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For a Special Prosecutor on Intelligence-Agency Abuses

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WASHINGTON—In 1973, Congress and the public forced the Attorney General to appoint a special prosecutor independent of Justice Department control to investigate the deepening Watergate scandal. The need was clear. Former Attorney General Eric Starobin and the department had failed to move decisively when faced with a cover-up.

Intelligence-agency abuses present a similar situation. Attorney General Edward H. Levi should therefore follow the precedent of the former Attorney General Elliot Richardson, and appoint a special prosecutor to investigate and prosecute violations of law by intelligence-agency officials. Alternatively, he can assign the task to the Watergate special prosecutor

whose continuing charter encompasses matters the prosecutor consents to have assigned him by the Attorney General.

That crimes have been committed is firmly established; that the Justice Department lacks the impartiality and the will to prosecute is becoming increasingly clear. Known violations of law include the following:

1. The Central Intelligence Agency for 20 years opened mail to and from the United States. C.I.A. officials knew it was illegal and took steps to conceal it. When the Federal Bureau of Investigation found out about the program, it became an active participant.

2. The F.B.I. conducted hundreds of burglaries against domestic organizations and individuals knowing it was in violation of law.

3. Other programs infringed upon protected civil rights. The F.B.I.'s COINTELPRO operations involved

hundreds of actions to disrupt political groups, and the anonymous letter to Dr. Martin Luther King Jr. suggesting that he commit suicide. The C.I.A.'s massive CHAOS program was aimed at antiwar activists.

4. Cover-up is also involved. The former Director of Central Intelligence, Richard Helms, testified that the agency had not given aid to opponents of the late Chilean President, Dr. Salvador Allende Gossens, and that the C.I.A. did not maintain files on American citizens. Official documents suggest that Mr. Helms may have violated perjury statutes.

The Attorney General expresses concern about many of these activities and the Justice Department asserts that it has been conducting criminal investigations of at least the mail openings, National Security Agency cable interceptions, C.I.A. assassinations plots, and the possible Helms perjury. However, there is no sign that

any cases will be presented to a grand jury. Perhaps this inaction is due to a lack of sufficient evidence or procedural difficulties. Still, we cannot be sure that the problem is not that the Justice Department is investigating itself.

The issue, as in Watergate, is whether the Justice Department can investigate these crimes with sufficient impartiality. The argument for a special prosecutor is based on considerable evidence that the department cannot. Under standards proposed by the American Bar Association, a prosecutor should withdraw from a case if there is any suggestion of partiality. Here there is more than a suggestion.

For twenty years, the Justice Department operated under a secret agreement with the C.I.A. exempting that agency from the normal requirement to call possible violations of law to the attention of the department.

The department's involvement in this dubious agreement is sufficient to disqualify it from investigating the allegations against the C.I.A.

Many of the criminal activities involve the F.B.I., with which the Justice Department works intimately. This raises questions of impartiality, particularly because these are not isolated acts by low-level agents, but programs directed by senior bureau officials.

Department officials may also be implicated to the extent they knew of these activities. It is our understanding that the Justice Department investigators have recommended against prosecuting anyone involved in COINTELPRO.

A further conflict arises because the Justice Department defends the very conduct it claims to be investigating when it represents officials sued for civil damages as a consequence of these activities.

One key element in bringing the intelligence agencies under democratic control is to insure that officials of intelligence agencies are prosecuted when they violate the law. Unless there is a thorough investigation by an impartial prosecutor followed by indictments and a report, the threat of criminal penalties will not deter future abuses.

There is considerable debate about whether we need a permanent special prosecutor, and there is merit on both sides of that issue. But there is no question that we need a special prosecutor now to investigate the illegal activities of the intelligence community. As with Watergate, a sense of justice demands it.

Jerry J. Berman and Morton H. Halperin, both associated with the Center for National Security Studies, are editors of the center's recent report, "The Abuses of the Intelligence Agencies."