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Alabama's 'Watergate'

By Myra MacPherson and McPherson is a reporter on The Post's national staff. April 3, 1977

Shots which started the controversy were fired by policeman Donald B. Foster; Attorney General William Baxley made a deal with policemen; former chief Ed Wright had problems with a lie detector test; lawyer Donald Watkins had trouble getting a police report.

On that cold December afternoon in 1975, Bernard Whitehurst raced through the streets and in back of houses, gulping for air and scrambling to make it over a fence, then slumped to death as two shoots from a policeman's gun tore through his body.

Police reports said it was a routine case of a cop chasing a fleeing felon who had robbed a corner grocery store and "turned and fired once at the officer and the officer shot the suspect twice."

The killing of a black man by a white officer rated but a few lines in the Montgomery Advertiser-Alabama Journal. Now, 16 months later, the mayor and former police chief and eight other police officers have resigned or been fired in the aftermath of a major police scandal and alleged cover-up of the facts surrounding that killing.

It is just like Watergate - that is the thought that ripples through this city. But if it is a Watergate, it is a Snopesian Watergate - with tales of a missing tape and planted gun, alleged threats on peoples' lives and allegedly perjured testimony. Prominent members of the community who pursued the Whitehurst case accuse police of smearing them with illicit sex and drug frameups. Police, in turn, charge harassment by the district attorney. Good ol'boy police who broke the unwritten "code of silence" to testify against buddies say they were hounded out of town.

The possibility of corruption and cover-up in any police department - the symbol of law and order - holds a special fascination, and the twists and turns of this particular Alabama case rival a movie plot. It all revolves around the crucial question of whether Whitehurst had a gun. The prosecution in a perjury trial and plaintiffs in a civil trial persented evidence that police had in all probability shot a man who was not the robber - and shot him not in the chest, as police reports claimed, but in the back. More than that, they alleged, Whitehurst never had a gun - and police planted by his body a "throw down" gun which had been confiscated months before in a drug

raid, then wove a wild and convoluted tale to cover their tracks.

Just as Watergate covered up a "third-rate burglary attempt," as Nixon's aide, Ron Ziegler, originally dismissed it, many in this Southern capital, rocked by this alleged police coverup, see an ultimate irony: they feel the actual shooting of Whitehurst was a "non-crime."

As one local law enforcement official put it, "When the nigger run, in my mind he was an escaping felon. According to Alabama law, it is okay to shoot a fleeing felon. Any grand jury would say it's justifiable homicide, but they had to mess up the scene and the more they covered, the worse it got."

A decade after the Alabama civil rights marches, racial overtones are still strong. Some police here use the word "nigger" with ease and talk of blacks giving them more trouble. But this is not to say that the Whitehurst case is indigenous to the South. The term "throw down" gun or knife, to be planted next to a person mistakenly shot, is known to police around the country.

To understand the motivation behind such cover-ups, it is necessary to note a certain paranoia felt by some police. "We have to stick together, because nobody cares about us," said a former Montgomery policeman. "We all carried a knife. The idea was a 'throwdown' if we fouled up. Course, I never seen it done and after the Whitehurst case it wasn't allowed."

Before that case, some of the police used to go to "Hank's Place" for some ritualistic drinking after a good bust. Hank's Place was not a bar, mind you, but the graveside of country music singer Hank Williams.

They were always expected in a crunch to "fight or die" for each other. Some are still mystified at "all the fuss" about the Whitehurst case, for it was not uncommon for them to brood over the spectre of brave policemen dying in battle. A daily reminder hangs on the wall at police headquarters - a plaque showing the Montgomery police badge, half-drenched in red. The message: "This symbol of authority, now stained with the blood of a man, cries out to you all, 'Listen, recall! Don't Take Your Eyes off His Hands.'"

BERNARD WHITEHURST was an unlikely and ironic prospect to bring down the top officials of this city. His furtive, derelict street life was a million light years away from the suburban comfort of former Mayor James Robinson, with the picture over the fireplace of himself, hand on Bible, American flag at his side, letters of regret at his resignation piled high on the dining room table.

Whitehurst, 32, a janitor at a McDonald's, had been committed five times for mental illness in the 1960s, was a known drug user, had a history of voyeurism and indecent exposure. But on the afternoon Whitehurst was shot, his real "crime," it seems, was running.

