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*American Behavioral Scientist* 2010; 53; 826

DOI: 10.1177/0002764209353276

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# Negative Information Action: Danger for Democracy

American Behavioral Scientist  
53(6) 826–847  
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DOI: 10.1177/0002764209353276  
<http://abs.sagepub.com>



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## Abstract

This article explores evidence of, and provides insight into, secrecy-related information actions that are sometimes used to circumvent established government policy and law. These information actions may also be used to cover up such circumventions after the fact. To better understand secrecy as a negative information action and its impact on democracy, secrecy-related information actions are described according to methods, information technologies, and knowledge support. Negative information actions are willful and deliberate acts designed to keep government information from those in government and the public entitled to it. Negative information actions subvert the rule of law and the constitutional checks and balances. Negative information actions used by government officials to violate policies and laws during the Iran-Contra Affair are identified, analyzed, and categorized by type. The relative impact of negative information actions on enlightened citizen understanding is demonstrated using a Negative Information Action Model by assigning a location according to type on a continuum of enlightened citizen understanding. Findings are compared with democratic theory and conspiracy doctrine.

## Keywords

conspiracy doctrine, democratic theory, enlightened citizen understanding, government secrecy, group-danger rationale, information policy, negative information action, SCAD, state crimes against democracy

The men who wrote the United States Constitution recognized problems associated with government transparency when they drafted Article I, Section 5 of the Constitution in 1787. This section instructs houses of the legislative branch to “keep a Journal of its

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Proceedings, and from time to time publish the same, excepting such Parts as may in their judgment require Secrecy” (United States Constitution, 1787). This information policy instrument demonstrates citizen access to government information was expected from the nation’s beginning. While included to prevent the release of information sensitive or detrimental to the nation’s interests in its formative years, when covert government activity was rare and simple, the secrecy provision may have provided the precedent for future abuses of government secrecy not envisioned by the Constitution’s authors.

In the United States a complex policy framework has been developed to manage government secrecy by balancing national security interests with the public’s right to know what its government is doing. The U.S. government secrecy structure is composed of constitutional provisions, legislation, court cases, and presidential executive orders. Together these secrecy-related information policy instruments make up the *policy framework* referred to as the U.S. *secrecy structure*. The terms *framework* and *structure* may be considered misleading by many in that they imply government secrecy policy is consistent and coordinated. The literature suggests otherwise. This secrecy structure has proven effective in circumstances where government officials are acting in good faith and where the decisions of government employees and administrators are properly reviewed by their superiors in the chain of command. The Watergate and Iran-Contra scandals, and similar events, have revealed this policy framework to be vulnerable to misuse when high-ranking policy makers seek to evade congressional oversight, hide criminal acts, conceal embarrassing information, silence critics, or manipulate popular perceptions of international incidents.

Many times individuals and groups in government keep activities unknown from others in government and from the nation’s citizens because of a government official’s desire to keep embarrassing or criminal information from the public. While the established secrecy structure has procedures in place for determining the need to keep information from citizens, it does so under the authoritative guidance of information policy instruments established by law or administrative regulation. However, the secrecy structure is subject to abuse and is not meeting the needs of democratic policy making. The intent of this article is to better understand the nature of departures from the established secrecy structure by examining the secrecy-related negative information actions of conspiratorial groups who circumvent policy and law.

## Information Action

*Information* is defined as the complete and unadulterated presentation of relevant facts to those groups and individuals with oversight responsibility in government and the public. It may be tangible or intangible, or viewed as a process or a final product (Buckland, 1991). *Information access* is the right to use information, whereas *information availability* is the opportunity to use information. A *negative information action* is a willful and deliberate act designed to keep government information from those in government and the public entitled to it. Negative information actions are not in accordance with either the rule of law or the constitutional system of checks and

balances. Negative information actions can differ in intent, content, and method. *Misinformation* is the unintentional provision of inaccurate information to others, whereas *disinformation* is the intentional provision of false information. An individual or group may use disinformation to create misinformation which can be misidentified as information in decision making.

A *false statement* contains facts or representations known not to be true, whereas a *misleading statement* may omit relevant facts to misdirect others (Black, 1983). *Propaganda* usually contains both true and false statements designed to confuse individuals and groups. Methods used to commit negative information actions include, but are not limited to, making false or misleading statements, altering or destroying documents, and delaying the release of requested records. Other methods used to commit negative information actions include the misuse of constitutional and statutory provisions. The provision of requested information to those with oversight responsibilities is considered to be the norm. Actions used to prevent or delay the provision of information is a departure from the given norm. Departures from the norm, *negative information actions*, are subject to public accountability and the rule of law. The constitutional checks and balances and the rule of law are in place to ensure that government officials work inside the norm. Only departures from the norms are subject to investigation and prosecution. Enlightened citizen understanding requires a public and legal accounting of government officials.

## Enlightened Understanding

There exists a direct relationship between enlightened citizen understanding and enlightened citizen choice in that citizens make choices regarding elected officials and referendums based on their knowledge and understanding of government activities. During the past five decades, Americans have learned about several secrecy-related clusters of government programs. Some have been rooted in conspiracies by public officials to evade congressional directives, conduct domestic surveillance for purposes of partisan politics, and/or cover up crimes or embarrassing information. The media typically refers to political crimes not as conspiracies but as *scandals*. Since the United States is considered to be a democratic society, its citizens expect transparency to conduct oversight of government officials and programs. Secrecy abuses have occurred so often they are now considered to be an unfortunate yet recognized phenomenon in government. Secrecy has a detrimental impact on citizen participation and government oversight in that a citizen's ability to identify, locate, comprehend, analyze, evaluate, and utilize information related to government activity is diminished. Furthermore, those negative information actions reducing a citizen's enlightened understanding, in turn, create problems for democracy and can lead to repeated policy failures.

Government officials who misuse or go outside the established secrecy structure undermine the rule of law and weaken the constitutional system of checks and balances. Public policy studies must recognize and investigate these kinds of sinister and concealed policy activities including those of an apparent and positive nature to

fully describe or explain the causes and consequences of government policy, intended and unintended (Dye, 1976). The literature generally overlooks the possibility that the very highest officials in the United States government may subvert the legitimate secrecy structure to conceal unlawful acts, yet Watergate and Iran-Contra show this has been done. These conspiracies were uncovered because of fortuitous events—the Watergate burglars were caught when they returned to the Watergate hotel to repair a secretly planted eavesdropping device, and a Central Intelligence Agency (CIA) operative was captured in Nicaragua because his airplane was shot down. These suggest that many other conspiracies of a similar nature may have been carried out but never detected.

