

# A Promotion for Earl Silbert?

Earl J. Silbert, who as an assistant U.S. attorney for the District of Columbia who directed the original Watergate investigation and prosecution, is up for promotion. But his nomination by President Nixon to be the U.S. Attorney for the District has run into trouble in the Senate Judiciary Committee.

It should.

My review of court records, plus the testimony and documents available since, raise questions about Silbert's original approach to the prosecution and about the manner in which he conducted his initial investigation.

Silbert and his supporters maintain these days that the prosecutor and his staff always had suspicions that higher-ups were involved, but claim they couldn't break the conspiracy until they had convicted the original Watergate seven. Then they planned to put those individuals involved back before the grand jury, this time with immunity. It was that strategy, Silbert now maintains, that led to the breakdown of the cover-up.

In February 1973, immediately after conclusion of the Watergate trial, Silbert was telling a different story. He told me it was a waste of time to plow through the trial transcripts and courtroom exhibits for a story because he believed the case was over. Sure, Silbert said, the seven convicted conspirators were going to be put back before the grand jury with immunity, but he did not expect them to say anything. Silbert told me and other newsmen in those days he was convinced the Watergate affair was just as he had portrayed it to the trial jury—an escape thought up and run by G. Gordon Liddy, off on his own to gain favor with his bosses.

On July 5, 1972—less than three weeks after the burglars were discovered in Democratic headquarters—Alfred C. Baldwin III, the man who monitored some 200 phone calls over a bugged phone, agreed to cooperate with the prosecutors in return for a promise he would not be indicted. By July 10, Baldwin had told his whole story to Silbert and the FBI. With all the other potential defendants and suspects remaining silent and with neither of the two bugs Baldwin described having been uncovered by the FBI, Baldwin's statement was the first solid indication that a wiretap had actually been operating.

That changed the case from a "third rate attempted burglary"—as the White House had described it—to a successful burglary and wiretap followed by an unsuccessful second attempt. Baldwin also told the prosecutors of the participation of E. Howard Hunt and Liddy. And he reported that on the night of the arrests, he had taken to the home of James McCord—one of the arrested burglars—and given to McCord's wife the radio receiver over which he heard the bugged phone conversations and the walkie-talkies he and Hunt used. Baldwin also told the prosecutors about an attempt to bug McGovern headquarters prior to June 17, 1972.

What happened to those leads on the bugging? Although Baldwin had identified the phone of Democratic aide Spencer Oliver as the one tapped, Silbert did not immediately send the FBI in to check Oliver's phone. He told the Judiciary Committee he was assured the FBI already had checked all the Democrats' phones and didn't find a

bug on any of them. In at least one instance Silbert told a questioner he could not forward information about the Oliver bug because he had been asked by Baldwin to keep his cooperation confidential. That's nonsense, since an FBI agent sat in on the Baldwin interview and a summary of his information was contained in the July 21, 1972, FBI report sent to the White House.

There is another questionable twist involving Silbert and the Oliver bug. On Sept. 13, 1972, the Democrats themselves uncovered that bug which was still on Oliver's phone. It was turned over to the FBI, whereupon the Bureau launched an extensive investigation of Democratic Party and McGovern campaign employees aimed at finding out who among them had

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planted the device. Within three weeks, 102 employees had been interviewed—a startling figure when compared with the 65 Nixon re-election committee aides and 21 White House staff members who were questioned by the FBI during the months of the Watergate inquiry.

Silbert now claims he always knew the bug found on Oliver's phone was the original one planted by McCord. Yet the FBI, whose efforts he directed, waited over a month, until Oct. 16, 1972, before testing the bug itself and finding that it transmitted on the exact frequency Baldwin had earlier said he tuned to when listening to the phone conversations.

Then Attorney General Richard Kleindienst announced in a September public television interview he believed the Oliver bug had been planted by the Democrats. Silbert never contradicted his boss. He now says he was unaware of Kleindienst's remarks, yet a story about them was carried prominently in *The Washington Post*.