His clothes and appearance didn't even match the description broadcast of the robber. The robbery suspect wore a red ski cap, blue jacket and jeans. Whitehurst wore a brown and white jacket and a wide-brimmed brown fedora. However, some say, Whitehurst had a psychotic fear of anyone in uniform. Whitehurst was walking in the vicinity of the robber and, when he saw a patrolman, he fled, ignoring commands to halt. Police who knew him later said they were used to Whitehurst fleeing whenever he saw them. For 30 minutes, some two dozen policemen, responding to the robbery call, chased Whitehurst. His life ended at 4:30 p.m. Dec. 2, 1975, behind an abandoned house, near a 1940s sedan rusting in the backyard weeds.

The events that followed the killing, when finally revealed, were suspicious. There was no autopsy. The coroner, who saw the body later that night, relied heavily on police reports that Whitehurst was killed by a shot through the chest. The man's family was not notified, even though Whitehurst was known to police. A relative heard about the killing on the radio. By then, Whitehurst had been embalmed. There were wide discrepancies in statements from police at the scene. Some said they saw no gun; others said it was 27 inches from Whitehurst's hand.

There is even a missing tape. A witness testified that she heard a policeman, bending over Whitehurst, shout to the officer who killed him, "You done shot the wrong nigger!" But the radio log tapes which could have verified that were erased.

Police still maintain that at the time it appeared to be such an open-and-shut case that no autopsy was needed, that they routinely erased radio logs for re-use and that there was no necessity to run lab tests to see if the gun alleged to be Whitehurst's had been fired.

It all might have ended quietly with Whitehurst's death had it not been for the probing of a handful - the district attorney, a newspaper publisher and a couple of young reporters, some police who testified and others who leaked information, a young black lawyer and a "little old lady" who asked a crucial question on a grand jury.

As the investigation wore on, District Attorney James Evans became so suspicious that, a half a year after the killing, he ordered the body exhumed. An autopsy then performed by a state toxicologist revealed Whitehurst had been shot in the back.

Months after the shooting, sufficient evidence was collected to bring about an unprecedented indictment in Alabama - three police officers were indicted for perjury relating to testimony in the shooting of a black man.

However, because of one of the most curious deals in the law enforcement books, the people implicated in the Whitehurst case may never be brought to trial. Only one perjury case, against just one of the three police officers, came to trial. It ended in a hung jury last October.

Last December, a year after the killing, Alabama Attorney General William Baxley, who tried that one case, was getting discouraged. "None of the higher-ups we suspected of being involved in the cover-up - like the then police chief - had even been indicted for anything." So Baxley agreed that, in exchange for taking polygraph tests, police involved in the alleged cover-up would not be prosecuted. However, if they refused to take the test or flunked, they would be fired. The perjury case against the three officers was dropped after they resigned rather than take a lie detector test.

Baxley's critics scream that his deal amounts to blanket immunity, "trial by polygraph," and makes a mockery of the justice system. Baxley heatedly argues back that he made the best deal possible, that "we can't get a jury to convict officers in this day and age. The lying, perjury, cover-up were horrible, but if they were acquitted they'd stay in office and run things for a decade. This way we got rid of some of those guys."

His critics, however, see Baxley's raw ambition getting in the way. He is openly running for governor, the seat George Wallace will finally relinquish in 1978. Baxley wanted the Whitehurst case resolved so he could pursue his political fortunes, they reason. The Whitehurst case was so unpopular that last December, police and their loyal followers retaliated against investigation with rallies and such bumper stickers as "Prosecute Crooks, Not Cops" - paid for by the present acting mayor.

Baxley himself grumbles that blind loyalty and passionate support of "law 'n order" went against him. "Until they flunked those tests, 90 per cent of the citizens believed they were innocent - I bet 50 per cent still do. I didn't want to believe it myself. Old Ed Wright was so smooth he almost talked me out of it. I had to go back and carefully read the case report; then I figured he was lying like hell."

COL. ED WRIGHT, a hulking man over 6 feet 4, ran the police department with total authority. Now deposed, he is still greeted effusively as "colonel" by a manager as he walks into a restaurant. Wright, ex-mayor Robinson and Wright's former aide - now chief of police - Charles E. Swindall are the three key figures implicated in the alleged cover-up. In light of the polygraph test results - blazed in headlines across page one of the local paper - no one

currently in office or out persists in the argument that there was not some sort of cover-up. But who knew about it is unproven. Robinson, Wright and Swindall all still maintain their innocence.

