

Rule of Law

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There is no longer any question that the Central Intelligence Agency and the Federal Bureau of Investigation, in their pursuit of the national interest—as they and a succession of Presidents were left to define it—broke a number of the laws of the United States.

Senator Frank Church, whose post as chairman of the Senate Select Committee on Intelligence has afforded him a close and panoramic view of the whole range of violations committed by both agencies, has called for appointment of a special prosecutor to take the investigations and prosecutions out of the Justice Department. Attorney General Edward H. Levi has vigorously opposed the Church proposal, terming it “an attack on the integrity” of his department. In our view, Mr. Levi has much the better of the argument.

The task now before the Department of Justice, simply stated, is to vindicate the rule of law. Over and beyond the normal duty it bears to enforce the law vigorously and fairly, its recent history imposes a special obligation on the department to re-establish the sense that it will do so, wherever warranted, even against people who have acted under color of the highest Federal authority. By the same token, it must resist being stampeded by skeptics into bringing unwise and unsupportable indictments simply to prove that the John Mitchell era is over.

Appointment of a special prosecutor for these investigations, even if a number of important and successful prosecutions were accomplished, would serve only half the purpose of vindicating the rule of law. A clear demonstration that the ordinary law-enforcement machinery is again operative and reliable is also urgently required. Indeed, an effective Justice Department would stand as a far more credible deterrent to officials who might be tempted to commit crimes than would yet one more special prosecutorial effort destined to fold its tent when this particular job is done.

Even Senator Church's argument that a special prosecutor is needed because of the Justice Department's long-standing immunity agreement with the C.I.A. and its dependence on the F.B.I. for investigations cuts against him. Nothing would more clearly signal to the C.I.A. and F.B.I. bureaucracies that the immunity honeymoon is over than successful prosecutions by the Attorney General against officials of both agencies for crimes committed in the name of national security.

The national addiction to special prosecutorial offices—however well-founded in Watergate—is unwise, for it undercuts the drive for excellence and integrity without which the nation's established prosecutors' offices are bound to grow flabby, ineffectual and even corrupt. Mr. Levi's current task is to prod his department into moving on the F.B.I. and C.I.A. cases as skillfully, fairly and expeditiously as possible; successful completion of that task would be a major contribution to the Republic and to the rule of law.