

Bud Fensterwald: He Runs the Town's Other CIA

By Shelby Coffey III

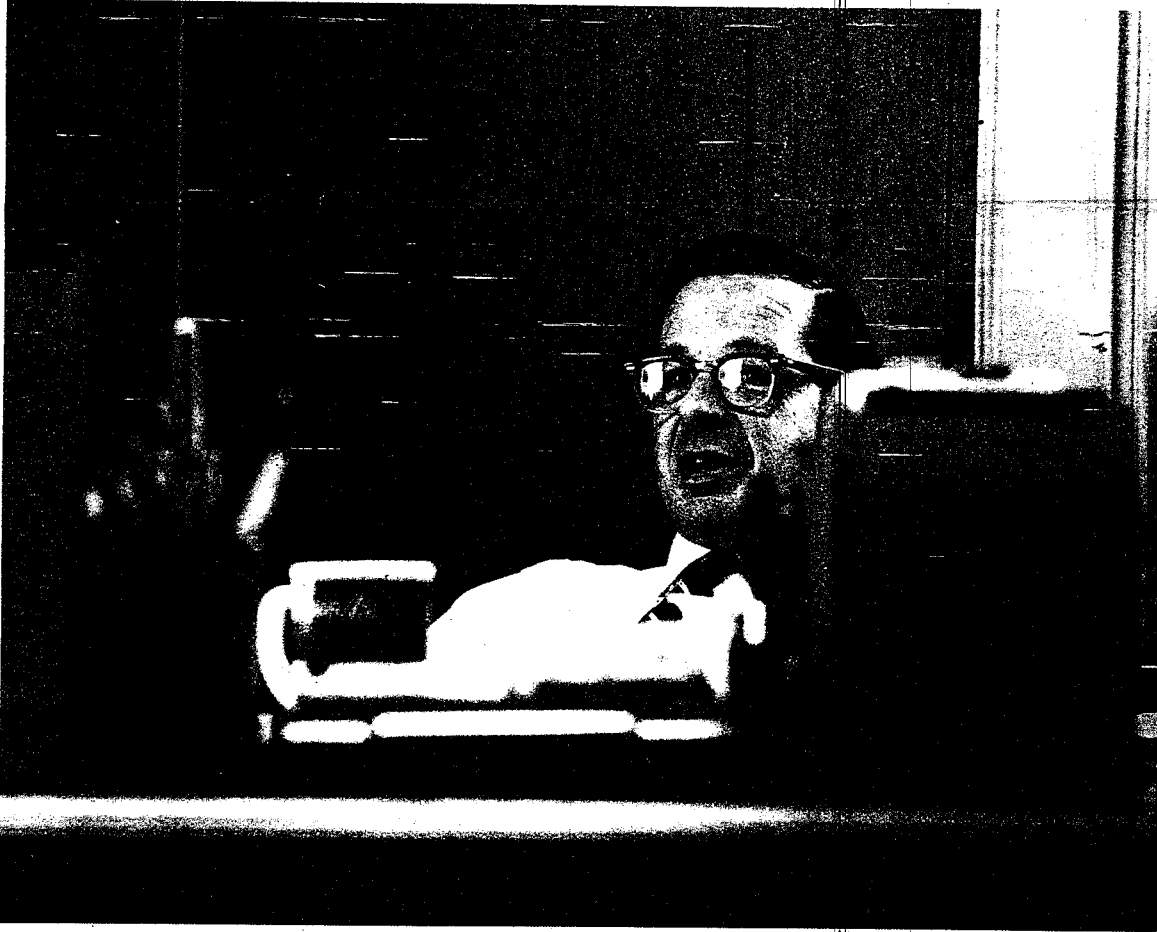
There have been periods when Bernard Fensterwald Jr. has stood near the hot center of power in Washington, when he was quoted and sought by an admiring press corps. Back in 1965, when Fensterwald was general counsel of a Senate subcommittee investigating the abuses of government invasions of privacy he and Bobby Kennedy lashed out at each other in public and in private.

Now Bud Fensterwald's pale eyes narrow slightly when he says "I know what I'm doing is unpopular." What he is doing, aside from private law practice, is pursuing a pastime that has sometimes come to be associated with a legion of fools and opportunists: he is investigating the assassinations of Robert and John Kennedy and of Martin Luther King.

But Bud Fensterwald is no ordinary conspiracy-seeker, looking to turn a fast review of flaws in the Warren Report into an instant paperback and cheap publicity.

These days, he tries to arrive at his offices on 15th street at about "7 o'clock in

PHOTOGRAPHS BY DOUGLAS CHEVALIER



Bernard Fensterwald Jr.

the morning when things are quiet" to pore over documents addressed to his own CIA—the Committee to Investigate Assassinations. CIA is a loose confederation of people who have written or worked on the various conspiracy theories.

