ H. Jefferson Powell, "XIV.1821: The Attorney General and the Rule of Law," in *A Community Built on Words: The Constitution in History and Politics* (University of Chicago Press, 2002), 146.

³⁴ Powell, "XIV.1821: The Attorney General and the Rule of Law," 146.

³⁵ Learned, "The Attorney-General and the Cabinet," 456.

Wirt, who came to the position with experience as a respected lawyer, judge and writer, was heralded by the press for “his brilliant faculties of the mind,” his reputation as “a lawyer of most respectable standing,” a “*belles lettres* scholar,” and for his strict “devotion to his country.”³⁶ When he assumed office, Wirt was shocked to discover that there was not even a “trace of a pen indicating in the slightest manner any one act of advice or opinion.”³⁷ He believed that writing official opinions was the most burdensome of the AGs duties, and without any comprehensive and organized record, any government department that consulted this legal advice was in danger of “perpetual collisions and inconsistencies.”³⁸ As a result, he began constructing an archive of official opinions, which would allow him and his staff, as well as future AGs, to consult and quote opinions and their legal basis. By doing so, Wirt’s successors would be empowered to maintain continuity when providing legal opinions.³⁹

Among other things, Wirt was highly disappointed with the lack of weight given to these opinions by Congress and other executive branch members. He began a self-prompted examination of the Judiciary Act and subsequently shared his observations with

³⁶ *Belles lettres* is a literary term which the French used to distinguish “artistic literature from scientific or philosophical literature.” *The Oxford Dictionary of Literary Terms*, 4th ed. (Oxford, England: Oxford University Press, 2015) s.v. “*belles-lettres*.” Selected books of William Wirt: *The British Spy, Or, Letters to a Member of the British Parliament* (1804), *The Life of Patrick Henry* (1817). “Desultory. Government of the U. States,” *Arkansas Gazette*, Dec. 6, 1825, 4, Readex/NewsBank; “Attorney General,” *Poulson’s American Daily Advertiser*, Nov. 17, 1817, 3. Readex/NewsBank; “The Administration,” *Salem Gazette*, March 16, 1827, 1, Readex/NewsBank.

³⁷ Thompson, “The Evolution of Federal Justice in the United States,” 107.

³⁸ William D. Wirt to Hon. Hugh Nelson, March 27, 1818, in Kennedy, *Memoirs of the Life of William Wirt*, 62.

³⁹ His practice of systematically maintaining the opinions of the AGs would result in an 1852 volume titled, *Official Opinions of the Attorneys General of the United States*. As a distinction, *Official Opinions* was a commercial project which contained a selection of opinions, “which, in view of the public interests, have been deemed proper for publication.” The collection included opinions from 1791 on. H. Jefferson Powell, “Attorney General Taney & the South Carolina Police Bill,” *Green Bag* 5 (Autumn 2001): 75, https://scholarship.law.duke.edu/faculty_scholarship/3441/; Wirt to Hon. Hugh Nelson, March 27, 1818, in Kennedy, *Memoirs of the Life of William Wirt*, 62; Laidler, “The Attorney General of the United States,” 75.

the Chairman of the Judiciary Committee. His 1818 letter emphasized the necessity for the office of the AG's advice to "have an official influence."⁴⁰ One way to legitimize these legal opinions would be to continually maintain the AG's archive. However, he argued that such labor would not be possible "without an expense, [*sic*] in clerk-hire, office-fuel, stationery," and currently there was "no provision" in the law for these material needs.⁴¹ Wirt's letter amplified issues Randolph had first raised, and finally Congress agreed to provide the AG's office with the funds to employ a clerk and a \$500 stipend for office supplies.⁴² Although this provision left much to be desired, it was still a major step forward in the professionalization of the office, and therefore, it made a significant contribution to Wirt's legacy.

In 1853, Cushing, President Franklin Pierce's AG, became the first to adhere to a residence requirement and to serve in the office without supplementing his income with a private law practice.⁴³ This was largely due to the fact that the AG now received an increased salary of \$8,000.⁴⁴ He imagined the AG to be "the great, controlling, supervising office," within the administration and publicly highlighted the power and influence of *his* executive department.⁴⁵ Claude Fuess, one of his biographers, described Cushing as an "indefatigable Attorney General," and noted that in his attempts to secure the public's admiration for the Pierce administration, he was willing to take on any task.⁴⁶

⁴⁰ Wirt to Hon. Hugh Nelson, March 27, 1818, in Kennedy, *Memoirs of the Life of William Wirt*, 62.

⁴¹ Wirt to Hon. Hugh Nelson, March 27, 1818, in Kennedy, *Memoirs of the Life of William Wirt*, 63.

⁴² Learned, "The Attorney-General and the Cabinet," 450.

⁴³ Learned, "The Attorney-General and the Cabinet," 456.

⁴⁴ Claude Moore Fuess, *The Life of Caleb Cushing, Volume 2* (Harcourt Brace & Co., 1923), 136.

⁴⁵ Senator Charles Sumner wrote in a letter that "The rulers of the country are the President, with Cushing..." President Pierce and Cushing were described as "imperialistic," and Cushing was commended as the personification of "young America," energetic and industrious. Thompson, "The Evolution of Federal Justice in the United States," 107; Fuess, *The Life of Caleb Cushing*, 136-137.

⁴⁶ Fuess, *The Life of Caleb Cushing*, 136.

Cushing's aims at strengthening the authority of the AG and ensuring his influence within the Cabinet was clear to his peers, with one writing that if he was "a less ambitious man," he might have "despaired at the avalanche of business..."⁴⁷ Yet, Cushing "welcomed it...and looked about for more."⁴⁸ His industriousness and meticulous work ethic were representative of his experience and his commitment to the professionalization of the position.

Although "all the judges and members of the bar" had the "highest respect and opinion of his legal capacity," other facets of Cushing's character ultimately shaped his reputation as AG. In a particularly vindictive piece, *The New York Herald* described Cushing as the "Mephistophiles [*sic*] of the Cabinet," as he was a "smart, quick-witted fellow" who wanted "to use everybody, but sometimes gets used himself."⁴⁹ An 1853 issue of the *New York Evening Mirror* noted that Cushing had "received the sobriquet of 'Richelieu,'" which alluded to his political alliance with the President, and his "struggle for executive influence and popular admiration."⁵⁰ While Cushing was indispensable to the Pierce administration, his integrity increasingly came under fire. However, his loyalty

⁴⁷ Michael Catherine Hodgson, "Chapter IV: Compeer in the Cabinet," in *Caleb Cushing: Attorney General of the United States, 1853-1857* (Catholic University of America Press, 1955), 102.

⁴⁸ Hodgson, "Chapter IV: Compeer in the Cabinet," 102.

⁴⁹ In *Faust*, Mephistophiles is the evil entity who tempted Faust, getting him to sell his soul to the Devil. If someone is a Mephistophiles or Mephistophelian, they are clever and cunning, like a devil. People also use this adjective to describe a devilish or evil person, but in this context, *The New York Herald* is making more of a statement on his cunningness. *Vocabulary.com Dictionary*, s.v. "mephistophelian," Accessed Sep. 28, 2024, <https://www.vocabulary.com/dictionary/mephistophelian>; *The New York Herald*, "Gen. Cushing in a New Character," *The Barre Patriot*, Nov. 18, 1853, 3, Readex/NewsBank.

⁵⁰ In this context, 'Richelieu,' refers to the 17th century French clergyman and politician. Cardinal Richelieu was chief minister to Louis XIII, who is known for having helped to establish total monarchy in France, by removing the Protestants from power. He was also known as *l'Éminence rouge*, which translates to "the Red Eminence." It is likely that Cushing earned this nickname due to his close political relationship working to advance the interests of Pierce's administration, regardless of if the tasks fell directly within the purview of the AG. Cushing wanted to become Secretary of State and would take on any related jobs, while some saw him as power-hungry, others saw his hard work and talents being taken advantage of. Orest Ranum, "Richelieu and the Great Nobility: Some Aspects of Early Modern Political Motives," *French Historical Studies* 3, no. 2 (Autumn 1963): 189, <https://doi.org/10.2307/286029>; Fuess, *The Life of Caleb Cushing*, 136-137.

to the President was unquestionable, and his term demonstrated that people did not yet expect AGs to exhibit independence and integrity as they would be closer to the twentieth century.

Cushing identified his position as one of great importance. In an 1856 opinion “Office and Duties of Attorney General,” he defined the role of the AG as “quasi-judicial” (court-like).⁵¹ He also suggested that a periodic report on the “business of his [AG] office” should be submitted to Congress and the President.⁵² This report would include official opinions and “any pertinent suggestions regarding the interests of the Government.”⁵³ This would ensure that those in top government positions could demonstrate a “unity in executive decision and action.”⁵⁴ This opinion piece, Fuess argued, demonstrated that Cushing was “the highest type of public servant— intelligent, industrious, tireless, systematic, progressive” and interested in his work.⁵⁵ For these early AGs, these traits were highly prized. However, early administrations prioritized loyalty, not independence. The politicization of the office of the AG would not become an issue until the early twentieth century. Indeed, the early AGs partook in significant political tasks, often openly aligned with their respective parties, because they actively engaged in the act of establishing a new government, and although overzealous partisanship was not encouraged, Presidents expected political loyalty as it reflected trust and dependability.

⁵¹ Cushing, “Office and Duties of Attorney General,” 72.

⁵² Cushing, “Office and Duties of Attorney General,” 87.

⁵³ Cushing, “Office and Duties of Attorney General,” 87.

⁵⁴ Cushing wrote that unity in this sense could not be “obtained by means of a plurality of persons wholly independent from one another, without corporate conjunction...”; Learned, “The Attorney-General and the Cabinet,” 458-9.

⁵⁵ Fuess, *The Life of Caleb Cushing*, 182.

Over the nineteenth century, lawmakers continuously discussed the need for a centralized department of law with federal authority. Over the years, multiple attempts for legislation had been abandoned. Although in 1870, Representative Thomas A. Jenckes (R-RI), introduced legislation that he hoped would ensure that “all the law officers...shall be subordinate to one head.”⁵⁶ The legislation passed through Congress and in June 1870, President Ulysses S. Grant signed the bill into law, which established the Department of Justice.

The act created an executive department under the purview of the AG, and provided for two subordinate offices that would become indispensable to the administration.⁵⁷ While the primary responsibility of the DOJ would be to handle all legal affairs—both criminal and civil—within the US, the new legislation gave the AG definite authority over federal law enforcement; this provision finally encouraged the use of coordinated legal positions throughout the whole government. While the AG added department head to its responsibilities as chief legal officer, the bill also provided for a solicitor general, designated to take government cases before the Supreme Court, and a number of assistant AG’s, who could be delegated to different tasks and divisions throughout the expanding department.⁵⁸ Eighty-one years after its creation, the AG’s office, having undergone long-awaited structural changes, now maintained an explicitly administrative function apart from its legal duties. However, its original legal mandate remained the same.

⁵⁶ “A Department of Justice,” *The New York Times*, May 13, 1870, 4, ProQuest; Learned, “The Attorney-General and the Cabinet,” 461; Griffin B. Bell and Ronald J. Ostrow, *Taking Care of the Law* (Mercer University Press, 1986), 176.

⁵⁷ *A Bill to Establish a Department of Justice*, 16 Stat. 162 (1870); Laidler, “The Attorney General of the United States,” 78.

⁵⁸ Learned, “The Attorney-General and the Cabinet,” 463.

In 1906, President Theodore Roosevelt, then in his second term, nominated Charles Bonaparte, the grandnephew of Napoleon I, to become his AG.⁵⁹ At that time, if the DOJ wanted to conduct any investigations, the AG was forced to utilize Secret Service agents from the Treasury Department.⁶⁰ The DOJ's lack of an investigative force, the dearth of federal crime laws, and the absence of a national network between federal and local law enforcement inhibited their crime-fighting capacities and exposed systematic inadequacies within American law. Bonaparte and Roosevelt's solution would be to create a "sort of Federal police;" this force would be under the charge of the DOJ.⁶¹

Beginning in June 1908, the DOJ's new "Bureau of Investigation" (BI) was tasked with inquiries into naturalization violations, enforcing the 1910 Mann Act, and looking into land and bank fraud reports, all with these "special agents" ultimately under the control of the AG.⁶² The BI allowed the DOJ to be more self-sufficient and less reliant on the Treasury Department for manpower; and the influx of new federal laws

⁵⁹ "Bonaparte Nomination Held Up in the Senate," *New York Times*, Dec. 11, 1906, 3, ProQuest.

⁶⁰ The Secret Service was set up in 1860 within the Treasury Department to "detect, arrest, and prosecute counterfeiters of the coins of the United States." Their presidential protection function was not officially added to their mandate until after the 1901 assassination of President William McKinley. If the AG wanted to investigate, they would have to request manpower from the Secret Service or outsource to another agency, such as the Pinkerton Detective Agency. See also Norman Ansley, "The United States Secret Service: An Administrative History," *The Journal of Criminal Law, Criminology, and Police Science* 47, no. 1 (May/June 1956): 93-94, <https://scholarlycommons.law.northwestern.edu/jclc/vol47/iss1/14/>; Willard M. Oliver, "The Secret Service," in *The Birth of the FBI: Teddy Roosevelt, the Secret Service, and the Fight Over America's Premier Law Enforcement Agency* (Rowman & Littlefield Publishers, Inc., 2021), 82-85.

⁶¹ "To Shift Control of Secret Service," *New York Times*, Dec. 22, 1908, 3, ProQuest; James S. Pula, "Bruce Bielaski and the Origin of the FBI," *Polish American Studies* 68, no. 1 (Spring 2011): 43-44, <https://www.jstor.org/stable/41289314>.

⁶² Bonaparte's successor, George W. Wickersham was the AG to give the investigative unit the name Bureau of Investigation. The Mann Act aimed to target prostitution and human trafficking by criminalizing "the use of interstate or foreign commerce to transport women for immoral purposes." *Legal Information Institute*, s.v. "Mann Act," accessed Nov. 20, 2023, https://www.law.cornell.edu/wex/mann_act; "Plan to Save Girls: Federal Authorities to Crush 'White Slave' Traffic," *The Washington Post*, Oct. 26, 1910, 5, ProQuest. The Bureau also did rudimentary immigration enforcement when they investigated "naturalization violations; 'President Thanks Lawyers: Praises Assistant United States Attorneys for Naturalization Law Work,'" *The Washington Post*, April 24, 1908, 3, ProQuest; Oliver, *The Birth of the FBI*, 174.

expanded the mandate of their jurisdiction. Bonaparte and Roosevelt's BI afforded the AG more independence and influence, due to their control of both an investigative unit and prosecutorial authority.

By 1910, the US government had become increasingly concerned with anarchist and communist groups on American soil.⁶³ The First World War prompted the DOJ to reassess its priorities, transitioning from trust-busting and legal opinions into a wartime intelligence hub. This operational shift was noticeable within the BI, which increased the staff and budget to accommodate their new wartime responsibilities. Even after the war ended, the AG was primarily responsible for overseeing the BI, and enforcing new federal policies such as: the Espionage Act of 1917, which criminalized interference with US war efforts; and subsequently the Sedition Act of 1918, which promised harsh punishments for "dissenters," who were viewed as undertaking actions that were antithetical to the American cause.⁶⁴ In 1919, President Woodrow Wilson appointed a "Quaker who helped to elect" him, one of the "leading Wilson men": A. Mitchell Palmer, who at that time was working as the Alien Property Custodian.⁶⁵ By doing so, Wilson kept in the tradition of nominating an AG who had already demonstrated loyalty to him and his agenda.

