

# 'We Try to Use Dictatorial Powers Only As a Last Resort'

---

by Walter Shapiro

---

The cab ride was by now quite familiar, but on that early March afternoon I instinctively put down my paper and turned to stare as the taxi ducked behind the Treasury Building, arced around the rear lawn of the White House, drove past the heavily guarded automobile entrance to the Executive Office Building, and swung onto 17th Street. Once the cab made the turn, my attention, as always, focused on the Executive Office Building (EOB) to those close to the seat of power), whose highly ornamental style is Washington's most lasting legacy of the age of Louis Napoleon.

The other side of 17th Street has always been far more modest in scale, as if, almost providentially, it had been designed to complement the EOB.

The most memorable structure is the five-story Winder Building, which dates from the 1840s and has housed government agencies from Abraham Lincoln's War Department to such modern bureaucratic wastelands as the Office of Emergency Preparedness. But that afternoon, instead of seeing the row of small, pleasing structures that extended from the Winder Building most of the rest of the way to

Pennsylvania Avenue, I was confronted with the work of a wrecking crew, the debris of a bulldozer. Where once stood the Nichols Cafe building, a three-story, 1830s townhouse, there now was only rubble. The Riggs Bank building (an almost classic example of the solidity that was *de rigueur* for financial buildings during the 1920s) fared a little better—most of its facade remained, but the rear of the building had been demolished. Although not visible from the street, the wrecking crews had also started work on the roof of the Winder Annex, an 1880's structure which adjoins its more famous namesake.

It is seductively easy to wax sentimental over the destruction of historic structures and to denounce their replacement by cement and glass office buildings as symbolic of the decline of taste in America. But that isn't the point of this story, that isn't why the gutted buildings on 17th Street are worth considering.

The now-vacant lot near the White House is symbolic of what happens when the government breaks the law. Sadly, in recent years this has become an all-too-familiar problem. But unlike such activities as the secret bombing of Cambodia, here the lawlessness has been reduced to a comprehensible scale.

---

*Walter Shapiro is an editor of The Washington Monthly.*



The villain this time is Arthur Sampson, head of the General Services Administration (GSA), the independent agency that supplies the government with everything from paper clips to the mausoleum-style architecture of so many new government buildings. Because almost everyone in government needs something from GSA, Sampson has the kind of power within the federal government that the custodians of pork barrel have on Capitol Hill. Sampson is far from unaware of GSA's unique position in the federal hierarchy. "We have almost dictatorial powers," he said recently when asked about the demolition. "Our policy is to try to fulfill all regulations, to try to cooperate. We try to use dictatorial powers only as a last resort."

On the weekend of March 2, the three buildings on 17th Street suffered the consequences of Sampson's concept of due process. The wreckers were dispatched virtually in secret, although GSA had pledged (or, at least, gone to great pains to give the impression that they had pledged) to take no action until all historic preservation questions were resolved. On the following Monday the remnants of the Riggs Bank and the Winder Annex were saved, for the moment, by a temporary restraining order obtained

by attorneys for a local preservation group.

Destroying a building is, in its own way, as permanent a solution as hanging a murderer. That's why due process is even more important in a question like this than it is in resolving more abstract constitutional issues like impoundment. Two recent news stories illustrate the consequences of such irreversible actions. In *The Washington Star-News* Stephen Aug detailed how cash-starved Amtrak will have to spend between \$1 and \$2 million to restore a roadbed that was recently uprooted by the Penn Central if it is to reestablish passenger service between Boston and Chicago. Even more graphic is Morton Mintz's account in *The Washington Post* of the way in which General Motors conspired illegally with Standard Oil of California and Firestone Tire in the late 1940s to pave over Southern California's famed inter-urban street railway and replace it with a fleet of buses.

