

High Crime Today: Conceptualization, Detection, Prosecution, Prevention

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by

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Abstract: This paper examines political corruption in high office where the aim is power and political advantage rather than personal, material gain. The crimes of Watergate, Iran-Contra, and Plame-Gate are used as examples to draw lessons about high crimes, conceptualized as “state crimes against democracy” (SCADs). SCADs are difficult to detect and successfully prosecute because they are usually complex and compartmentalized, investigations are often compromised by conflicts of interests, top officials can influence or control investigations, and powerful norms discourage speculation about corruption in high office. Recommended reforms include singling out antidemocratic conspiracies in the criminal code, mandating investigative procedures when conspiracies are suspected, authorizing severe penalties for violations, and clarifying the president’s pardon powers to prohibit abuses.

Antidemocratic Conspiracies in High Office

In modern representative democracies, political corruption has taken two principal forms (Rogow & Lasswell, 1962). One involves misuse of office for personal material gain, as in graft, nepotism, embezzlement, and kickbacks. The other form of political corruption occurs when democratic processes for arriving at collectively binding decisions are subverted, either to benefit the interests of a ruling faction or class, or to violate the rights of minority factions or individuals. Examples here include election tampering, assassination, malicious prosecution, voter disenfranchisement, and unlawful incarceration. These forms of corruption are not mutually exclusive, but they are sufficiently distinct to permit analysis of corrupt behavior in terms of its motives.

Regardless of its aims, political corruption can occur in either high office or among rank and file administrators. Table 1 lists examples of the different forms of corruption at different levels of office. U.S. public administration scholars and practitioners tend to focus on bureaucratic corruption for financial gain. However,

antidemocratic conspiracies in high office pose a much graver threat to constitutional governance, and they appear to be increasing in frequency, scope, and sophistication (deHaven-Smith, 2006; deHaven-Smith and Kouzmin, forthcoming).

Table 1: Categories of Political Corruption			
		Level of Office	
		Low	High
Aim of Corruption	Financial Gain	Jonathan Pollard (spying)	Teapot Dome
	Power	Election tampering by Ohio vote tabulators in 2004	Watergate, Iran-Contra, Plame-gate

This threat first became evident when President Nixon was implicated in a wide-ranging plot to steal the 1972 presidential election by sabotaging the campaigns of the strongest candidates in the Democratic Party primaries (Kutler, 1990; Summers, 2000). Investigations surrounding and following the Watergate scandal exposed a web of intrigue among top officials in the White House, the Justice Department, the FBI, and the CIA. Although a number of reforms were instituted to strengthen Congressional and judicial oversight of America’s national security apparatus, Watergate was soon followed by the Iran-Contra scandal which, too, was a criminal conspiracy organized and directed by the President and involving others in high office (Kornbluh & Byrne, 1993; Walsh, 1997).

More recently, the crimes of the Administration of George W. Bush, while they may never be fully investigated and exposed, appear to have included conspiring to wage a war of aggression in the Middle East (Clarke, 2004, p. 32; Isikoff & Corn, 2006; Suskind, 2004, pp. 72-75, 82-86; Wilson, 2003; Wright & Dixon, 2008, pp. 5-6, 217); countenancing torture of prisoners to elicit false confessions linking Iraq to 9-11 (Mayer, 2008; Paust, 2007; Rich, 2009; Senate Committee on Armed Services, 2008, p. 41; Shane, 2009; Wilkerson, 2009); exposing the identity of a CIA agent whose husband challenged the Administration’s claims about Iraqi weapons of mass destruction (Rich, 2009; Wilson, 2004); and issuing bogus terror alerts to rally popular support in the run-up to the 2004 presidential election (Hall, 2005).

The trajectory of this series of scandals is ominous (cf., Bernstein, 1976). The crimes of the Nixon Administration were driven by the President’s personal fears and animosities, and involved only a handful of top officials, most of whom participated only in cover-ups and, even then, reluctantly. Furthermore, Republican and Democratic members of Congress joined together to investigate and condemn the President’s actions. In contrast, the Iran-Contra episode was systemic, organized, and carefully planned, and its investigation was impeded by partisan opposition. Motivated by ideology, it emanated from the White House and garnered enthusiastic participation by high-ranking officials and career professionals within the State Department, the CIA, and the military. Even wider in scope and more deeply woven into governing institutions were the crimes apparently committed by the Bush-Cheney Administration. Attacking the organs of

deliberation, policymaking, oversight and legal review, they appear to have involved officials throughout the executive branch and perhaps leaders in Congress as well.