Polygraph tests are generally not admissible in court. Varying arguments are advanced as to the accuracy of the lie detector machine - depending on whether the person doing the arguing "won" or "lost" his polygraph test. That is why so many down here feel there will be a shadow over the case forever unless federal officials try it. The Justice Department civil rights division and the U.S. attorney for Alabama, Ira DeMent, are actively investigating to see if there are federal violations.

DeMent had long been a friend of Ed Wright's, as had many law enforcement officials in this close-knit town. Ironically, Wright, who flunked his lie detector test, is a noted Alabama polygraph expert. Wright flew to San Diego, Calif., to take his test. The examiner stated after Wright flunked that he was "attempting deception" on four out of seven questions when he said he did not plant or direct that a gun be planted and that he had no knowledge of a "throw down" gun - the precise phrase used in the lie detector test. Wright now quibbles with the examiner's terminology. "He said he 'felt' I was being 'deceptive.' An examiner should deal in either guilty or specific reactions." Despite the toxicologist's autopsy that showed Whitehurst shot in the back, Wright insists otherwise. The gaping wound he thought was an exit wound may have been an entrance shot, he now says, but argues that it was not in the back but the side.

Mayor Robinson passed his test, but then stunned the community by resigning the next day. He said, "My wife and my family cannot continue to suffer the lies that appear every morning and every afternoon in the daily newspapers."

Feisty Harold E. Martin, the Pulitzer Prize-winning publisher of the Advertiser, says they weren't lies - and he would prove it. Adding a comic opera touch to the whole affair, Martin then took a polygraph test - that he had not printed lies and was not out to get the mayor. He passed. Praised for helping to uncover the scandal, Martin is also reviled by those who feel his relentless coverage hounded a good and innocent mayor, popular with both blacks and whites, out of office. Many feel Mayor Robinson was totally duped. Others argue that, if Robinson didn't know, he should have known, and feel his crime was in his failure to act. Robinson maintains that, although he had his suspicions, it was up to the courts to decide guilt.

Mayor Robinson grew up as a poor white in a housing project and worked his way up and out - something, he recalls, that blacks could not do in the South at that time. He moved up the salesman ladder to a top job in a paper company.

Robinson helped change Montgomery from a three-man all-white commission elected citywide to a nine-person council system. Council members are elected by districts, not citywide, thus opening the way for blacks. There are four black council members and five white. The ratio played an important part in the Whitehurst case. Any requests concerning the case, such as a citizens' review, were turned down - five to four, according to Martin. Robinson appointed the first black to an important city government job. Many citizens call him "good" and "honest." So does attorney general Baxley, but Baxley adds the word "naive." Baxley, Martin and others pointed out what they felt were glaring conflicts in police stories and tried to get Robinson to fire the police involved, but Robinson refused.

Few agree, however, as Martin wrote in a signed editorial, that Mayor Robinson was the "biggest deceiver of all" in the Whitehurst scandal.

Martin maintains he was merely conducting an honest journalistic search for truth. He characterizes as a threat a remark Robinson once made to him: "The police can dig up anything on anybody they want to and that includes you."

As a prime example of such "digging up," Martin charges one of the most ludicrous spin-offs of the case. A statement was made by a convict that Martin was photographed in the company of two black prostitutes. Martin, a Baptist lay preacher, was not about to let the matter drop. He went before a convention of Baptist ministers and denounced, not the convict, but police detective C. B. Bodine. Martin charged that Bodine attempted to frame the convict into discrediting Martin. Bodine threatened the convict with going to prison if he didn't say something about Martin and held out a work release permit if he did, Martin says. Going to prison could mean death for the convict, branded as an informer. Martin contends that under such a threat, the felon gave a tape-recorded statement that the district attorney had in his possession photos of Martin with the prostitutes. Bodine denied forcing the convict to lie, but admitted he had circulated an affidavit containing the interview to members of a grand jury. The convict last week passed a polygraph test saying all his statements were false and Bodine put him up to it.

IN ALL the cover-up investigation, the actual shooting of Whitehurst sometimes is overlooked - but there is a \$7 million civil suit against the police department alleging that they engaged in "unlawful chase," deprived Whitehurst of his civil rights and that he was "summarily executed" by police officer Donald E. Foster.

Donald Watkins, a skinny, tall, 28-year-old black lawyer, was sitting in his office one day shortly after the shooting when Whitehurst's mother and other family members walked in. Whitehurst didn't have a gun, they

said. Like many others working on the Whitehurst case, Watkins could hardly believe what unfolded. "I didn't believe the family version for anything. I didn't believe they'd shoot an unarmed guy and plant a pistol."

