

12-2013

## Political Motive and Bail: The Effect of Prosecutorial Strategies on Pretrial Decisions in Federal Terrorism Trials

Michael John Clanton  
*University of Arkansas, Fayetteville*

Follow this and additional works at: <https://scholarworks.uark.edu/etd>



Part of the [Criminology and Criminal Justice Commons](#), and the [Social Control, Law, Crime, and Deviance Commons](#)

---

### Citation

Clanton, M. J. (2013). Political Motive and Bail: The Effect of Prosecutorial Strategies on Pretrial Decisions in Federal Terrorism Trials. *Graduate Theses and Dissertations* Retrieved from <https://scholarworks.uark.edu/etd/980>

This Thesis is brought to you for free and open access by ScholarWorks@UARK. It has been accepted for inclusion in Graduate Theses and Dissertations by an authorized administrator of ScholarWorks@UARK. For more information, please contact [scholar@uark.edu](mailto:scholar@uark.edu).

Political Motive and Bail: The Effect of Prosecutorial Strategies on Pretrial Decisions in Federal  
Terrorism Trials

Political Motive and Bail: The Effect of Prosecutorial Strategies on Pretrial Decisions in Federal  
Terrorism Trials

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Arts in Sociology

by

Michael John Clanton  
University of Arkansas  
Bachelor of Arts in Art, 2001  
University of Arkansas  
Bachelor of Arts in Criminal Justice, 2011

December 2013  
University of Arkansas

This thesis is approved for recommendation to the Graduate Council.

---

Dr. Brent Smith  
Thesis Director

---

Dr. Christopher Shields  
Committee Member

---

Dr. Jeffrey Gruenewald  
Committee Member

## ABSTRACT

The purpose of this study is to understand how prosecutorial strategies affect pretrial decisions in U.S. terrorism trials and how pretrial decisions in turn affect the disposition of those trials. This research builds off of the work of Smith and Damphousse (1996) which compared terrorism indictees to traditional federal offenders. They found that the use of explicit politicality as a prosecution strategy was a significant predictor of both disposition and the sentence length in terrorism trials. This study focuses on the question of whether the use of an explicitly political prosecution strategy impacts pretrial decisions in terrorism cases and whether the pretrial decisions impact the guilty plea rates in those cases.

This study addresses this issue through a structural-contextual theoretical framework by looking at the prosecutorial strategy of explicit politicality. The reason for this research is to see whether defendants in more heavily politicized cases are less likely to receive pretrial release and if the pretrial detention of the defendants affects the disposition of the trial. Using available data from the American Terrorism Study database, this study looks at data collected for 480 individuals indicted from the years 1980-2006 to investigate whether the prosecutorial strategy used had an effect on pretrial detention decisions. Rather than comparing terrorism indictees with traditional criminals, this study looks at indictees who have been indicted in federal terrorism trials, but were either prosecuted as traditional offenders or had their cases politicized by the prosecution. The study uses bivariate and multivariate analyses to measure the strength of the relationships between prosecution strategy, pretrial decisions, and trial disposition for both traditional and politicized terrorism trials.

In regards to pretrial release, this analysis has shown that defendants with less than high school education are less likely to receive pretrial release and that crime severity and community

ties have significant roles in pretrial bail decisions. Surprisingly, race was also significant with white defendants being less likely to be released on bail. However, failure to secure pretrial release was not found to have any significant relationship with case dispositions.

## ACKNOWLEDGMENTS

Special thanks are due to the staff of the Terrorism Research Center for all of their help with my thesis and all of the research leading up to it. It would have been impossible to make it through the graduate program without their guidance and encouragement. I would like to thank Dr. Jeffrey Gruenewald for helping me with the data analysis for my thesis, and I would also like to thank Dr. Brent Smith for allowing me to be a graduate assistant for the Terrorism Research Center and for guiding my understanding of terrorism and terrorism research. Finally, I would like to give a special thanks to Dr. Christopher Shields for helping me understand the legal coding aspect of this research, giving me direction and assistance to make this thesis what it is today, and for giving more of his time and energy to his students than any other teacher I have ever known.

## DEDICATION

This thesis is dedicated to my wife, Wendy, and my daughters, Haley and Erika, for their love, encouragement, and support. You mean more to me than I can ever say.