Scholars and practitioners alike have been slow to recognize this growing threat to America's democratic institutions. Social scientists have studied various forms of state crime, but in almost every case the potential for public officials in liberal democracies to subvert democratic institutions has been disregarded. In anthropology, sociology, and criminology, most research on state criminality has focused on relationships between government and deviant groups, especially the symbiosis that often develops between police agencies and organized crime (Heyman, 1999). A few scholars in these fields have also studied state crime as a form of political repression, an interest that points their attention away from state subversion of democratic institutions and toward state violence directed at the poor and the weak. In public administration, research has targeted administrative corruption in policing, business regulation, and similar policy areas that are susceptible to graft and cooptation (Sherman, 1980; Werner, 1983). In political science, most scholars who have studied state crimes have ignored liberal democracies and have focused instead on "regime terrorism" under fascism and communism.

Scholars have generally viewed Watergate, Iran-Contra, and Plame-gate as isolated abuses of power rather than symptoms of developing corruption, criminogenic patterns and institutional decline. This naïve, uncritical attitude is reinforced by powerful norms that discourage speculation about antidemocratic conspiracies in high office. In turn, these norms, combined with the resources and powers vested in high office, impede investigations and prosecutions that might call the norms into question.

Conceptualization

The first step in addressing the threat of antidemocratic conspiracies in high office is to conceptualize such conspiracies so they can be studied and targeted for detection and prevention. Until recently, research on possible complicity by top officials in political crimes and suspicious events of uncertain origin had been left almost entirely to political officials (who have often had conflicts of interests) and to amateur investigators (who have lacked analytical training). Officials have invariably exonerated the government of blame except when Congress and the White House have been controlled by different political parties, as was the case for both Watergate and Iran-Contra.

For their part, amateur investigators have developed a large popular literature alleging and documenting possible complicity by officials in political assassinations, election tampering, contrived defense failures, and other crimes. But in speculating about each suspicious event in isolation, this "conspiracy theory" literature has failed to develop and inform a theory *of* conspiracy – a theory about the motivations, tactics, circumstances, and other characteristics of antidemocratic intrigue in high public office. Also, because of its slipshod, scattershot character, the conspiracy-theory literature has contributed to concerns within the social sciences that theorizing about possible elite involvement in suspicious events fuels a "paranoid style" in American politics reminiscent of McCarthyism (Hellinger, 2003; Hofstadter, 1964; Olmsted, 2009).

The concept of "state crimes against democracy" (SCAD) was introduced in an effort to move inquiry into elite political criminality beyond incident-specific theories of government plots. SCADs are concerted actions, or inactions, by political insiders intended to subvert democratic processes and popular control of government. A detailed

discussion of this formulation is offered in deHaven-Smith (2006). The SCAD construct is designed to capture the particular form of elite political criminality which now appears to be threatening representative democracy. The definition is loose enough to allow for variation in the phenomenon under study, but more specific than the traditional concept of “high crime” and the sociological concepts of “organizational deviance” (Sherman, 1980; Swigert & Farrell, 1980; Werner 1983), “state crime” (Heyman, 1999; Ross, 2000), and “state-corporate crime” (Michalowski & Kramer, 2006).

As thus defined, SCADs include not only election tampering, vote fraud, government graft, political assassinations, and similar crimes when they are initiated by public officials, but also more subtle violations of democratic processes and prerequisites. Popular sovereignty requires regular opportunities for citizens to express meaningful choices in open, fair and competitive elections with real consequences (Dahl, 2002). Hence any concerted effort by public officials to mislead or distract the electorate, discourage citizen participation, or in other ways undermine enlightened citizen choice constitutes an assault on democracy. Examples of recent SCADs in which public officials appear to have intentionally undermined effective citizen choice in competitive elections include President Bush’s State of the Union address in 2003 which misled Congress and the public about weapons of mass destruction in Iraq; the failure by Ohio election officials in 2004 to provide sufficient numbers of voting machines in inner-city precincts where traditionally Democratic constituencies are concentrated; the flawed program implemented in Florida shortly before the 2000 and 2004 presidential elections to remove convicted felons from the registered-voter rolls; and election tampering and vote fraud in the balloting for overseas military personnel in the 2000 presidential election in Florida.

The SCAD concept presupposes that crimes against democracy can originate from many points in the social order, not just the state. In principle, there can be corporate crimes against democracy, partisan crimes against democracy, and so on. SCADs are state crimes in the sense that they involve the use of state authority and resources by public officials to achieve specifically political objectives through illegal or extralegal means.

This does not mean, however, that political crimes by public officials must be in some sense officially approved or condoned to qualify as SCADs. The SCAD construct differs from the criminological concept of “governmental deviance,” which is activity that, although illegal, flows from an agency’s culture and is approved by the agency’s dominant administrative coalition. Some SCADs might meet these criteria – Iran-Contra, for example. But SCADs also include actions by rogue elements of an agency operating in secret as well as conspiracies that extend across agencies or include non-governmental parties, or both. An example is the Watergate break-in and cover-up, which were perpetrated by a small group of conspirators within the White House who drew in individuals from other agencies (e.g., the Justice Department), non-governmental organizations (e.g., the Committee to Reelect the President), and the private sector (Liddy, Hunt, and other “plumbers”).