There is a growing concern that the right to access government information is diminishing, citizens are less informed about government activities, and government abuses of power increase as secrecy increases (Demac, 1984; Feinberg, 2004). Those who own and control information have great advantages over those who do not because controlling an argument is the most compelling benefit of secrecy since restricting direct access to government information ensures only one side of any policy debate is heard (Armstrong, 1998; Demac, 1984). Secrets unrelated to national security or unauthorized by law run counter to the democratic process. Undue government secrecy prevents citizens from making informed choices in matters important to individual citizens and to society.

## Conspiracy Research

Examples of conspiracies involving the secrecy structure include the misrepresentation of intelligence findings in the Gulf of Tonkin incident and the burglary of Daniel Ellsberg's psychiatrist's office. Recently, officials in the President George W. Bush administration were accused of leaking classified information to smear a critic of the administration's decision to invade Iraq in 2003. As these examples demonstrate, even though various government policy instruments have been used to create a legitimate government secrecy structure, abuses of secrecy can and have occurred nonetheless.

The negative social effects of many conspiracies rise to a level considered criminal. According to Abbate (1974), a conspiracy exists when two or more persons combine to commit an unlawful act or to commit a lawful act using unlawful means. Legal scholars address these unlawful activities in what is known as the *conspiracy doctrine*. The conspiracy doctrine provides a legal framework to protect society from the anti-social effects of conspiracies by providing criminal sanctions. Abbate contends the doctrine makes state of mind the reason for preventive action against those who threaten society, though they may not have taken a substantial step in the commission of a criminal act. The reduction of antisocial effects associated with conspiracies is in itself a justification to conduct conspiracy-related research.

Conspiracy research has a problem unique to this study. If, as a result of secrecy or misdirection, there are missing data or unknown explanations, how can evidence be examined? Most scientists do not experience this problem in that most subjects are passive with regard to data gathering and would not attempt to avoid detection (Keeley, 1999). What

methodologies are available to study conspiracies? Keeley (1999) focused on errant data related to conspiracies in his attempt to understand them. According to Keeley, errant data is useful in examining whether false explanations were disseminated in a conscious effort to deceive or misdirect those who suspect a conspiracy.

Hofman (1993) suggested employing the sociological method to examine social functions surrounding conspiracies including equality, consensus and hierarchy within a structured system. Russell (1955) used historical analysis to examine the possible existence of a conspiracy related to the interpretation of the Fourteenth Amendment of the U.S. Constitution. Pigden (1995) discussed conditions that must be present for conspiracies to occur, including a belief by conspirators covert action is necessary to overcome the problems faced by the group and their efforts will be successful, like-minded individuals who will support their effort without revealing information related to the group activities, and sufficient and accessible resources to accomplish their objectives. Cressey (1967) attempted to study various aspects of secret mafia activities, and determined social scientists can create data by reasoning from the known to the inaccessible.

Research directly related to state crimes is sensitive because it usually relates to deviance, social control, and the vested interests of powerful government officials and groups (Renzetti & Lee, 1993). *State crimes against democracy* (SCAD) are “concerted actions or inactions by public officials that are intended to weaken or subvert popular control of their government” (deHaven-Smith, 2006, p. 333). Due to the public nature of government investigations, many of the sensitive, ethical, and political issues related to conducting research involving state crimes are decided in advance by those in government. A reduction in illegitimate secrecy-related information actions will increase governmental accountability and enlightened citizen understanding without adversely affecting national security. Negative information action studies undertaken with research related to state crimes may provide insight to better understand the nature of departures from the established secrecy structure by members of conspiratorial groups who circumvent policy and law. Although the topic of this type of research may be controversial, it would be socially irresponsible not to study issues related to undue government secrecy and state crimes against democracy. It would also be academically irresponsible to ignore available data providing a thorough and accurate accounting of a government conspiracy relevant to the study of secrecy-related issues, state crimes, and their impact on the democratic process.

## Iran-Contra

Excessive government secrecy in the Reagan era bred contempt for the democratic process and encouraged several individuals to believe they were beyond the reach of the law (Doyle, 1999). During this era, several high-ranking and midlevel government employees conspired with civilians to conduct secret government activities and attempted to cover up their activities once exposed. The events and the attempted cover-up by high ranking Reagan administration officials would be known as the Iran-Contra Affair. The Iran-Contra scandal was the end result of the exposure of two secret Reagan administration policies,

the Iran Initiative and the Nicaragua Operation, coordinated by the National Security Council (NSC). The Iran initiative consisted of efforts to obtain the release of American hostages held in Iran by unlawfully selling weapons to Iran. The Contra operation consisted of efforts to unlawfully support paramilitary activities in Nicaragua in violation of the Boland II Amendment. They were intertwined because the profits made from the missile sales to Iran were used to provide arms to the Contra effort. The secret programs were also against U.S. foreign policy. These unlawful programs were exposed in 1986 when a U.S. cargo plane was shot down while delivering military supplies to the Contras in October, and again in November when a Lebanese newspaper reported the sale of arms to Iran (Walsh, 1993).

After the investigation, Independent Counsel Lawrence Walsh concluded that in addition to other policy and law violations, government officials had systematically and willfully withheld large volumes of relevant documents from investigators and had deliberately deceived Congress and the public about the government's knowledge of and support for the alleged activities (Walsh, 1993). The outgoing president pardoned Secretary of Defense Casper Weinberger and five other officials on December 24, 1992. The presidential pardons ensured that no information found in Weinberger's notes showing President George H. W. Bush's involvement would be introduced at trial (Armstrong, 1998). The best evidence of the cover-up beginning in October 1986 and continuing through August 1987 was not discovered until the last part of the investigation. The discovery of previously withheld evidence was too late for prosecution because the statute of limitations expired (Walsh, 1993). "What set Iran-Contra apart from previous political scandals was the fact a cover-up engineered in the White House of one president and completed by his successor prevented the rule of law from being applied to the perpetrators of criminal activity of constitutional dimension" (Walsh, 1997, p. 531). The Iran-Contra Affair has been one of the most thoroughly investigated for purposes of prosecution. This suggests the Iran-Contra Affair may provide insight into enduring flaws in the secrecy structure.