Palmer's legacy as AG was heavily impacted by his "usurpation of authority" both during and before his term.⁶⁶ When Wilson announced Palmer's nomination, some

⁶³ Nathan Masters, *Crooked: The Roaring '20s Tale of a Corrupt Attorney General, a Crusading Senator, and the Birth of the American Political Scandal* (Hachette Books, 2023), 102-103.

⁶⁴ Espionage Act, 18 U.S.C. § 792 (1917); Sedition Act, Pub. L. 65-150, 40 Stat. 553 (1918). The Sedition Act was repealed in December 1920.

⁶⁵ "A.W. Palmer Nominated for Attorney General," *Wall Street Journal*, Feb. 28, 1919, 7, ProQuest; "The New Attorney General," *The Washington Post*, May 8, 1919, 6, ProQuest.

⁶⁶ "Finds Palmer in Right in 1920 Raids on Reds: Senate Committee Declares He Was Not Guilty of Illegal Usurpation of Authority," *New York Times*, April 11, 1922, 32, ProQuest.

Congressional opponents alleged that Palmer had used his ranking position in the office of the Alien Property Custodian “to give positions to Democrats at huge salaries.”⁶⁷ Furthermore, they asserted that Palmer had turned the office “into a political machine for the furtherance of his own ambitions.”⁶⁸ Wilson’s affinity for Palmer helped secure his confirmation, but much of the public already saw him as potentially dishonest, and politically motivated.⁶⁹ They were concerned about potential politicization, and critical of Palmer for not being more independent from Wilson. They also believed that he was a man of little integrity, a marked change from the early AGs who had been defined by their legal skill and loyalty to the Presidential administration.

Despite public concerns, Palmer took office during the first “Red Scare,” which followed the First World War and the Bolshevik Revolution. This period was characterized by the US’ all-consuming anxiety over communism and the invasion of political radicals.⁷⁰ The panic resulted in the demonization of immigrant communities, those with foreign connections, and labor organizers.⁷¹ The AG’s raids, conducted between November 1919 and January 1920, utilized “evidence” collected during surveillance campaigns to round up and arrest “radicals” with the intention of charging and deporting them.⁷²

⁶⁷ “Nominates Palmer Attorney General: President Names Pennsylvanian to Office He Wanted in the First Wilson Cabinet,” *New York Times*, Feb. 28, 1919, 5, ProQuest.

⁶⁸ “Untermeyer Insists on Palmer Inquiry: Renews Charges Against Attorney General and Says More Than Mud-Slinging Is Expected,” *New York Times*, Jan. 23, 1921, 15, ProQuest.

⁶⁹ “Untermeyer Insists on Palmer Inquiry,” 15.

⁷⁰ “Unpreparedness in the War Against Radicalism,” *New York Times*, Nov. 23, 1919, XXI, ProQuest; “Palmer Promise More Soviet Arks,” *New York Times*, Feb. 29, 1920, E1, ProQuest; A. Mitchell Palmer, “The Case Against the ‘Reds,’” *The Forum* 63 (Feb. 1920): 173-180, Reprinted by Marxists Internet Archive, ed. Tim Davenport, 2004, <https://www.marxists.org/history/usa/government/fbi/1920/0200-palmer-redscase.pdf>.

⁷¹ Stanley Coben, “A Study in Nativism: The American Red Scare of 1919-20,” *Political Science Quarterly* 79, no. 1 (March 1964): 59-60, <https://doi.org/10.2307/2146574>.

⁷² “Palmer Declares Alien ‘Reds’ Are to Be Deported,” *The Ogden Standard*, Nov. 8, 1919, 1, <https://chroniclingamerica.loc.gov/lccn/sn85058396/1919-11-08/ed-1/seq-1/>; “Sweeping Drive is Made

These operations subsequently became known as the “Palmer Raids,” and they were notably divisive. Several high-profile lawyers filed a brief with the Senate Judiciary Committee, arguing that the raids deprived “thousands of American citizens” of their legal rights.⁷³ However, others in the media defended Palmer, and they argued that he was a “strong, fearless Attorney General” who was merely “enforcing the law.”⁷⁴ They emphasized that Palmer had been executing his duty as a “patriotic American,” and had “accepted the heavy responsibility” which had come to him.⁷⁵ The Senate Committee eventually acquitted Palmer, but his reputation as AG, by that point, was damaged. His actions as AG highlighted the department’s power and the perils of having a non-independent appointee lead the DOJ. However, it would be Palmer’s successor that would come to define, for the first time, what politicians and the public did not want in their AG.

President Warren Harding arrived at the Oval Office in 1921 with an entourage of close allies whom he quickly installed in influential positions within his administration.⁷⁶ Historians have dubbed these men as the “Ohio gang of political henchmen and cronies.”⁷⁷ They were men who were entirely dependent upon the President, as they had received their positions without the public’s support or confidence.⁷⁸ One of the most

Against Radicals,” *The Ogden Standard*, Jan. 3, 1920, 1, <https://chroniclingamerica.loc.gov/lccn/sn85058396/1920-01-03/ed-1/seq-1/>; “3,000 Arrested in Nation-Wide Round-Up of ‘Reds’; Palmer Directs Raids in 35 Cities; 650 Seized Here,” *New York Tribune*, Jan. 3, 1920, 1. <https://chroniclingamerica.loc.gov/lccn/sn83030214/1920-01-03/ed-1/seq-1/>; Associated Press, “Raids Ordered by Palmer,” *New York Times*, Nov. 14, 1919, 1, ProQuest.

⁷³ “12 Lawyers Renew Attack on Palmer,” *New York Times*, Jan. 19, 1921, 28. ProQuest; “Lawyers Denounce Raids on Radicals,” *New York Times*, May 28, 1920, 6, ProQuest.

⁷⁴ “A Misleading Attack,” *The Washington Post*, March 19, 1922, 34, ProQuest.

⁷⁵ “A Misleading Attack,” 34.

⁷⁶ “Harding Wins,” *The Marion Daily Star* newspaper clipping, Nov. 3, 1920, P 146, Box 41, Harding Memorial Association Collection, Ohio History Connection, Columbus, OH, <https://ohiomemory.org/digital/collection/p16007coll100/id/1477/rec/18>.

⁷⁷ Sidney Warren, “Corruption in Politics: IV. The Harding Era,” 349.

⁷⁸ Warren, “Corruption in Politics: IV.,” 349.

controversial additions to the President's Cabinet was his campaign manager, a politician by the name of Harry M. Daugherty. Harding had rewarded Daugherty for his loyalty by appointing him AG.⁷⁹ When Daugherty's name was announced as Harding's nominee, *The New York Times* wrote that his appointment could only be "regarded as the payment of a political debt," and that if Congress were to confirm Daugherty, they would be allowing "a man not believed to be competent to do the important work placed in his hands."⁸⁰ Even with the recent memory of Palmer as AG, "Mr. Harding" had kept with patronage politics and nominated his "best friend."⁸¹

Despite lingering concerns about his competency, Congress confirmed Daugherty as AG in March of 1921 and he quickly made himself at home in the White House.⁸² When he arrived in Washington, he brought his close friend Jess Smith with him. Smith "immediately installed himself in an office in the Department of Justice," and subsequently called for "a list of all employes [*sic*] there, with their political affiliations, so that he could decide which employes [*sic*] to retain and which to discharge or transfer."⁸³ Additionally, he installed his boyhood friend and founder of the William J.

⁷⁹ James N. Giglio, "Attorney General Harry M. Daugherty and the United Gas Improvement Company Case, 1914-1924," *Pennsylvania History: A Journal of Mid-Atlantic Studies* 46, no. 4 (Oct. 1979): 347, <https://www.jstor.org/stable/27772626>; "Harry M. Daugherty is Moving Spirit Behind Senator Harding: Veteran Buckeye Political Leader Said to Be Responsible for Candidacy—Figured in Vice Presidency of Roosevelt," *The Washington Post*, Oct. 6, 1920, 2, ProQuest.

⁸⁰ "The Next Attorney General," *New York Times* newspaper clipping, Feb. 11, 1921, MSS 345, Box 252, Folder 4715, Warren G. Harding Papers, Ohio History Connection, Columbus, OH, <https://ohiomemory.org/digital/collection/p16007coll100/id/1441/rec/7>.

⁸¹ M.R. Werner, *Privileged Characters* (Robert M. McBride & Company, 1935), 21; "Daugherty Agrees to Take Place of Attorney General: No Man Could Refuse to Serve a Friend and His Country, He Declares," *New York Times*, February 22, 1921, 1-2, ProQuest.

⁸² Laton McCartney, *The Teapot Dome Scandal: How Big Oil Bought the Harding White House and Tried to Steal the Country* (Random House Publishing, 2008), 69.

⁸³ "Links Daugherty and Spoils System: W.D. Foulke Asserts the Former Attorney General Was Foe of Civil Service," *New York Times*, Nov. 14, 1926, E4, ProQuest.

Burns International Detective Agency, “Billy” Burns as BI Director.⁸⁴ Daugherty went on to fill the DOJ with politically loyal investigators, prosecutors, and administrators who would insulate and protect the Harding administration, as well as himself. His “strong-arm methods” as a manager and as AG, were notorious. Daugherty’s exploitation and “prostituting” of DOJ resources and the AG’s influence earned him a reputation as a “bad enemy and a good friend.”⁸⁵ It was no secret that Daugherty was “active in politics” or that he had earned significant material assets since entering office.⁸⁶ When he left office, one newspaper reported that he was someone “who was poor when he became Attorney General and who was opulent when he resigned that position.”⁸⁷ Although Daugherty had legal experience that qualified him for the job, his lack of professional scruples and blatant politicization of the office would become increasingly visible to the public.

Beginning in 1910, the US Navy, in need of petroleum fuel for its growing fleet, reached out to Congress about setting aside designated “Naval Petroleum Reserves”—defined as parts of federally owned land where oil deposits were known to exist—which the government agreed not to drill or sell unless a national emergency deemed it necessary.⁸⁸ One of these designated reserves was Teapot Dome (Naval Petroleum Reserve No.3), which took its name from the teapot-shaped rock formation near the oil

⁸⁴ “W.J. Burns to Head the Secret Service: Daugherty Announces Choice of Agency Chief for Washington Post,” *New York Times*, Aug. 19, 1921, 3, ProQuest.

⁸⁵ Associated Press, “Post Promised to Hamon, Jess Smith Told Her, Widow Testifies: Vehemently Denies She Tried Blackmail,” *The Washington Post*, March 23, 1924, 1, ProQuest; “Attacks on Mr. Daugherty,” *The Washington Post*, May 6, 1922, 6, ProQuest; Associated Press, “Former Daugherty Aid Declares Faith in Chief’s Integrity: Crim, Now Directing Inquiry of Veterans Bureau, Heard by Committee,” *The Washington Post*, May 23, 1924, 4, ProQuest.

⁸⁶ “Attacks on Mr. Daugherty,” 6; Senate Votes 70-2 to Fight Daugherty: Will Take to the Supreme Court His Defiance of the Brookhart Committee,” *New York Times*, June 6, 1924, 2, ProQuest.

⁸⁷ Senate Votes 70-2 to Fight Daugherty,” 2.

⁸⁸ “Teapot Dome Development by Mammoth Grows Apace: There are 27 Wells Now Being Drilled On Naval Oil Reserve Leased from the Government,” *Wall Street Journal*, Nov. 29, 1922, 1, 8, ProQuest.

field in Wyoming.⁸⁹ In 1921, Harding had transferred, via executive order, supervision of the reserves from the Department of the Navy to the Department of the Interior, and subsequently, his Secretary of the Interior, Albert Bacon Fall, began accepting bribes from major oil companies in return for no-bid leases on these federal oil reserves.⁹⁰ On April 14, 1922, the *Wall Street Journal* exposed the illegal contracts and development, prompting a Congressional investigation into the affair.⁹¹

During the investigation, Senator Thaddeus Caraway (D-AK) suggested that if not for Daugherty, all the men involved in the conspiracy would already have been indicted.⁹² He referred to the singular dangerous influence wielded by the AG, confessing that “as long as he [Daugherty] sits at the helm of the Department of Justice they may sell the White House and be absolutely immune from any prosecutions in the Federal courts.”⁹³ However, there was no evidence to prove that Daugherty was directly involved with the naval oil reserve conspiracy, although he was openly criticized for allegedly protecting the indicted men by refusing to open an investigation when he first learned about the transactions.⁹⁴ Daugherty’s purposeful inaction, compounded with growing concern over indecencies in the DOJ and the sudden suicide of his right-hand man, Jess Smith, led to a larger, more thorough investigation of Daugherty.⁹⁵

⁸⁹ “Teapot Dome Development by Mammoth Grows Apace,” 1, 8.

⁹⁰ Fall also made similar deals for leasing rights to reserves in Elk Hills, CA and Buena Vista Hills, CA. “Two Criminal Suits Pend.: Teapot Dome Actions Were Instituted by Late Senator La Follette,” *New York Times*, Oct. 11, 1927, 23, ProQuest; “Government Opens Teapot Dome Suit; Secrecy Admitted: Pomerene Declares Sinclair and Fall Perpetrated Big Fraud Under Cover,” *New York Times*, March 10, 1925, 1, ProQuest.

⁹¹ “Sinclair Consolidated in Big Oil Deal with U.S.,” *Wall Street Journal*, April 14, 1922, 1, ProQuest.

⁹² Sen. Caraway, speaking on Lease of Naval Oil Reserve Lands, 68th Cong., 1st sess., *Congressional Record* 65 (Jan. 16, 1924): S 1034-5, <https://www.govinfo.gov/app/details/GPO-CRECB-1924-pt2-v65>.

⁹³ Sen. Caraway, speaking on Lease of Naval Oil Reserve Lands: S 1034-5.

⁹⁴ “Daugherty Swears He Gave No Opinion on Navy Oil Leases,” *New York Times*, Dec. 1, 1926, 1, ProQuest.

⁹⁵ Jess Smith, 51, was found in with a self-inflicted gunshot wound in the Attorney General’s suite (where he had been living). Police believed he had shot himself “through the head with an automatic pistol.”

During Daugherty's term, rumors spread in Washington of his ability to wipe criminal records or demonstrate leniency from the DOJ in exchange for money.⁹⁶ He was also allegedly selling illegal liquor permits, as well as forcing bootleggers to pay federal protection money.⁹⁷ Daugherty made a point to tend to this business through others—primarily Smith—to avoid linking his name to these illegal transactions.⁹⁸ However, one witness, Gaston Means, who had worked as a special investigator for the BI, confessed that, that everyone involved in a particular whiskey ring, knew that “Smith represented Mr. Daugherty in their transactions.”⁹⁹

Another rumor that the media substantiated concerned Daugherty using Burns and the BI as a personal detective agency. Allegedly, agents would follow enemies of the Harding administration to gather information.¹⁰⁰ Burns eventually admitted that bureau agents had, in fact, been used to collect information on US Senator Burton Wheeler (D-MT) in order to build a case against him.¹⁰¹ It was not until after Daugherty left office that he was officially indicted and brought to trial, on charges that he, and a former Alien Property Custodian, Thomas W. Miller, had conspired to defraud the government by transferring \$7 million in American Metal Company assets which had been seized during

Authorities had found a scribbled will and believed that Smith had been recently “brooding over his ill health for many months.” However many of Smith's acquaintances confessed there was no indication that Smith planned to take his life. “Daugherty's Friend Suicide in His Room: Jess W. Smith Shoots Himself in Attorney General's Washington Apartment,” *New York Times*, May 31, 1923, 1, ProQuest; Masters, *Crooked*, 8-9.

