

Senate Panel Grills Silbert On Watergate

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Earl J. Silbert, prosecutor in the original Watergate investigation, vigorously defended himself yesterday against accusations that his conduct of the Watergate case had been inadequate and that he had failed to spot White House involvement in the coverup.

Silbert underwent more than four hours of detailed questioning on his role in the Watergate prosecution before the Senate Judiciary Committee. It opened hearings on President Nixon's nomination of Silbert to be the U. S. attorney for the District of Columbia.

Sen. Philip Hart (D-Mich.) carried the entire weight of the questioning. Sens. James Eastland (D-Miss.), Strom Thurmond (R-S.C.) and Roman L. Hruska (R-Neb.) made brief appearances in the committee room, but none asked questions.

Sitting quietly in the audience during the hearing was one of Silbert's critics, James W. McCord.

Silbert successfully prosecuted McCord as one of the seven men who broke into the headquarters of the Democratic National Committee in the Watergate.

McCord, who may testify today when the committee resumes hearings, issued an 11-page statement to reporters questioning Silbert's fitness for the U. S. attorney's position. Later he said nothing he had heard had changed his opinion.

Silbert, 37, portrayed himself as a single-minded assistant U. S. attorney whose first obligation was to win conviction of the Watergate conspirators.

"I and two assistants were preparing for a trial with 90 witnesses," Silbert told Hart late in the afternoon as questioning entered the fifth hour. "We were working night and day. There were more than 30

pretrial motions to handle. We were trying to concentrate on the Watergate bugging and burglary."

Silbert had been pressed on why he had not been more aggressive in trying to pursue leads in October, 1972, that indicated there had been violations of federal campaign financing laws.

Hart said at the outset of the hearing that "we all of us have the benefit of hindsight now—a magnificent luxury but sometimes a misleading one." He added that "failure to follow a lead can't be excused either."

Hart said that Special Watergate Prosecutor Leon Jaworski had found no evidence of "misfeasance, malfeasance or bad faith" in Silbert's handling of the original Watergate case.

Hart wrote Jaworski last Feb. 20 requesting his views on this question, and the reply was received five days later. In placing the Jaworski letter in the record, Hart said that it "might be seen as damning with faint praise."

See SILBERT, C3, Col. 1

SILBERT, From C1

Specific criticisms of Silbert's handling of the Watergate investigation were aired for the first time. Some of the questions raised by Hart, and Silbert's explanations:

• Why didn't CSilbert obtain a search warrant for McCord's home or office in Rockville, Md., immediately after McCord's arrest at Watergate?

"Mere suspicion is not enough to obtain a search warrant. We had no specific grounds necessary to ask a magistrate for such a warrant."

• With most of the facts about the June 17, 1972, Watergate bugging and break-in known by July 20, 1972, why was Silbert not able to bring an indictment by the end of July?

"I would not have remotely considered bringing an indictment at that time. All we had was the uncorroborated testimony of an accomplice. It usually takes six months or a year to bring an indictment. In fact, it made me uneasy to return an indictment in September after only three months. The second-guessing would have been worse than it is now if we had brought the indictment in July."

• Why did not Silbert continue the grand jury after the initial indictments of the seven?

"You can't use a grand jury to develop more information against defendants after an indictment has been handed down. It would have helped the defense attorneys and was in no way a realistic possibility."

• Why didn't Silbert grant immunity to more witnesses, especially McCord, in an effort to develop more information?

"We did consider it very soon for McCord, but he was a basically uncooperative witness. We concluded that Gordon Liddy was in charge of the operation and we had grave reservations that McCord had any special knowledge because he reported to Liddy."

• Why did you not introduce the "Mexican checks" — that linked secret campaign donations to the break-in — as evidence at the Watergate trial?

"It had nothing to do with

the bugging or break-in and was irrelevant and immaterial to the changes in the indictment."

• Silbert testified that former White House aide John Ehrlichman made a protest that stopped Silbert from requiring former Commerce Secretary Maurice Stans and

other administration figures to appear before the July, 1972, grand jury investigation into the Watergate break-in.

Silbert said he had issued a subpoena on July 28 requiring Stans to appear before the grand jury on Aug. 1. But over the weekend he received a call from Assistant U.S. Attorney General Henry E. Petersen saying that Ehrlichman had complained about "harassment" of Stans.

A meeting was arranged at the Justice Department with Petersen and then — Attorney General Richard Kleindienst.

It was decided that Stans would be permitted to testify by deposition. Silbert testified he could not recall who actually made this decision, but said he could not fault it in retrospect even though it was contrary to his initial intent.

"I had seen the media descend en masse around the courthouse where the grand jury was meeting," Silbert said. "I was very sensitive to publicity. It was a tough judgment call."

But Silbert said it was "ridiculous" to extend the deposition favor to a secretary of White House aide Charles Colson, special counselor to President Nixon. Colson also testified by deposition.

Silbert was asked by Hart if there had been any discussion with the executive branch of any position for himself, such as a judgeship.

"No," said Silbert. "Flat out, no."

Silbert has been serving as interim U.S. attorney for the District since January, when poor health forced the resignation of Harold H. Titus, Jr. Silbert was the unanimous choice of the judges of the U.S. District Court here to fill the \$38,000-a-year job on the temporary basis.