While hardly comparable to General Motors, the ultimate beneficiary of the demolition is the Federal Home Loan Bank Board, which coveted the site for its new offices. A little-known government agency, which likes to fancy itself as the Federal Reserve of the savings and loan industry, the

Bank Board believes that moving to a prestige location just a block from the White House would rescue it from bureaucratic obscurity. In its criteria for site selection, the Bank Board gave top priority to a location in the "immediate vicinity of sister financial institutions" like the Federal Reserve, the Council of Economic Advisors, and the Federal Deposit Insurance Corporation (whose own box-like headquarters began the erosion of the charm and scale of 17th Street).

Leading the opposition to the Bank Board and the GSA, was the Advisory Council on Historical Preservation. In terms of size and power, the Advisory Council is to the U. S. government what Andorra is to Europe. Established in 1966, the Council—midway between an independent agency and a division of the National Park Service—has a staff of 27 (24 in Washington and three in a regional office in Denver) and an annual budget of less than \$500,000. All the Advisory Council had on its side was the law, specifically Section 106 of its enabling legislation, which states that any agency contemplating building or demolition "shall afford the Advisory Council on Historic Preservation. . . a reasonable opportunity to comment" on any undertaking that affects any "building, structure or object that is included in the National Register"—an index of historic and architecturally significant properties maintained by the National Park Service. The Council's own regulations state that if no agreement can be reached at the staff level with another federal agency, "the agency official must delay further processing of the undertaking until the Advisory Council has submitted its comments. . . ."

When the Advisory Council was first officially informed of the planned Bank Board building, in September, 1973, they were primarily concerned with the new structure's visual impact on two National Register properties—the Winder Building, which would adjoin the Bank Board, and the Executive Office Building across the

street. Although these original arguments of scale and aesthetics are extremely valid, they are also exceedingly personal and likely to be un-persuasive in public debate. As a consequence, when negotiations with the GSA began in earnest, the Advisory Council turned to the more clearcut argument of the historic and architectural importance of the existing buildings on the site. At this point, neither the Winder Annex, the Riggs Bank, nor Nichols Cafe were on the National Register. However, a 1971 Executive Order had directed all federal agencies to survey the properties they own for those likely to be eligible for the National Register, and pass on questionable cases to the Interior Department for final determination.

It was at this point that the GSA began taking the law into its own hands. Steve Ruttenbaum, who heads GSA's two-man office of historic preservation, refused to nominate these properties for the National Register. Ruttenbaum argued that GSA retains the right to nominate properties to the National Register and Interior can only affirm or deny these recommendations. So, on February 13 the Advisory Council (in a rather unusual move) asked Interior to make a determination of the historical values of the three properties. Just one week later, Interior ruled that "both the Nichols Cafe and the Riggs Bank appear to meet the criteria for inclusion in the National Register"—a finding that has the same legal effect as actual listing. Moreover, Interior concluded that the Winder Annex "is an integral part of the Winder Building itself" and consequently was already listed on the National Register.

During the last week in February, GSA embarked on a policy of either deliberate lying or willful deception regarding its plans for these three National Register properties. On Tuesday, February 26, GSA began demolition of a non-controversial structure on another portion of the Bank Board site. This prompted Patrick Macrory,

an attorney retained by a local preservation group, to call GSA to determine their intentions. Robert Rice, a GSA attorney, assured Macrory that there was no need to go into court, since there would be no further demolition until consultation with the Advisory Council had been completed.

On the following day, February 27, the staff of the Advisory Council met with GSA in a futile attempt to resolve the dispute. Their only agreement was to place the issue on the agenda for the next meeting of the Advisory Council (then scheduled for May 1).

The importance of the February 27 meeting lies in the conviction universally shared by the Advisory Council (and disputed by GSA) that the agency had pledged to halt demolition until the May meeting. Robert Garvey, executive director of the Council, noted in a letter to GSA on March 1 that at the February 27 meeting it had been agreed that "there will be no further demolition of buildings in the site area pending comments by the Council." After the meeting, Ernie Holz, the Advisory Council city planner who had done most of the work on the Bank Board issue, asked Jim Stewart, GSA's project manager, "Are we to understand that demolition won't go any further?" According to Holz, Stewart answered: "Yes, yes, I will make that statement for you." According to David Julyan, an assistant to Rep. Fortney Stark, the most vigorous congressional opponent of the Bank Board's move, Stewart made a similar statement during a February 28 phone call.