The intent in defining SCADs broadly as “actions” rather than narrowly as “illegal actions” is to assure that efforts by public officials to subvert popular control of government are covered even if they are not technically in violation of established laws. Using the word “crime” in the name for these actions reflects legal as well as popular usage when the term “crime” is applied to acts by public officials, as in “high crimes and

misdemeanors.” The U.S. Constitution refers to “high crimes” but leaves the term undefined and therefore open to interpretation. Congress decided long ago that high crimes are not limited to actions prohibited by law. Indeed, they can include simple matters of attitude and speech that are entirely unregulated by legal codes. Defining SCADs similarly--as counter-democratic state actions that may not be technically illegal--is appropriate because this allows for the possibility that public officials who wish to manipulate the political process may be in a position to create or take advantage of statutory loopholes for their schemes. An example of the latter occurred in Iran-Contra. After Congress passed the Boland Amendment to prohibit the CIA from providing technical support and other aid to rebel forces in Nicaragua, President Reagan simply transferred the Contra program from the CIA to the National Security Council (Kornbluh & Byrne, 1993, p. xviii.).

Detection and Investigation

As a criminological formulation, the SCAD construct brings a *forensic heuristic* to public administration theory, research and practice. In positing the possibility of antidemocratic conspiracies in high office, the construct points to a variety of new subject matters, research questions, and reform initiatives. It suggests new lines of inquiry and action by holding public officials to such basic democratic principles as popular sovereignty and the rule of law. Even when not backed by specific laws, these principles have juridical (and political) import because of the broad obligations entailed in the oath of office as well as the constitutionally open-ended notion of “high crimes and misdemeanors.”

Similar to research on white collar crime, domestic violence, serial murder, and other crime categories, research on SCAD patterns seeks to identify similarities across SCADs in victims, tactics, timing, those who benefit, and other characteristics. These patterns offer clues about the motives, institutional location, skills, and resources of SCAD perpetrators. They also alert investigators to criminogenic circumstances where suspicion and scrutiny are warranted.

Impediments to SCAD Detection and Prosecution. Research on SCAD patterns is essential for SCAD detection because SCADs are more complex and better concealed than ordinary crimes. Typically, SCADs are conspiracies involving people with expertise in law, law enforcement, and police procedures. For example, G. Gordon Liddy, who organized the Watergate break-ins, was a former agent with the Federal Bureau of Investigation (FBI). He was assisted by E. Howard Hunt, who had recently retired from the Central Intelligence Agency (CIA). The wiretap expert for bugging the Democratic National Committee was James McCord, also a retired CIA officer. In planning the Watergate break-ins, Liddy, Hunt, and McCord identified and neutralized numerous safeguards that had been put in place by the Watergate's security agency (Hunt, 1974; Liddy, 1980; McCord, 1974). Exterior lighting was disabled prior to the break-ins. Locks were picked rather than forced. Observers were positioned outside the building to watch for activity and to communicate with the burglars by walkie-talkie. The electronic surveillance devices were custom made to prevent their signals from being picked up by police radios and other receivers. The Watergate burglars were apprehended only because one of the low level operatives failed to follow instructions and left a strip of tape on a stairwell door lock.

Similarly, when guilty public officials come under suspicion, they usually have access to legal experts who can help them evade prosecution. For example, when the first press stories appeared on what would become known as Iran-Contra, Attorney General Edwin Meese, in the guise of carrying out an internal investigation, worked with the President, Vice President, and several members of the cabinet to develop a cover story to insulate the President from responsibility and to shift blame to the military personnel who had executed the President's policies (Walsh, 1997).

Because of their legal and technical sophistication, SCADs may lack many of the characteristics of ordinary crimes that allow the latter to be investigated and solved. Ordinary crimes are often solved by pressuring criminals to inform on one another, but this may be impossible with SCADs because they are often organized like covert intelligence operations. Each element of the operation is compartmentalized, and information about participant roles is shared only on a need-to-know basis. In Iran-Contra, for example, separate corporations or "cut outs" were hired to handle arms shipments and sales so that the military units from which the armaments originated would not know the arms were destined for Iran (Kornbluh and Byrne, 1993; Walsh, 1997).