## TABLE OF CONTENTS

I. Introduction .....	1
II. Literature Review .....	3
A. Pretrial Detention and Disparity .....	3
B. Pretrial Decisions and Extralegal Factors .....	4
C. Pretrial Decisions, Trials, and Dispositions .....	6
D. Terrorism Trials and Explicit Politicality .....	8
III. Limitations of Past Research .....	11
IV. Theoretical Orientation.....	12
V. Research Question and Hypotheses .....	13
VI. Methods .....	17
A. Data Source .....	17
VII. Variables.....	18
A. Exogenous variables .....	18
B. Endogenous variables.....	18
C. Dependent variable.....	19
VIII. Plan of Analysis .....	20
IX. Sample .....	21
A. Frequency Distribution of Variables.....	22
X. Results of Study .....	23
A. Results Research Question 1 .....	24
B. Results Research Question 2 .....	26
XI. Discussion.....	27
A. Pretrial decisions .....	27
B. Politicization and Disposition of Cases.....	31
C. Overall Results of this Study.....	33
XII. Directions for Future Research.....	36
XIII. References .....	38

## **Introduction**

The presumption of innocence is a key right in the American judicial system. Also implicit in the criminal justice system is balancing security against civil liberties. The Eighth Amendment of the Bill of Rights to the U.S. Constitution states that neither excessive bail nor excessive fines should be required for defendants and that cruel and unusual punishments are forbidden. However, some individuals are deemed to be too dangerous or too high of a flight risk to be released on bail. The Bail Reform Act of 1984 allowed the detention of criminal defendants without bail by showing their potential for dangerous actions in the future. Does the inability to receive pretrial release violate the civil liberties of inditees? Is being held in pretrial detention before being convicted of a crime cruel and unusual?

At the onset of this study, one goal was to investigate how using explicit politicality—the prosecutorial strategy used when a defendant’s actions are described as being terroristic in nature, as opposed to conventional methods of prosecution in federal terrorism cases—affects how these trials progress. Specifically, this study looks at how these prosecution strategies affect the ability of alleged terrorist defendants to receive pretrial release and whether pretrial decisions have an effect on the dispositions of these trials. If such a relationship exists between prosecution strategy and pretrial decisions, it follows that it may have an impact on trial progression and outcomes.

Previous research has shown that the use of explicit politicality in cases involving international terrorists is much more likely than in cases involving domestic terrorists, where it is not as successful in prosecuting inditees as it is in international cases. The use of explicit politicality results in harsher punishments for international terrorists than either their domestic

counterparts tried using the same method (Smith et al., 2002), or international indictees tried on similar charges in non-politicized cases (Smith & Damphousse, 1996). If explicit politicality leads indictees to be imprisoned longer, then it is reasonable to believe it may also impact pretrial release decisions.

Previous research has shown that race and ethnicity influence the decision on whether individuals receive pretrial detention (Demuth, 2003). Unfortunately, previous works have not calculated how the prosecutorial strategies might also influence pretrial detention decisions.

There is also a growing body of research that looks at the effect pretrial release or detention has on trials. Besides taking away individual freedoms before being found guilty, it is possible that pretrial detention has other adverse effects on the indictees. It is possible that individuals who are released on bail before trial will be seen as less of a danger to society and, as a result, receive a shorter jail sentence or an acquittal. Research shows that pretrial detention increases sentence length (Sacks, 2011), that a prosecutor's bail request is the most important factor in both the bail amount and a defendant being released on his or her own recognizance (Phillips, 2004), and that pretrial detention has a strong effect on when a defendant will plead guilty – defendants held in pretrial detention will plead guilty more quickly so that they will be released from incarceration sooner (Sacks & Ackerman, 2012).

This research is important because the presumption of innocence is central to the justice system in the United States. The World Trade Center bombing in 1993, the devastating attack by Timothy McVeigh in Oklahoma City in 1995, and the 9/11 attacks in 2001, have brought terrorism to the attention of many Americans (Damphousse and Shields, 2008). Terrorist attacks also receive a lot of attention from the media. This increased awareness and coverage by the media might increase the power explicit politicality can have on a terrorism case. If individuals

charged in federal terrorism cases are less likely to receive pretrial release when explicit politicality is used, then we might see a significant difference in pretrial release after the events of September 11, 2001. That possibility warrants an examination of pre- and post-9/11 subsamples.

Data on the sentencing and pre-trial detention of terrorism indictees used in this study have been compiled by the American Terrorism Study. There are many good reasons to use the ATS dataset to determine the relationship between the bail eligibility among terrorism indictees: first, this database is the only publically available source for the legal information regarding federal terrorism indictees; second, the ATS dataset represents the population of individuals indicted in terrorism cases between 1980-2001 and 40 percent of the cases from 2002-2006; and third, the cases involved were all taken from a list provided by the FBI of all individuals indicted in federal court after an official terror investigation. The database includes information gathered covering demographic information, target information, the case outcome, sentencing information, and specific legal information regarding the case.