⁹⁶ “Under Attack for 3 Years: Daugherty Has Been Almost Continuously Under Fire,” *New York Times*, March 29, 1924, 2, ProQuest.

⁹⁷ “Under Attack for 3 Years,” 2; “Accuses Attorney General: Divorced Wife of Jess Smith is First Witness at Inquiry,” *New York Times*, March 13, 1924, 1, ProQuest.

⁹⁸ “Accuses Attorney General,” 1.

⁹⁹ “First Graft Charge Against Daugherty is Brought by Means: He Declares Jess Smith Complained Attorney General Kept Liquor Money,” *New York Times*, April 17, 1924, 1, ProQuest.

¹⁰⁰ Associated Press, “Charge of Shadowing Members of Congress Denied by Daugherty,” *The Washington Post*, May 26, 1922, 1, ProQuest; McCartney, *The Teapot Dome Scandal*, 70.

¹⁰¹ “Burns Sent Agents to Help Build Case Against Wheeler: He Also Admits Reporting Alleged Gordon Campbell Service to Daugherty,” *New York Times*, April 11, 1924, 1, ProQuest.

the First World War from the government and subsequently accepting a \$391,000 bribe from the foreign claimants.¹⁰² Daugherty was acquitted, but his reputation never recovered. Thus, his tenure made clear to many that it was necessary to stop the practice of awarding loyalists with influential positions, and instead the President should nominate those who were not just professionals, but independent men with integrity.

Despite fevered calls for his impeachment, it was not until March 1924, when Daugherty refused to turn over DOJ files, that President Calvin Coolidge formally demanded Daugherty's resignation. In his request, Coolidge wrote that Daugherty's continued presence in office was a source of "ever-increasing embarrassment."¹⁰³ The Teapot Dome scandal "almost destroyed the faith of the nation in their Government [*sic*]," and Coolidge hoped to distance his administration from the marred reputation of a corrupt AG established by Palmer's failings and Daugherty's dealings.¹⁰⁴ Thereafter Coolidge sought an AG who would be "free from organization politics and business influences," but who would also be an adviser "of outstanding ability" as a lawyer and administrator, who would "command the respect of the country."¹⁰⁵ His nominee was

¹⁰² "Daugherty-Miller Trial Begins Today," *New York Times*, Sep. 7, 1926, 16, ProQuest; "Daugherty Indicted as Conspirator in Alien Metals Sale," *New York Times*, May 8, 1926, 1, 5, ProQuest; "Corruption: Blossoms in Court," *Time*, Sep. 13, 1926, np, ProQuest.

¹⁰³ "President Takes Action: Tells Attorney General He Embarrasses the Administration," *New York Times*, March 29, 1924, 1, ProQuest; Associated Press, "Coolidge Criticized by Hull for Delay in Daugherty Case," *The Washington Post*, March 29, 1924, 2, ProQuest; "Daugherty Sues to Keep His Telegrams From Being Turned Over to Investigators," *New York Times*, May 3, 1924, 1, ProQuest; "Accuses Daugherty, Citing 14 Grounds for Impeachment," *New York Times*, Dec. 2, 1922, 1, ProQuest.

¹⁰⁴ "'Cleanse Capitol,' Says Senator Reed: Missourian, in Peoria Speech, Says Teapot Dome is Destroying People's Faith," *New York Times*, Feb. 23, 1924, 2, ProQuest.

¹⁰⁵ "Coolidge Picks New Yorker: Columbia Law Dean is Nominated as Attorney General," *New York Times*, April 3, 1924, 1, ProQuest; "Five Names on List President Has for Attorney General: Taft, Weeks and Pepper at White House to Discuss Choice," *The Washington Post*, April 1, 1924, 1, ProQuest; "The Cabinet: From New Hampshire," *Time*, April 14, 1924, np, <https://time.com/archive/6651387/the-cabinet-from-new-hampshire/>.

Harlan Fiske Stone, a respected lawyer who served as Dean of Columbia Law School while also maintaining a private practice in New York.¹⁰⁶

Stone was sworn in on April 9, 1924, and during his swearing-in ceremony he accepted “the appointment as Attorney General as a public duty,” during which he would endeavor to make American law, by way of the DOJ, not only “the shield of innocence, but the swift avenger of guilt.”¹⁰⁷ A thorough “housecleaning” of the DOJ had been strongly encouraged by members of Congress and the American public due to the “grave abuse[s] of power” by Justice leaders such as Burns and Daugherty.¹⁰⁸ For example, influential banker, Frank A. Vanderlip, was quoted saying during a speech that the DOJ was “still filled with people appointed by Daugherty” and that there had to be a severe transformation within the department “before the machinery is clean.”¹⁰⁹ Daugherty’s term defined more rigorous expectations for the character of AGs, but also prompted calls for structural reform, with the understanding that the current order of things allowed for politicization.

Stone recognized that the DOJ, specifically the BI, was “in exceedingly bad odor.”¹¹⁰ As a result, he began to remove district attorneys who had not been enforcing prohibition laws. He also removed all of the BI’s “dollar-a-year secret agents.”¹¹¹ During

¹⁰⁶ “Applaud Naming of Stone: Many Write and Wire Coolidge Congratulating Him on His Choice,” *New York Times*, April 4, 1924, 3, ProQuest.

¹⁰⁷ “Stone Sworn In; Promises Justice: New Attorney General Aims to Make Department ‘Shield of Innocence, Avenger of Guilt,’” *The New York Times*, April 10, 1924, 3, ProQuest.

¹⁰⁸ “Vanderlip Favors a ‘Housecleaning’: Says Daugherty and Burns are Out, but Former’s Appointees are Still in Office,” *The New York Times*, May 11, 1924, 14, ProQuest.

¹⁰⁹ “Vanderlip Favors a ‘Housecleaning,’” 14.

¹¹⁰ Kurt A. Schmautz, “Book Review: J. Edgar Hoover: The Man and the Secrets. By Curt Gentry,” *Michigan Law Review* 90, no. 6 (1992): 1814, <https://repository.law.umich.edu/mlr/vol90/iss6/46/>.

¹¹¹ The use of “Dollar-a-year” referred to someone who accepted a one-dollar yearly salary, since American law prohibited unpaid work. This was done in an effort to remove untrained and unreliable persons from the Bureau. “How Common is Trump’s \$1 Salary?,” BBC News, Nov. 14, 2016, <https://www.bbc.com/news/election-us-2016-37977433>; “Stone Himself Will Direct Secret Agents, Reorganizing the Bureau of Investigation,” *New York Times*, May 14, 1924, 1, ProQuest; “Stone Hints

the reorganization, he promoted the then young assistant director J. Edgar Hoover to Acting Director, and instructed him to establish the BI as a model meritocracy, and eliminate political corruption within the organization.¹¹² Hoover, who Stone installed as its permanent director in 1924, began a modernization campaign that would transform the Bureau into a professionalized law enforcement body.¹¹³ Hoover went on to institute new application requirements to homogenize the employee rolls and ensure all agents would be qualified to carry out the FBI's growing mandate.¹¹⁴ Where candidates had previously been hired "for the tenure of a partisan administration," they would now be evaluated and employed on "a career basis."¹¹⁵ By doing so, the Bureau would be less subservient to the political whims of the executive administration, and more capable to enforce federal justice under the supervision of Hoover and the AG.

A year after becoming AG, Coolidge nominated Stone for a Supreme Court seat as an associate justice.¹¹⁶ Although Stone was only AG for a year, the press commended him for taking the position "without the handicap of any political alliances."¹¹⁷ He was

More Wet U.S. Attorneys Will Be Replaced: "About Six" Have Been Asked to Resign, Attorney General Says," *The Washington Post*, Oct. 28, 1924, 2, ProQuest.

¹¹² "Another Hoover," *Time*, Dec. 29, 1924, np, <https://time.com/archive/6896716/national-affairs-another-hoover/>; Beverly Gage, *G-Man: J. Edgar Hoover and the Making of the American Century* (Viking Press, 2022), 107-109.

¹¹³ This included a crime statistics analysis campaign which emphasized the organization of all previous criminal records "information for their efficacy." In addition, Hoover prioritized the creation of a superior crime lab at FBI Headquarters which highlighted new scientific breakthroughs in fingerprinting and ballistic identification. "Identification of Criminals Has Made Vast Strides, Director Hoover Asserts," *The Washington Post*, Dec. 22, 1929, M4, ProQuest; "Analysis of Crime Statistics Planned," *The Washington Post*, Aug. 12, 1930, 2, ProQuest; Gerald G. Gross, "Justice Stone Prepared the Way for Work of G-Men: Hoover Praises Noted Supreme Court Member," *The Washington Post*, Jan. 12, 1936, B5, ProQuest.

¹¹⁴ Hoover said that the FBI was no place for "ward heelers" (nepotists, patronage seekers). The criteria for consideration as a special agent was that candidates must be at least 25, have "adequate background and experience as a lawyer or account," and pass a "physical and other routine examinations." Gross, "Justice Stone Prepared the Way for Work of G-Men," B5.

¹¹⁵ Gross, "Justice Stone Prepared the Way for Work of G-Men," SM4.

¹¹⁶ "Stone is Nominated for Supreme Bench as M'Kenna Resigns: Coolidge Names Attorney General to Succeed the Only Pacific Coast Justice," *New York Times*, Jan. 6, 1925, 1, 2, ProQuest.

¹¹⁷ "Chief Justice Harlan Stone of Supreme Court Is Dead," *New York Times*, April 23, 1946, 1, ProQuest.

credited with “laying the fundamental groundwork” for the modern, “highly efficient” FBI, and for his “ceaseless crusade for high standards,” in government conduct and professional ethics.¹¹⁸ His peers spoke of him as one of the few AGs who got along with “outsiders or with the run of subordinates inside the department...No Cabinet officer of recent times has been...more open and above-board, than Attorney General Stone.”¹¹⁹ Stone’s legacy of restoring order to the DOJ set an example for his successive AGs.

In fewer than ten years, the subsequent terms of Palmer, Daugherty and Stone had outlined the needed traits of an ideal AG and its antithesis. For a time, many of Stone’s successors would attempt to maintain the nonpolitical, honest, legally focused tradition that he had initiated. However, this “system,” for retaining a principled office of the AG, was reliant on the men themselves, rather than any sort of institutional safeguards. Without structural support, even the most professional, independent and integrous AG, would be unable to prevent politicization entirely. Thus, even when the media and Congress probed potential AGs for their political affiliations and character (or lack thereof), the amassed power of the office of the AG continued to be a tempting political tool throughout the twentieth century.

When Republican President Richard Nixon entered office in 1969, he appointed his law partner—top Wall Street municipal bonds lawyer—and campaign manager, John N. Mitchell, as AG.¹²⁰ At the time, many voiced concerns about Nixon's choice of a dedicated political ally to serve as chief law enforcement officer. Ramsey Clark, the

¹¹⁸ Gross, “Justice Stone Prepared the Way for Work of G-Men,” B5.

¹¹⁹ “New Supreme Justice Won Spurs as Scholar,” *New York Times*, Jan. 11, 1925, 1, ProQuest.

¹²⁰ Stephen Isaacs, “The Rise and Fall of John Mitchell,” *The Washington Post*, July 8, 1973, A1, A11, ProQuest; “Cabinet Enigma: New Attorney General Poses Question Marks on Antitrust, Rights,” *Wall Street Journal*, Jan. 17, 1969, 1, ProQuest.

departing AG, was worried about the threat the Nixon administration presented to the “mission of justice.”¹²¹ Clark argued that the position of the AG was “primarily a moral job,” and he was apprehensive as to whether Mitchell would be able to “devote himself selflessly to the public interest.”¹²²

Additionally, it was not just Washington insiders who were wary of the incoming administration. Reflecting on the nomination in a December 1969 letter to the editor of *The New York Times*, concerned citizen Ladislav Farago wrote that:

Whatever history’s verdict will be of John Mitchell as Attorney General, his activities and utterances at his sensitive post in the Nixon Administration raise an important and delicate issue in American politics. It involves the propriety and wisdom of naming the campaign manager of a successful Presidential candidate to the office of Attorney General.¹²³

Farago recognized that the AG was uniquely susceptible to political abuse and was concerned that Mitchell’s nomination presented an inevitable conflict of interest between the Nixon administration’s agenda and the responsibilities of the AG. He expressed apprehension over such a partisan appointment because of how Mitchell served “in the dual role of chief law officer of the Federal Government and the architect and executor of the Republican party’s so-called “Southern strategy.”¹²⁴ Furthermore, he believed that even if Mitchell were to scrupulously adhere “to the purposes of his office and carry out

¹²¹ Richard Harris, “Annals of Politics: Justice: II—The Transition,” *The New Yorker*, Nov. 15, 1969, 64, <https://www.newyorker.com/magazine/1969/11/15/justice-ii-the-transition>.

¹²² Harris, “Annals of Politics: Justice: II—The Transition,” 86.

¹²³ Ladislav Farago, “Letters to the Editors of the Times: Campaign Rewards,” *New York Times*, Dec. 28, 1969, E9, ProQuest.

¹²⁴ Nixon’s “Southern strategy,” refers to his campaign plan to flip the long-Democratic Southern states into Republican strongholds. In the 1971 book *The Southern Strategy*, journalists Reg Murphy and Hal Gulliver summarize the campaign as “a cynical strategy” which catered “in subtle ways to the segregationist leanings of white Southern voters—yet pretending with high rhetoric that the real aim was simply to treat the South fairly.” This strategy was advertised as a new avenue away from the liberal, crime rampant administrations of Democratic presidents of the 1960s. Reg Murphy and Hal Gulliver, *The Southern Strategy* (Charles Scribner’s Sons, 1971), 3.; Farago, “Letters to the Editors of the Times: Campaign Rewards,” E9.

his duties” he would “leave the impression that the Department is used, however subtly and judiciously, to serve partisan political purposes.”¹²⁵ Farago implied that political appointments, regardless of intentions, could not be totally independent and stand against partisan pressure, and as such, men such as Mitchell should not even be considered for such an influential and necessary position.¹²⁶

Despite these concerns, Mitchell was sworn into office in mid-January 1969 and officially began serving as Nixon’s “closest adviser...on all legal matters and on many other matters as well.”¹²⁷ Mitchell’s influence within the Nixon administration was enormous, largely due to his camaraderie and history with the President. He was the only one in the administration who could “change the President’s mind after he” had “reached a decision,” and was recognized in the media as “the most powerful man in the Cabinet.”¹²⁸ Nixon’s “Iron Chancellor” sought to refocus the DOJ as an “institution for law enforcement, not social improvement,” and was a staunch proponent of maintaining strict “law-and-order.”¹²⁹

As AG, Mitchell cultivated a reputation as an unemotional, cool, “stern-visaged prosecutor,” and “high-level political operator.”¹³⁰ Although he did not seek to create a

¹²⁵ Farago, “Letters to the Editors of the Times: Campaign Rewards,” E9.