Indeed, SCADs are sometimes so sophisticated that it is unclear whether a political crime has actually been committed. During the 1972 campaign season, the Nixon Administration engaged in a wide-ranging program of political "dirty tricks" to ensure that the weakest candidate in the field would be nominated by the National Democratic Party. Circumstantial evidence suggests that Edmund Muskie's emotional breakdown on the campaign trail had been provoked by an LSD-like chemical agent, but this suspicion has never been confirmed (Summers, 2000, pp. 407-408). Similarly, a staff investigator for the Senate Watergate Committee discovered that over 100 burglaries with the plumbers' signature profile had been committed in 1972, mainly in and around Washington, D.C. (Wise, 1976). In many cases, the targets were offices of psychiatrists who were treating Nixon Administration critics or their spouses. However, the only such burglaries officially traced to Liddy and Hunt were the break-ins at the Watergate and at the office of Lewis Fielding, the psychiatrist of Daniel Ellsberg.

SCADs are also difficult to detect because the agencies assigned to investigate what may be high crimes often bear some blame or have some connection to the events in question; hence, personnel in these agencies are inevitably tempted to conceal evidence that would implicate or embarrass the agencies or their top managers. In the investigation of the assassination of President Kennedy, for example, both the FBI and the CIA concealed evidence of their contacts with Lee Harvey Oswald and Jack Ruby (Talbot, 2007). Likewise, in response to the inquiry into the defense failures surrounding 9-11, the Department of Defense appears to have withheld from the 9-11 Commission evidence that military intelligence agents had uncovered the 9-11 hijackers' activities well in advance of September 2001 (Weldon, 2005).

An additional barrier to un-blinkered investigations of crimes or suspicious events that may involve top leaders is the latter's ability to exert control over the investigatory scope and conditions. When the FBI first began its inquiry into the Watergate burglary, agents were compelled to allow John Dean, the White House General Counsel, to attend their interviews of White House staff (Kutler, 1990, pp. 209-210). Nixon's staff also convinced Acting FBI Director Patrick Gray to destroy evidence taken from the safe in Howard Hunt's White House office, telling him that "it should never see the light of day"

because it involved important national secrets (Gray, 2008, pp. 81-83). As the investigation continued, President Nixon sent word to CIA Director Richard Helms that he should demand an end to the FBI investigation on the grounds that the Watergate break-in had been a national security operation (Kutler, 1990, pp. 218-219; Summers, 2000, pp. 428-429). This gambit failed only because Acting FBI Director Patrick Gray demanded the CIA's claim to be made in writing, and Helms balked (Gray, 2008, pp. 87-88).

Examples of SCAD patterns. A comparative analysis of political assassinations and assassination attempts offers examples of the kinds of insights that can be developed from SCAD research. In the post-World War II era, the range of U.S. officials targeted for assassination has been limited to those officials who are most directly associated with foreign policy: presidents and senators. Most other high-ranking officials in the federal government have seldom been murdered even though many have attracted widespread hostility and opposition. No Vice Presidents have been assassinated, nor have any members of the U.S. House of Representatives or the U.S. Supreme Court. If lone gunmen have been roaming the country in search of political victims, it is difficult to understand why they have not struck more widely, especially given that most officials receive no Secret Service protection.

A related pattern is evident in assassinations and assassination attempts carried out against U.S. Senators. In the post-WWII era, Senators have been targeted only when running for the presidency (Robert Kennedy) or when the Senate is closely divided. Again, this is indicative of an effort to influence foreign policy. The Senate is more important to foreign policy than the House because it must confirm Cabinet appointments and approve international treaties. However, the death of a single U.S. Senator would almost never cause significant shifts in military action or defense policy, because individual Senators are seldom that powerful. Hence, if the aim was to affect foreign policy, a Senator would be targeted for assassination only in rare instances. This has indeed been the case. Just one Senator is known to have been assassinated since 1960, despite the large number of available targets and the absence of bodyguards. Senator Robert F. Kennedy was murdered after he had denounced the Vietnam War and had become the Democratic Party's frontrunner for the 1968 presidential nomination. Given the high probability that RFK would have been elected, his murder was, in effect, a preemptive assassination of a president-to-be.

The only other senatorial assassinations or attempted assassinations in the post-WWII era occurred in 2001 when Democrats controlled the Senate by virtue of a one-vote advantage over Republicans. In May of 2001, just four months after George W. Bush gained the presidency in a SCAD-ridden disputed election, Republican Jim Jeffords left the party to become an independent, and the Senate shifted to Democratic control for the first time since 1994. Five months later, on 9 October 2001, letters laced with anthrax were used in an unsuccessful attempt to assassinate two leading Senate Democrats, Majority Leader Tom Daschle and Judiciary Committee Chairman Patrick Leahy. The anthrax in the letters came from what is known as the "Ames strain," which was developed and distributed to biomedical research laboratories by the U.S. Army (Tarpley, 2005, pp. 311-318). Thus, aside from the assassination of Robert Kennedy, the only other time since WWII that Senators have been targeted for death was when a war was about to

be fought for dubious reasons and the death of a single Senator could shift control of the Senate to the political party pushing for war.

