

## Ideas & Trends Continued

# Scholars In The Middle of Battles Over Information

**I**t may have failed to persuade Congress that the Freedom of Information Act is too free, but that hasn't stopped the Reagan Administration from attempting to correct what it regards as the excesses of open government spawned by the law. An Executive Order on Classification promulgated this spring, for example, gives officials broader authority to withhold information on the ground of national security. Budget cuts are restricting the compilation and dispersal of Government statistics and slowing declassification of documents at the National Archives. And last month, Mr. Reagan signed a measure making it a crime to disclose the identity of covert agents. These moves have troubled press and public affairs groups, but they are especially vexing to Federal historians, who must mediate between the often conflicting demands of the agencies they work for, outsiders who come to them for information and, of course, history itself. At a recent meeting of The Society for History in the Federal Government, Allen Weinstein, a historian and professor at Georgetown University and executive editor of *The Washington Quarterly*, Alfred Goldberg, chief historian in the office of the Secretary of Defense, and Quintan J. Shea Jr., former director of the Office of Privacy and Information Appeal and currently director and counsel for the Justice Department's Executive Office for United States Trustees, discussed the dilemmas confronting Federal historians. Excerpts follow.

## Allen Weinstein

Life was once much simpler for Federal historians. Classification laws were tighter, there was a long-standing disinterest on the part of the American public in their work, even among their academic brethren. There was also a sense of bureaucratic detachment from the broader flow of historians. At one point, for better or worse, obscurity was its own reward, at least morally, in the sense that 10, 15, 20 years ago, Federal historians knew where their allegiance lay. They knew the ground rules, the preconceptions, the assumptions governing their behavior with archives, with colleagues in Government or with researchers from the outside. And there was, for some, a certain holistic attractiveness to this process. But, in W. B. Yeats's words, 'all has changed utterly.'

Suddenly, Federal historians are being thrust into the middle of public debate on various issues, ranging from Watergate to the Vietnam War to spy cases to business machinations at the highest international level. And the

The question of whether or not to tell and what to tell in any given record has become an acute dilemma, and leads me to a phenomenon I refer to as the 'greening' of Government historians, and of archivists as well.

At a time when Federal historians are as likely to see a Bob Woodward or a Seymour Hersh as an academic colleague racing for first use, or first strike, at any records, the archives are proving to be a gold mine. At a time when this person arrives who shares your concerns and wants to find out what is happening, you find yourself walking a fine line between the concern for history from the inside and the growing obsession with historical records on the outside.

What has the model for many Government historians become? One model is the investigative reportorial model, which stresses the exposé, pursues the question of falsification, wrongful destruction or obfuscation of a reasonably factual record.

Now, honoring the integrity of the historical record is the primary obligation for all of us. Therefore, maximizing the measure of openness of information is also an obligation. But no Federal historian would be a Federal historian without recognizing an obligation to examine the legitimate concerns and purposes of one's employers in either the release or the non-release of records. Unlike other historians, Government historians are often both researcher and administrator of the records being researched.

In Washington today, however, within the ranks of many younger Government historians — and some not so young — antinomianism is widespread. By this, I refer to a change from a presumption held by many through the late 1960's and early 1970's that one's primary responsibility was to the agency or to the department with which one was identified, and through that to the Government at large.

There exists now a great question regarding the Government historian's relationship to any given set of individuals in power and the degree to which that relationship is defined in a negative context. The importance of this question has been enhanced in part because over the last

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10 years, there has evolved in this country a struggle for control of the American past. It is a contest that over the last generation has turned the past itself and the understanding of the past into a battleground for debate over policy and personnel.

If you picked up The Washington Post recently, for example, you would have seen a piece on the role of former Secretary of State Henry Kissinger and Alexander M. Haig Jr., then his associate, in wiretapping journalists during the Nixon years. In his memoirs, Mr. Kissinger has offered his own interpretation of those events. Who among us could argue that what is at issue in these pieces is dead and buried and has no immediate implications for the current Administration?