¹²⁶ Farago, “Letters to the Editors of the Times: Campaign Rewards,” E9.

¹²⁷ “Sketches of the Seven Nixon Aides Indicted by the Watergate Grand Jury,” *New York Times*, March 2, 1974, 16, <https://www.nytimes.com/1974/03/02/archives/sketches-of-the-seven-nixon-aides-indicted-by-the-watergate-grand.html>.

¹²⁸ Don Oberdorfer, “Mitchell: ‘As Long As He Wants Me, I Will Stay,’” *St. Petersburg Times*, April 20, 1970, 17A, <https://tinyurl.com/2uyne2w6>; Don Oberdorfer, “Despite Calls for Scalp: Mitchell’s Power Still Unmatched,” *The Washington Post*, April 19, 1970, A1, ProQuest.

¹²⁹ Oberdorfer, “Mitchell: ‘As Long As He Wants Me, I Will Stay,’” 17A; Milton Viorst, “Attorney General Mitchell’s Philosophy is ‘The Justice Department is an Institution for Law Enforcement, Not Social Improvement,’” *New York Times*, August 10, 1969, SM10,

<https://www.nytimes.com/1969/08/10/archives/attorney-general-mitchells-philosophy-is-the-justice-department-is.html>; “Mr. Nixon’s Attorney General,” *New York Times*, Feb. 18, 1972, ProQuest.

¹³⁰ “Law: Questions About Mitchell’s Dual Role at Justice,” *The New York Times*, June 7, 1970, 161, <https://www.nytimes.com/1970/06/07/archives/law-questions-about-mitchells-dual-role-at-justice.html>.

political impression, Mitchell became notorious as an “all-purpose Presidential adviser.” Beginning with his nomination announcement, there were legitimate concerns that his growing political reputation “would erode the image of the uncompromising prosecutor.”¹³¹ Instead of “balancing...interests,” he would use his position to confer “special status on those who felt short-changed in the liberal dominion” of John F. Kennedy (JFK) and Lyndon B. Johnson’s (LBJ) administrations.¹³²

Early in December 1970, Nixon was preparing for his re-election campaign and was debating bringing Mitchell back as his campaign manager. Nixon confessed to national audiences that he felt conflicted over whether to ask Mitchell to step away from his role, arguing he was the man most qualified for each of those tasks.¹³³ In 1971, *The Washington Post* reported that Mitchell was “reluctant to leave office,” as he enjoyed “the accoutrements of high office.”¹³⁴ Apparently, he had even considered “keeping his position and running the campaign” out of the DOJ.¹³⁵ This was nothing new, as Mitchell had been accused numerous times of “mixing politics with justice.”¹³⁶ *The New York Times* had even referred to him as the “Politician General.”¹³⁷ In 1972, he resigned from his position to officially manage Nixon’s re-election campaign, taking charge of the Committee for the Re-Election of the President (CREEP) as Campaign Director.¹³⁸

¹³¹ “Law: Questions About Mitchell’s Dual Role at Justice,” 161.

¹³² Robert B. Semple, Jr., “Who Likes Mitchell? Someone Named Nixon,” *The Nation* via *New York Times*, April 19, 1970, 166, <https://www.nytimes.com/1970/04/19/archives/the-nation-continued-who-likes-mitchell-someone-named-nixon.html>.

¹³³ “...Mr. Mitchell for Manager,” *The New York Times*, Jan. 4, 1972, 32, <https://www.nytimes.com/1972/01/04/archives/-mr-mitchell-for-manager.html>.

¹³⁴ Jack Anderson, “The Washington Merry-Go-Round: Mitchell to Quit to Aid Nixon Drive,” *The Washington Post*, April 13, 1971, B13, ProQuest.

¹³⁵ Anderson, “The Washington Merry-Go-Round,” B13.

¹³⁶ “...Mr. Mitchell for Manager,” 32.

¹³⁷ Anderson, “The Washington Merry-Go-Round,” B13.

¹³⁸ Gaylord Shaw, “Attorney General Mitchell Resigns,” *Observer-Reporter*, Feb. 16, 1972, A1, <https://tinyurl.com/ycymbtef>.

Mitchell had stipulated that Richard Kleindienst, his “more outgoing” Deputy, should inherit the position after him.¹³⁹ Nixon seemed to agree, as Kleindienst was another “law-and-order conservative.”¹⁴⁰ While the Senate Judiciary Committee had initially approved his nomination unanimously, the question of criminal charges arose concerning political favoritism by the DOJ in the settlement of International Telephone and Telegraph Corporation (I.T.T) antitrust cases.¹⁴¹ Several senators were concerned that Kleindienst may have been complicit in the impropriety. In order to “clear away any cloud” hanging over his nomination, Kleindienst agreed to a number of Judiciary Committee hearings which concluded that he had not “engaged in any improper or illegal action that disqualified him.”¹⁴² Kleindienst’s nomination was therefore approved on June 8, 1972, and he was sworn in on June 12, mere days before the infamous “break-in.”

In the early morning of June 17, 1972, five men broke into the Democratic National Committee’s headquarters at the Watergate Hotel in Washington, D.C. They had returned to fix a botched wiretap job, but were apprehended by plainclothes police.¹⁴³ Investigators found the burglars had connections to the Central Intelligence Agency

¹³⁹ He was expected to bring a new style to the Justice Department, but no new changes in substance.” Kleindienst was known to be better with the press than Mitchell. Louis M. Kohlmeier, “Kleindienst Confirmed as Attorney General In 64-19 Senate Vote Along Political Lines,” *The Wall Street Journal*, June 9, 1972, 2, ProQuest.

¹⁴⁰ “Mitchell Quits Cabinet Post, Nixon Names Kleindienst,” *The Daily News*, Feb. 16, 1972, 1, <https://tinyurl.com/5yuk3t4n>; Fred P. Grahams, “Mitchell Quits; Nomination Goes to Kleindienst,” *New York Times*, Feb. 26, 1972, 1, <https://www.nytimes.com/1972/02/16/archives/mitchell-quits-nomination-goes-to-kleindienst-attorney-general-to.html>.

¹⁴¹ United Press International, “Senate Panel Unanimous in Supporting Kleindienst,” *New York Times*, Feb. 25, 1972, 33, <https://www.nytimes.com/1972/02/25/archives/senate-panel-unanimous-in-supporting-kleindienst.html>; John W. Finney, “Senate Backs Kleindienst in Attorney General Post,” *New York Times*, June 9, 1972, 1, <https://www.nytimes.com/1972/06/09/archives/senate-backs-kleindienst-in-attorney-general-post-senate-votes-64.html>.

¹⁴² Finney, “Senate Backs Kleindienst in Attorney General Post,” 1.

¹⁴³ Alfred E. Lewis, “5 Held in Plot to Bug Democrats’ Office Here,” *The Washington Post*, June 18, 1972, ProQuest.

(CIA), the FBI, and CREEP.¹⁴⁴ At first, the White House maintained a strict public relations policy that there had been no involvement by the Nixon administration, but a number of investigators suspected a more extensive cover-up.¹⁴⁵ Mounting evidence suggested that Mitchell, while he was AG, had used a secret Republican fund to finance information-gathering operations against the Democrats, and was part of a more extensive campaign of “political espionage” by the Nixon White House which had led to the Watergate break-in.¹⁴⁶

The Senate voted in February 1973 to begin an investigation into the scandal. These hearings were separate from the burglar’s criminal trial.¹⁴⁷ The investigation’s revelations exposed the illegal actions of a number of high-ranking officials associated with the Nixon administration and by the end of April, two of Nixon’s top White House staffers, H.R. Haldeman and John Ehrlichman, White House counsel John Dean, and Kleindienst had all resigned from office.¹⁴⁸ Additionally, trial testimony alleged that Mitchell had “approved and helped plan the Watergate bugging operation,” and that he had conspired to “buy the silence” of the convicted Watergate conspirators.¹⁴⁹ In *Time*’s coverage of the trial they reported that “the nation’s highest law-enforcement officer in a

¹⁴⁴ Tad Szulc, “Cuban Veterans Group Linked to Raid on Democratic Office,” *New York Times*, June 23, 1972, 1, <https://www.nytimes.com/1972/06/23/archives/cuban-veterans-group-linked-to-raid-on-democratic-office-cuban.html>.

¹⁴⁵ Bob Woodward and Carl Bernstein, “White House: Facts Elusive on Watergate,” *The Washington Post*, July 1, 1973, A1, ProQuest.

¹⁴⁶ Carl Bernstein and Bob Woodward, “FBI Finds Nixon Aides Sabotaged Democrats,” October 10, 1972, *The Washington Post*, A01, ProQuest; Carl Bernstein and Bob Woodward, “Mitchell Controlled Secret GOP Fund,” *The Washington Post*, Sep. 29, 1972, A01, ProQuest; “He Stole No Money,” *New York Times*, May 22, 1973, 40, <https://www.nytimes.com/1973/05/22/archives/he-stole-no-money.html>.

¹⁴⁷ Bob Woodward and Carl Bernstein, “Senate Votes Watergate Probe,” *The Washington Post*, Feb. 8, 1973, A1, ProQuest.

¹⁴⁸ Kleindienst had resigned because of ‘close ties to individuals implicated in the Watergate inquiry.’ Laurence Stern and Haynes Johnson, “3 Top Nixon Aides, Kleindienst Out; President Accepts Full Responsibility; Richardson Will Conduct New Probe,” *The Washington Post*, May 1, 1973, A1, ProQuest.

¹⁴⁹ Bob Woodward and Carl Bernstein, “Mitchell, Dean Approved Watergate, Payoffs, Magruder Reportedly Says,” *The Washington Post*, April 19, 1973, A1, ProQuest.

self-proclaimed law-and-order Administration [sic]" had been present at two meetings during which "plans for such crimes as kidnaping, prostitution, mugging, burglary and wiretapping were suggested," although evidence indicated that he had vetoed these plans for being extreme or unreasonably expensive.¹⁵⁰ Mitchell and Nixon had spent the majority of their professional careers together establishing their image as tough on crime; however, the revelations of Watergate destroyed this myths.¹⁵¹

After Kleindienst's resignation, Nixon recruited his then Secretary of Defense—Elliot Richardson—to be his third AG.¹⁵² Richardson, who had gained a reputation as the "independent Boston Brahmin," was deemed the "right man for the job" because of his "unquestioned integrity, intelligence, and ability."¹⁵³ At the time, "the job" was to appoint a Special Prosecutor to conduct an extensive, independent investigation of the Watergate cover-up.¹⁵⁴ Following Mitchell and Kleindienst, the AG was expected to be hyper-independent and honest, which Richardson emphasized with his focus on an independent special prosecutor. However, the lack of concrete evidence available to investigators was incredibly frustrating. Then, a surprising confession reinvigorated investigative and public interest in the case, as Alexander Butterfield, a White House aide, testified to the

¹⁵⁰ "The Hearings: John Mitchell Takes the Stand," *Time*, July 16, 1973, np, <https://time.com/archive/6841393/the-hearings-john-mitchell-takes-the-stand/>.

¹⁵¹ Viorst, "Attorney General Mitchell's Philosophy," SM10.

¹⁵² Moses J. Newson, "Atty. Gen. Elliot L. Richardson: Nation's New Law Enforcement Officer," *The Afro-American*, July 7, 1973, 1, 2, <https://tinyurl.com/adckf4rn>.

¹⁵³ Boston Brahmins are a name for the historic upper class of Bostonians. Although, it typically connotes "great wealth, political influence, old New England roots..." Andy Bowers, "What's a Boston Brahmin?," *Slate*, March 1, 2004, <https://slate.com/news-and-politics/2004/03/what-s-a-boston-brahmin.html>; Ron Speed, "The Third Administration," *New York Times*, May 10, 1973, 45, <https://www.nytimes.com/1973/05/10/archives/the-third-administration.html>; "An Independent Attorney General Elliot Lee Richardson," *New York Times*, Oct. 12, 1973, 27, <https://www.nytimes.com/1973/10/12/archives/an-independent-attorney-general-case-reopened-many-lost-battles.html>.

¹⁵⁴ David E. Rosenbaum, "Richardson Vows New Prosecutor," *New York Times*, May 8, 1973, 89, <https://www.nytimes.com/1973/05/08/archives/richardson-vows-new-prosecutor.html>.

Senate Watergate Committee that since the spring of 1971, Nixon's meetings and phone conversations in the Oval Office had been recorded.¹⁵⁵ Despite numerous requests by both the Senate committee and the DOJ Special Prosecutor, Nixon refused to turn over the tapes, citing "executive privilege."¹⁵⁶

The fight for Nixon's tapes came to a head during the events of October 20, 1973, which the press dubbed the "Saturday Night Massacre." Nixon clashed with Archibald Cox, the Special Prosecutor chosen by Richardson, and refused to cooperate with any of Cox's access requests for the tapes.¹⁵⁷ Instead, the president ordered Richardson to dismiss Cox.¹⁵⁸ Richardson refused, and resigned in protest.¹⁵⁹ Authority then fell to Richardson's Deputy AG, William French Smith, who also declined to fire Cox and resigned.¹⁶⁰ Next in the chain of command was Solicitor General Robert Bork, who dismissed Cox and began a brief, three-month term as Acting Attorney General.¹⁶¹

In desperate need of another AG who would meet expected qualifications but also not further darken his name, Nixon added a new face to his administration. He nominated

¹⁵⁵ John Pierson, "Nixon's Talks and Phone Calls Are Taped in Oval Office, 3 Other Places, Panel Told," *Wall Street Journal*, July 17, 1973, 2, ProQuest.

¹⁵⁶ Anthony Ripley, "Richardson Bids Nixon Drop Claim," *New York Times*, Nov. 7, 1973, 1, <https://www.nytimes.com/1973/11/07/archives/richardson-bids-nixon-drop-claim-tells-senators-the-president.html>.

¹⁵⁷ Jules Witcover, "'Massacre' Traced: 'Saturday Night Massacre' After Months of Seething," *The Washington Post*, July 21, 1974, A1, A11.

¹⁵⁸ Mary Russell, "Nixon Talked of Firing Cox in September—Richardson," *The Washington Post*, Nov. 7, 1973, A1, ProQuest.

¹⁵⁹ John M. Crewdson, "Richardson Quits Over Order on Cox: Attorney General Says He Couldn't Oust Prosecutor—Cites Autonomy Vow," *New York Times*, Oct. 21, 1973, 1, 51, <https://www.nytimes.com/1973/10/21/archives/richardson-quits-over-order-on-cox-attorney-general-says-he-couldnt.html>.

¹⁶⁰ "Ruckelshaus Got Request to Oust Cox and Refused," *New York Times*, Oct. 21, 1973, 58, <https://www.nytimes.com/1973/10/21/archives/ruckelshaus-got-request-to-oust-cox-and-refused-twisting-slowly.html>.

¹⁶¹ Douglas E. Kneeland, "Bork Takes Over; Duties of Prosecutor Are Shifted Back to Justice Dept.," *New York Times*, Oct. 21, 1973, 1, 60, ProQuest; Joel Dreyfuss, "The Man Who Fired Archibald Cox," *The Washington Post*, Nov. 6, 1973, B1, ProQuest.