Patterns like these help investigators differentiate “inside crimes” from random attacks or unplanned government failures. In general, SCADs and suspected SCADs frequently involve presidents either as victims or principals, benefit military and military-industrial elites, and employ the skills of intelligence and paramilitary operatives. Conditions conducive to SCADs include periods of warfare or heightened international tensions, administrations with Vice Presidents closely tied to military and/or intelligence elites, and Senates closely divided along partisan lines. SCADs often appear where presidential politics and foreign policy intersect. When political assassinations, defense failures, anthrax attacks, plane crashes involving top officials, and similar events occur in these circumstances, SCADs should be suspected, and investigations should scrutinize the conduct of officials who benefited.

The main theoretical issues for SCAD research involve SCAD perpetrators. Most SCADs are too complex to be committed by isolated individuals, but little is known about how SCAD-oriented networks arise and how they plan, execute, and cover up their crimes. Conspiracy theorists have often jumped to the conclusion that SCADs are initiated either by a stable cabal of high officials or by small, temporary coalitions of high officials who come together to address isolated concerns. However, nothing that is currently known about SCADs precludes the possibility that SCAD networks are much more widely dispersed, involving either a more or less stable group of mid-rank professionals intent on protecting certain values (anticommunism, white supremacy, Christianity, etc.), or temporary combinations of opportunistic officials in the middle ranks who come together briefly to achieve limited objectives (financial gain, career advancement, inter-institutional advantages, etc.). It is also possible that multiple networks coexist and cooperate or compete.

Prosecution

Even when there is clear evidence of antidemocratic conspiracies in high office, prosecution is impeded by powerful norms that discourage speculation about corruption among top leaders. In the absence of such norms, top government officials would come under widespread distrust whenever they received political windfalls from assassinations, terrorist attacks, election breakdowns, and similar incidents. But convention prohibits suspicions from being voiced about top officials unless their guilt can be proven unambiguously by demonstrable evidence. Without a "smoking gun," even quite reasonable suspicions about high crimes are dismissed as "conspiracy theories."

Norms against voicing suspicions of elite political criminality are based in part on the principle in American jurisprudence that suspects are considered innocent until proven guilty. However, the presumption of innocence was never intended to outlaw suspicions. Rather, it calls for suspicions to be tested with thorough and fair investigations grounded by procedural rules for procuring and presenting evidence. In contrast, the pejorative “conspiracy theory” label is applied not to categorize a position that will actually be considered, but to shut off argumentation before it begins. As a practical matter, the label condemns as hysterical and pernicious almost all speculations about the possible complicity of political elites in suspicious events.

Given that U.S. elites themselves could become the targets of assassination plots, illegal surveillance, and other conspiracies by their domestic political opponents, their

blanket hostility to conspiracy theories seems irrational, for it encourages them to dismiss real dangers and to deny reasonable concerns. It also silences those who believe they have been victims. George Wallace suspected, with good reason, that the attempt on his life during the 1972 presidential campaign had been engineered by Richard Nixon (Summers, 2000, pp. 406, 473, 526n). Wallace never expressed this suspicion publicly, but this is why he withdrew his support from Nixon during the Watergate hearings. Similarly, by 1968, Robert Kennedy was convinced that JFK's assassination had been the work of a conspiracy involving the CIA, but he did not voice his suspicions publicly while running for president because he feared it would discredit him politically or get him killed (Douglass, 2008; Talbot, 2007). These examples suggest norms against conspiratorial speculations in public discourse sacrifice the safety of individual political elites to protect the legitimacy of political elites *as a class*.

In any event, elite and mass alike are usually reluctant to face troubling questions about high-ranking officials. The official response to the Watergate wiretapping is illustrative of this reticence. In June 1972, months before the 1972 presidential election, a former CIA agent (Hunt) and a former FBI agent (Liddy), both of whom were employed directly by the White House, were arrested in connection with the crime. Also arrested was the head of security for the Committee to Reelect the President (McCord), which was chaired by Nixon-confidant and former Attorney General John Mitchell. The involvement of Hunt, Liddy, and McCord was strong circumstantial evidence that the Nixon Administration, if not the President himself, was engaging in election tampering. Hunt pleaded guilty to all charges in January 1973, and the other Watergate burglars followed suit shortly thereafter. Also in January 1973, John Mitchell was linked to payments received by the burglars. Nonetheless, articles of impeachment were not introduced until July 1973; and, even then, Congress showed no willingness to send the articles to the Senate for trial. It was not until audio tapes implicating Nixon and his inner circle were discovered and made public that calls for Nixon's impeachment began to be seriously considered.