## Study Analysis

Successful conspiracies are difficult or impossible to investigate because of the inherent secret nature of conspiracies. Government conspiracies having been exposed and investigated are more likely to provide data directly related to the use of secrecy than government conspiracies that are suspected but have not been investigated and prosecuted. Although the Iran-Contra Affair was thoroughly investigated by the Office of the Independent Counsel there may be undiscovered data known only to the conspirators.

This study analysis began with an initial literature review of the U.S. secrecy structure, the impact of negative information actions on enlightened citizen understanding, and, in turn, its impact on democracy. The literature related to conspiracy research and the societal impact of conspiracies was also reviewed. This initial literature review provided a basic understanding of a known phenomenon of interest—departures from the established secrecy structure by government officials. The literature review also served as a form of

open coding in that the focus of this study is the public's access to government information as it relates to modern democracies. Many times data collection in research is associated with information collected during interviews of individuals and groups. There are other sources of data including documentary data (Glaser, 2004; Pandit, 1996). Availability is an issue to consider when identifying possible data sources. Those phenomena involving sensitive and potentially embarrassing issues would make interviewing subjects problematic (Renzetti & Lee, 1993). Without the availability of interviews the researcher must turn to documentary data including official investigations and government prosecutions. Government investigative reports may contain summaries of an investigation and prosecution, its history, its underlying facts, a legal analysis, and a concluding discussion. This was the case with the *Final Report of the Independent Counsel for Iran/Contra Matters* issued on August 4, 1993 (Walsh, 1993).

The *Final Report* provided an in-depth account of the government officials and their choice of negative information actions used to withhold information from those entitled to it. The official report provided data valid to the study of negative information actions and state crimes against democracy. The *Final Report* provided uncommon data in that rarely do successful conspiracies reveal data sufficient to conduct secrecy-related research. The independent counsel's report was thoroughly investigated by the independent counsel, numerous agents of the Federal Bureau of Investigation (FBI), 65 attorneys, more than two dozen paralegals, and several consultants (Walsh, 1993). The due diligence required to be exercised by these professionals prior to the presentation of the evidence to a federal grand jury adds to the reliability of the previously gathered data contained in the official government report. The scope of a criminal investigation and prosecution is limited by its relevance to the underlying criminal activity. The legal relevance used in the prosecution is sufficiently similar, if not unlike, the theoretical relevance sought in this study—negative information actions taken by government officials.

### Data Analysis

Data analysis began with a key point analysis of the *Final Report*. A word by word or line by line micro-analysis may lead to over conceptualization and data overload. Identifying key points significant to the investigation and research questions avoids these problems associated with micro-analysis (Allan, 2003; Pandit, 1996). In this study key point coding consists of highlighting points in the investigative file text relevant to a negative information action and assigning an identifier to the key point. The key point code contains an uppercase letter indicating a particular investigative file followed by alpha-numeric characters representing a particular method. A number within parentheses following the alpha-numeric characters identifies repeated information actions. In the following analysis, PM4(2) indicates Vice Admiral Poindexter "P" destroyed documents "M4" a second time "(2)" (see the appendix). The codes are later used to locate the relative position of negative information actions on a continuum of enlightened citizen understanding according to their impact.

The linking of categories and the examination of relationships between concepts and categories permit theoretical emergence (Allan, 2003). The relationship between methods, information technology, and knowledge support was the focus of this study. The process of emergence ends when the benefits of constant comparison reach the point of diminishing return with regard to discovering concepts and categories. This is generally known in grounded theory research as saturation. According to Katzner (2001), it is easier to measure elements related to a physical phenomenon than to measure a social phenomenon because there are few, if any, scales to measure salient social science variables. Negative information actions performed by individuals can be counted; however, such counts cannot convey information related to many factors including impact or magnitude.

### Subject Selection

The subjects for this analysis were selected for several reasons. The selected individuals were all government employees at the time of the Iran-Contra Affair. Each individual played a role leading to his or her investigation by the Office of Independent Counsel. With the exception of Fawn Hall, who cooperated with the prosecution and was provided criminal immunity, all the subjects were indicted by a grand jury on the basis of their efforts to obstruct justice. Although others in government may have committed negative information actions, their actions did not rise to the level of a prosecutable offense. The individual investigations used in this study include the following subjects:

Name	Position
1. Elliot Abrams	Assistant Secretary of State
2. Duane Clarridge	CIA Division Chief
3. Joseph Fernandez	CIA Station Chief
4. Allen Fiers	CIA Task Force Chief
5. Clair George	CIA Deputy Director
6. Fawn Hall	NSC Staff Member
7. Robert McFarlane	National Security Advisor
8. Lieutenant Colonel Oliver North	NSC Counter-Terrorism Expert
9. Vice Admiral John Poindexter	National Security Advisor
10. Casper Weinberger	Secretary of Defense

### Findings

The phrase *withholding of information* is generally used to describe several types of negative information actions including altering information, delaying or hiding information, destroying information, and making false or misleading statements. These types of information actions are usually carried out in secret and require little expertise. Other types of information actions are carried out in plain view of the public. Those are information actions that are generally allowed by law and assisted by individuals with legal expertise. Negative information actions that impede or terminate

information flow include the misuse of constitutional and statutory provisions including statutes of limitation, pardons, immunity, classification laws, and several types of privileged communications. Although the rule of law is expected to provide the legal means to settle disagreements and to provide justice, the very elements assuring fairness in the U.S. legal system may be misused to impede information flow and frustrate public accountability and, in turn, be used to diminish enlightened citizen understanding. Many times citizens do not understand the end result of these types of actions.