Back in July 1972, when Silbert first learned of Baldwin's delivery of the receiver and walkie-talkies to McCord's home, the logical action of a prosecutor would have been to swear out a search warrant. Silbert did not do that. He now says he doubts the equipment



would have been there since McCord had been released from jail and would have hidden it. He had. But months later, Silbert's resourcefulness and desire to get the receiver led him to do stranger things than putting out a possibly unsuccessful warrant.

In September, about the time the indictments were finally brought against the original seven, Silbert called McCord's wife and his daughter to the grand jury to testify about the equipment. When that did not get him what he wanted, he called McCord's lawyer and threatened to indict McCord's wife as an accessory if the receiver and other equipment were not turned over. That worked. Why wasn't something like that done earlier?

While Silbert bore down on McCord, he treated the higher officials at the Nixon re-election committee and the White House staff with kid gloves. He agreed to let Kenneth Parkinson and other Nixon committee lawyers sit in on FBI interviews of the campaign employees. Even when the FBI complained that lawyers were telling interviewees which questions to answer, Silbert continued the practice. Finally, he now says, he moved the investigation into the grand jury. Nonetheless, Parkinson and his colleagues still played a major role in arranging for witnesses.

One specific instance is worth exploring. Herbert Porter was scheduling director for the campaign. About 10 days after the burglars were caught, Porter agreed to back up a phoney story devised by Jeb Stuart Magruder, the purpose of which was to cover-up the money given Liddy to pay for the Watergate operation. At the request of Parkinson, Porter and Magruder put their story down on paper. It was only after that was done that—on July 19—the FBI asked to interview Porter. At Parkinson's suggestion, a Nixon lawyer sat in. In early August, according to Silbert, the prosecutors considered Magruder a potential target of their investigation. Porter's story was the only

thing that corroborated Magruder on the purpose of the cash he approved to be given Liddy. It was Parkinson, however, not Porter with whom Silbert spoke about getting Porter to the grand jury. And when Parkinson told Silbert that Porter was too busy to have an interview prior to his grand jury appearance, Silbert accepted that. Thus a key witness was never questioned privately by Silbert before going to the grand jury to tell his story.

Silbert also was restrained in directly investigating Magruder, though he now says he always was suspicious of the deputy campaign director. Silbert never had the FBI interview Robert Reisner, Magruder's administrative assistant. (Parkinson told Porter not to mention Reisner in front of the grand jury.) Nor when Magruder's datebook showed a key meeting of Liddy, Magruder, Attorney General John Mitchell and John Dean, did Silbert question Magruder's appointment secretary—even after Magruder testified (falsely) that the meeting had been canceled.

On Oct. 25, 1972, while pre-trial motions were being heard before Judge John Sirica, Silbert offered McCord a chance to plead guilty to one count if he would become a government witness. Why was that done? In an amazing statement to the Judiciary Committee, Silbert said his intention was "to secure McCord's cooperation, particularly disclosure from him as to what he did with the (wiretap) logs, so that prior to the election, through his plea, the public might know." It is hard to believe that Silbert, given his caution up to that point, would have been planning public release of McCord's statements—had he given any—within weeks of a presidential election. What makes the proposition less believable is that in November Silbert made a second, less attractive offer to McCord—not mentioned in his Judiciary Committee statement—because, according to McCord's lawyer, Silbert said they had less need for his testimony.

Should the Judiciary Committee approve the Silbert nomination, the Senators would be indicating to future career Justice Department prosecutors that his handling of the difficult Watergate investigation and prosecution was a standard to be emulated. The committee's action would also be interpreted as supporting the President's contention that the Watergate case was handled correctly from the start; and that a cover-up hidden from an able, aggressive prosecutor could easily be hidden from a President busy running the country.

Perhaps Silbert has—thanks to hindsight—received more criticism than he deserved. But, based on the record, does he deserve a promotion?

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