This reluctance to entertain suspicions of high crimes is why George W. Bush and/or Dick Cheney were not impeached for "outing" CIA agent Valerie Plame. Undisputed evidence now shows that, shortly before the 2003 invasion of Iraq, the President changed longstanding policy to allow the Vice President to declassify state secrets (Rich, 2007). A few months later, after Joseph Wilson challenged the administration's claims about Iraq seeking to acquire uranium in Africa, the Vice President informed his aid Stuart Libby of Plame's status. Libby then leaked this information to the press and to others in the administration who also leaked it to the press. These circumstances suggest that Libby was following the orders of the President and the Vice President, but Libby alone was indicted, and only then for committing perjury when he denied having leaked Plame's identity to reporters. Without a confession from Libby implicating Cheney and Bush, no one was willing to take action against either the President or the Vice President, both of whom appear to have been part of a criminal conspiracy to commit the treasonous offense of exposing the identity of a covert agent in a time of war.

Even when evidence points to pervasive political criminality in high office, the public and its leaders are reticent to investigate and prosecute. Again, the administration of George W. Bush is illustrative. Much evidence indicates that, in addition to outing

Valerie Plame, the Bush Administration manipulated and distorted intelligence to concoct a pretext for invading Iraq (Isikoff & Corn, 2007; Rich, 2006); fired federal prosecutors who refused to target Democratic officials (Horton, 2007); sought to intimidate and silence career government professionals who arrived at conclusions contradicting the administration's claims or premises (Savage, 2007, pp. 279-307); conducted domestic electronic surveillance without first obtaining court orders (Suskind, 2006); periodically raised terrorist threat levels to rally electoral support for the president (Hall, 2005); and countenanced cruel and inhumane treatment of suspected terrorists (Goldsmith, 2007; Greenwald, 2007). Some of these actions were investigated, and in a few instances officials were forced to resign or were prosecuted. But the President and Vice President were never called to account, not even after the 2006 and 2008 elections shifted control of Congress and the White House to the Democrats.

Prevention

SCAD patterns in the post-WWII era point to many policies that would make SCADs less likely to be committed even if the networks behind them remain obscure. In general, incentives and opportunities for committing SCADs need to be identified and reduced or eliminated. Toward this end, antidemocratic conspiracies by public officials should be singled out like hate crimes and racketeering for special treatment in the criminal code. Certainly, the implications of state political criminality are sufficiently grave to warrant extraordinary penalties and investigatory powers.

SCADs could also be discouraged by marshalling law enforcement resources to protect likely targets. Opportunities for political crimes that affect national priorities often arise around elections for the presidency. Hence special attention needs to be paid to protecting candidates against assassination, monitoring contacts between campaigns and foreign governments, holding election officials personally responsible for bias in election administration, and overturning elections when, for whatever reason, the results fail to reflect the voters' intentions.

Another reform that would make SCADs less likely would be to increase the chances of detection and conviction. As it is, both investigations and convictions are rare because the government is usually compromised by partisan loyalties and other conflicts of interest. The individuals who are most likely to come across SCAD conspiracies are career civil servants, but the examples of Daniel Ellsberg and Joseph Wilson, both of whom suffered severe reprisals, show that protections for whistleblowers need to be strengthened and refined to accommodate situations where corruption reaches the highest levels of government. Likewise, laws that pertain to government investigations of possible state crimes should mandate citizen juries and other mechanisms to foster objectivity.

SCAD conviction rates can be improved by requiring rigorous crime-scene processing and evidence inventorying for all assassinations, terrorist attacks, election disputes, and deaths of public officials in suicides and accidents. As it stands, events with profound implications for the nation and the world are left to be investigated on an ad hoc basis; procedures for controlling crime scenes, inventorying evidence, interviewing suspects, interpreting evidence, overseeing the investigative process, and reporting findings are developed on the spot in the aftermath of the tragedies, when the nation is in shock and the perpetrators may be covering their trail. Public officials or

their agents lost, discarded, or destroyed critical evidence in the World Trade Center destruction (Griffin, 2004; Hufschmid, 2002); the anthrax mailings in October 2001 (Broad, Johnston, Miller, & Zielbauer, 2001); the disputed presidential elections of 2000 and 2004 (Barstow & Van Natta, 2001; deHaven-Smith, 2005; Miller, 2005); the assassinations of John Kennedy, Robert Kennedy, and Martin Luther King (Grodin, 1993; Pease, 2003; Weldon, 2000); and the attempted assassination of George Wallace (Hunt, 1974, p. 216; Summers, 2000).

Incentives to commit SCADs can be further reduced by placing statutory restrictions on the President's power to grant pardons and commute sentences. Gerald Ford pardoned Richard Nixon without even allowing a full investigation into all of Nixon's possible crimes. Similarly, George H.W. Bush pardoned the Iran-Contra conspirators and effectively prevented further investigation of his own role in the affair. George W. Bush appears to have had similar motives with respect to Scooter Libby. In commuting Libby's sentence rather than issuing a pardon, Bush made it impossible for Congress to compel Libby's testimony in any further inquiry into Plame's exposure. Congress should clarify the President's pardon power by enacting a pardon statute that precludes pardons for crimes committed at the President's direction. Likewise, presidents should not be allowed to grant pardons to anyone who preceded them in the office and left office by resignation.

