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The FBI Defendants

IT IS NOT often that we offer advice to judges about the sentences they should impose on convicted criminals. Judges trying to reach wise decisions struggle with enough pressures and second-guessers as it is. But the action of the Department of Justice in dropping the criminal charges against former FBI director L. Patrick Gray prompts us to say a few words about the two other former FBI officials who will be sentenced today, W. Mark Felt and Edward S. Miller.

Mr. Felt and Mr. Miller will come before federal Judge William B. Bryant to find out what punishment they face for having conspired to violate the civil rights of several American citizens. The crime of which they were convicted by a jury is a serious one. It grew out of one of the more tawdry episodes in federal law enforcement—the burglaries of private homes by FBI agents in pursuit of opponents of the war in Vietnam.

The dimensions of the wrongdoing by the FBI in those days—and before—are far larger than the specifics of the case against Messrs. Felt and Miller. The “black bag jobs” were only part of a system of so-called law enforcement that ignored the principles of individual rights and personal privacy that are at the heart of this nation’s political legacy.

The question that truly troubles us, however, is whether Messrs. Felt and Miller are the proper persons to be standing in front of Judge Bryant—or whether they are the fall guys for a system acquiesced in by countless others and that they themselves did not create. We believe the two men should have been indicted, prosecuted and, as the jury saw the evidence, convicted. But there is also no question that there were others (most no longer alive), who belonged in the dock with them.

Messrs. Felt and Miller did not establish the policies and the atmosphere by which the FBI finally ran amok, contemptuous of the restrictions the law places on all citizens. That came from a higher level of government, from directors, attorneys general and presidents who approved, condoned or ignored illegal police tactics. One director under whom the two men served, Mr. Gray, says he did not know what was going on (he was in office only 11 months), and the Justice Department’s action indicates that is true. The other director’s despicable record has been memorialized in stone on a building on Pennsylvania Avenue. Most of the others who helped establish the operating methods that led Messrs. Felt and Miller to the bar of justice have gone on, like Mr. Hoover, to their reward.

So what should Judge Bryant do with these men who once stood near the peak of the FBI’s power pyramid? They were, in those days, honest, hard-working and dedicated law enforcement officers. They served their country well in some respects, even if they served it badly—tragically so—in others.

In our view, Messrs. Felt and Miller have been punished enough. The trial and conviction have cost them dearly in money and in personal prestige. The message that their case had to send to all law enforcement officers—that this country will not tolerate illegal police conduct even when it is committed with the highest motives—has been sent. The system of which they were a part has been dismantled. The atmosphere that approved the wrongdoing in which they participated has been dispelled. There is nothing to be gained by sending them to prison. It would be gratuitous and cruel for a society itself implicated in the toleration of the activities for which they are being punished to now incarcerate these two men.