Richard Saxbe, a blunt-spoken Senator, who had spent eight years as AG in Ohio.¹⁶² This was viewed as a commendable choice by Nixon, because Saxbe had often provided “unabashed criticism of Mr. Nixon and his administration,” which gave him “an aura of independence.”¹⁶³ Saxbe was sworn in in January of 1974, during which time he promised to operate in a manner that would “bring credit on the law, the legal process, and individual lawyers.”¹⁶⁴ Nevertheless, despite Nixon’s selection, the AG and DOJ were so greatly demoralized by that point that it would be challenging for anyone in the Nixon administration to restore their integrity.

The tension increased during the latter half of 1974, when the President and the AG faced unprecedented charges of criminalization. In May 1974, Kleindienst pled guilty to concealing “the fact that he had been ordered by President Nixon to drop an appeal...of one of the suits against ITT,” during his 1972 confirmation hearings.¹⁶⁵ He reported that in 1971, Ehrlichman had called his office requesting the DOJ stop its appeal. When Kleindienst declined, Nixon had phoned him and directed him not to appeal one of three antitrust cases to the Supreme Court, instead opting for “an out-of-court settlement generally considered favorable to the corporation” involved.¹⁶⁶ Then, on August 9, 1974, after it became clear that impeachment was inevitable, Nixon became the

¹⁶² “Ohio Senator Expects to Be Attorney General,” *The Gadsden Times*, Oct. 31, 1973, 1, <https://tinyurl.com/bdcw92ka>.

¹⁶³ “Saxbe: Good Choice,” *The Toledo Blade*, Nov. 3, 1973, 12, <https://tinyurl.com/y53679ej>; “Taft Hopes Saxbe to Be Confirmed,” *The Portsmouth Times*, Nov. 20, 1973, 8, <https://tinyurl.com/mthdhs2a>.

¹⁶⁴ Frank Kane, “Saxbe Takes Oath in Rite as 70th Attorney General,” *The Toledo Blade*, Jan. 5, 1974, 1, <https://tinyurl.com/5ympe4ny>.

¹⁶⁵ “Kleindienst Pleads Guilty to Misdemeanor: Former Attorney General Allowed Plea in Return For Aid in ITT Inquiry,” *Wall Street Journal*, May 17, 1974, 2, ProQuest.

¹⁶⁶ “Kleindienst Pleads Guilty to Misdemeanor,” 2; E.W. Kenworthy, “The Extraordinary I.T.T. Affair,” *New York Times*, Dec. 16, 1973, 233, <https://www.nytimes.com/1973/12/16/archives/whats-good-for-a-corporate-giant-may-not-be-good-for-everybody-else.html>.

first U.S. President to resign from office.¹⁶⁷ By January 1, 1975, Mitchell had been found guilty of “conspiracy, obstruction of justice, and lying on three separate occasions to either the Watergate grand jury or the Senate Watergate committee.”¹⁶⁸ In February of that year, a judge sentenced Mitchell to serve two and a half to eight years in prison.¹⁶⁹ Mitchell thus became the first AG to serve time in prison.

Following Nixon’s resignation, Gerald R. Ford abruptly assumed the presidency. This would be Ford’s second unprecedented promotion. The first was when Nixon approved Ford for Vice President (VP) in 1973 after the resignation of Nixon’s first VP, Spiro Agnew.¹⁷⁰ As President, Ford’s most urgent task was to guide the US past the trauma of Watergate. It was necessary to nominate an AG who would demonstrate independence, integrity and professionalism. As head of the DOJ, Mitchell embodied the image of a politicized AG. While he was not the first to take advantage of the immense power the modern AG wielded, he was the first to face prison time for his actions. The Mitchell-Nixon administration had dangerously politicized the DOJ. They weaponized

¹⁶⁷ Caroll Kilpatrick, “Nixon Resigns,” *The Washington Post*, Aug. 9, 1974, A01, ProQuest.

¹⁶⁸ George Lardner Jr., “Mitchell, Haldeman, Mardian, Ehrlichman Guilty on All Counts: One of Defendants in Cover-Up Trial, Parkinson, Cleared,” *The Washington Post*, Jan. 2, 1975, A1, ProQuest.

¹⁶⁹ Lesley Oelsner, “Mitchell, Haldeman, Ehrlichman are Sentenced to 2½ to 8 Years, Mardian to 10 Months to 3 Years: All Will Appeal,” *New York Times*, Feb. 22, 1975, 1, <https://www.nytimes.com/1975/02/22/archives/mitchell-haldeman-ehrllichman-are-sentenced-to-2-to-8-years-mardian.html>.

¹⁷⁰ The DOJ had been investigating VP Spiro Agnew for evidence of political corruption which included accepting bribes. Although he maintained his innocence, he resigned after pleading no contest to charges of federal tax evasion. Richard M. Cohen and Jules Witcover, “‘A Heartbeat Away’: Kickbacks, Payoffs—And Spiro Agnew?,” *The Washington Post*, April 14, 1974, A1, ProQuest; “How Agnew Bartered His Office To Keep From Going to Prison,” *New York Times*, Oct. 23, 1973, 1, <https://www.nytimes.com/1973/10/23/archives/howagnewbarteredhis-office-to-keep-from-going-to-prison-how-spiro.html>; “Original Cabinet of Nixon is Gone: Agnew Resignation Marked End of First Line-Up,” *New York Times*, Oct. 13, 1973, 18, <https://www.nytimes.com/1973/10/13/archives/original-cabinet-of-nixon-is-gone-agnew-resignation-marked-end-of.html>; Donald W. Riegle Jr., “Ford: Nixon’s Better Idea,” *The Washington Post*, Dec. 9, 1973, B1.

the AG to ensure political power, creating an immediate need for an effective AG to reform these avenues of federal justice.

Since its creation in the Judiciary Act of 1789, the office of the AG had accumulated outsized influence on national policy and established itself clearly as the nation's chief legal officer. The position that Levi would inherit in 1975 had grown exponentially in the 186 years since its inception and was still evolving. However, legislation never resolved the dilemma over whom the AG served. This tension shaped the position's evolution throughout its history. Additionally, subsequent initiatives lacked legislative support and never fully alleviated the central problem affecting the office. Since the early twentieth century terms of Palmer and Daugherty, politicization of the office of the AG became a central concern, thus determining that loyalty to the President could no longer be a factor into the appointment as it had in its early years. Independence and integrity were prioritized, in addition to a nominee's professionalism.

Mitchell's abuse of power was possible because of ambiguous language in the Judiciary Act. Despite this problem being highlighted at different periods throughout American history, no clarity was ever provided, which allowed for continued freedom of interpretation. The lack of structural reform ensured that the potential for politicization would continue to be high. In addition, the scope of legal and prosecutorial responsibilities afforded to the modern AGs, allowed Mitchell and Nixon to severely damage the integrity of the office of the AG. Their tenure left the DOJ and the office of the AG deeply demoralized and without much needed public confidence. This was the environment Levi entered when he became AG in 1975. However, as I will discuss in the next chapter, although Levi set a strong moral example—exhibiting those clear traits that

scholars had identified—he fell short when it came to providing the legislative support needed to concretely dissuade further exploitation of the position’s ambiguous nature.

CHAPTER III

Being a Good Guy Just Isn't Enough: Levi as Attorney General, 1974-1977

Due to the “unfortunate experience” with John N. Mitchell, it was crucial for President Gerald R. Ford to, early in his term, nominate a “non-political” AG.¹ The general public opined that a “politically neutral attorney general” would be a “refreshing change” from the men who had “set such a dismal record in the recent past.”² For Ford, it was clear that his nominee must be “uninhibited by politics,” and, because of the insidious nature of the Watergate affair, the new AG “ought to come from outside the traditional political arena” entirely.³ In addition, the administration prioritized integrity, distance from Washington, and a candidate who demonstrated skill and knowledge of the law.⁴

Watergate had deeply soured the American public on the federal government. In the hopes of moving America past the crimes of the previous administration, Ford pardoned Nixon, a move widely condemned at the time.⁵ Furthermore, public leaks that exposed domestic spying by the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA) increased American’s distrust of their government.⁶ It also

¹ “Liberating Justice...,” *The New York Times*, Dec. 21, 1974, 26, <https://www.nytimes.com/1974/12/21/archives/liberating-justice.html?searchResultPosition=7>.

² “The New Attorney General,” *Chicago Daily News*, Feb. 8-9, 1975, 8, in Scrapbook Vol. 1 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

³ Gerald R. Ford, “Attorney General Edward H. Levi,” *The University of Chicago Law Review* 52, no. 2 (Spring 1985): 284, <https://chicagounbound.uchicago.edu/uclrev/vol52/iss2/2>.

⁴ Ford, “Attorney General Edward H. Levi,” 284.

⁵ Peter Milius, “Ford Grants Nixon Full Pardon, Says He Has ‘Suffered Enough,’” *The Washington Post*, Sep. 9, 1974, A1, A11, ProQuest.

⁶ Betty Medsger and Ken W. Clawson, “Stolen Documents Describe FBI Surveillance Activities,” *The Washington Post*, March 24, 1971, A1, A11, ProQuest; Seymour M. Hersh, “Huge C.I.A. Operation Reported in U.S. Against Antiwar Forces, Other Dissidents in Nixon Years,” *The New York Times*, Dec. 22,

prompted increasingly consistent calls for reform. By 1974, the “reservoir of trust” had been sapped entirely, and thus, the establishment of a “non-political administration at [Department of] Justice [DOJ]” was urgent.⁷

Upon taking office, Ford, cognizant that he needed to publicly break from the traditional practice of appointing a political ally as AG, stated that “no campaign managers need apply, nor members of the family, official or political.”⁸ He was adamant that after the “corruption of the Nixon years,” his AG, must be someone of “towering intellect and spotless integrity,” who could rebuild the confidence and reputation of the DOJ, which had been demoralized by a constant and repetitive abuse of power.⁹ It was crucial, not just for Ford’s administration, but for the general administration of justice, that the public faith in American law be restored.¹⁰

In 1924, President Calvin Coolidge had contended with a similar atmosphere in the wake of scandal-ridden AG Harry Daugherty’s term when he nominated academic Harlan Fiske Stone to the position of AG.¹¹ Perhaps Ford attempted to replicate Coolidge’s effort when he nominated Dr. Edward H. Levi to the same position in 1974. Levi, a notable legal scholar and political outsider, represented a potential new era for the AG and the administration of federal justice. Much of Washington and the public

1974, 1, <https://www.nytimes.com/1974/12/22/archives/huge-cia-operation-reported-in-u-s-against-antiwar-forces-other.html>.

⁷ Ken Armstrong and Virginia Groark, “Edward Hirsch Levi 1911-2000,” *Chicago Tribune*, March 8, 2000, updated Aug. 21, 2021, <https://www.chicagotribune.com/2000/03/08/edward-hirsch-levi-1911-2000/>; “Liberating Justice...,” 26.

⁸ Gerald R. Ford, “In Memoriam: Edward H. Levi,” *The University of Chicago Law Review* 67, no. 4 (Fall 2000): 975, <https://chicagounbound.uchicago.edu/uclrev/vol67/iss4/1>.

⁹ Ford, “In Memoriam: Edward H. Levi,” 975.

¹⁰ Anthony Lewis, “Need to Restore Symbols: Lawless Among Those Who Uphold the Law,” *The Leader Post*, Dec. 28, 1974, 33, <https://tinyurl.com/58jzb6ra>.

¹¹ Charles C. Burlingham, “Harlan Fiske Stone,” *American Bar Association Journal* 32, no. 6 (June 1946): 323, <https://www.jstor.org/stable/25715606>.

accepted Levi's nomination. Newspapers highlighted his overwhelmingly positive reputation within the legal community and argued that he was a man of integrity. The Ford administration successfully advertised Levi as the antithesis of the politicized AG, which had been the norm for the past century.¹²

However, despite Levi's reputation, he was never able to completely reform the office he led, largely, because of the very traits that made him so valuable to Ford and his administration. Levi exemplified the values of independence, integrity and professionalism; however, his personal characteristics were not enough on their own to ensure that the politicization of the position would end. Without structural reform, the ambiguities inherent in the office would continue to enable exploitation. Although he attempted to create much-needed structural reform by establishing the Federal Bureau of Investigation (FBI) Domestic Security Investigation Guidelines and the Office of Professional Responsibility (OPR), these initiatives failed to have a significant or long-term impact on the office, and did not include any legislative safeguards against future abuses of power.

On assuming the presidency, Ford faced significant pressure to name a worthy nominee for AG. Donald Rumsfeld, former Illinois Congressman, and Ford's White House Chief of Staff at the time, suggested Levi might be a strong contender for the position.¹³ Rumsfeld was familiar with Levi, a national authority on antitrust law and

¹² Lewis, "Need to Restore Symbols," 33.

¹³ Victor S. Navasky, "The Attorney General as Scholar, Not Enforcer," *New York Times*, Sep. 7, 1975, 84, <https://www.nytimes.com/1975/09/07/archives/the-attorney-general-as-scholar-not-enforcer-if-he-were-moses-the.html>; Ken Armstrong and Virginia Groark, "Edward Hirsch Levi 1911-2000," *Chicago Tribune*, March 8, 2000, updated Aug. 21, 2021, <https://www.chicagotribune.com/2000/03/08/edward-hirsch-levi-1911-2000/>; Ford, "In Memoriam: Edward H. Levi," 975; There was an alternate argument published in the Washington Whispers column of popular magazine, *U.S. News and World Report*, that Nelson Rockefeller, Ford's Vice-President had orchestrated Levi's nomination. The full note reads: "It was Nelson Rockefeller, according to insiders, who was behind President Ford's controversial choice of Democrat Edward H. Levi,

liberal education, as a “fellow Chicagoan.”¹⁴ At the time, Levi was planning to retire as President of the University of Chicago in 1976 and he was in the process of preparing to begin a term as a Visiting Professor at the University of Cambridge.¹⁵ He was sixty-three years old and had been at the University of Chicago since he was five—as a student, an educator, and an administrator.¹⁶ However, Levi’s experience was not limited to academia. During the 1940s, he worked in the DOJ’s antitrust division, and in 1950, he served as counsel to the House Judiciary Committee’s Subcommittee on the Study of Monopoly Power.¹⁷ His commitment to education also led to memberships on the White House Central Group on Domestic Affairs in 1964, and the White House Task Force on Education from 1966 to 1967.¹⁸ Levi’s competency as an intellectual leader left many of his students and coworkers with strong impressions.¹⁹ These impressions were primarily positive, but part of his persona was also defined by his directness and no-nonsense approach to educational instruction. For example, Robert Bork, who was Solicitor General during Levi’s tenure, characterized his former professor as “the intellectual version of a Marine bootcamp drill inspector.”²⁰

president of the University of Chicago, as U.S. Attorney General. The Rockefeller Foundation and family, it is noted, have long had financial and other ties with the university.” However, it is also interesting to note their categorization of Levi as a Democrat, despite his noted noncommittal attitude towards any political party. “Washington Whispers,” *U.S. News and World Report*, Jan. 13, 1975, 3, LexisNexis.

¹⁴ Armstrong and Groark, “Edward Hirsch Levi 1911-2000.”

¹⁵ Letter from A.D.I. Nicol to E.H. Levi, Feb. 15, 1974, Box 43, Folder 5, Edward H. Levi Papers 1894-1998, Hanna Holborn Gray Special Collections Research Center, University of Chicago Library.

¹⁶ Navasky, “The Attorney General as Scholar, Not Enforcer,” 84.