References

- Barstow, D. & Van Natta Jr., D. (2001). How Bush took Florida: Mining the overseas absentee vote. *New York Times*. July 15.
- Bernstein, B. J. (1976). The road to Watergate and beyond: The growth and abuse of executive authority since 1960. *Law and Contemporary Problems*, 40(2), 58-86.
- Broad, W. J., Johnston, D., Miller, J., & Zielbauer, P. (2001). Anthrax probe hampered by FBI blunders. *New York Times*, November 9.
- Clarke, R. A. (2004). *Against all enemies: Inside America's war on terror*. New York: The Free Press.
- Dahl, R. (2002). *How democratic is the U.S. Constitution?* New Haven: Yale University Press.
- deHaven-Smith, L. (2005). *The Battle for Florida*. Gainesville: University Press of Florida.
- deHaven-Smith, L. (2006). "When political crimes are inside jobs: Detecting State Crimes Against Democracy," *Administrative Theory & Praxis*, Vol. 28: No. 3. (September), pp. 330-355.
- deHaven-Smith, L. (2010). Beyond conspiracy theory: Patterns of high crime in American government. *American Behavioral Scientist*, 53(6), 795-825.
- deHaven-Smith, L. & Kouzmin, A. (forthcoming). Symposium on state crimes against democracy: Introduction to the symposium. *Public Integrity*.
- deHaven-Smith, L., and Witt, M. (2008). Preventing state crimes against democracy, paper presented to Public Administration Theory Network (PAT-net) Conference, Richmond Virginia, May 29 - 30, 2008.
- Douglass, J. W. (2008). *JFK and the unspeakable: Why he died and why it matters*. Maryknoll, NY: Orbis Books.

- Ellsberg, D. (2002). *Secrets: A memoir of Vietnam and the pentagon papers*. London: Penguin Press.
- Fisher, L. (2004). The way we go to war: The Iraq Resolution, in Gregg, G.L. and Rozell, M.J., eds., *Considering the Bush Presidency* (107-124). New York: Oxford University Press.
- Ford, G. R. (1974). Proclamation 4311, granting a pardon to Richard Nixon. Available online at the Gerald R. Ford Presidential Library and Museum, at <http://www.ford.utexas.edu/>.
- Goldsmith, J. (2007). *The terror presidency: Law and judgment inside the Bush Administration*. New York: W.W. Norton.
- Goodman, M.A. (2008). *The failure of intelligence: The decline and fall of the CIA*. New York: Rowman and Littlefield.
- Gray, L. P. (2008). *In Nixon's web: A year in the crosshairs of Watergate*. New York: Henry Holt.
- Greenwald, G. (2007). *A tragic legacy: How a good vs. evil mentality destroyed the Bush presidency*. New York: Crown Publishing.
- Griffin, D. R. (2004). *The new Pearl Harbor: Disturbing questions about the Bush administration and 9/11*. Northampton, Massachusetts: Olive Branch Press.
- Griffin, D. R. (2005). *The 9/11 Commission report: Omissions and distortions*. Northampton, Massachusetts: Olive Branch Press.
- Groden, R. J. (1993). *The Killing of a president: The complete photographic record of the JFK assassination, the conspiracy, and the cover-up*. New York: Penguin Books USA.
- Hall, M. (2005). Ridge reveals clashes on alerts. *USA Today*, May 10.
- Hellinger, D. (2003). Paranoia, conspiracy and hegemony in American politics. In H.G. West H.G. & T. Sanders (Eds.), *Transparency and conspiracy: Ethnographies of suspicion in the new world order* (pp. 204-232): Durham: Duke University Press.
- Heyman, J. McC. (Ed.). (1999). *States and illegal practices*. Oxford: Berg.
- Heyman, J. McC & Smart, A. (1999). States and illegal practices: An overview. In J. McC. Heyman (Ed.) *States and illegal practices* (pp. 1-24). Oxford: Berg.
- Hofstadter, R. (1964). *The paranoid style in American politics and other essays*. Cambridge: Harvard University Press.
- Horton, S. (2007). Political profiling: The smoking gun. *Harpers*. April 13.
- Hufschmid, E. (2002). *Painful questions: An analysis of the September 11th attack*. Goleta, CA: Endpoint Software.
- Hunt, E. H. (1973). *Give us this day: The inside story of the CIA and the Bay of Pigs invasion . . . by one of its key organizers*. New Rochelle: Arlington House.
- Hunt, E. H. (1974). *Undercover: Memoirs of an American secret agent*. New York: G. P. Putnam's Sons.
- Isikoff, M. & Corn, D. (2006). *Hubris: The inside story of spin, scandal, and the selling of the Iraq War*. New York: Crown Publishers.
- Kornbluh, P. & Byrne, M. (Eds.)(1993). *The Iran-Contra scandal: The classified history*. New York: The New Press.
- Kutler, S.I. (1990). *The wars of Watergate: The last crisis of Richard Nixon*. New York: W.W. Norton.