The effect of all these assurances was to prevent anyone from going into court to guard against any further GSA demolitions. Meanwhile GSA was moving quickly. On Thursday February 28, Larry Roush, the head of the Public Buildings Service in GSA, consulted by telephone with several staff members who had been at the February 27 meeting. Late that afternoon Roush met with Arthur Samp-

son, who ordered demolition for that weekend.

On Friday morning, Jim Stewart called George Oram, the chief executive officer of the Bank Board, to inform him that demolition was planned for the weekend. Oram says that he informed Stewart that they "would have preferred to cover our congressional bases before the buildings came down," but stresses that it was only a problem of timing, "not that we thought it was incorrect to tear down the buildings."

The GSA had a sound reason for wanting to move ahead—because of escalating building costs, delay was raising the price of the building by \$10,000 a day. GSA had a barely plausible legal argument: as agent for the Bank Board, under an obscure statute they were exempt from Advisory Board scrutiny. But rather than testing this doubtful contention in court, GSA avoided a judicial judgment with its "demolish first, ask questions later" methods. Why did the GSA decide to take the law into its

## A landmark in American historical writing

"Detailed, absorbing . . . I wouldn't think that any person who pretends to knowledge of the time and region could possibly ignore it." —John Kenneth Galbraith

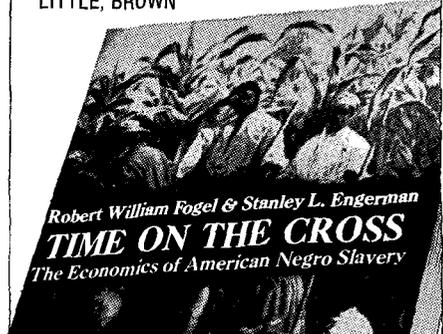
"When I first heard of *TIME ON THE CROSS* my reaction was: 'even if it's true, I won't believe it.' Now that I have read the text I am convinced." —Louis Gottschalk

\$8.95 at all bookstores

Also available:

**TIME ON THE CROSS: Evidence and Methods**  
—A Supplement \$12.50

LITTLE, BROWN



own hands? A simple explanation might be that Art Sampson had just finished reading *Plain Speaking* and decided to refashion the GSA in Truman's image. (In the best "the buck stops here" style, Sampson says of the demolition, "It's a fact that I did it.")

It is significant to note that Sampson and Roush differ on whether they were aware that GSA staff members had made any verbal commitments that the National Register properties would not be torn down. Sampson acknowledges these assurances, but dismisses their importance, saying, "I was told there were some problems. There were some agreements that were not necessarily valid. I knew it was not an easy decision for me."

Roush, on the other hand, denies that he knew anything of these assurances until Robert Garvey visited him on Monday, March 4, to complain about the weekend's activities. Roush, obviously taking a cue from the President, said, "I was not aware of any of these commitments. Although it is difficult to imagine how I was not aware. I guess some of the staff assumed I knew things I did not."

After examining what Arthur Sampson has said since the extra-legal demolitions, it becomes apparent that he was primarily motivated by a desire to limit the ability of the Advisory Council staff to delay future GSA projects. In an interview in late March, Sampson said, "My strong feeling is that the future of the Advisory Council depends on their decision-making process. If they remain purists and idealists, they won't be around very long." After the Advisory Council met to consider (and, under some political pressure, approve) the Bank Board project in early April, Sampson recounted, "I told them that if you don't want me to do it again, I'll need some changes in your procedures that relate to how long you can delay a project."

This "you good guys have to shape up or else" attitude is becoming so prevalent these days that Sampson's exact words to the executive session

are worth examining. Especially since Sampson was so proud of them that he dispatched a copy to me via courier within one hour after the closed-door session ended:

In my opinion, the credibility of the Council and its ultimate clout is at stake today. And this is somewhat unfortunate because the Council membership did *not* put itself in this position. The *staff* of the Council did. And this is important to think about. . . .