At his own expense Fensterwald took an "8,000 mile junket" last May, traveling to Los Angeles, Dallas, New Orleans, Atlanta and Memphis among other locations. He talked with James Earl Ray's lawyers, examined slides of John Kennedy's assassination, visited with the controversial Jim Garrison, and dozens of others, either fascinated or peripherally (or not so peripherally) connected with the three major political murders of the Sixties.

In a recent brief, breezily-styled "progress report" to his fellow CIA members ("There is no implication at all in the title," says Fensterwald with a bit of a wry grin), the Executive Director declared that funds were "Generally non-existent!" and that the venture needed angels but none had materialized.

As the report mentions the assortment of famous and obscure Fensterwald had talked with, an optimism emerges—there were a number of "fascinating leads" to be chased after and explored and not enough time to do it all in. But there is always a chance "next trip."

To friends and acquaintances who find Fensterwald's recent activities strange, he replies with the certainty of a man who is utterly convinced of not only the correctness but the need for his work.

He feels there may be more political assassinations if the earlier ones are not solved: He resents the statement of former Chief Justice Earl Warren that there will be things that we will not know about the death of John Kennedy until 2039. "My people don't go in with any preconceived notions," said Fensterwald, "We just look for the inaccuracies." To document them he traveled to London early in November to look into the stay of James Earl Ray in that city. Fensterwald's wife (his second, he was divorced in 1964 from the mother of his four children) always travels with him on these junkets, not so much because she is interested in the assassination, but because "as soon as you say do you want to go . . . my wife is already packing."

He does not feel that there is any immediate physical danger in his consuming avocation; but he has set aside a sum of money for the investigation into his death should he vanish someday. He has also placed copies of his most important evidence in "places that would be very difficult to get to."

This kind of talk upsets some people, particularly those who know of Fensterwald's background—an impeccable blend of a proper Southern Jewish family, trips to Europe as a child, Harvard, Harvard Law, a good World War II record as a Naval Lieutenant and the makings of a

credible career at the State Department.

"I guess part of it is that I'm a rebel," says Fensterwald, who has had several political horses shot out from under during his career of public service.

Beginning in 1961 Fensterwald was staff director of the Subcommittee on Antitrust and Monopoly and as such assisted the late Sen. Estes Kefauver (D-Tenn.) in the hearings which sent several top electrical company executives to jail for price-fixing. (Today, a Herblock cartoon depicting Kefauver as a sheriff in a cathouse full of sinning electrical companies decorates a wall in Fensterwald's smallish offices.)

He also helped conduct Kefauver's inquiries into excessive profits of drug companies, coordinated the "first last and only" liberal filibuster against the government letting AT&T take over Comsat, and gained a considerable audience among civil libertarians when, as chief counsel for a Senate Judiciary sub-committee, he led a series of investigations into Government invasions of privacy.

Post Office mail surveillance, Internal Revenue Service eavesdropping and illegal wiretapping were probed, partially denied by officials, partially admitted by officials. It was during this period that he clashed with the late Sen. Kennedy over whether or not the latter had authorized certain wiretaps as Attorney General. The hearings aroused furious controversy at times and finally were "the ones that did us all in," as Fensterwald puts it these days, only a trace of edge ramrodding through his professionally modulated, slightly Southern-accented voice.

That part of Fensterwald's career is not a totally uncommon one in the lunges, escapes and clawings of Capitol Hill. It is the almost ritual tale of the relentless, perhaps somewhat, obsessed, investigator bloodhounding after one or another of America's malefactors. (in this instance, certain government agencies themselves). The tales filled columns of newspapers and magazines, sometimes making a few minutes of the prime-time evening news, and all the while building the career of the sponsoring senator. First comes that sort of power and publicity, then the fall. The plummet may come from the quiet guillotine of an offended Power or it may come in the 180-degree reversal of the voracious lights of the media. The investigators become the suspects; their idealism smacks of decay before an intrigued national audience. On such events are journalistic prizes won and careers shattered or drastically altered.

These were two of the results when *Life* magazine printed an article in 1967 portraying then-Sen. Edward Long (D-Mo.) as linked to the Teamster Union. Long at the time was chairman of the Senate sub-committee on Administrative Practices and Procedures (which Fensterwald heads) and the implication was that the hearings

had been held as a circuitous method of building a case to free teamster chief Jimmy Hoffa.

The investigation lost much of its press coverage as well as its momentum. Long was defeated the next year in his bid for reelection and the *Life* author, William Lambert won the Worth Bingham Investigative Reporting Medallion. Bud Fensterwald retired the next year to private law practice—which both he and several friends say he had intended to do anyhow.