**Constitutional and Statutory Misuse.** The statute of limitations provides that after a prescribed period of time an individual may not be prosecuted for a crime (Black, 1983). There are exceptions to a statute of limitations, including murder. Examples of delaying information and the misuse of the statute of limitations include the untimely production of Casper Weinberger's and George H. W. Bush's notes. Weinberger and Bush were requested by the prosecution to provide these documents early in the investigation of Iran-Contra. The information contained in the documents clearly indicated Weinberger and Bush were well informed regarding the missile shipments to Iran. These documents were provided to the prosecution after the statute of limitations expired. Although the personal documents contained information indicating their prior statements were false regarding each man's knowledge regarding the shipments, they could not be prosecuted though they mislead investigators about their personal knowledge and involvement (see *Final Report*, p. 405; appendix).

Presidential pardons are constitutional provisions permitting the president to exempt an individual from the punishment demanded by law for a criminal offense by restoring the rights and privileges forfeited because of the offense (Black, 1983). Pardons may be given after a conviction or during an investigation prior to a conviction. It appears pardons may be given to terminate investigations that, in turn, frustrate public accountability. An example of pardon misuse was when President George H. W. Bush pardoned several Reagan and Bush administrations officials prior to his leaving office. Bush indicated the charges against those administration officials were not criminal, but political. This was not the case. The pardons required the independent counsel to discontinue further efforts to gather additional information because evidence cannot be collected absent pending charges that no longer existed. The pardons ensured that the public would not know the full extent of Bush's involvement in Iran-Contra (see *Final Report*, pp. xxiii-xxiv; appendix).

Immunity provisions, whether congressional or criminal, provide an opportunity for individuals to freely provide information without fear of prosecution from those seeking the information (Black, 1983). Congressional immunity can be used to frustrate future criminal investigations and prosecutions. When Congress provided immunity to Vice Admiral John Poindexter and Lieutenant Colonel Oliver North to testify before the Tower commission regarding their knowledge of the secret programs, it was to provide a full public accounting into the government's role in the missile and arms sales. Hoping the immunity would allow Poindexter and North to deny presidential involvement, several members urged fellow congressional members to grant immunity, which they did (see *Final Report*, pp. 558-559). Realizing they could not be prosecuted because of their

immunized testimony, Poindexter and North readily denied the president's knowledge and their own involvement. Not until Poindexter's and North's criminal trials did their recollections change to include the involvement of individuals higher than themselves (see *Final Report*, pp. 32-34, 564; appendix).

Classified information is limited to those with access and a need to know the information. Issues of access and availability limit the public's and those in government's knowledge of secret government programs. Those with a secrecy clearance and a need to know have the right to access; others do not. Even if an individual has met the access requirements, he or she may be prevented from handling the information because it is no longer or is temporarily unavailable. In addition to using restricted information and communication equipment from intelligence and military programs to conceal missile shipments to Iran and U.S. involvement in Latin America, members of the administration used the Classified Information Procedures Act (CIPA) as a means to avoid criminal prosecution. For example, Joseph Fernandez, a CIA section chief, requested certain classified information be admitted as evidence of his innocence during his criminal prosecution. This tactic, known as *graymailing*, was also used by North and Poindexter, who claimed the need for classified information that would not likely be declassified for their defense at trial. In the Fernandez case, the administration was concerned the classified documents could result in additional exposure of clandestine government operations in Latin America. Attorney General Richard Thornburg intervened to deny the release of the requested classified documents on the basis of national security. The unreleased information included several facts well known to the public and others in government. Not capable of mounting an adequate defense without the requested documents, the criminal charges were dropped against the section chief (see *Final Report*, pp. 288-292, 565; appendix).

There are several types of privileged communications including executive privilege, privileged attorney-client communication, privilege against self-incrimination, and others not relevant to this study. Probably the most recognized form of privilege associated with government is executive privilege. President Reagan cooperated with government investigators by answering interrogatories and providing testimony, but he did not assert executive privilege. After leaving the White House, Reagan retained custody of his diary and personal records that were exempt from disclosure under the Presidential Records Act without a lawfully issued subpoena. The Bush administration was successful in seeking to quash the independent counsel's subpoena of Reagan's diary on the basis of executive privilege (see *Final Report*, pp. 126-128; appendix).

Another type of privilege invoked during the criminal investigation into the Iran-Contra matters was attorney-client privilege. Privileged communication between a defendant and his or her attorney simply means neither the client nor attorney is compelled to disclose his or her discussions. In North's case, the attorney-client privilege was used to further obstruct justice and violate the law. North's attorney, in addition to the normal activities conducted by an attorney on behalf of a defendant, was complicit in removing documents from a secured site and was responsible for coaching the testimony of others who destroyed government documents (see *Final Report*, pp. 148-149; appendix). In addition to privileged communications between an attorney and his or her client, an attorney may recommend a

client invoke his or her privilege against self-incrimination. The right against self-incrimination is a constitutional right found in the Fifth Amendment (Black, 1983). On advice of his attorney, North invoked his privilege against self-incrimination.

**Information Manipulation.** The most prominent example of altering information is found in the North and Hall investigative files. After North was alerted to the Department of Justice investigation into the Iran missile sales, he began to make written revisions to NSC documents. North then instructed Hall to type the revisions and to replace the original documents with the altered ones (see *Final Report*, p. 147; appendix). A negative information action used by the Reagan administration to hide the missile and arms shipments was simply to destroy any documentary evidence indicating members' of the administration complicity in the affair. Fawn Hall testified she shredded stacks of documents and telephone logs indicating Robert McFarlane, John Poindexter, and Oliver North violated the Boland Amendment by providing weapons and military support to the Contras. The most prominent example of destroying information is found in the North and Poindexter cases where North testified he witnessed Poindexter destroying a Presidential Finding directing any information regarding the Iran missile sales to be kept from the CIA director (see *Final Report*, pp. 147-148; appendix).

Perhaps the most used negative information action by those in the Reagan administration was to simply lie. The *Final Report* documents well over 50 false statements made by the conspirators to congressional and criminal investigators. The false statements put forth by the administration ranged from false cover stories provided during press conferences to false statements to investigators and perjured testimony to members and committees in Congress. Also, there was a group effort on the part of the conspirators to create a false chronology of related events to provide consistency to the administration's position that the president was unaware of the missiles for hostages deal (see appendix). Joseph Fernandez gave misleading answers on matters at the heart of the congressional investigations of his activities in Latin America to congressional investigators. Although his statements were accurate, they were incomplete and designed to mislead government investigators. It should be noted that the charge of providing misleading information was separate from the charge of making false statements related to the same topics. Whereas one set of charges stemmed from providing incomplete information, the other charges resulted from providing false information (see *Final Report*, p. 284; appendix).