I weighed carefully the impact of my decision on our relationship with the Council. I knew the Council could go one of two ways. It could evaluate the action I took and find, based upon my past performance in historic preservation, that my action was not hasty and that it was justified. But I knew the Council could react negatively, and take some adverse action. I guessed that the latter would be true knowing then that the staff of the Council has great influence. . . .

At this point you may wonder why I did not attempt to call a meeting of the Council, or meet with the Council staff, or Secretary Morton, or somebody—*before* ordering demolition. The answer to that question is simple.

Having worked with Council staff on other projects and knowing their activities on this project—I knew that further consultation would be both futile and very time-consuming. At that point the staff had the power to control and/or influence the Council, the National Park Service, and high officials of the Department of the Interior. And the staff was not about to become objective overnight. . . .

Let us learn a lesson from all this. Let us prevent this from happening again.

There are those who feel that GSA must be taught a lesson in this case to prevent another episode of this type. This is the wrong approach—let me assure you of that.

What we need to do is to resolve this issue affirmatively. . . . The role of staff must be defined if the Council is to succeed.

The Advisory Council staff, as was noted in the beginning, had only the law on its side, which really doesn't do you much good when the building has been knocked down, the tracks ripped up, or the bomb dropped. It is this power to make irreversible decisions that undermines the comforting notion that "we have a government of laws, not men." ■

## THREE WAYS TO INCREASE SECURITY— AND SAVE MONEY TOO

# Shooting at Empty Silos

by Pat Schroeder

For years the Pentagon has successfully parlayed fears about Russia's potential capability to launch a nuclear Pearl Harbor or a "first strike" into an awesome American strategic force, upon which we spend some \$7.6 billion annually. Like all bureaucrats with "turf" to protect and expand, Pentagon planners are constantly searching for reasons to keep existing programs going and justifications for new ones. Unlike most of the other bureaucrats, the military strategists have the advantage of a special lingo that is full of words like "MIRV" and "SLBM" and which may have been invented years ago for the express purpose of rendering all discussion of the topic both cryptic and intolerably boring. Still, readers who stay the course will, I hope, find this article worthwhile, for it describes a basic—and possibly dangerous—change in defense policy.

Less than a year ago, the Pentagon's bureaucratic problems were becoming acute. It was losing credibility with the public at a pace close to that of the remainder of the Administration. Its old arguments about the danger of a Russian first-strike were being undone by a number of factors: our MIRVed\* ICBM forces, our invulnerable fleet of Polaris-Poseidon submarines, our strategic bombers increasingly capable of striking targets inside the Soviet Union without even violating Soviet air space, the 7,000-plus "tactical" warheads based in Europe (many of which can reach

the Soviet Union), and the SALT I agreements that prevented both sides from deploying ABM systems. The Pentagon needed something new to justify not only its regular incremental increases in defense appropriations, but also this year's jump of over 8 per cent.

Defense Secretary James Schlesinger came through with a whole new strategic concept during a question and answer session at the Overseas Writers Association luncheon on January 10. His statements that day reveal more about underlying Pentagon intentions than anything the Administration has since said or is likely to say in the future. In some ways the remarks were too revealing; shortly thereafter a National Security Defense Memorandum, signed by the President himself, "clarified" for intra-Administration purposes the U. S. position on nuclear flexibility in a manner that has led Schlesinger to be less forthcoming during subsequent public appearances, including those before the Congress.

But the presidential memorandum did not affect the approximately \$250 million the Pentagon is seeking this year for research and development of its newest pet project—weapons with efficient "counterforce" capabilities. These include new missile warheads, improved guidance and re-entry sys-

\*MIRV, which stands for multiple independently targeted re-entry vehicle, means missiles that deliver several bombs, each of which may hit a different target. If shotgun pellets could be armed and aimed separately, MIRV would be a nuclear shotgun.

*Pat Schroeder is a U.S. Representative from Colorado.*

LICENSED TO UNZ.ORG

ELECTRONIC REPRODUCTION PROHIBITED