

In Defense of

By Daniel A. Reznick

WASHINGTON—Normally, the nomination of Earl J. Silbert to be United States Attorney for the District of Columbia would be a matter of only local interest. But inasmuch as Mr. Silbert was head of the original Watergate prosecution team before the appointment of Archibald Cox as special prosecutor, his nomination has been caught up in the intense controversy surrounding every aspect of the Watergate affair.

The Senate Judiciary Committee is now holding extensive hearings on the Silbert nomination, but caution is one thing and guilt by association is quite another. The actions or lack of action of high Administration officials in no way reflect on their thousands of subordinates. To argue otherwise is to smear honest and capable individuals with the broad brush of guilt by inadvertent association.

Those of us in the Washington legal community who know Mr. Silbert and his work consider him to be an outstanding attorney, a vigorous prosecutor, and a person of integrity. He deserves to be judged on his own record as the first prosecutor in the Watergate case.

Two principal criticisms have been directed against his record. The first is that perhaps he had hoped to suggest that the Watergate burglars were only blackmailers out for private gain. This is demonstrably inaccurate, as a look at the trial transcript would have shown. Mr. Silbert in his opening statement discussed the burglars' motive as follows: "What were the motives behind this conduct? What are the reasons for their activities? What was their motivations?" He answered: "Obviously it was a political motive, [a] political campaign. The operation was directed against the Democratic party." In his closing argument Mr. Silbert again argued that the burglary and wiretapping were to obtain "in-

formation about Senator McGovern's planned campaign, the Democratic National Committee's planned campaign."

It has been suggested that Mr. Silbert failed to investigate the relationship of Herbert W. Kalmbach, the President's personal attorney, to Donald H. Segretti, the "dirty-trickster" of the Republican campaign. This is also wrong, for on the very day that Mr. Silbert questioned Mr. Segretti and learned from him that he had been recruited by Dwight L. Chapin and Gordon Strachan, both on the White House staff, and had been paid by Mr. Kalmbach, Mr. Silbert directed the F.B.I. to conduct interviews of Mr. Kalmbach, Mr. Chapin and Mr. Strachan.

Even more significant than the errors of the critics of the Silbert nomination are the points they overlook. Here are some statements from persons in a position to know the facts:

Archibald Cox, first special prosecutor, in a letter to Mr. Silbert: "None of us has seen anything to show that you did not pursue your professional duties according to your honest judgment and in complete good faith."

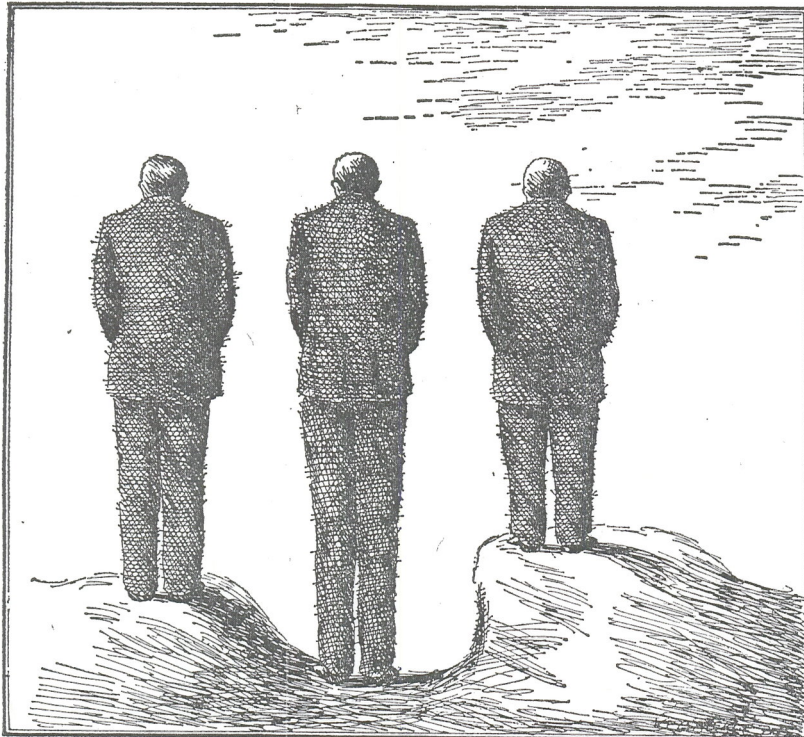
Leon Jaworski, special prosecutor, to Senator Roman Hruska of the Senate Judiciary Committee: "It is the opinion of the members of my staff who are most familiar with this matter that the handling of this case by Mr. Silbert and his colleagues prior to the appointment of a special prosecutor was professional and fair."

Chief Judge John J. Sirica, on administering the oath to Mr. Silbert as interim United States Attorney by appointment of the United States District Court: "Finding principal assistant Silbert well qualified, the judges voted unanimously for his selection."

Joseph L. Rauh Jr., a leader of the Washington bar and well-known for his courage in defending unpopular clients in civil rights and civil liberties cases, has written of Mr. Silbert and his colleagues: "Their job was to obtain convictions of the defendants before the court and this

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Silbert: A Look at the Record



Phillippe Weisbecker

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they did with a skill and thoroughness born of extensive prosecutorial experience."

Lawrence Spelser, former director of the American Civil Liberties Union's Washington office, has written to the Senate Judiciary Committee about Mr. Silbert: "There are bound to be differences of opinion on how any case should be handled. However, I do not believe that his handling of the case reflected anything other than a conscientious and sincere effort. . . . In short, I believe Mr. Silbert to be an attorney of honesty, integrity, and

ability who is eminently qualified to be the United States Attorney for the District of Columbia."

Let me rest my case with a few quotations from those who had reason to know best how vigorously Mr. Silbert and his colleagues pressed their investigation. These are excerpts from the White House transcripts. The speakers are "P" (the President) and "H" (H. R. Haldeman):

1.

After Jeb Stuart Magruder's meeting with Mr. Silbert:

"H. It is a damn good prosecuting

lawyer like Silbert to get a key witness to tumble, but—

P. Immediately?

H. Sure, they're got the facts—they may not be able to prove them but they've got them."

* * *

"P. You see what's happened, the prosecutor has been pretty clever. They got Magruder."

2.

"P. These guys are crowding in—Silbert and the rest—they aren't taking any program."

3.

After Gordon Strachan's appearance before the Watergate grand jury:

"P. He said that Strachan just got the hell beat out of him.

H. He did. He was absolutely astonished. He came out of there and he said it was just beyond belief."

* * *

H. I think we're in a terrible—these guys are working in a most blood-thirsty way."

4.

The President meets with John J. Wilson, attorney for Mr. Haldeman and John D. Ehrlichman:

"W. Now, we are old prosecutors, Mr. President.

P. Good.

W. And we think that this is not a case, according to our standards. This is not an indictable case against Bob. On the other hand, bear in mind that we have got a group of zealots—uh, particularly in Seymour Glanzer who is a fire-eating prosecutor, and uh—these zealots always shoot for the top."

None of these materials is secret, but the critics of the Silbert nomination do not mention them. I do not question their good faith or doubt that they have made honest mistakes. I only wish that they were willing to accord the same good faith to Mr. Silbert.

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