## **Knowledge, Expertise, and Specialized Skill Sets**

Those government officials participating in the secret operations recruited others with specific knowledge and skill sets. The knowledge support used by the Iran-Contra conspirators included business and financial expertise, governmental expertise, political knowledge, legal skill, and military experience. Members of the administration participating in the Iran-Contra Affair used the knowledge and expertise of those not in government including Albert Hakim, Richard Secord, John K. Singlaub, Carl R. Channell, and Richard R. Miller. Hakim was an experienced arms dealer with business connections in the Middle East. Secord was a retired Air Force major general whose prior military experience included arms sales to Middle Eastern countries.

Singlaub, a retired Army major general, also had prior experience in weapons sales. Professional fund-raisers Channell and Miller were recruited to open Swiss bank accounts and to raise large sums of money from foreign leaders and heads of state. Even North's attorney helped finance the arm sales (see *Final Report*, pp. 84, 105, 187).

Members of the conspiracy utilized individuals in the U.S. government with specialized knowledge and expertise. Many of the individuals possessed operational knowledge while others used their knowledge to aid in the cover-up. Individuals within the CIA provided their knowledge and expertise and included station chiefs and other career officers with experience in covert operations. Nonmilitary personnel in the Department of Defense with procurement experience used their knowledge to assist members of the conspiratorial group to circumvent the Arms Export Control Act (1976) to sell weapons to Iran, a recognized terrorist nation. Others in government used their knowledge and expertise to help cover up activities once they were exposed, including the national archivist, who assisted not once but twice in the removal and destruction of electronic records from the White House in violation of the Federal Records Act (1950). Several members of Congress pushed to give those participating in the secret programs congressional immunity to protect the president and to later frustrate the prosecution (see *Final Report*, pp. 32-34, 126-128, 564).

Government employees and individuals outside government with legal knowledge and expertise were used for cover-up purposes. Edwin Meese as United State Attorney General failed in his fact finding duties after the exposure of arm sales profits used to provide arms for the Contras. He failed to take notes, held secret White House meetings, and falsely stated Reagan had no knowledge regarding the sale of missiles in exchange for American hostages. Individuals with the CIA's Office of the General Counsel proposed a retroactive Presidential Finding to deny knowledge of the sale and transport of missiles to Iran via Israel. North's attorney, in addition to investing in the arm sales and crafting Fawn Hall's misleading testimony, instructed North to exercise his privilege against self-incrimination, thereby keeping much of North's and his attorney's personal involvement secret (see *Final Report*, pp. 24, 148-149, 319).

Several members of the NSC participating in the two covert operations had military experience, including three Naval Academy graduates, Robert McFarlane, John Poindexter, and Oliver North. As previously mentioned, former Air Force Major General Richard Secord used the knowledge and expertise gained on active military duty to carry out the group's objectives, while former Army Major General John K. Singlaub solicited South Korea and Taiwan for military aid for Contras. The transport of missiles and arms to Iran and Nicaragua were initially carried out using CIA proprietary aircraft, but the arms were later transferred to foreign military aircraft for final delivery (see *Final Report*, pp. 84, 123; appendix).

## Information Technologies

The secret nature of conspiracies requires members to communicate undetected to avoid exposure. Military and intelligence agencies throughout the world have relied upon advances in information technology for this type of secret communication. The

U.S. government procures and provides to its military and intelligence units advanced communications equipment and technologies to keep secret operations from being exposed to the nation's adversaries. These technologies are generally restricted to those with access and are only used for official government purposes. In the Iran-Contra Affair, members of the administration misused communication technologies to avoid detection. For example, Poindexter and North misused a PROFS note system and also made it available to civilians without proper access, including retired former National Security Advisor McFarlane. A PROFS note system is an IBM proprietary communication network. The PROFS note system was used to store the NSC's secure interoffice e-mail among NSC staff. The misuse of this technology prevented those not participating in the secret operations from detecting policy departures. Subsequently North altered the e-mail contained in the PROFS note system and replaced the original electronic notes with the altered ones (see *Final Report*, p. 94; appendix).

Another misuse of information technologies was brought to light during Duane Clarridge's investigation. Clarridge was a career CIA officer who, as chief of the Latin American Division from 1981 to 1984, directed CIA efforts to support the Contras and assisted North in transferring missiles to Iran. Clarridge misused a secured cable system to alert other foreign intelligence units to assist North in his attempt to deliver missiles to Iran. He used a *flash* priority, the second highest priority for CIA cables requiring immediate attention. Clarridge misused the cable system to avoid detection. He also maintained exclusive control over the messages. During the course of the investigation, the only cables missing from his files were those relating to North's activities. Early in the conspiracy, members of the NSC, particularly National Security Advisor Robert McFarlane and Secretary of State George Shultz, used a back-channel cable for secret communicate information regarding the missile shipments (see *Final Report*, pp. 90, 249; appendix).

Whereas those participating in the secret programs misused advanced electronic information technology to avoid detection and prosecution, less advanced information technologies were used to withhold information regarding policy departures. Poindexter, North, and Hall used a shredder to destroy hundreds of documents, ledgers and phone logs. Although the shredder is not an advanced technology, it was used to achieve the same objective—to destroy information of an embarrassing or criminal nature. Another example of less advanced information technology used to communicate information secretly was a pay telephone. The telephone was used by McFarlane to secretly convey a cover story to be used by North when asked about presidential authorizations. North was to indicate the president made a mental Presidential Finding authorizing the missile shipments to Iran. Using the pay telephone was an attempt to avoid information technologies used to record incoming and outgoing telephone conversations of government employee working in sensitive programs and offices (see *Final Report*, pp. 116-117, 148; appendix).