- Liddy, G.G. (1980). *Will: The autobiography of G. Gordon Liddy*. New York: St. Martin's Press.
- Mayer, J. (2008). *The dark side: The inside story of how the war on terror turned into a war on American ideals*. New York: Doubleday.
- McCord, J. W., Jr. (1974). *A Piece of Tape: The Watergate Story, Fact and Fiction*. Rockville, Maryland: Washington Media Services.
- Michalowski, R.J. & Kramer, R.C., eds. (2006). *State-Corporate crime: Wrongdoing at the intersection of business and government*. New Brunswick: Rutgers University Press.
- Miller, A. (Ed.). (2005). *What went wrong in Ohio: The Conyers' report on the 2004 presidential election*. Chicago: Academy Publishers.
- Olmsted, K.S. (2009). *Real enemies: Conspiracy theories and America democracy, World War I to 9/11*. Oxford: Oxford University Press.
- Parry, R. (1993). *Trick or treason: The October surprise mystery*. New York: Sheridan Square Press, Inc.
- Paust, J. (2007). *Beyond the law: The Bush Administration's unlawful responses in the "war" on terror*. New York: Cambridge University Press.
- Pease, L. (2003). The RFK plot: Parts I and II. In J. DiEugeio & L. Pease (Eds.). *The assassinations: Probe magazine on JFK, MLK, RFK, and Malcolm X* (pp. 536-570). Los Angeles: Feral House.
- Rich, F. (2006). *The greatest story ever sold*. New York: Penguin.
- Rich, F. (2007). "When the Vice President does it, that means it's not illegal. *New York Times*, July 1.
- Ross, J. I. (Ed.). (2000). *Varieties of state crime and its control*. Monsey, NY: Criminal Justice Press.
- Rogow, A.A. & Lasswell, H.D. (1963). *Power, Corruption, and Lies*. Englewood Cliffs, NJ: Prentice Hall.
- Savage, C. (2007). *Takeover: The return of the imperial presidency and the subversion of American democracy*. New York: Little, Brown and Company.
- Shane, S. (2009). Waterboarding used 266 times on 2 suspects, *New York Times*, April 19. Available from: <http://www.nytimes.com/2009/04/20/world/20detain.html> [Accessed 12 August 2010].
- Shenon, P. (2008). *The commission: The uncensored history of the 9/11 investigation*. New York: Twelve.
- Sherman, L. W. (1980). Three models of organizational corruption in agencies of social control." *Social Problems*, 27(4), 478-491).
- Sick, G. (1991). *October surprise: America's hostages in Iran and the election of Ronald Reagan*. New York: Random House.
- Summers, A. (2000). *The arrogance of power: The secret world of Richard Nixon*. New York: Viking.
- Suskind, R. (2006). *The one percent doctrine: Deep inside America's pursuit of its enemies since 9/11*. New York: Simon and Schuster.
- Swigert, V.L. & Farrell, R.A. (1980). Corporate homicide: Definitional processes in the creation of deviance. *Law and Society Review* 15(1), 161-182.
- Talbot, D. (2007). *Brothers: The hidden history of the Kennedy years*. New York: Free Press.

- Tarpley, W. G. (2005). *9/11 synthetic terror*. Joshua Tree, California: Progressive Press.
- Walsh, L. E. (1997). *Firewall: The Iran-Contra conspiracy and cover-up*. New York: W.W. Norton and Company.
- Weldon, C. (2005). *Countdown to terror*. Washington, D.C.: Regnery.
- Weldon, D. (2000). The Kennedy limousine: Dallas 1963. In J. H. Fetzer (Ed.). *Murder in Dealey Plaza: What we know now that we didn't know then about the death of JFK* (pp. 129-158). Chicago: Catfeet Press.
- Werner, S. B. (1983). New directions in the study of administrative corruption. *Public Administration Review*, 43(2), 146-154.
- Wilkerson, L. B. (2009). The truth about Richard Bruce Cheney, *The Washington Note*, May 13. Available from: http://www.thewashingtonnote.com/archives/2009/05/the_truth_about/ [Accessed 12 August 2010].
- Wilson, J. (2003). What I didn't find in Africa, *New York Times*, July 6. Available from: <http://www.nytimes.com/2003/07/06/opinion/06WILS.html> [Accessed 12 August 2010].
- Wise, D. (1976). *The American police state: The government against the people*. New York: Vintage Books.
- Wright, A. and Dixon, S. (2008). *Dissent: Voices of conscience*. Kihei, Hawaii: Koa Books.