What I'm suggesting is that our statesmen must write like politicians, with two eyes cocked for the posse of critical scholars and journalists at their backs, which creates a problem. For to some extent, these memoirs dilute the historical record in the name of providing effective apologies, which leaves the Federal historian trying to play umpire. And this goes to the heart of one's historical judgment of an episode. I see no way out of the dilemma.

## Alfred Goldberg

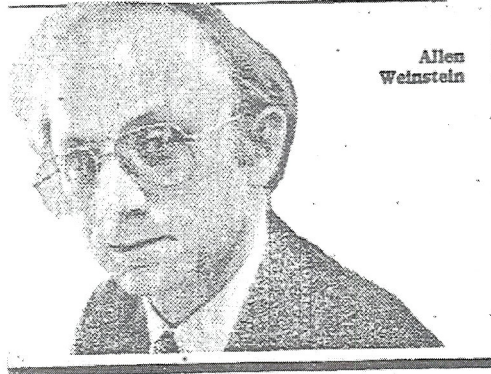
Let me venture here a few observations and propositions about ethics in the historical profession generally, and among Government historians in particular.

First, ethics concerns standards of conduct among people and social groups. It therefore concerns social structures. We are concerned with two such structures: Government and the historical profession. Second, we're not talking about a single systematic code of moral principles. We're talking about a body of beliefs, about right and wrong, and about standards of behavior in which integrity is the central issue.

Third, we're not dealing in what is absolutely right and absolutely wrong. New problems arise and ethical standards must be redefined to keep them relevant to contemporary situations. Many professional associations have formal codes of ethics. For the most part they've had little effect on members' behavior. Enforcement is by self-discipline and cooperation, not by law.



Alfred Goldberg



Allen Weinstein

The historical profession, through its association, has not adopted ethics codes. We're therefore entering the domain of obedience to the unenforceable, where persons are responsible for their own right doing. Finally, Government historians are divided into three parts: permanent staff, consultants and contractors.

Let me now mention several dilemmas that Government historians may encounter.

The foremost concerns the role of the Government historian. Can he function as freely and independently as his academic colleague? In general, the answer must be no. There are, of course, legitimate questions about the extent to which many academic historians are free and independent to do their work. Still, Government historians are subject to more constraints than their colleagues in academia. And this has caused them to be viewed with more than a modicum of distrust and suspicion.

The Government historian is sometimes confronted by what can best be described as conflict-of-interest. It is conflict among loyalty to the Government, loyalty to the public and loyalty to the profession; between the narrow interests of the institution and wider interests of society and scholarship.

We're all aware of the chief indictment against Government historians: that they're subject to constraints and censorship, which prevent them from telling the truth, or the whole truth; that they're subject to bias and special pleading; that they're court historians. Occasionally, there is substance in these charges.

But let us consider another aspect of conflict of interest that is more subtle, and perhaps more insidious — autocensorship. It derives from the unconscious absorption through the pores, so to speak, of the ideas, attitudes, predilections, biases, loyalties of the institutional environment.

The British historian Herbert Butterfield spoke from close observation of the British experience. He said it is essential for everybody to be aware that the problem of censorship today has been transformed into the phenomenon of autocensorship, a matter to be borne in mind even when the people involved are only indirectly the servants of government or are attached by no further tie than the enjoyment of privileges that might be taken away.

The dilemma now is how to guard against the silken cord, how to remain aware of the danger and minimize its effect on one's thoughts and work. It is a dilemma that re-



quires an unusual degree of introspection, the quest for one's motives at almost every step of the historical process. Few are capable of it, even fewer can sustain it. Closer to the throne, the greater the danger. Witness the experience of the White House historians in residence in the 1960's.

Another dilemma involves access to Government records. Government historians often benefit from first access, especially to classified documents, which they can publish and also use to enhance their positions in the profession. Then, there are Government historians who consider themselves the guardians of documents and who sometimes oppose or hinder granting access to outside scholars.