¹⁷ Washington Bureau, “Chicago Lawyer Named Berge Aid,” *The Chicago Sun*, March 5, 1944, np, in Box 106, Folder 2, Edward H. Levi Papers 1894-1998, Hanna Holborn Gray Special Collections Research Center, University of Chicago Library; Department of Justice Press Release, March 4, 1944, Box 108, Folder 2, Edward H. Levi Papers 1894-1998, Hanna Holborn Gray Special Collections Research Center, University of Chicago Library.

¹⁸ Edward Hirsch Levi Resume, nd, Box 111, Folder 13, Edward H. Levi Papers 1894-1998, Hanna Holborn Gray Special Collections Research Center, University of Chicago Library.

¹⁹ Navasky, “The Attorney General as Scholar, Not Enforcer,” 84.

²⁰ Bork became Solicitor General from 1972-77, prior to Levi’s installment in Washington. Additionally, he served as Acting Attorney General following Elliot Richardson’s resignation during the Saturday Night

In early December 1974, Rumsfeld invited Levi, who was on the shortlist for the position, to the White House for a meeting.²¹ Levi was a strong candidate, as he had previous experience within the DOJ and as an organizational administrator who was well-versed in the law. More importantly perhaps, the public viewed Levi as a political outsider. Professor G. Robert Blakey of Cornell University Law School emphasized this when Levi became Ford's nominee, writing that what the DOJ needed was "someone like Levi whose experience in managing the University of Chicago, whose depth as a scholar and whose enormously effective mind can turn that whole department around."²²

When Levi arrived in Washington, he was surprised to meet with President Ford personally. He had thought he was meeting with White House staff to discuss education.²³ During their meeting however, the two men discussed general issues concerning the DOJ and then, the possibility of him serving as AG.²⁴ Levi, who had told Ford that the DOJ was in dire need of nonpolitical leadership in order to recover public trust in the administration of law, had never angled for the position himself.²⁵ When Ford asked him if he would be interested, Levi responded that he needed the job like "he needed a hole in the head."²⁶ However, before the two parted, Ford posed the question: "with the administration of justice in such difficulty, how can you possibly turn your back on it?"²⁷

Massacre. As Solicitor General, he was the DOJ's third-highest ranking officer, and he dismissed Archibald Cox as Watergate Special Prosecutor. Robert H. Bork, "The Greatest Lawyer of His Time," *Wall Street Journal*, March 13, 2000, A46, ProQuest.

²¹ Navasky, "The Attorney General as Scholar, Not Enforcer," 84.

²² Anthony Ripley, "The Logical Direction at Justice Department Is Up," *New York Times*, Jan. 19, 1975, 181, ProQuest.

²³ Ford, "In Memoriam: Edward H. Levi," 976.

²⁴ Ford, "In Memoriam: Edward H. Levi," 976.

²⁵ Richard Norton Smith, *An Ordinary Man* (HarperCollins, 2023), 479-80.

²⁶ This was not out of character for Levi to say. Navasky, "The Attorney General as Scholar, Not Enforcer," 84.

²⁷ Smith, *An Ordinary Man*, 481.

After a couple of days of contemplation, Levi accepted the nomination. Ford then announced his nominee to the national public.

Reporting from the time stressed the impact of Ford's nominee on the state of American law and justice. *The Leader Post* argued "that it could indeed be the most important choice he makes as president."²⁸ The corruption of the Nixon administration and their penchant for placing political allies in positions of influence directly impacted the weight of Ford's decision. As a result, the public and DOJ employees had "much at stake in President Ford's selection."²⁹ It was vitally important that his nominee was someone who would "scorn partisanship in running the Justice Department."³⁰

Levi's potential political affiliations were a significant point of contention during his nomination period. Although Levi was transparent about his connection to Rumsfeld, he consistently attributed his appointment to the "so-called post-Watergate morality," rather than a crony connection.³¹ Second, Levi saw himself as apolitical. Throughout his career, he had never openly identified with a political party; a position he held to maintain professional neutrality while at the University of Chicago.³² Over the course of his life, he never disclosed his political leanings, and his views, whether liberal or conservative, varied. This was reflected in how others perceived him. For example,

²⁸ Lewis, "Need to Restore Symbols," 33.

²⁹ Lewis, "Need to Restore Symbols," 33.

³⁰ Lewis, "Need to Restore Symbols," 33.

³¹ Navasky, "The Attorney General as Scholar, Not Enforcer," 92.

³² During his confirmation hearing Levi noted that his political neutrality at the University of Chicago was self-imposed, as he felt it would be "inappropriate for me as a dean or a president to take a position because it would be misunderstood as an institutional position." U.S. Congress, Senate, Committee on the Judiciary, Nomination of Edward H. Levi to be Attorney General, 94th Cong., 1st sess., Jan. 27-29, 1975, 7, Internet Archive.

according to the left, he was too right-leaning. According to the right, he was too left-leaning.³³

The majority of the public and Congress seemed optimistic about Levi's nomination, and all reporting for the time hypothesized that Levi would fly through his hearings.³⁴ However, a few concerns were raised by members of Congress who were hesitant to install an AG from an academic background. Others worried that he lacked the experience to lead the DOJ given its active agenda.³⁵ In addition, there were those Congressmen and members of the public who were apprehensive because of Levi's past involvement with the National Lawyers Guild (NLG)—which had been accused of being a subversive communist front group—and his involvement with the recording of jury deliberations in the 1950s.³⁶ These latter claims challenged the image of Levi as a man of independence and integrity. As a result, Ford suggested that Levi make "Hill visits," which he did before his confirmation hearings to speak directly with the Congressmen

³³ "Edward Levi's Liberalism," *The Chicago Tribune*, Dec. 28, 1974, 8, ProQuest.

³⁴ Linda Charlton, "Panel Ends Questioning of Levi; Confirmation Support Expected," *New York Times*, Jan. 29, 1975, 12, <https://www.nytimes.com/1975/01/29/archives/panel-ends-questioning-of-levi-confirmation-support-expected.html>.

³⁵ Rowland Evans and Robert Novak, "The Opposition Lines Up Against Levi," *The Washington Post*, Dec. 23, 1974, A15, ProQuest; John D. Lofton, Jr., "Likely Attorney General Nominee: Conservatives Divided on Levi," *The Victoria Advocate*, Dec. 30, 1974, A4, <https://tinyurl.com/hv6ppfy2>; "The New Attorney General," 8.

³⁶ Levi testified that he was a member of the NLG from 1936 "until the early 1940s." Additionally, the jury deliberation mentioned here refers to a 1954 University of Chicago Law School research study of the jury system. The study was made possible by a \$1.4 million grant from the Ford Foundation (no affiliation to President Ford). The goal of the study was to study and improve the American jury system. The study involved planting hidden microphones to record "jury deliberations in five separate civil cases," in a Wichita Kansas jury room. The study leads said they had gotten prior permission for the "buggings" from the presiding judge and a senior judge. Levi was attached to the study as he was dean of the law school at that time. He testified before the Internal Security Subcommittee supporting the study. The subcommittee was led by Sen. James O. Eastland (D-MS) and William E. Jenner (R-IN). Murray Marder, "Probers Hit Recordings of Jury Debate as Snooping," *The Washington Post*, Oct. 13, 1955, 1, ProQuest; Allen Drury, "2 Senators Ask Law to Bar Eavesdropping on Juries," *New York Times*, Oct. 14, 1955, ProQuest; Allen Drury, "Secret Jury-Room Microphones Defended Before Senate Inquiry," *New York Times*, Oct. 13, 1955, 1, ProQuest; Mitchell C. Lynch, "Ford Nominates Former Antitrust Chief, Edward H. Levi, to Be Attorney General," *Wall Street Journal*, Jan. 15, 1975, 11, ProQuest; "The Wrong Kind of Controversy," *Wall Street Journal*, Dec. 27, 1974, 10, ProQuest.

about their concerns and expectations.³⁷ His affiliation with the NLG, and his participation in the jury tapings were downplayed, and eventually dismissed as illegitimate concerns.³⁸ Furthermore, many of Levi's supporters in Washington refuted claims that linked his intellectual status with inefficiency, stating that Levi's "achievements have not been confined to ivory tower scholarship."³⁹

Levi was confirmed by voice vote "without debate," but his confirmation hearings in late January 1975 before the Senate Committee on the Judiciary provide a concise overview of the positions of both his detractors and defenders, as well as the issues that he would have to deal with as AG, which would in turn, provide guidance on the issues he would need to address upon assuming office.⁴⁰ Both senators from Illinois, Charles H. Percy (R) and Adlai Stevenson (D) were highly supportive of Levi, testifying on his behalf by speaking to his high-standing within the Chicago community, and his illustrious career as a legal scholar and an "eminent educator."⁴¹ Stevenson repeated the statement that he had made just a few days earlier on the Senate floor, which compared Ford's nomination of Levi to Coolidge's nomination of Stone in 1924. He argued that "President

³⁷ Lawrence Meyer, "Ford to Name Levi Attorney General," *The Washington Post*, Dec. 17, 1974, A1, ProQuest.

³⁸ Lawrence Meyer, "Opposition to Levi Dissipating," *The Washington Post*, Jan. 23, 1975, A2, ProQuest.

³⁹ United Press International, "Levi Okay Appears Sure in Senate," *The Beaver County Times*, Jan. 27, 1975, A2, <https://tinyurl.com/zjuwm9ru>.

⁴⁰ "Non-Politician Levi Approved as Attorney General," *New York Times*, Feb. 6, 1975, 16; U.S. Congress, Senate, Committee, Nomination of Edward H. Levi; Democratic Sen. James O. Eastland chaired the Committee on the Judiciary for the 94th Congress. The Minority (R) members were: Roman L. Hruska, Hiram L. Fong, Hugh Scott, Strom Thurmond, Charles McC. Mathias, Jr., William L. Scott. The Majority (D) members were: John L. McClellan, Philip A. Hart, Edward M. Kennedy, Birch Bayh, Quentin N. Burdick, Robert C. Byrd, John B. Tunney, James G. Abourezk. Hruska, Eastland and Sen. John Tower (R) were the more outspoken about their hesitations towards Levi's appointment. United Press International, "Levi Okay Appears Sure in Senate," A2.

⁴¹ Sen. Percy was also a trustee of the University of Chicago; U.S. Congress, Senate, Committee, Nomination of Edward H. Levi, 1-5.

Ford's choice of Edward Levi" was "every bit as fortunate."⁴² Both Stevenson and Percy repeatedly celebrated Levi for his distinguished resume, his independence as a leader, and his "high standards of professional excellence and personal integrity," thereby emphasizing his unquestioned morality, demonstrated political neutrality, and reputation for academic and administrative distinction.⁴³ Their spotlight on Levi's strength of character was due to underlying fears of politicization after Mitchell, thus, the topics of individual character of the nominee and potential political loyalty was central to this confirmation period.

Lawrence E. Walsh, the President-Elect of the American Bar Association (ABA) provided two statements: one from himself, and one from the ABA Board of Governors, both of which unequivocally supported Levi. Walsh testified that the ABA looked "forward to the time when he [Levi] epitomizes our profession in the public eye," bringing specific attention to the nominee's reputation as a "man with wide government experience, yet without active political involvement."⁴⁴ All of the Levi-supporting statements echoed each other by emphasizing the integrity he embodied as a lawyer, educator, and administrator, positioning him as a bastion of hope for the tarnished DOJ.

Conversely, Levi's detractors focused on discrediting him as an independent, and nonpartisan candidate. E. Stanley Rittenhouse, a representative for Liberty Lobby, a far-right political advocacy organization, lambasted Levi for his past associations with the NLG, his "tolerance for lawlessness," and, in a particularly antisemitic attack, his

⁴² *Nomination of Edward H. Levi to be Attorney General: Testimony before the Committee on the Judiciary*, 94th Cong. 1 (1975) (statement of Adlai E. Stevenson III, U.S. Senator from Illinois), 4.

⁴³ U.S. Congress, Senate, Committee, Nomination of Edward H. Levi, 3.

⁴⁴ *Nomination of Edward H. Levi to be Attorney General: Testimony before the Committee on the Judiciary*, 94th Cong. 1 (1975) (statement of Lawrence E. Walsh, President-Elect, ABA), 59.

Jewishness.⁴⁵ According to Rittenhouse, it would be “disastrous for America,” to confirm Levi, because the AG should be someone who “strongly oppose[d] all anti-American organizations, movements, and individuals.”⁴⁶ Rittenhouse argued that Levi’s past revealed “that he not only traveled with subversives but he also belonged to their organizations.”⁴⁷ Levi’s potential links to Nelson Rockefeller and the Rockefeller family’s financial interests were also a major point of contention; Rittenhouse feared that if Levi joined the Cabinet, he would undermine “America’s sovereignty.”⁴⁸

Tony Chaitkin of the U.S. Labor Party also referred to Levi’s connection to the Rockefeller family. He argued that if Levi were confirmed, he would enable the “Rockefeller family...to create a supranational government to implement fascist policies...”⁴⁹ Chaitkin also asserted that during the Second World War, Levi “personally supervised the official protection and preservation of the Rockefellers’ criminal collaboration with the Nazis;” in reference to the Rockefeller’s economic activity in Germany during that period and Levi’s past work in the DOJ concerning antitrust cases and monopolies.⁵⁰ Chaitkin ended his statement saying that Levi had “no principles...[and] no spine...” arguing that not only should Levi be investigated as a criminal, but that he was not the moral stalwart his supporters alleged him to be.⁵¹

⁴⁵ Levi was the first Jewish AG.; *Nomination of Edward H. Levi to be Attorney General: Testimony before the Committee on the Judiciary*, 94th Cong. 1 (1975) (statement of E. Stanley Rittenhouse, Legislative Aide, Liberty Lobby), 110.

⁴⁶ Rittenhouse, testimony on *Nomination of Edward H. Levi to be Attorney General*, 111.

⁴⁷ Rittenhouse, testimony on *Nomination of Edward H. Levi to be Attorney General*, 111.

⁴⁸ Rittenhouse, testimony on *Nomination of Edward H. Levi to be Attorney General*, 111.

⁴⁹ *Nomination of Edward H. Levi to be Attorney General: Testimony before the Committee on the Judiciary*, 94th Cong. 1 (1975) (statement of Tony Chaitkin, U.S. Labor Party), 121; It should be noted that this Rockefeller connection was only supported by 1) a *U.S. News and World Report* two sentence note that alleged an insider reported that Rockefeller was behind Levi’s nomination, and 2) that John D. Rockefeller is credited as the founder of the University of Chicago. Rittenhouse, testimony on *Nomination of Edward H. Levi to be Attorney General*, 107-108, 111; “Washington Whispers,” 3.

⁵⁰ Chaitkin, testimony on *Nomination of Edward H. Levi to be Attorney General*, 118-21.

⁵¹ Chaitkin, testimony on *Nomination of Edward H. Levi to be Attorney General*, 118-21.

The last witness who spoke against Levi was Frederika Blankner, President of the Chicago Property Owners Association.⁵² She mentioned Levi's role as a defendant accused of "alleged fraud, conspiracy, misuse of eminent domain and of tax multimillions," within the University of Chicago Urban Renewal Case and requested that Levi disqualify "himself from participating in these considerations."⁵³ Her concern largely lay with Levi's potential to use his position as AG to secure a favorable ruling in the fraud case.⁵⁴ All the opposing witness statements demonstrate an overarching concern that Levi, as AG, would utilize the position for his own personal gain, or for the benefit of allies. Weaponizing widespread fears of another Mitchell, Levi's opponents attacked his integrity, which definitively contrasted with the nonpolitical, morally upright, intellectual propagated by the Ford administration. In the end however, these attacks failed to sully the image of the new AG.

