

A Strange Nomination

By Tom Wicker

IN THE NATION

Richard Nixon's nomination of Earl J. Silbert to be U.S. Attorney for the District of Columbia has predictably set off a Senate Judiciary Committee investigation of the Justice Department's original handling of the Watergate matter. Mr. Silbert directed the Watergate inquiry until the appointment of Archibald Cox as special prosecutor, which raises the question why Mr. Nixon would nominate a man whose confirmation hearings were bound to rake over the coals of Watergate and the cover-up.

The White House transcripts, for example, disclose the possibility that Mr. Silbert may have been in ex parte contact with Federal Judge Charles R. Richey during the early Watergate inquiry. In a conversation with Mr. Nixon on Sept. 15, 1972, the transcript shows, John W. Dean 3d said that after "a casual encounter—in fact it was just in the hall," between Mr. Silbert and Judge Richey, no more depositions would be taken in the Democrats' Watergate suit against the Committee to Re-elect the President.

Six days later, the judge said he would stop taking such depositions, in order to avoid any possible interference with the criminal indictments of the Watergate burglars; but the move also tended to delay publication of information in the depositions until after Election Day, 1972. Both Judge Richey and Mr. Silbert have denied the "casual counter" or any other form of collusion, but this is one more in a number of unexplained or questionable episodes that raise serious questions about Mr. Silbert's nomination, and the original Watergate probe.

On July 24, 1973, for another example, John Ehrlichman testified at the Senate Watergate hearings that "I would guess a year or more ago," John Dean had told him that in the Ellsberg burglary "Henry Petersen [an Assistant Attorney General] had the information and the photographs and the whole business. . . . Last November he told Mr. [Egil] Krogh the same thing, told him that both Mr. Silbert and Mr. Petersen had this information."

That would have been in 1972. The Government brought Daniel Ellsberg to trial after that, but did not admit until April 25, 1973, that his rights had been seriously violated.

(Those who doubt Mr. Dean's veracity should note that his remark about Judge Richey and Mr. Silbert, as well as his reported comments on the Ellsberg matter, were made months before he broke with Mr. Nixon and the White House and obtained limited immunity for himself.)

Charles Morgan, the Washington director of the A.C.L.U., and a strong

opponent of Mr. Silbert's nomination, represented the Democrats in some aspects of the Watergate case. He testified in the Silbert hearings that in December, 1972, Mr. Silbert told him that E. Howard Hunt was trying to blackmail R. Spencer Oliver of the Democratic National Committee, "and I'm going to prove it." Mr. Silbert later tried unsuccessfully to have the logs of a tap on Mr. Oliver's phone put in evidence in the Watergate trial. When Judge Dayid Bazelon asked him in an appellate hearing if he was trying to prove blackmail, newspaper accounts have Mr. Silbert answering: "Why else would a wiretapper be interested, when doing political wiretapping, in information that was personal and of a confidential and private nature?"

Mr. Morgan believes Mr. Silbert hoped to suggest that the Watergate burglars were only blackmailers out for private gain, and further cites a remark of Mr. Silbert in his summation to the jury:

"He [James McCord] and [G. Gordon] Liddy were off on an enterprise of their own. Diverting that money for their own uses." (This was a reference to funds advanced to Mr. Liddy by C.R.E.E.P.)

Then there is the Parkinson matter. According to the transcript of the hearings on the nomination of L. Patrick Gray to be F.B.I. director, Kenneth Wells Parkinson, a C.R.E.E.P. lawyer, asked on June 20, 1972, to sit in on F.B.I. interviews with committee employes. Mr. Silbert, who was then in charge of the Watergate inquiry, agreed. On June 23, when F.B.I. agents tried to conduct interviews without Mr. Parkinson, Mr. Silbert told them Mr. Parkinson would not agree and that the agents would have to abide by the arrangement.

Later, Mr. Silbert said at the Senate hearings, he tried himself to keep Mr. Parkinson out of the interviews. But questions seem to arise everywhere. Here is still another:

Donald Segretti was asked by the Senate Watergate committee if Mr. Silbert had queried him about Herbert Kalmbach, who had in fact been Mr. Segretti's paymaster. Mr. Segretti said that in private interrogation, Mr. Silbert had asked, "Were you receiving funds from Mr. K.?" Taking that to mean Mr. Kalmbach, Mr. Segretti said he had been. But before the grand jury, he said, Mr. Silbert had not asked him about Mr. Kalmbach or how he was paid. If a grand juror had not raised those questions, Mr. Segretti said he did not believe anyone would have.