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Senator Sam J. Ervin Jr., left, with Henry E. Petersen, Assistant Attorney General, after Mr. Petersen's testimony before the Senate Judiciary Committee yesterday.

Petersen Says Silbert's Confirmation Could Be Used in President's Defense

By ANTHONY RIPLEY
Special to The New York Times

WASHINGTON, June 24 — Senate approval of the promotion of a former Watergate prosecutor could aid the President's defense against impeachment, Assistant Attorney General Henry E. Petersen acknowledged today.

Mr. Petersen, testifying during confirmation hearings for Earl J. Silbert to become United States Attorney for the District of Columbia, said Senate approval of Mr. Silbert would not be hard evidence in defense of the President but could be used as part of a public relations campaign.

In answering questions by Senator John V. Tunney, Democrat of California, Mr. Petersen said Mr. Silbert's confirmation would mean that the Senate approved of the early handling of the Watergate case by the Justice Department.

A 'Credible' Job

Senator Tunney read portions of a May 7 news conference held by James D. St. Clair, the President's chief defense lawyer, that included this question:

"Do you mean that [Mr. Nixon] ordered the Justice Department to investigate, the Justice Department performed an honest investigation and by reason thereof he is innocent?"

Mr. St. Clair answered, "Yes," and said he thought Mr. Petersen and Mr. Silbert had done a "credible" job.

Senator Tunney said that "many of us" were concerned over whether approval of Mr. Silbert meant approval of the handling of the Watergate case.

The remark seemed to galvanize Mr. Petersen in what

had been a rather listless hearing. He said he was glad the question was asked and that it went to the "core" of the matter.

Mr. Petersen said that Mr. Silbert had letters of praise from the first special Watergate prosecutor, Archibald Cox, and his successor, Leon Jaworski. The Assistant Attorney General added that Mr. Silbert had been approved by the 15 judges on the Federal bench here to be acting United States Attorney and that he had made "the breakthrough" in the Watergate cover-up, which Mr. Petersen described as "a tight-knit conspiracy."

"Are we saying [if we approve the nomination] that the President as chief law enforcement officer fulfilled his duty?" Senator Tunney asked.

"I think that inference might be drawn," Mr. Petersen replied, adding that he could not say whether the inference was a valid one.

Mr. Petersen went on to say that prosecutors always faced tough decisions, as do Senators.

"I sympathize with you, but all I can say in effect is, 'Welcome aboard,'" he added.

Mr. Petersen said that "one of the consequences" of a Senate vote of approval was that "it can be exploited in a public relations campaign."

But he stressed that such approval could not be used as "an evidentiary fact" in a formal impeachment proceeding.

Mr. Petersen contended that the President, as the nation's chief law enforcement officer "was not actively involved" in the Watergate case. But he added that he would have

preferred that Mr. Nixon had been "out there yelling, 'Go get them!'"

But the President did not, he said, and at the same time did not stand in the way of the investigation.

The discussions took place before the Senate Judiciary Committee, which has been holding hearings irregularly over the last two months on Mr. Silbert's nomination.

Questioned by Ervin

During a session this morning, Senator Sam J. Ervin Jr., Democrat of North Carolina, questioned Mr. Petersen at length over the question of immunity.

John V. Dean 3d, President Nixon's former counsel, had been seeking immunity from prosecution in exchange for his testimony against others in the Watergate affair. On April 17, 1973, Mr. Nixon publicly said that he had "expressed his view" to the "appropriate authorities" that "no individual" holding a job of "major importance" should be given immunity.

White House transcripts of Presidential tapes show Mr. Nixon in private to be very concerned over giving immunity to Mr. Dean. The tapes also contain his discussions of the issue with Mr. Petersen.

Mr. Petersen testified that he felt he was under no instructions from the President on the immunity question.

"At no point in my conversation with the President did he expect me to do anything less than I thought should be done," Mr. Petersen said. But he added:

"I recognize that the President didn't see eye-to-eye with me on immunity."