"I asked for the police report, just so I could make some sort of statement to the family, and I couldn't get the goddamned report out of them!" A policeman "took me as far as he could go; he told me about the gun, and it was mind-blowing."

Watkins' suit alleged that the mayor, Chief Wright and Swindall were grossly negligent in hiring and maintaining Patrolman Foster on the force, that he possessed violent tendencies, racial and prejudice and emotional problems.

Both Wright and Swindall testified under oath that they knew no details of Foster having a bad record. A copy of Foster's personnel file, later leaked to Harold Martin and his newspaper, indicates otherwise. One memorandum, dated July 23, 1974, is thick with recorded incidents relating to arrests made by officer Foster, comments that he was transferred at various times because of "tactless demeanor," "belligerence" and "immaturity" and once received a five-day suspension for "gross incompetence." This one report alone lists 23 arrests, over a three-year period, in which Foster used force. Foster always argued that it was necessary force to subdue those resisting arrest. He was only lightly reprimanded.

Chief Swindall, who passed his lie detector test, stares when asked about Foster's record. "We judged the evidence insufficient. "Forest is still on the force. Last week, Foster applied for retirement benefits, and a city personnel spokesman said his resignation "papers are on the way."

In October, District Judge Robert E. Varner ruled that, when Whitehurst died, his civil rights died with him. Any conspiracy to violate his civil rights ended with that death, Varner concluded. The jury returned a verdict in favor of former police chief Wright, his top aide, Swindall, and Foster, the officer who shot Whitehurst. The case is on appeal.

When the grand jury convened for its monthly session a few weeks after Whitehurst was killed, they knew nothing of Foster's personnel record. In fact, Foster was a hero. The day after he shot Whitehurst, he received a commendation.

Still, inconsistencies in the case haunted some. For months, grand juries doggedly sifted through conflicting testimony, complex accusations - trying to find the truth. Here is a sequence of events - and some of the "flukes" -

that led to the perjury trial:

"When the case routinely went to the grand jury, members questioned the fact that Whitehurst's clothing did not match the description of the robber's. They also thought it strange that the store owner and his helper identified another man as the robber from mug shots. (The case against him was later dismissed for lack of evidence.)

Then a "little old lady" on the grand jury, acting on some hunch, wanted the gun checked out. "It was just a fluke," says district attorney Jim Evans.

Evans asked police to check out the gun. It took two months to get a report - which stated that the gun by the body had been found in drug bust a year and half before the Whitehurst shooting. "Then I knew it stunk," said Evans.

Proving that view was another matter. Three detectives on that drug bust stuck to their story that they left three pistols on a table in the apartment because they were not included in the search warrant; they hypothesized that Whitehurst stole one of the guns from the apartment at some later date.

Evans was getting nowhere. The apartment owner and one of the men picked up in the drug raid said the guns were not left behind, but Evans needed more evidence. Then two more flukes occurred. A man wandered crime he didn't commit.

Evans, bored, routinely asked the man's name - then "nearly fell over." The man was one of the two picked up in the drug raid where the alleged Whitehursts gun was found. Evans had been searching for him for months. The man corroborated the story that the pistols were taken from the apartment. But Chief Wright told Evans, "That just the word of two ex-felons against three fine officers. You ain't got a case."

A few days later, Gary Jones, a state public official, was in Evans' office talking to a friend, who casually asked Jones if he knew about the now all-important drug raid. Jones said he was in on that raid. Fluke number three.

Jones testified that he saw the gun at police headquarters and that the serial number on a report made at that time matched the serial number on the gun found next to Whitehurst's body. Jones passed a lie detector test. The police report he says he saw is not to be found.

A few weeks later, Evans ordered the body exhumed. A few weeks after that, the three policemen were indicted

for perjury for telling the grand jury they had left the pistols in the apartment.

At the October trial, police Sgt. Bill Segrest testified that he knew the three policemen had left the pistols in the apartment. Last month, Segrest failed the polygraph, told the examiner he had given false testimony during the perjury trial and that he knew the pistols were taken into police custody.

Once the polygraph results were known, the police case collapsed. One police detective was fired when his polygraph test indicated he had discharged the unused pistol - supposedly shot by Whitehurst - as he was taking it back to headquarters after the killing. Another detective quit rather than take the polygraph test.