## Theoretical Framework and Model

Based on the above, the negative information actions used by the Reagan administration to carry out the Nicaragua operation and the Iran initiative and those used by the Bush administration to cover up the governmental misconduct after the fact had a direct impact on

political participation with regard to citizens' enlightened understanding of government activities. The author's Negative Information Action Model is designed to demonstrate the relative impact of different types of information actions based on the public's knowledge of negative information actions and the legal accountability of government officials who conduct those actions (see Figure 1). This model is used to locate deliberate and willful information actions either in accordance or not in accordance with the rule of law or the system of checks and balances. The continuum runs from enlightened citizen understanding to unenlightened citizen understanding. Information actions identified and located on the extreme left are in keeping with the established secrecy structure. Information actions found on the extreme right provide no information serving to enlightened citizen understanding. The closer an information action is located to the right, the less enlightened citizen choice. *Fully prosecuted* refers to criminal cases not terminating on the basis of conflicting immunity, executive privilege, failure to declassify, pardons, or the statute of limitations. This definition is in keeping with Sutherland's (1940) recommendation to define behavior as criminal where convictions are avoided because of outside influence. The four types of information actions (IA) affecting enlightened citizen choice are as follows:

- IA1*: Information actions in accordance with the rule of law and the system of checks and balances.
- IA2*: Information actions not in accordance with the rule of law or the system of checks and balances which are known and fully prosecuted.
- IA3*: Information actions not in accordance with the rule of law or the system of checks and balances that are not fully known and not fully prosecuted.
- IA4*: Information actions not in accordance with the established secrecy structure or the rule of law that are not known and not prosecuted.

It should be noted information actions in keeping with the secrecy structure (IA1) generally have declassification dates at which time government activities not known to the public will be revealed according to established declassification schedules.

An example of the impact of negative information actions on enlightened citizen understanding may be demonstrated by assigning a location on a continuum of enlightened citizen understanding according to type (see Figure 2).

## Discussion

HM4(2)—Fawn Hall shredded documents sought by the FBI, but by cooperating with the independent counsel was not charged with a crime. Hall's information actions were not in accordance with either the rule of law or the system of checks and balances, but were fully revealed and prosecuted. Hall's position is located on or near IA2. NM6(1)—Oliver North invoked congressional immunity during his trial, and his conviction was reversed on the same basis, therefore not fully prosecuted. North's conflicting testimonies during congressional and criminal hearings were different, and his actions could not be fully known. North also invokes the privilege to remain silent regarding his actions. North's



**Figure 1.** Negative Information Action Model



**Figure 2.** Example using Negative Information Action Model

position is located somewhere on or near IA3. CM8(1)—Duane Clarridge obstructed Congress but was pardoned after his indictment and as a result was not fully prosecuted. Because he failed to cooperate with CIA or FBI investigators, many of his actions remain unknown. Clarridge’s position is located on or near IA3. WM3(1)—The discovery of Casper Weinberger’s notes detailing the underlying facts was untimely, and the notes could not be used as evidence against him in a prosecution. Weinberger’s position is also located on or near IA3. BM3(1)—Weinberger’s pardon also ensured that the public would never know the extent of George H. W. Bush’s involvement. Bush’s position is located on or near IA4.

### Abbate and Dahl Revisited

It is clear that negative information actions used to circumvent the system of constitutional checks and balances and the rule of law may be carried out secretly by government officials with dangerous consequences for democracy. The enhanced punishment for those who combine and conspire to commit criminal violations is based on four factors known as the *group-danger rationale* (Abbate, 1974). Those factors are as follows:

1. An individual is more likely to carry out group commitments than his or her personal commitments.
2. Group involvement decreases the likelihood a member would remove himself or herself from the group without the approval of other members.
3. An increased probability that covert action will succeed.
4. A likelihood that greater harm will occur than intended by an individual.

Abbate's first factor evidenced during the independent counsel investigation was a national commitment to prevent the expansion of communism and to gain the release of American hostages. Issues involving loyalty, patriotism, and commitment outweighed the vested interests of any one individual, including the possibility of fines, imprisonment, and damage to reputation. Although a few members of the conspiracy were less than enthusiastic with the group's direction and were removed from the information loop, their tacit silence, their failure to produce requested notes, and their failure to cooperate with Congress and investigators demonstrated their reluctance to leave the group or expose the secret programs. These actions demonstrate the existence of Abbate's second factor.

The third factor is identified by the group's ability to successfully keep undetected two secret government programs and to gather resources sufficient to maintain and continue the programs. If not for the exposure resulting from an airplane downing and the crewman's capture combined with an article printed in a Lebanese newspaper about the government's attempts to trade arms for hostages, the secret programs may have continued unnoticed to those outside the group. Abbate's fourth factor was demonstrated when the group managed to temporarily circumvent the constitutional system of checks and balances by evading congressional oversight through a concerted effort by several members on multiple occasions to deceive investigators. The government officials participating in the secret government programs and their use of negative information actions demonstrates all of the factors identified in the group-danger rationale.

Political theorist Robert Dahl (1998) identified five criteria a government must meet to be considered fully democratic:

1. Effective participation—equal and effective opportunities for citizens to make their views on policy known to others.
2. Voting equality—equal and effective opportunities for citizens to vote and have their vote counted equally.
3. Enlightened understanding—equal and effective opportunities for citizens to learn about relevant alternative policies and possible consequences.
4. Exercising final control of the agenda—policies are always open to change by citizens if they so choose.
5. Inclusion of adults—adult citizens who are permanent residents should have all of the rights implied in the first four criteria.

U.S. citizens were deprived the opportunity to make their policy views known to other citizens and their government representatives regarding the Reagan administration's secret programs. For example, a lack of knowledge of missile shipments to Iran or arms supplies to the Contras prevented citizens and groups who would have publicly opposed such programs from making their views known. The Reagan administration failed to provide U.S. citizens and groups the opportunity to voice opposition to the secret programs either directly or indirectly through legislative representatives. Dahl's first criterion of democracy was not met during the Iran-Contra Affair when the administration prevented effective political participation by its citizens.

Dahl's second criterion requires citizens to have equal and effective opportunities to vote and to have their votes counted equally. By ignoring the legislation passed by a duly elected Congress, the Reagan administration's end result was the same as if no representative vote were cast or any legislation passed. For practical purposes, when administration officials ignored the congressional vote count and violated the Boland Amendments (1982, 1984), they substituted their own vote for the votes of citizens and legislative representatives. Dahl's second criterion was not met in this regard to voting equality. The third criterion requires equal and effective opportunities for citizens to learn about relevant alternative policies and the possible consequences. This condition was not met because there were secret programs not known to citizens and Congress. Undue secrecy surrounding the missile sales to Iran or the provision of military arms to the Contras prevented the public from learning about relevant alternatives and consequences, thereby denying citizens an opportunity to gain an enlightened understanding of government programs.