In cases such as these, most of us can distinguish right from wrong, but not all of us have the courage to do what is right. We must confront our own consciences and weigh our integrity and professionalism in the balance.

## Quinlan J. Shea Jr.

What I call the 'cooking of records' inside the Government has gone on as long as there has been any government anywhere. By cooking, I'm talking about falsifying the records in one way or another.

Let us agree that an important distinction between the outside historian and the inside historian is that the outside historian must deal with the records as they are, while the inside historian should be concerned with the records as they ought to be; namely, with a truthful and accurate record of the history those records purport to reflect. Now, let's talk about that historical record.

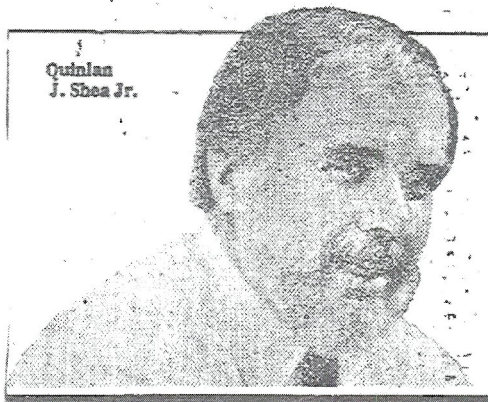
It is axiomatic that there really are very few honest-to-God historical smoking guns, by which I mean a nice, tidy, single document that has the whole truth, nothing but the truth, and tells you everything there is to know about whatever it is you want to know. But the falsification of the historical record makes the searching, the weighing and confronting, the piecing together of evidence in search of the truth, more difficult.

A little story I like to tell about this concerns the initials on documents inside the F.B.I. under Mr. Hoover. Proposed action papers came from the bowels and worked their way up through a complex hierarchy of approval and review and finally would get to the director's desk. On the way up, everyone who looked at it put his initials on the document.

If it then came back from the director approved, fine, a historian could look at that document today and have a decent chance of knowing who saw it and initialed or commented on it. But if some Jovian thunderbolt came back from the director's office, the historian today runs into an interesting problem — disappearing initials. For as that paper came back down the chain, all the initials would disappear — except for the poor folks who started it.

What about the real substance of the document? Let's talk about the F.B.I. again, and about the secret, sensitive internal records that affected the important decisions of the Hoover era. At the time they were created, no one outside the F.B.I. dreamed those documents would be seen outside the family, the F.B.I. family that is. And even then, these documents weren't subjectively honest. God knows they weren't objectively honest, but they weren't even subjectively honest, principally because of the posturing, toadying and posterior protecting that went on inside the bureau under Mr. Hoover.

Times change, you say? No they don't. The problem has gotten worse and for reasons that are rightly or



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J. Shea Jr.

wrongly tied to the Freedom of Information and Privacy Acts — the access statutes.

Government records can also be destroyed. In 1978, for example, it was recommended that the Justice Department records on antiwar activists be destroyed, that their continued preservation and maintenance was too dangerous, that they could harm the people who had been involved — most of whom were engaged in legitimate legal activities. What was not in any of those documents was the existence of a very strong desire to protect Federal, state and local agencies and personnel from the lawsuits that could have followed had this stuff gotten into the hands of the people whose activities had been surveilled.

We wanted very much to preserve the programmatic record, the bottom line. And Harold Tyler, who was then a Deputy Attorney General, went along with this. True, we decided to get rid of the individually identifiable stuff so that it isn't sitting around rotting to do damage to people. But we kept all the program materials, so in the future, people can see just how paranoid the Government became during that period, and how pervasive was the surveillance of people engaged in lawful activities.