Members of the Senate Judicial Committee were also allowed to question Levi on several topics, but for the purposes of this chapter, I emphasize three comments because of their relevance to the roles, responsibilities, and expectations of the AG. The main issues covered in the hearing focused on their expectations for an independent and incorruptible DOJ, the lack of definitive guidance for wiretapping and electronic surveillance procedures, and concerns for standing FBI practices and procedures. Levi was largely unwilling to commit to hard stances on several issues—a tactic he utilized to

⁵² The last witness, Charles Trimble, Executive Director of the National Congress of American Indians spoke not directly about Levi, but about the failure of the Attorney General and the Justice Department to properly represent Indigenous interests. U.S. Congress, Senate, Committee, Nomination of Edward H. Levi, 127-137.

⁵³ *Nomination of Edward H. Levi to be Attorney General: Testimony before the Committee on the Judiciary*, 94th Cong. 1 (1975) (statement of Frederika Blankner, President, Chicago Property Owners Association), 131.

⁵⁴ Blankner, testimony on *Nomination of Edward H. Levi to be Attorney General*, 131.

remain neutral—and was therefore accused in the newspapers of waffling, a trait that would become frustrating for many later on.⁵⁵ However, he stated that he “would resist pressure, from Congress or from the White House, to take a particular action unless he felt it was justified.”⁵⁶ He would continue to reiterate this point, and when asked about how to potentially insulate the DOJ from abusive pressure, he responded that there should be congressional oversight, and “a morality of appropriate” behavior on the part of the DOJ.⁵⁷ While Levi did not explicitly define what he meant by “individual morality,” he implied that this was the only true protection against abuses regardless of any other programs or institutional safeguards in place.⁵⁸ Thus, he reiterated the argument that the integrity of the man was critical to the implementation of independent and non-partisan justice. Yet, as his tenure would demonstrate, it would not be enough.

Unsurprisingly, another major topic of inquiry concerned the abuses of investigatory powers by the FBI. The existence of the FBI’s counterintelligence program (COINTELPRO) had been leaked to the public in 1971, and since that point, evidence of the Bureau’s initiatives to “expose, disrupt, and “otherwise neutralize” a variety of “subversive” organizations was being uncovered almost daily.⁵⁹ As such, much of the Senate’s questioning focused on Levi’s position towards government surveillance—

⁵⁵ United Press International, “Dash Accuses President of ‘Misleading Statements’,” *St. Joseph Gazette*, Oct. 29, 1976, 7B, <https://tinyurl.com/3cahabu6>; Linda Charlton, “Attorney-General Designate Asserts Death Penalty, if Enforced, Is Deterrent,” *New York Times*, Jan. 28, 1975, 1, 17, <https://www.nytimes.com/1975/01/28/archives/attorney-general-designate-asserts-death-penalty-if-enforced-is.html>; Lawrence Meyer, “Academician Levi Differs from Predecessor,” *The Daily Pantagraph*, Feb. 10, 1975, B1, Newspapers.com.

⁵⁶ Charlton, “Attorney-General Designate Asserts Death Penalty,” 1, 17.

⁵⁷ U.S. Congress, Senate, Committee, Nomination of Edward H. Levi, 22.

⁵⁸ U.S. Congress, Senate, Committee, Nomination of Edward H. Levi, 22.

⁵⁹ Susanna McBee, “Hoover Ordered FBI to Plant Spies, Forge Papers Against Extremists,” *The Washington Post*, March 8, 1974, A1, A6, ProQuest; “The Nation/Continued: The F.B.I.’s Harassment Was Just That,” *New York Times*, Nov. 24, 1974, 207, <https://www.nytimes.com/1974/11/24/archives/the-nationcontinued.html>; John M. Crewdson, “Light on the Dark Side of Hoover’s F.B.I.,” *New York Times*, Nov. 24, 1974, 207, ProQuest.

specifically that of wiretapping civilians. Levi responded that such a tactic would be “required in connection with certain areas.”⁶⁰ Furthermore, he acknowledged the need for wiretaps in investigations, but he also noted that the public undoubtedly needed protection against the “undue use of government surveillance.”⁶¹ This concern resulted from the fact that the use and scope of the surveillance would hinge on the character and interpretation of those conducting the investigations.

When Levi was asked what he planned to do about the maintenance of the FBI’s often unwieldy collection of files, he responded that he hoped to implement a set of public guidelines that could be implemented as safeguards against “undue government surveillance.”⁶² At that time, Levi hoped that these guidelines would be developed with multiple sources of input—such as Congress, and FBI leadership—to best ensure individual constitutional rights while also not actively disabling investigations.⁶³ This overview of the policy he hoped to instate while in office was generally acceptable to the Committee, and newspaper accounts reflected that his hearings had been a success.⁶⁴ Many Americans felt encouraged that Levi planned to ensure the integrity of an organization that had received much-deserved criticism in recent years for its blatant disregard for civil rights. In addition, because Levi planned to create the guidelines with potential Congressional input, many hoped that they would receive legislative backing, and as such the effectiveness of the guidelines would rely less on the individual interpretation of the DOJ leadership at any given time.

⁶⁰ Charlton, “Attorney-General Designate Asserts Death Penalty,” 1, 17.

⁶¹ Charlton, “Attorney-General Designate Asserts Death Penalty,” 1, 17.

⁶² Charlton, “Attorney-General Designate Asserts Death Penalty,” 1, 17.

⁶³ Charlton, “Attorney-General Designate Asserts Death Penalty,” 1, 17.

⁶⁴ Associated Press, “Senate Confirms Attorney General Nominee E.H. Levi,” *The Anderson Independent*, Feb. 6, 1975, 1, Newspapers.com.

Levi was sworn in on February 7th, 1975 and during the ceremony, President Ford congratulated him for having “earned the honor of being the Attorney General of the United States.”⁶⁵ Ford went on to say that he was sure that Levi would “make certain that all of our fellow citizens believe [in] this government,” especially “when laws are interpreted,” or “when laws are carried out.”⁶⁶ It was this restoration of faith in government that Ford argued, was so desperately needed “at this very troubled time.”⁶⁷ In his speech, Levi acknowledged that he was becoming the AG at a “time of change and corrosive skepticism and cynicism concerning the administration of justice.”⁶⁸ Yet, even with such difficulties, he argued it would be part of his mission to make it evident “that our law is not an instrument of partisan purpose.”⁶⁹

Determined to distance himself from the public image of the corruptible crony that had more recently come to define the position, Levi, early in his term, placed three portraits in the AG’s conference room—those of Stone, William DeWitt Mitchell, and Francis Biddle.⁷⁰ To Levi, their images represented men who had embodied the “nonpolitical or dignified conception of the office,” and were leaders who personified standards of integrity, professionalization, and independence.⁷¹ Levi swore to make the

⁶⁵ Speech, Remarks for Swearing In of Edward Levi, Feb. 7, 1975, folder: 2/7/75 – Remarks for Swearing-In Ceremony of Edward Levi, Attorney-General (includes Draft), box 5, President’s Speeches and Statements, Gerald R. Ford Library.

⁶⁶ Speech, Remarks for Swearing In of Edward Levi.

⁶⁷ Speech, Remarks for Swearing In of Edward Levi.

⁶⁸ Carroll Kilpatrick, “Levi Sworn Into Post, Vows Equal Justice,” *The Washington Post*, Feb. 8, 1975, A2, ProQuest.

⁶⁹ Kilpatrick, “Levi Sworn Into Post, Vows Equal Justice,” A2.

⁷⁰ Navasky, “The Attorney General as Scholar, Not Enforcer,” 13, 85-89, 92; William DeWitt Mitchell was Solicitor General under Coolidge, and President Herbert Hoover appointed him AG (1929-33). Francis Biddle was also Solicitor General before being appointed AG (1941-5) by President Franklin Delano Roosevelt. Biddle was the AG when Levi worked in the DOJ in the 1940s. Jed Handelsman Shugerman, “Professionals, Politicos, and Crony Attorneys General: A Historical Sketch of the U.S. Attorney General as a Case for Structural Independence,” *Fordham Law Review* 87, no. 5 (2019): 1966, https://scholarship.law.bu.edu/faculty_scholarship/3588/.

⁷¹ Navasky, “The Attorney General as Scholar, Not Enforcer,” 13, 85-89, 92.

Department of Justice (DOJ) a “more thoughtful place,” but more importantly, he became determined to be his “own man” and to make it evidently clear that the law was not to be “an instrument for partisan purposes.”⁷²

Almost immediately, Levi had to reckon with the actions of his predecessors. The most pressing issue was the ongoing study of the American Intelligence Community (IC) by the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, which had formed on January 27th, 1975.⁷³ The revelations of COINTELPRO and other secret FBI domestic operations had captured Congressional and national interest.⁷⁴ Chaired by Sen. Frank Church (D-ID), its goal was to “conduct an investigation and study of governmental operations with respect to intelligence activities and of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any agency of the Federal Government.”⁷⁵ While the Church Committee investigated the DOJ, Levi coordinated inquiries into the FBI and the DOJ which aimed to assess the legitimacy of abuses of power by those institutions.⁷⁶

Levi also ordered several internal Justice reviews to ascertain the quality and content of several programs. One of his major studies examined the content of

⁷² John M. Crewsdon, “The Attorney General is Going From One Crisis to Another,” *New York Times*, July 20, 1975, 3, ProQuest; DOJ Press Release, Levi Remarks at Swearing-In Ceremony, 7 Feb. 1975, folder: 2/7/75 – Transcript of Swearing-In Ceremony, vol. 1 – Speeches and Testimony, Edward H. Levi Scrapbooks and Speeches, Gerald R. Ford Library.

⁷³ Hereafter referred to as the Church Committee. The House and White House also established separate investigative committees (Nedzi/Pike and Rockefeller, respectively). Nicholas M. Horrock, “The Church Committee Must Address That, Among Other Questions: How Deeply Should the C.I.A. Be Looked Into?” *New York Times*, June 22, 1975, 182, <https://www.nytimes.com/1975/06/22/archives/the-church-committee-must-address-that-among-other-questions-how.html>.

⁷⁴ John M. Crewsdon, “Documents Show F.B.I. Harassed Foes of War,” *New York Times*, June 25, 1975, 15, ProQuest.

⁷⁵ U.S. Congress, Senate, *To Establish a Select Committee of the Senate to Conduct an Investigation and Study of Governmental Operations with Respect to Intelligence Activities*, S. Res. 21, 94th Cong. 1st sess, introduced in Senate Jan. 21, 1975.

⁷⁶ John M. Crewsdon, “F.B.I. Was Not as Advertised and Won’t Ever Be the Same,” *The Nation* via *New York Times*, August 1, 1976, 4E, ProQuest.

accumulated FBI intelligence. In March 1975, he revealed that the late Bureau Director J. Edgar Hoover had “kept derogatory information on Presidents, executive branch officials and 17 members of Congress.”⁷⁷ Under Hoover’s leadership, the Bureau had amassed “6.5 million FBI files on public and private officials.”⁷⁸ Levi disclosed this to the House Judiciary Committee’s subcommittee on civil and constitutional rights in late February 1975. He shared this information not just to shed light on some of the information-gathering practices of the FBI, but also to set the stage for his new guidelines which would “ensure such abuses would not occur in the future.”⁷⁹ This was significant, as it seemed that some solid structural reform would finally be instituted, which could potentially address the structural flaws that had allowed for politicization since the office’s inception.

Levi stipulated that these domestic investigation guidelines would “have to speak to the appropriate investigatory areas and the scope of the bureau’s investigating practices in relation to the jurisdiction and authority,” of the FBI.⁸⁰ He assigned a team of six attorneys to draft the guidelines, in cooperation with members of the Bureau, which would cover areas such as background investigations, handling unsolicited mail, civil and

⁷⁷ Peggy Constantine, “Levi’s Problem: What to Do With 6.5 Million FBI Files,” *Chicago Sun-Times*, March 1, 1975, 8 in Scrapbook Vol. 1 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁷⁸ Constantine, “Levi’s Problem,” 8; Associated Press, “Levi Confirms Hoover Files on Public Officials,” *The Cincinnati Enquirer*, Feb. 28, 1975, np, in Scrapbook Vol. 1 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library; William J. Eaton, “Secret Hoover Files are Disclosed,” *Chicago Daily News*, Feb. 27, 1975, 1, 9, in Scrapbook Vol. 1 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁷⁹ David Murray, “Levi Tells of Hoover Files on Political VIPs,” *Chicago Sun-Times*, Feb. 28, 1975, 2, in Scrapbook Vol. 1 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁸⁰ *House Judiciary Committee Subcommittee on Civil Rights & Constitutional Rights: Testimony on FBI Operations*, 94th Cong. 1 (1975) (statement of Edward Levi, Attorney General), 24.

criminal investigations, domestic intelligence and counterintelligence.⁸¹ His goal was that in the next six to eight months, a set of recommendations would be drafted, which would then be submitted for Congressional approval.⁸²

In addition to working on the guidelines, Levi officially established the OPR, an “internal Justice Department agency to oversee investigations of alleged misconduct of employees,” which included the FBI, the Drug Enforcement Agency (DEA), and the Marshals Service, among others.⁸³ As its head, he appointed Michael Sheehan Jr., who had, since that past August, been serving as the department’s liaison with Congress on intelligence matters.⁸⁴ According to Levi, Sheehan Jr. would “have the right of access” to whatever was “going on in any of the investigating units.” If a concern required “special attention,” it would be up to the head of the OPR to recommend to the AG “how or what the alternative ways of handling it ought to be.”⁸⁵ As examples, Levi noted that these recommendations could include investigating the matter, or bringing the issue to an external investigative body.⁸⁶ Not only was the OPR a testament to the continued professionalization of the DOJ, but it also represented one of Levi’s efforts to rebuild the department's probity. Once again, Levi approached the job by focusing on the well-defined tradition of professionalism, independence, and integrity.

⁸¹ Ronald J. Ostrow, “Team Drafting Rules to Avert FBI Misconduct,” *Los Angeles Times*, June 22, 1975, 1, in Scrapbook Vol. 5 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁸² Ostrow, “Team Drafting Rules to Avert FBI Misconduct,” 1.

⁸³ Associated Press, “Levi Forming Agency to Guide Inquiries into Any Misconduct,” *New York Times*, Dec. 10, 1975, 30, ProQuest.

⁸⁴ Associated Press, “Levi Names Aide to Head New Office of Investigations,” *New York Times*, Dec. 19, 1975, 19, Scrapbook Vol. 9 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁸⁵ “FBI Revamping Plan Unchanged, Levi Says,” *Chicago Tribune*, Dec. 15, 1975, 6 in Scrapbook Vol. 9 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁸⁶ “FBI Revamping Plan Unchanged, Levi Says,” 6.

