

American University Washington College of Law

From the Selected Works of Kenneth Anderson

July 18, 1999

Peepshow

Kenneth Anderson



Available at: https://works.bepress.com/kenneth_anderson/154/

Peepshow

KENNETH ANDERSON

SHADOW

*Five Presidents and the
Legacy of Watergate*

By Bob Woodward

Simon and Schuster: 592 pp., \$27.50

In the months after the impeachment of William Jefferson Clinton, the race was on, publish or perish, to make some sense of the events of the last year. Notwithstanding that Bob Woodward is the dean of inside-Beltway reporting, the journalist who had defined coverage of presidential implosions, from Richard Nixon onward, he faced stiff competition from a wide range of Clintonia writers, both journalists and former aides, including Michael Isikoff, George Stephanopoulos and Christopher Hitchens. Woodward's entry, "Shadow," attempts to cut loose from the crowd by being about more than just Clinton (although more than half the book is about Clinton). "Shadow" strives to give an account not just of the Clinton turmoil, but of the travails that have overtaken every president since Nixon—as each fought to cope with the heightened scrutiny of the chief executive and the heavy, extra-constitutional weight of the now-defunct Office of the Independent Counsel upon the presidency. The book's central claim is that the relentless spotlight upon the president, in the hands of ever-more relentless prosecutors, has practically ensured that every post-Watergate president will lie, evade and cover up about something; in this regard, looking across the record of five presidents, Clinton is unusual in degree but not in kind from other post-Nixon presidents. As a consequence of this longer view, "Shadow" has a loftier intellectual theme than the quickie Clinton books: Its aim is no less than to set the standard, as did "All the President's Men," for understanding the scandal 30, 40, 50 years from now, when the rest of the books have disappeared, when our recollections have disappeared too and when my now 6-year-old daughter has some unaccountable desire to read about the decadent fin de siècle.

But this book may well make its way quickly to the remainder bin, to join the other contenders in the now-tired genre of the presidential scandal post-mortem. The problem does not lie with a failure to research; Woodward has canvassed the literature and tapped into the legendary Woodward web of sources. In the sections of the book on pre-Clinton presidents, he usually names them, but in the Clinton section he relies extensively on unnamed "knowledgeable sources." Heavy reliance upon these unnamed sources inevitably raises issues of credibility and motive; Woodward's account has been challenged by several players in these events. This leaves readers who don't trust lawyers or journalists, or even the sainted Woodward, in the delicate position of judging the race to lie, invent, and spin. Shall we trust Woodward's account or that of Jane Sherburne, appointed Clinton scandal management lawyer in 1994? Trust Bernie Nussbaum, David Kendall, Charles Ruff, Ken Starr, Brett Kavanaugh, Hillary Clinton, Bob Bennett, David Schippers, Nicole Seligman, Vernon Jordan, William H. Ginsburg, Bill Clinton, lawyers all? Who among them would one not be embarrassed to introduce to one's children or have over to dinner? I would guess that many readers of

Kenneth Anderson teaches law at American University, Washington D.C.; he is legal editor of "Crimes of War: What the Public Should Know" (W.W. Norton).



From "Peepshows: A Visual History," by Richard Balzer (Abrams: 160 pp., \$45)

"Shadow," if honest with themselves, will be unsure who to believe.

In some instances, "Shadow" rings true to everything known about Bill Clinton, for example the repeated instances the author cites of Clinton casually cheating at golf. In other instances, it seems rather that Woodward has been spun by his source—or simply liked him or her—and given various players in the Clinton scandal the opportunity to exculpate themselves and shift blame onto others. Nussbaum's role, for example, in denying the FBI and Justice Department access to Vince Foster's office following his suicide, is spun evidently to rehabilitate Nussbaum's tattered reputation, showing that, far from being out of his league as so many thought, he showed great prescience about the independent counsel office, saying to Hillary, according to Woodward, "Why are you going to put your head in that noose?" Being spun is a risk of relying on the accounts of insider underlings, who have things to hide, scores to settle, blame to shift and new Beltway jobs to maneuver for, even if Woodward is not varnishing the stories himself.

Similarly, much of what is said about and, supposedly by, Bob Bennett, the lawyer who handled the Paula Jones sexual harassment suit for Clinton, reads as though drafted by Bennett and handed to Woodward for unedited insertion. Can a lawyer breach the attorney-client privilege by telling falsehoods designed to make the lawyer look good but which, because they are untrue, reveal no client confidences? Who knows, but it may be Bennett and some of the other lawyers' best, or anyway most novel, ethics charges defense.