So, those who wanted to unwrite history in that case lost. But if you believe this isn't happening today, that valuable records aren't getting trashed and that ignoble motives aren't involved, you must also believe in the Tooth Fairy and Santa Claus.



not... created began to tumble. A key set of cases involved the justiciability of challenges to state legislative apportionment. In 1946 Frankfurter had declared that a "political question" and warned the courts to stay out of the "political thicket."

In 1962, with Brennan writing the majority opinion in *Baker v. Carr* the Court held that it did have jurisdiction, and two years later Chief Justice Warren delivered the Court's opinion in a series of cases that, taken together, required a complete overhaul of the nation's state legislative apportionment schemes based on the criterion of one person, one vote (see REAPPORTIONMENT cases). In response to Justice John M. Harlan's dissent that the Court ignored history and precedent, Warren made clear that the Constitution mandated democracy and justice: "Citizens, not history or economic interests cast votes," he declared in *Reynolds v. Sims* (1964). "People, not land or trees or pastures vote" (p. 579).

This commitment to democratic procedures, to justice and to individual liberties, marks the core of Earl Warren's jurisprudence, and also its weakness. He believed that in the Constitution and the "Bill of Rights, the Founders had erected barriers against majoritarian rule to protect the individual, whether in the exercise of political rights or the expression of unpopular opinions or as a shield against vengeance in criminal prosecutions. The will of the majority expressed itself in the laws of the Congress and the actions of the Executive; the Court, in turn, had been assigned the critical role of ensuring that the elective branches did not ride roughshod over individual liberties. When Governor Orville Faubus challenged the Court's authority to bind the states to its interpretation of the Constitution, Warren massed the Court behind Brennan's opinion in *Cooper v. Aaron* (1958), one of the strongest statements in the Court's history affirming its role as the final arbiter of what the Constitution means.

Whether one looks at the Court's record in matters of free speech, separation of church and state, apportionment, racial discrimination, or criminal procedure, Warren and his Court essentially asked the same questions: Is this fair? Does this protect the individual, especially the one with unpopular views? Does this impose the power of the state where it does not belong? Warren was not antigovernment or anti-law enforcement, but he believed that the Constitu-

tion in *William v. California* (1968) required a minimum, a person accused of a crime would be informed of his or her rights (see counsel, right to). Warren recognized, and empirical studies have since confirmed, that the Miranda warnings do not hamper effective police work; they serve as a prophylactic to make sure both the state and the individual are treated fairly.

Warren also had no trouble supporting the activist bloc when it read bold new rights into the Constitution, such as in the landmark case of *Griswold v. Connecticut* (1965), which proclaimed a right to "privacy."

Warren predictably came under criticism from conservatives who opposed judicial activism and his broad interpretation of the Bill of Rights, but even some of his admirers questioned his judgment in 1963 when he accepted the chairmanship of the special commission to investigate the assassination of John F. Kennedy (see EXTRAJUDICIAL ACTIVITIES). The chief justice did not want to take the assignment, believing that extrajudicial assignments tended to undermine the work of the Court and violated "separation of powers. But he found himself no match against Lyndon Johnson's powers of persuasion and the president's appeal to Warren's patriotism. Although Warren did not participate actively in the commission's work, he kept himself apprised of its progress, and took a hand in shaping its final report.

As several scholars have noted, it was not a happy experience for the chief justice, whose instincts for candor and justice collided with his recognition of the political implications of the report and his desire, for reasons similar to that in *Brown*, to have the report endorsed unanimously. The commission and its report have been under continuous criticism from one group or another ever since; while there can be little question that a man of Warren's integrity would not participate in a blatant coverup, evidence does suggest that even if the commission's ultimate findings are correct, it did not have access to important FBI and CIA files. Warren should have followed his initial instincts to turn the assignment down.

In June 1968, Earl Warren went to the White House to inform the president that he intended to retire, but left the date open until the confirmation of his successor. Johnson named Abe Fortas, whose views coincided closely with those of Warren, but the Republicans smelled victory in 1968, and determined to deny Johnson the chance to name the next chief justice. Then

Useful Text

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