SOME OF THE MEN, are indeed, gone. But there is yet another story. That is what has happened to the people who fought the police and those who broke an unwritten code and spoke out against their fellow policemen. "The good guys got hurt as much as the bad guys," says attorney general Baxley.

There has long been bad blood between district attorney Evans and the police. As Evans hammered away on the case, police investigative reports implied that he was soft on drug cases, used drugs with convicted pushers and was possibly a homosexual. Police investigators wrote in a report that Evans had 15 to 20 abortions performed on various girlfriends. The information came from a woman Evans had prosecuted for an illegal abortion. These contentions were never proven, but Evans is still under a cloud of suspicion by some in the community who feel he was "out to get" the mayor and the police chief. They think he should have taken a polygraph test, too. Evans says he was not a party to the polygraph agreement - Baxley says he was.

"All that stuff on me is pure crap, crap, crap," Evans says today. "I knew they'd be out to get me, but it'll be a cold day in hell before they shoot a guy in the back and plant a gun by him." As a lawyer just out of law school, Evans helped in the prosecution in the celebrated Ku Klux Klan slaying of civil rights worker Viola Liuzzo in 1965.

"What they're doing to me now is mild compared to then."

As the Whitehurst case came to trial, Evans said his tires were slashed, his apartment burglarized, threats made on his life. The Alabama Public Safety Department assigned him a bodyguard. "I asked Baxley to enter the case because I honestly didn't know if I was going to be around," Evans now says.

Gary Jones, the official who testified he saw the guns in police headquarters, and used to wear hippie clothes when he worked the drug scene, quit his job because he was "ostracized." He says quietly, "Immediately after the indictments were made public, my information began calling me and telling me the word was out on the street

that I would never live to testify." Character witnesses testified they wouldn't trust Jones under oath. Jones claims "everyone of 'em I busted or they were superiors I had in some way bucked."

The two patrolmen first on the scene at the Whitehurst killing resigned months ago and moved out of town. Swindall and Wright today say it is their word against the two patrolmen, Rayford Latham and Danny Philips.

Now in Shreveport, La, working for an oxygen supply company, Phillips said in a telephone interview, "As they say, I moved for 'health reasons.' I didn't want to end up at the bottom of the Alabama River. They never did ask for my statement - and I was one of the first on the scene. Whitehurst was still breathing, trying to get air. I looked around and there was no way to be a gun. It wasn't until I was shown the pictures of Whitehurst's body taken at the scene that I knew something was bad wrong. They had this gun lying there, 27 inches from his hand." Phillips added. "Wright showed up in about three minutes after the shouting. He run the whole show."

The other patrolman, Rayford Latham, now on the police force in Scottsboro, tells the same story:

"I walked toward Whitehurst - his muscles were still contracting. I started looking and I said, "Where's the weapon? Hell, I can't find the weapon." About that time Wright walks up and he calls Faster over and they talk for 15 minutes. When I went in to make my statement, I asked, "Did you all find the weapon? I never did see it." The detective said, "You seen it - you just didn't look close enough. "Then I caught on."

Latham now says, "I lost some close and dear friends because I wanted to tell the dadgummed truth. Friends wouldn't let me in their homes anymore. You're expected to fight and die for your fellow policeman, but I wasn't going to prison over it."

THINGS ARE quieting down in Montgomery now. Publisher Harold Martin is no longer flooded with hate mail. No less than 47 candidates are out frantically pursuing the mayors job James Robinson left behind.

The lie detector tests, despite their lack of credence in court, carried a final judgment as far as many average citizens were concerned. Flunking them or refusing to take them - as so many on the police force did - was hardly a badge of innocence.

The fall of heroes is hard to accept, though, and some citizens cling to the belief that Robinson and Wright were hounded out of office.

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Some people, like acting mayor Emory Fmory and police chief Swindall, wish outsiders would just leave the story alone. Others feel pressure should be put on federal officials to try the case.

Publisher Harold Martin concurs with the view that most of the police on the Montgomery force are good men - but that, more than ever, vigilance on the part of the press is necessary to weed out the bad. "Some of those men were friends of mine.

Swindall does not share Martin's view. Sitting at his desk as chief of police, he says solemnly. "It's never a healthy thing to have my investigation of police officers." It's time, he says, "to get back to prosecuting rapists and muggers."

And what about his dethroned boss, Ed Wright? What has he learned from all this?

"What have I learned? Well, I've learned that, well - people just don't care any more about law'n order."

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