Questions about what and who to believe in "Shadow" are compounded by Woodward's trademark method of reconstructing within quotation marks what people supposedly said, even though they may not actually have used "those words." This is different from quoting verbatim from an unrevealed

"knowledgeable source"; this is creating dialogue, much of it that, alas, wasn't necessarily spoken. It makes for a jolly good read, just like a historical novel, except you don't actually know who said what and what Woodward merely made up in what he believed was the spirit of the age. Any student who put things within quotation marks in a paper that were not actually said would find themselves facing honor code charges—don't try this at home, kids.

Far more troubling, however, is Woodward's attempt to clear Clinton's name, if not for the present, then for posterity. I do not mean merely Woodward's final judgments that "there were no orders . . . to lie or obstruct justice," or that "Starr's decision to send a massive narrative of the Clinton-Lewinsky sexual relationship to Congress . . . was pathetic and unwise." Woodward is entitled to his view. It is, rather, Woodward's attempt to spin a revised Clinton for tomorrow's history lessons; it is part political agenda and part bookselling strategy.

In a book that will be read 50 years from now, the political agenda is evident not in what is said, but in what is left out. On that score, "Shadow" is invidious. Consider Woodward's treatment of Hillary Clinton's commodities trading scandal. The sum total that "Shadow" says about it is that "the New York Times published a story disclosing that Mrs. Clinton had made nearly \$100,000 in 1978 and 1979 trading commodities futures on a meager \$1,000 initial investment. A flood of editorials followed, pointing out the contrast between Hillary's earlier denunciations of greed during the Reagan years and her own secret profit-making."

But the issue is not that Mrs. Clinton was a hypocrite, nor that she lied about the incident after the story broke by claiming it was her skill reading the Wall Street Journal that turned a profit. The point of concern is rather that her husband was running with no

serious opposition for governor when the trades took place, and she was guided through the minefield of commodities trading with the expert help of Tyson Foods lawyer, James Blair, whose client stood to gain from the governor. Also, it remains unclear whether her account was allocated profits but not losses.

It only takes a sentence or two to put the relevant context on the table, but Woodward doesn't do it. The average reader today perhaps has some sense of the context of corruption, but the reader 50 years from now will not. This strategy of history by omission shows up again and again, in the accounts of the travel office firings, the FBI files scandal and the scandals of missing and later found boxes of documents. "Shadow" is very, very kind to the Clintons.

Yet the most bald-faced move to protect Clinton's future reputation comes from "Shadow's" attempt to be a book about five presidents, and not just one. Post-Watergate ethics laws and scrutiny, Woodward says, have caught each post-Nixon president in their grasp. Each post-Nixon president has responded, to some degree or other, by lying and covering up, but as inevitably as night follows day, cover-up raises scandal to a penetrating heat. Ford had the Nixon pardon; Carter, Bert Lance and Hamilton Jordan; Reagan, Iran-Contra; and Bush, the aftermath of Iran-Contra in the person of the marauding Lawrence Walsh. The weak, and undoubtedly true, version of Woodward's thesis is that presidents must understand that the only thing to do in response to scandal is to reveal everything immediately and move on—but no chief executive has been able to do this.

Yet this truism is not very interesting, and it is evident that Woodward means something far stronger, a thesis with a lesson for history and "Shadow's" future readers. The scandals that have broken across the bow of each post-Watergate presidency are the consequence of ethics laws that transformed men such as Walsh and Starr into petty Oliver Cromwells, fanatics free of all political, moral or legal restraint. They proclaim themselves to be acting within the law, but those who think of themselves as "guardians" of the law often, as Walsh and Starr did, come to regard themselves as above it. Because the scandals are driven by unaccountable special prosecutors, Woodward claims—a claim built into the very architecture of this book—the Clintons' scandals must be seen as merely different in degree, not kind, from those of Ford, Carter, Reagan and Bush. All of them lied, evaded and covered up; it is the nature of the contemporary presidency, and in that regard, Clinton is just another president, driven to further extremes perhaps by the most extreme prosecutor of all.

But this is preposterous. It is calumny to put Ford's struggles with the Nixon pardon on a continuum with the Clinton White House possessing FBI files on Republicans; this gets us into Nixon—not Ford, Carter, Reagan, or Bush—country, and Woodward surely knows this better than anyone. To suggest that Carter's short-lived, fruitless struggle to spin Bert Lance's financially questionable past into harmlessness bears any resemblance to the sustained 5-year stonewalling by the Clintons crosses into slander. Even the Reagan-Bush Iran-Contra scandal was always about executive foreign policy power against the Congress, a matter of ultimately constitutional concern. Very, very kind to the Clintons indeed. Woodward emerges from this book as a spinner, like all the rest, spinning to become the authoritative voice for tomorrow if not today. His success—or failure—won't be known for another 50 years.