Naturally enough,—since he feels that certain damaging material was illegally leaked to *Life*—he continued work on a book on "the way the Government railroads certain people" into jail or disgrace. The book was originally called "*Big Brother Is a Mother*" and is now tentatively titled simply, *Big Mother*. Fensterwald says he is having some trouble finding a publisher.

In his office where pictures of the famous line 16 walls, (Senators Kefauver and Long in the places of honor; Birch Bayh, Phillip Hart, Ted Kennedy, Everett Dirksen and Ambassador Sargent Shriver on the far wall), Bud Fensterwald leans back, a glass of beer in hand and says no, he isn't bitter about the *Life* article, that you have to expect these turnabouts in political work.

Without a trace of inflection his dry voice concludes that it was ironic that he had gone to such pains to avoid working on matters that would be a direct help to Hoffa's case as well as to several other politically explosive cases. A little later he says he has not become cynical about our form of government; it's just that certain parts and certain agencies have "corrupt, venal and vindictive" elements. Then the middle-aged father in him emerges—"some of my own children are talking anarchy," he says.

His reddish face twists a little in puzzlement and concern and the man who has given nearly 20 years to public service declares: "Sometimes I think I'm one of the few people around who does believe in our system of government."

Bud Fensterwald has always been well-endowed to be one of the elite who not only believes in but leads certain parts of the American government.

Fensterwald grew up in Nashville, Tenn. the son of a wealthy family of clothing merchants and this factor of possessing an independent fortune has played an important part in his career. As one of his assistants on the Judiciary Committee recalls, "working for Bud was not like working for an ordinary boss. He was not involved in jealously guarding his prerogatives; he allowed a lot of freedom for his staff to move into new areas on their own."

The assistant feels that his relaxed attitude was due in part to the fact that Fensterwald did not have to worry with the harsh choices involved in getting and spending while trying to carve out a career in government. He did not have to scram-



ble after a well-fortified niche in the Civil Service.

Another factor was the honed and polished intellect that Fensterwald brought to his tasks. This could be seen in his Harvard years, when, as an ill-prepared freshman, he was told by a kindly Dean that he might as well take his clothes home with him as the Christmas break. "I was failing everything," Fensterwald recalls.

But Fensterwald's parents had seen his departure for college as the necessary flight "from the nest" and had in fact forbade him to take the accepted route of many sons of Nashville upper-middle class—that of attending Vanderbilt and living at home.

Fensterwald declined the Deans' invita-



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tion to tumble back into the nest and instead drudged and toiled through the rest of the year. It is a measure of his determination as well as his brilliance that when he graduated from Harvard in 1942, it was *magna cum laude* in International Law.

Like many of his classmates, Fensterwald chose the Navy during World War II. He was the officer who went in with the first wave of landing craft in several amphibious invasions in the Southwest Pacific. When he describes those days, he does not dwell on the excitement and fear and humor—the more typical sort of war remembrances—but rather on the mechanics involved setting up amphibious operations in the dark, on the logistics, methods and problems. One senses a mind concerned with machinations and methods.

Fensterwald joined the post-war stampede back to the campus and into marriage: He returned to Harvard Law School and married a Wave he met in Washington.

He again concentrated in International Law while in law school and in 1949 went on to receive a Masters degree in the same vast subject from the School of Advanced International Studies.

Thus primed and groomed for a career in international affairs, secure in the connections that Harvard, an excellent academic record, and a private income bring, and couched in the idealism that many bright

young war veterans of the time brought to government in those days, Fensterwald joined the legal staff of the State Department in 1950. It was an auspicious start.

For the State Department as a whole, however, the early Fifties were a period of painful ferment and criticism; and Bernard Fensterwald became involved in some of the more harrowing trials of the department.

When the Bricker Amendment (which would have returned almost all foreign policy decisions to Congress) was introduced, Fensterwald was one of State's men assigned to Capitol Hill to help defeat the bill. There he met and worked with Sen. Kefauver, who was one of the few outspoken opponents of the bill. Fensterwald counts it as one of his proudest moments when the Bricker Amendment failed to pass the Senate by an extraordinarily small margin. "It would have passed the state legislatures like . . . through a tin horn," says Fensterwald today, "It would have returned us to an era like that under the Articles of Confederation."

He was also involved in work at the United Nations, for which he held great hope. When speaking of his feelings then, a weariness tinges his voice—the failure of the UN to become the dynamic force in world politics has been part of the disillusioning of Bernard Fensterwald.

Another part of that process was his view



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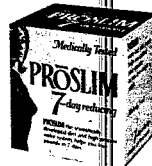
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summoned forth during the heyday of the Joe McCarthy investigations. Fensterwald was assigned to help read classified documents for some of the State Department career men whose security clearances had been suspended. He passed on the information to aid suspended officials in their defense. "A lot of the old China hands had written the very reports they were not cleared to read. It was a very ironic situation . . . I imagine they thought of me as some sort of pimp for the work I was doing."