The fourth criterion was not met in that citizens, through their elected representatives, could not determine the government's agenda to effect change. Decisions regarding whether to vote for incumbent political candidates, including those participating in the secret programs, were frustrated by undue secrecy. The fifth criterion requires adult citizens who are permanent residents to have all of the rights implied in the first four criteria. Having failed to meet the first four criteria, the Reagan administration's secret government programs effectively excluded many adult citizens who were entitled to the withheld information. The citizens were denied the information and thereby prevented from participating and excluded from the political process. Based on criteria set forth by Dahl's (1998) democratic theory and Abbate's (1974) group-danger rationale, negative information actions can have a dangerous impact on democracy.

## **Conclusion and Recommendations**

The legal environment in the United States used to promote public accountability and justice, when misused, produces negative information actions that subvert citizen choice by eroding citizen understanding. Constitutional and statutory amendments are necessary to reduce negative information actions related to the legal environment. The constitutional authority of the president to pardon and the constitutional rights of privilege must be limited to allow for a complete and documented investigation of government activities. Restricting the use of congressional immunity in a criminal trial would be needed to overcome current shortcomings. A longer statute of limitation may be required when dealing with newly discovered but previously withheld information related to negative information actions committed by those in government.

Legislation should mandate the declassification of information where the released information does not cause national harm or was used to hide embarrassing or criminal behavior. Until adequate measures are in place to guarantee restricted information technologies will not be misused by individuals in government, other conditions required for successful conspiracies to occur must be the focus of preventive measures. Legislation must be enacted to provide enhanced

penalties for those in government who commit negative information actions or misuse information technologies to subvert the popular control of government.

There appears to be a pattern emerging related to public and legal accountability among administrations. In the mid-1970s several high-ranking government officials involved in the Watergate Scandal served prison sentences including Attorney General John Mitchell, White House Counsel John Dean, and White House Chief of Staff H. R. Halderman. We may never know the full extent of President Nixon's involvement because he was pardoned by President Ford. With the exception of Nixon there was, for the most part, a full public and legal accounting. During the Iran-Contra Affair, beginning in the mid-1980s and continuing through the early 1990s, there was a public accounting but no legal accounting of government actions in that none of the participants went to prison for their crimes. The veil of secrecy surrounding the George W. Bush administration has prevented a public or legal accounting of domestic surveillance activities, the destruction of e-mails and tapes, or the misuse of classification provisions for political purposes. Americans do not yet know whether the Obama administration or Congress will revisit questionable activities that occurred in the Bush administration. Equally perplexing is whether a legal accounting will take place if it is determined these activities rise to the level of prosecutable offenses. If left unchanged, this pattern suggests that in terms of enlightened citizen understanding and the democratic process, the United States becomes less democratic with each passing decade. Perhaps future research combined with past studies will bring meaning to sufficiently similar historical periods of democratic rule.

## Appendix

### *Negative Information Actions Sorted by Method*

Number	Method	Negative information action	Code
1	M1	Altered CIA Soft Files	GM1(1)
2	M1	Altered Prepared Statement	GM1(2)
3	M1	Altered Electronic Documents	HM1(1)
4	M1	Directed North to Alter Documents	MM1(1)
5	M1	Revised Missile Shipment Chronology	MM1(2)
6	M1	Directed North to Alter Documents	PM1(1)
7	M2	Invoked Classified Info. Procedures Act	FM2(1)
8	M2	Invoked Classified Info. Procedures Act	FM2(1)
9	M2	Invoked Classified Info. Procedures Act	GM2(1)
10	M2	Invoked Classified Info. Procedures Act	NM2(1)
11	M2	Used Secret Channel Communication	PM2(1)
12	M3	Re: Contra Assistance Activities	AM3(1)
13	M3	Re: Contra Assistance Activities	AM3(2)
14	M3	Re: Sultan of Brunei Contributions	AM3(3)
15	M3	Re: Sultan of Brunei Contributions	AM3(4)
16	M3	Compartmentized Funding Information	GM3(1)
17	M3	Compartmentized Nicaragua Information	GM3(2)

(continued)

## Appendix (continued)

Number	Method	Negative information action	Code
18	M3	Compartmentized North's Activities	MM3(1)
19	M3	Re: Secret Fundraising Trip to Israel	MM3(2)
20	M3	Re: Secret Middle East Trip	MM3(3)
21	M3	Compartmentized Fund Raising Activity	MM3(4)
22	M3	Used Secret Intermediary to Raise Fund	MM3(4)
23	M3	Used Pay Telephone re: Mental Finding	MM3(5)
24	M3	Failed to Provide Letters to Congress	NM3(1)
25	M3	Failed to Provide Letters to Congress	NM3(2)
26	M3	Withheld Personal Diary and Notes	WM2(1)
27	M4	Destroyed Copies of Cable Messages	CM4(1)
28	M4	Shredded Documents and Phone Logs	HM4(1)
29	M4	Shredded PROF Notes	HM4(2)
30	M4	Removed Documents from Sealed Office	HM4(3)
31	M4	Directed North to Destroy Documents	MM4(1)
32	M4	Directed PROF File Purge	MM4(2)
33	M4	Destroyed Documents	NM5(17)
34	M4	Destroyed Iran-Contra Documents	NM4(1)
35	M4	Destroyed Presidential Finding	PM4(1)
36	M4	Deleted Electronic Messages	PM4(2)
37	M5	Lied re: Government Knowledge	AM5(1)
38	M5	Lied re: Gomez Connection to VP Bush	AM5(2)
39	M5	Lied re: Plane's Weapons Cargo	CM5(1)
40	M5	Lied re: North's Involvement in Shipment	CM5(2)
41	M5	Lied re: Plane's Weapons Cargo	CM5(3)
42	M5	Lied re: North's Involvement in Shipment	CM5(4)
43	M5	Lied re: Plane's Weapons Cargo	CM5(5)
44	M5	Lied re: CIA Role in Missile Shipment	CM5(6)
45	M5	Lied re: Commercial Deal with Israel	CM5(7)
46	M5	Lied re: Funds Solicitation for Contras	CM5(8)
47	M5	Lied re: Costa Rican Air Strip	FM5(1)
48	M5	Lied re: Costa Rican Air Defense	FM5(2)
49	M5	Lied re: Personal Involvement	FM5(3)
50	M5	Lied re: Personal Involvement	FM5(4)
51	M5	Lied re: Weapons Supply to Contras	FM5(5)
52	M5	Lied re: True Identity of Max Gomez	FRM5(1)
53	M5	Lied re: CIA-Contras Contact	FRM5(2)
54	M5	Lied re: Identity of Benefactors	FRM5(3)
55	M5	Lied re: North's Nicaragua Activities	FRM5(4)
56	M5	Lied re: U.S. Citizen Aid to Contras	FRM5(5)
57	M5	Lied re: Restricted Inter-Agency Group	FRM5(6)
58	M5	Lied re: Hasenfus Involvement with Arms	GM5(2)
59	M5	Lied re: True Identity of Max Gomez	GM5(3)
60	M5	Lied re: Major General Secord Contact	GM5(4)
61	M5	Lied re: Hasenfus Involvement with Arms	GM5(5)

