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# Ford May Press

## 3d Silbert Vote

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President Ford will probably ask the Senate for the third time to confirm the appointment of Earl J. Silbert as Washington's U.S. attorney despite continued—but apparently scattered—Senate opposition to the way he handled the original Watergate investigation, sources said yesterday.

Silbert can continue to serve as U.S. Attorney until confirmed by the Senate or until the President withdraws the nomination and appoints someone else.

Senate Judiciary Committee aides said there was indication recently that some senators, including Chairman James Eastland (D-Miss.), were tiring of the controversy and pressing for a vote. In that case, Committee sources said, the likelihood was that Silbert would be confirmed.

Opposition has been led by Sen. John Tunney (D-Calif.), who admitted as much last April, according to his aides. But the aides said that situation may have changed with the release of more information, and they were reluctant to predict which way the vote would go.

Most committee members have not declared themselves one way or another on the nomination.

The Silbert nomination, which has been before the Judiciary Committee for more than 18 months, was returned to the White House last week when Congress broke for its summer recess. White House sources said yesterday that the nomination was being studied but that it was likely Mr. Ford would resubmit it to the Senate in September.

Last week, Mr. Ford voiced support of Silbert during an Air Force One press conference over Europe. When told by reporters that Silbert's nomination has once again been returned to the White House, Ford said he was not aware of that action, but added:

"I reiterated the nomination of Mr. Silbert and as far as I know, there is no reason to change." White House spokesmen said a statement concerning Silbert's nomination would probably be released before Mr. Ford leaves Sunday for a vacation in Vail, Colo.

Sources on the Judiciary Committee said they expected the White House to resubmit the nomination. Tunney was traveling in California and could not be reached for comment. An aide said the senator would have nothing to say on the matter until he returned to Washington next month. The aide predicted that Tunney would continue to oppose the nomination.

Tunney, picking up where former Judiciary Committee chairman Sam Ervin (D-N.C.) left off, has questioned Silbert's handling of the original Watergate investigation, charging he was less than vigorous in pursuing leads and in grasping that the scandal would eventually lead to high Nixon administration officials.

Tunney has postponed attempts to bring the matter to a Judiciary Committee vote and exercised his prerogative at the committee's last executive session, for instance, that the vote be postponed one week. The delay was enough to force the matter into the recess period when all nominations are routinely returned to the White House unless the Senate's rules are waived. Tunney asked that the rule not be waived in Silbert's case and Majority Leader Mike Mansfield (D-Mont.) complied.

The protracted battle between Tunney and Silbert has led to 10 separate days of hearings, the first of which was held in April, 1974. Silbert's nomination was first postponed by Ervin who questioned whether it was advisable to take up the matter while the impeachment of former President Nixon was pending. Since Ervin's retirement, Tunney has led the opposition to the appointment.

Silbert was appointed U.S. attorney by the judges of the federal court here. In addition to their support, his nomination has been endorsed by area bar associations, two former Watergate special prosecutors and a variety of individual lawyers and law professors.

Judiciary Committee sources said Tunney has been effectively lobbied by Charles Morgan Jr., director of the American Civil Liberties Union's Washington office and an outspoken critic of the way Silbert handled the Watergate case. Morgan, who testified against Silbert and who filed an ACLU motion to have the original Watergate defendants retried, said that both he and Tunney view the Silbert hearings as a vehicle for examining the way the Justice Department handled the case.

In the ACLU motion, which was dismissed, Morgan asked that the defendants be retried "under a properly drawn indictment which charges all of those responsible for the Watergate conspiracy, regardless of their station in life."

Morgan's complaint goes to the heart of Tunney's opposition to Silbert—that the original investigation was timid, lacking the scope that would have immediately implicated higher-ups. Silbert has said that criticism is based on hindsight and

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### SILBERT, From B1

that he had every intention of returning the defendants to the grand jury, giving them immunization and compelling them to talk about who conceived and authorized the burglary.

Tunney has asked special Watergate prosecutor Henry S. Ruth Jr. for a memorandum Silbert wrote in September, 1972, in which he outlined the case to his Justice Department superiors and said where he would proceed after the first Water-

gate trial. Tunney has said he wants to see if the memo supports Silbert's statements that he intended to pursue the investigation.

Ruth, in a July 23 letter to Tunney, said that members of the Judiciary Committee would be allowed to see the memorandum, but would not be allowed to publicly discuss it or quote from it.

Tunney also asked for White House transcripts in which Silbert's investigation was presumably discussed in the Oval Office. Ruth denied that request.