The OPR was a symbol of Levi “carrying out promises made...as much as two years ago.”⁸⁷ Elliot Richardson had first proposed appointing an inspector general within the DOJ, but William Saxbe, Levi’s predecessor, had issued the order establishing such an office. While the order had been in effect since two weeks before Saxbe’s resignation, it wasn’t until December 1975 that Levi finalized the initiative that had begun under the previous two AGs.⁸⁸ Levi hoped that the OPR, in combination with the new FBI guidelines, would provide departments under the AG with regulatory guidance on ethical operations, and dissuade the “recurrence of illegally disruptive activities,” such as what had taken place during COINTELPRO.⁸⁹

However, as several newspaper articles pointed out, Levi’s first draft of guidelines seemed “deeply disappointing,” in that they appeared to do little to curb abuse of power by the Bureau and instead, had institutionalized them.⁹⁰ According to Loch Johnson, who was special assistant to Church during the intelligence inquiries, Levi presented to the Senate Committee “an ill-defined set of guidelines for the FBI in the future.”⁹¹ Sen. Walter Mondale, one of the guidelines most ardent critics, argued that without “strong law,” the guidelines “would be swept away as quickly as a sand castle [*sic*] is overrun by

⁸⁷ Associated Press, “Attorney General Sets Up Internal ‘Watchdog’ Unit,” *The Washington Post*, Dec. 10, 1975, A2 in Scrapbook Vol. 9 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁸⁸ Associated Press, “Attorney General Sets Up Internal ‘Watchdog’ Unit,” A2.

⁸⁹ Warren Brown, “FBI Gets Guidelines On Spying,” *The Washington Post*, March 11, 1976, A1, ProQuest.

⁹⁰ “The F.B.I. Guidelines...,” *New York Times*, Dec. 16, 1975, C38 in Scrapbook Vol. 9 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library; Nicholas M. Horrock, “Power to Prevent Domestic Threats Sought for F.B.I.,” *New York Times*, Dec. 12, 1975, 8, <https://www.nytimes.com/1975/12/12/archives/new-jersey-pages-power-to-prevent-domestic-threats-sought-for-fbi-a.html>; “Washington Warrior: A Special Weekly Report from the Wall Street Journal’s Capital Bureau: Ford Choices for the Cabinet, praised at first, produce a mixed record.,” *The Wall Street Journal*, nd, 1, ProQuest.

⁹¹ Loch K. Johnson, *A Season of Inquiry Revisited* (University of Kansas Press, 2015), 155.

a hurricane.”⁹² *The New York Times* agreed with Mondale that the “basic defect” of Levi’s proposed guidelines was that “they do not have the force of law: they are merely administrative regulations, subject to amendment or rescision [*sic*] at will by the executive branch.”⁹³ This was the central problem with the guidelines. They provided little protection against future abuses of power because they did not address the primary deficiency that affected the office. In addition to the *New York Times*, other members of the media also argued that Levi’s guidelines were too “vague.”⁹⁴ Melvin Wulf, the legal director of the American Civil Liberties Union (ACLU) told the media that they were “really not enough,” particularly when trying to determine “between those using force and violence in a serious way and those discussing it in an abstract way.”⁹⁵

Without specifics and legislative backing, Levi’s attempts at structural reform would continue to allow for abuses of power, as they demonstrated the same deficiency that was inherent in the AGs original directives. Wulf’s concern speaks to the interpretive nature of the guidelines, specifically in regard to “preventative action.”⁹⁶ This open-ended concept was most problematic, as it would allow the FBI to utilize “illegal and extra-legal steps involving deception or intimidation,” in order to “try to prevent imminent violence.”⁹⁷ Even with the guidelines intent to create operational boundaries, it would

⁹² Horrock, “Power to Prevent Domestic Threats Sought for F.B.I.,” 85; Johnson, *A Season of Inquiry Revisited*, 155.

⁹³ “F.B.I. Guidelines,” *New York Times*, March 17, 1976, 36M, in Scrapbook Vol. 10 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁹⁴ “Well-Intentioned FBI Guidelines Contain Inherent Dangers, Too,” *Utah Tribune*, Dec. 15, 1975, np, Scrapbook Vol. 9 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁹⁵ Robert M. Press, “Levi FBI Guidelines Draw Critics’ Fire,” *Christian Science Monitor*, Aug. 14, 1975, np, in Scrapbook Vol. 7 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁹⁶ Walter Pincus, “Attorney General Weighs Ban on ‘Preventive Action’ by FBI,” *The Washington Post*, Feb. 28, 1976, A2 in Scrapbook Vol. 9 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

⁹⁷ Pincus, “Attorney General Weighs Ban on ‘Preventive Action’ by FBI,” A2.

still be up to the interpretation of those running the investigations. In the face of negative feedback, Levi later gave a statement that removed preventive action from the domestic security guidelines because of significant concern that it would be subject to abuse.⁹⁸

In early 1976, the first set of Attorney General Guidelines became official practice. They placed domestic security investigations into three definable categories: preliminary investigations, limited investigations, and full investigations.⁹⁹ The guidelines limited the techniques the FBI could utilize, based on the type of investigation they conducted.¹⁰⁰ However, shortly after their release, Levi found that he also needed to address concerns that the FBI had frequently used its network of informants in an “arbitrary and illegal manner.”¹⁰¹ As a result, there was a need to provide further distinctions for the treatment of informants so as to “not only to minimize their use but also to ensure that individual rights are not infringed.”¹⁰² The “Guidelines for Informant Use” were issued in December 1976, and they stressed that investigators should consider

⁹⁸ Press Statement, Department of Justice Statement by Edward H. Levi, March 10, 1976, Gerald R. Ford Library; Associated Press, “New Rules for FBI Readied,” *Anaheim Bulletin*, March 9, 1976, A4, Newspapers.com.

⁹⁹ Preliminary investigations allowed for determining the basis for a full investigation due to allegations presented to the agent. Limited investigations must be “authorized in writing by a Special Agent in Charge or FBI Headquarters,” IF and only if the means of investigation allowed to a preliminary investigation are not sufficient for estimating the basis for a full investigation. Full investigations require authorization from FBI headquarters, supplemented with “specific and articulable facts,” outlining the reason for the necessity of the investigation. “Appendix 2: Attorney General’s Guidelines for FBI Domestic Security Investigations, March 10, 1976,” in John Elliff, *The Reform of FBI Intelligence Operations* (Princeton University Press, 1979), 196-198.

¹⁰⁰ The allowed tactics included informants, “mail covers,” and electronic surveillance, but they all were subject to their own requirements. “Appendix 2: Attorney General’s Guidelines for FBI Domestic Security Investigations, March 10, 1976,” in Elliff, *The Reform of FBI Intelligence Operations*, 196-199.

¹⁰¹ John M. Goshko, “Strict Guidelines On FBI Informers Issued by Levi,” *The Washington Post*, Jan. 6, 1977, A1.

¹⁰² “Appendix 4: Attorney General’s Guidelines for FBI Use of Informants in Domestic Security, Organized Crime, and Other Criminal Investigations, Dec. 15, 1976” in Elliff, *The Reform of FBI Intelligence Operations*, 216.

other investigatory techniques before relying on these types of sources.¹⁰³ They also outlined additional procedures to protect both the informant and the Bureau.

It is important to note that Levi's guidelines were a consequence of mounting pressure from the Church Committee for the FBI to adopt a set of regulatory recommendations. The Committee had planned to provide these recommendations for improvement after completing their study of the past and current state of the American IC. There were suggestions that Levi had "devised the guidelines to head off more restrictive legislated curbs," and the vagueness of the instructions—which as they were, could not be enforced through law or executive order, contributed to this theory.¹⁰⁴ The Church Committee had initially considered establishing a legislative charter to define the scope of the FBI's investigative authority, but the issuance of Levi's "Domestic Security Investigation Guidelines," dissuaded Congress from adopting a more permanent, legislative alternative.¹⁰⁵ However, the weaknesses of the guidelines should not completely overshadow the fact that they represented a significant, legitimate effort to combat the abuses of power by the FBI. They also hoped to ensure ethical action without impeding the Bureau's investigatory function. Still, Levi's guidelines failed to address the central issue, the mandate enshrined in the Judiciary Act of 1789, which did not clarify

¹⁰³ It was reported that these guidelines affected "an estimated 600 to 700 informers in "security" cases and approximately 6,000 in the criminal field." John M. Goshko, "Strict Guidelines On FBI Informers Issued by Levi," *The Washington Post*, Jan. 6, 1977, A1 in Scrapbook Vol. 13 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library; "Appendix 4" in Elliff, *The Reform of FBI Intelligence Operations*, 215-19.

¹⁰⁴ R. V. Denenberg and Caroline Rand Herron, "Levi's F.B.I. Guidelines," *New York Times*, March 14, 1976, E4, <https://www.nytimes.com/1976/03/14/archives/levis-fbi-guidelines.html>; Dan Thomasson, "Agency Could Both Win and Lose: New FBI Restrictions Surprising," *Knoxville News Sentinel*, Aug. 16, 1975, np, Newspapers.com.

¹⁰⁵ Office of the Inspector General, *Chapter Two: Historical Background of the Attorney General's Investigative Guidelines*, (Office of the Inspector General, September 2005), [https://oig.justice.gov/sites/default/files/archive/special/0509/chapter2.htm#:~:text=The%20Levi%20Guidelines%20placed%20specific%20limits,%2C%20and%203\)%20full%20investigations.](https://oig.justice.gov/sites/default/files/archive/special/0509/chapter2.htm#:~:text=The%20Levi%20Guidelines%20placed%20specific%20limits,%2C%20and%203)%20full%20investigations.)

which of many masters the AG would serve. As a result, the debate over partisanship would continue to confront successive AGs.

When Levi resigned in January 1977, there was a mixed reaction to his term as AG.¹⁰⁶ Many acknowledged that because of the “Nixon experience,” Ford had always been likely to appoint an AG with whom he had “no prior connection.”¹⁰⁷ Levi was “advertised as a ‘non-political’” official because “that was exactly what the country wanted.”¹⁰⁸ By choosing a completely unaffiliated candidate, Ford set Levi up for a term of “great independence.”¹⁰⁹ Anthony Lewis, a *New York Times* journalist, commended Levi’s implementation of his guidelines but felt that he had fallen short concerning the “officials who abused their power in the name of national security” and their lack of accountability “before the law.”¹¹⁰ Levi confessed that his guidelines were incomplete, but he felt it was important that they had been put in place and could serve as the beginning of future accountability.¹¹¹ That accountability has yet to occur.

The emphasis on Levi’s character, political independence, integrity, and professionalism was central to why Ford nominated him. These traits had, historically, been integral elements of an ideal AG, which President Ford had sought as he strategized to rebuild the morale and reputation of the DOJ. For this reason, Levi set a character

¹⁰⁶ Associated Press, “Ford Accepts Levi’s Resignation Next Week as Attorney General,” *New York Times*, Jan. 13, 1977, 26, <https://www.nytimes.com/1977/01/13/archives/ford-accepts-levis-resignation-next-week-as-attorney-general.html>.

¹⁰⁷ David E. Rosenbaum, “Choosing a Friend for Attorney General,” *New York Times*, Dec. 28, 1976, 13C in Scrapbook Vol. 13 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

¹⁰⁸ Jim Mann, “Analysis: Apolitical Levi Learns Washington’s Lesson,” *The Baltimore Sun*, June 25, 1976, A1, Scrapbook Vol. 11 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

¹⁰⁹ Anthony Lewis, “Not Above the Law?” *New York Times*, Jan. 3, 1977, C21, <https://www.nytimes.com/1977/01/03/archives/not-above-the-law.html>.

¹¹⁰ Lewis, “Not Above the Law?” C21.

¹¹¹ Don Sider, “Levi Looks Back at Justice,” *Time*, Dec. 20, 1976, 72, <https://time.com/archive/6845681/the-law-levi-looks-back-at-justice/>.

example for an AG, but this was not enough. Structural reform was most needed post-Watergate to ensure protective measures against future politicization. Levi's determination to empower the DOJ with internal safeguards and in-house operation guidelines failed to fully address the issues that had been inherent in the position since its creation. While Levi symbolized a new era for the AG, the lack of legislative support for his initiatives did not ensure that any of his post-Watergate reforms created long-term accountability as intended.

CONCLUSION

Over the Watergate era, the politicization of the office of the Attorney General (AG) and the Department of Justice (DOJ) by President Richard Nixon and his AG John Mitchell had solidified for many, the image of the attorney general “as a political counselor to the [P]resident.” thus, for many, Edward Levi’s tenure was exceptional as he demonstrated that the AG could be an “independent figure, concerned primarily with the fair and impartial administration of justice.”¹ As such, Levi’s legacy is primarily defined by his reputation as a man of integrity, who arrived in Washington as a complete political outsider at a time when misuse of executive powers had greatly eroded public trust in the American government.² Levi was the picture of the ideal AG—he exuded professionalism, was intensely nonpartisan, and was committed to demonstrating not just his own integrity, but the integrity of the department he presided over. However, despite possessing these traits which scholars have agreed are essential to being an exemplary AG, Levi’s initiatives fell short of preventing future politicization of the office of the AG.

Since its inception, the ambiguous language within the Judiciary Act of 1789 has contributed to growing structural issues and prioritized, for many scholars, the importance of the character of the AG; legislation has never provided definitional guidance and thus, interpretation has relied heavily on the given administration. The lack of institutional safeguards, which would clarify the AG’s responsibilities and protect them

¹ Martin Weil, “Edward Levi Dies at 88: U.S. Attorney General After Watergate,” *The Washington Post*, March 7, 2000, <https://www.washingtonpost.com/archive/local/2000/03/08/edward-levi-dies-at-88/59ad2eaa-0c1b-4273-90e9-f9d2c6d61c82/>.

² Georgie Anne Geyer, “Levi: Man of Principle Sought Reachable Good,” *Chicago Daily News*, Jan. 1, 1977, 7, in Scrapbook Vol. 13 of Edward H. Levi; The Attorney General, February 7, 1975—April 16, 1975, Gerald R. Ford Library.

from undue politicization, is a noted issue throughout scholarship, yet practically, has never been addressed. Without structural reform, emphasis continues to be on the character of an AG and the hopes that they will embody independence, integrity, and professionalism. However, as with Levi's tenure, just possessing these characteristics is not enough to ensure the long-term independence of the office of the AG and the DOJ. As a result, scholars should consider these two themes in tandem to understand where reform efforts—such as Levi's Domestic Security Investigation Guidelines or Office of Professional Responsibility (OPR)—have fallen short.

Contemporary politics has revived the AG as a pertinent topic of discussion. Levi's name returned to these discussions with President Joseph Biden's 2021 nomination of Merrick Garland in the aftermath of President Donald Trump's first term. However, like Levi's own term, Garland left office without having provided any structural reforms to prevent the incoming Trump administration's inevitable weaponization of the DOJ. With institutional safeguards, the character of the AG becomes less impactful. However, with Trump's first and second picks for AG (Matt Gaetz and Pam Bondi, respectively) it has become clear that he has no interest in maintaining the independence of the office of the AG, instead opting for explicit loyalists.³ Despite the office of the AG changing in many ways since 1789, the initial legislation has never been clarified, which has allowed Presidents and AGs to interpret the role of the AG and their relationship to the President as they see fit.

³ Gram Slattery et al., "Trump Taps Loyalists With Few Qualifications for Top Jobs," *Reuters*, Nov. 14, 2024, <https://www.reuters.com/world/us/trump-taps-loyalists-with-few-qualifications-top-jobs-2024-11-13/>; Devlin Barrett et al., "Trump Picks Pam Bondi, Florida's Former Top Prosecutor, for Attorney General After Gaetz Withdraws," *New York Times*, Nov. 21, 2024, <https://www.nytimes.com/2024/11/21/us/politics/pam-bondi-attorney-general-trump.html>.

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