(continued)

## Appendix (continued)

Number	Method	Negative information action	Code
62	M5	Lied re: True Identity of Max Gomez	GM5(6)
63	M5	Lied re: Major General Secord Contact	GM5(7)
64	M5	Crafted Testimony re: Shredding Activity	HM5(1)
65	M5	Crafted Testimony re: Shredding Activity	HM5(2)
66	M5	Lied re: North's Involvement with Contra	MM5(1)
67	M5	Lied re: North's Involvement with Contra	MM5(2)
68	M5	Created Fake ID for North's Travels	MM5(3)
69	M5	Created Fake End-User Arms Certificates	MM5(4)
70	M5	Lied re: NSC Involvement with Contras	MM5(5)
71	M5	Lied to Shultz About Intermediaries	MM5(6)
72	M5	Lied re: Saudi Funds Solicitation	MM5(7)
73	M5	Lied re: Fund Raising Activities	NM5(1)
74	M5	Lied re: Fund Raising Activities	NM5(2)
75	M5	Lied re: Fund Raising Activities	NM5(3)
76	M5	Lied re: Military Advice to Contras	NM5(4)
77	M5	Lied re: Military Advice to Contras	NM5(5)
78	M5	Lied re: Military Advice to Contras	NM5(6)
79	M5	Lied re: Supply Movement	NM5(7)
80	M5	Lied re: Supply Movement	NM5(8)
81	M5	Lied re: Supply Movement	NM5(9)
82	M5	Lied re: Military Advice to Contras	NM5(10)
83	M5	Lied re: Military Action in Nicaragua	NM5(11)
84	M5	Lied re: Major General Singlaub Contact	NM5(12)
85	M5	Lied re: Fund Raising Activities	NM5(13)
86	M5	Lied re: North-Owen Contact	NM5(14)
87	M5	Lied re: North Advising Owen	NM5(15)
88	M5	Created False Shipment Chronology	NM5(16)
89	M5	Lied re: NSC Involvement in Iran	NM5(18)
90	M5	Lied re: Israeli Involvement in Iran	NM5(19)
91	M5	Lied re: Swiss Banks Account Deposits	NM5(20)
92	M5	Created False Cover Story	PM5(1)
93	M5	Lied re: Reagan Knowledge of Shipments	PM5(2)
94	M5	Directed North to Lie	PM5(3)
95	M5	Directed Creation of False Chronology	PM5(4)
96	M5	Lied re: Existence of Personal Notes	WM5(1)
97	M5	Lied re: Saudi Arabia Support	WM5(2)
98	M5	Lied re: Planned Missile Shipment	WM5(3)
99	M5	Lied re: Arms Replenishment	WM5(4)
100	M6	Invoked Congressional Immunity	FM6(1)
101	M6	Invoked Congressional Immunity	NM6(1)
102	M6	Invoked Congressional Immunity	PM6(1)
103	M6	Invoked Congressional Immunity	PM6(2)
104	M7	Coordinated Member Misstatements	AM7(1)
105	M7	Used Secret ID for Maj. General Secord	CM7(1)

(continued)

**Appendix (continued)**

Number	Method	Negative information action	Code
106	M7	Coordinated CIA Proprietary Airplane	CM7(2)
107	M7	Failed to Disclose Airstrip Operations	FM7(1)
108	M7	Failed to Disclose Re-supply Operation	FM7(2)
109	M7	Failed to Disclose Relationships	FM7(3)
110	M7	Failed to Disclose Relationships	FM7(4)
111	M7	Failed to Disclose CIA Authorization	GM7(1)
112	M7	Failed to Disclose Solicitation of Funds	MM7(1)
113	M8	Benefited from Presidential Pardon	AM8(1)
114	M8	Benefited from Presidential Pardon	CM8(1)
115	M8	Benefited from Presidential Pardon	FRM8(1)
116	M8	Benefited from Presidential Pardon	GM8(1)
117	M8	Benefited from Presidential Pardon	MM8(1)
118	M8	Benefited from Presidential Pardon	WM8(1)
119	M9	Used Privilege Against Self-Incrimination	NM9(1)
120	M9	Benefited from Executive Privilege: Diary	PM10(1)

Subject codes: A = Elliot Abrams; C = Duane R. Clarridge; F = Joseph F. Fernandez; FR = Allen Fiers; G = Clair George; H = Fawn Hall; M = Robert C. McFarlane; N = Oliver North; P = John Poindexter; W = Casper Weinberger.

Method codes: M1 = Altering Information; M2 = Classification Misuse; M3 = Delaying Information; M4 = Destroying Information; M5 = False Statements; M6 = Immunity Misuse; M7 = Misleading Statements; M8 = Pardon Misuse; M9 = Privilege Misuse.

**Declaration of Conflicting Interest**

The author declared no conflicts of interest with respect to the authorship and/or publication of this article.

**Funding**

The author received no financial support for the research and/or authorship of this article.

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