In 1956, discontented at the State Department, still savoring the acid aftermath of the McCarthy years and interested by his contact with life of Capitol Hill, Fensterwald decided to join the Vice Presidential campaign of Estes Kefauver as a speechwriter on foreign affairs. It was, he realized from the start, an almost hopeless campaign. Still, "something might have happened," and of course then, recalls Fensterwald, "I would have risen" at the State Department.

After something did not happen, Fensterwald's boss asked him to return to the State Department, but Secretary of State John Foster Dulles blocked his re-entry.

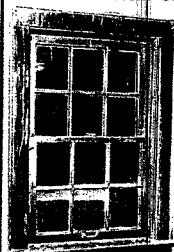
Fensterwald says he expected not to be able to return but it must have been something of a blow to a man who had spent so much of his life in preparation for a career

at State. He wanted to move to the Hill as the Administrative Aide to the late Sen Thomas C. Hennings (D-Mo.). He was happier in 1959 when he moved to be the Chief Counsel of the Subcommittee on Constitutional Amendments. "That's very high-toned work for a lawyer," says Fensterwald, who is very proud of the three amendments which he worked on and who is helping Sen. Birch Bayh work on the amendment to abolish the Electoral College. He still relishes discussing the implications and possibilities involved in various proposed amendments.

In 1961 Fensterwald was not selected for a top job at State and the implication was later made by *Life* that this had embittered Fensterwald against the Kennedys. "A lot of baloney," is the way Fensterwald talks about the allegation today. "A lot of people wanted jobs down there . . . Each major Democrat on the Hill was supposed to get one major appointment; and it was obvious that Kefauver's was going to be Rand Dixon, a good friend of mine." Dixon took over as head of the Federal Trade Commission and Fensterwald took Dixon's place as Staff Director of the Senate Antitrust and Monopoly Subcommittee.

This was a crucial turn in the career. Now Fensterwald speaks a little wistfully about going back to State; he says he keeps close contact with a lot of old friends there and that he has "talked over" a couple of

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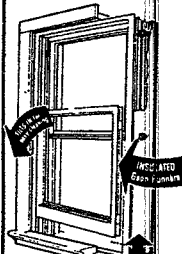
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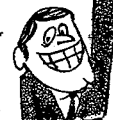
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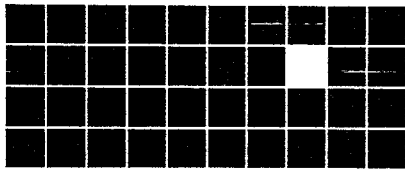
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different posts but none that quite fit, and these days he doubts that he will ever get back to State since he is pursuing the assassination investigation so diligently. "They don't like controversial people down at State; and that's as it should be."

After the price rollback a few days later, the subpoenas had been served ("after considerable difficulty") and were still outstanding. Fensterwald said he was very disappointed when the White House refused to intervene with the Judiciary Committee, which then voted not to force the steel company executives to appear.

After moving over to the Senate Subcommittee on Administrative Practice and Procedure, Fensterwald burrowed into the work on government invasions of privacy. He hired a top accounting agency to do all of his tax returns since he expected and says he received a very thorough check of his income tax returns after starting to investigate Internal Revenue "snooping" practices. During the period, says one reporter who followed him, "he did an awful lot of good work . . . maybe he got a little obsessed with what he was doing . . ."

After the Warren Report came out, Fensterwald began keeping a file on the matter, but he feels that it was the assassinations of Robert Kennedy and Martin Luther King which mobilized him to the extent he is today. He can't exactly put his finger on the wispy "why" of what he is doing except that he feels he is a serious investigator and "someone has to."

So Bud Fensterwald spends his time and personal fortune tracking down both the gossamer and what he is convinced is the reality of undisclosed conspiracies in the three assassinations.

He ponders, broods, spills over with examples of inconsistencies, tries to keep the phone bills down. He sends reply forms with carbon papers attached to various correspondents so that he will have file copies immediately upon return of the reply. He says a large anonymous network of informants—"many of them great admirers of the Kennedys"—report to him each day as he sits in the sixth floor of the office building which has an all-weather "Offices for rent" sign outside.

One friend and admirer of Fensterwald's abilities puts it this way: "Yes, he is obsessed with the investigation, but in the best sort of way. I always felt like he had scattered his talents . . . perhaps because he was wealthy. . . . But I think if anybody can crack this thing, it's Bud . . . I've never seen a more brilliant man when he sets his mind to something." ■

Shelby Coffey III is an assistant editor of *Potomac*.