

the case was not justiciable because it constituted only an “intra-branch dispute” over evidence to be used in a prosecution, in which the President’s decision was “final.” *Id.* at 692-93. The Supreme Court rejected that contention, explaining that the Special Prosecutor acted pursuant to a proper and legally binding delegation of the Attorney General’s authority:

Congress has vested in the Attorney General the power to conduct the criminal litigation of the United States Government. 28 U.S.C. § 516. It has also vested in him the power to appoint subordinate officers to assist him in the discharge of his duties. 28 U.S.C. §§ 509, 510, 515, 533. Acting pursuant to those statutes, the Attorney General has delegated the authority to represent the United States in these particular matters to a Special Prosecutor with unique authority and tenure.

*Id.* at 694; *see id.* at 694 n.8 (emphasizing that the Attorney General had issued the regulation “pursuant to” his “statutory authority”). The Court therefore held that, as long as the regulation remained in place, it bound the entire Executive Branch and required rejection of the President’s argument that he could override the Special Prosecutor’s subpoena. *Id.* at 695-96.

The district court erroneously determined (Dkt. 672 at 53-64) that *Nixon’s* reliance on the cited statutory provisions as authorizing the Attorney General to appoint “subordinate officers,” such as the Special Prosecutor, was dicta. *Nixon* necessarily evaluated the Attorney General’s appointment power because the Special Prosecutor could not assert the Attorney General’s authority “to conduct the criminal litigation of the United States Government” and the “explicit power