## **Literature Review**

### **Pretrial Detention and Disparity**

Pretrial detention is a feature of the criminal justice system, but in 1984 Congress enacted the Bail Reform Act, which allowed the detention of criminal defendants by showing a potentiality of future dangerousness (Responding to Terrorism: Crime, Punishment, and War, 2002). This Act, which removed the requirement of showing responsibility for past criminal acts by defendants in order to hold those defendants in prison (while still being presumed innocent for their current charge), would later be used in cases of terrorism. While the presumption of innocence still exists, there are now criminal and civil laws that the government can use to detain

individuals it suspects may commit dangerous crimes in the future (Levenson, 2001). Of course there are some who question the practice of pretrial detention. Natalini (1985) believes the Bail Reform Act shifts the burden of producing evidence of “nondangerousness” (p. 231) to the accused and that judicial discretion in these decisions requires “a prophetic prediction of future behavior” (p. 234). Some research shows that the actual dangerousness of defendants cannot be predicted accurately (Ewing, 1991). An article from the Yale Law Journal suggests that defendants may have a legitimate argument that pretrial detention during excessive trial time might be a violation of the indictees’ due process rights because of overcrowding issues (p. 938).

Pretrial detention is not just for violent criminals. In fact, material witness laws allow material witnesses to be held in pretrial detention for extended periods of time when there is probable cause to believe those witnesses have material evidence in regards to a criminal offense and may not be available for court. These material witnesses are not held because they are a danger to society; they are held because they know someone who might be a danger to society (Levenson, 2001) and the court wants to make sure these witnesses do not “evade their civic obligation to provide testimony” (Cole, 2009). In the trial process, it may not be difficult to convert these material witnesses into defendants based on the information they have. Federal bail laws apply to material witnesses as well, and material witnesses are permitted to receive help from counsel during the bail proceedings.

### **Pretrial Decisions and Extralegal Factors**

There has been considerable research investigating racial disparity in criminal case processing received before, during, and after trial, but the findings are mixed and at times contradictory. Bail decision data from a large urban jurisdiction show no relation to race, ethnicity, sex, or income in regards to the bail making process and pretrial detention (Goldkamp

& Gottfredson, 1979). Data from federal court orders, presentence reports, and sentencing hearing reports show that Hispanics and Blacks are more likely to be given harsher penalties compared to white defendants in similar situations (Steffensmeier & Demuth, 2000). That study also found that Hispanics are more likely to receive the harshest punishment because ethnicity plays a role in sentencing outcomes, and Hispanics are considered both a racial and an ethnic minority. A study of the bail bond market in New Haven, Connecticut, found disparate racial treatment by minority individuals receiving higher bail amounts, whereas the bonding companies actually charged lower bail rates for the same individuals. The results indicate that minorities are treated too harshly in pretrial release decisions (Ayres & Waldfogel, 1994).

Demuth (2003) looked at felony defendant data collected biennially in large urban courts by the State Court Processing Statistics program of the Bureau of Justices Statistics of the years 1990, 1992, 1994, and 1996. The study showed that Hispanics and black defendants were less likely than white defendants to be given pretrial release, Hispanics were less likely to receive a nonfinancial release option (being released on their own recognizance), paying a higher amount for release (no difference was found for either black or white defendants), and Hispanics and black defendants were more likely than white defendants to be held because of an inability to post bail (Demuth, 2003). A similar study examining the effects of gender and race-ethnicity on decision-making in the pretrial stage collected felony defendant data from large urban courts by the State Court Processing Statistics program of the Bureau of Justices Statistics. The study looked at 75 of the most populated counties from 1990-1996 and examined both pretrial release decisions and pretrial release outcomes. As in the previous study, Hispanic and black defendants received less favorable treatment when compared to white defendants concerning pretrial release decisions (e.g. receiving financial release options or higher bail amounts), but this study also

found a gender difference in pretrial decisions with females being more likely than males to have pretrial decisions that encouraged pretrial release as well as actually receiving pretrial release (Demuth & Steffensmeier, 2004).

### **Pretrial Decisions, Trials, and Dispositions**

The importance of pretrial decisions is seen in research that shows there is a connection between defendants not receiving pretrial release and then being convicted and sentenced. Rankin (1964) studied a sample of defendants who were arraigned in Manhattan's Magistrate's Felony Court to determine whether the relationship between pretrial detention and unfavorable dispositions is a causal one. This study looked at the previous records, bail amounts, type of counsel, family integration, and employment stability and found that these factors did not account for the statistical relationship between pretrial detention and unfavorable sentencing for defendants. Even when seen in combination with each other, these factors only accounted for a small amount of the relationship between pretrial detention and incarceration (Rankin, 1964).

It seems reasonable that a defendant's community ties (i.e., whether the defendant lived with a spouse, children, or held stable employment) would increase his or her likelihood of receiving a favorable pretrial decision. However, research found that this is not always the case. Studying the bail decisions for a cohort of 8,300 defendants in Philadelphia during the fall of 1975, Goldkamp and Gottfriedson (1979) collected background information for the defendants to see which information seemed to hold the biggest influence on pretrial decisions. That information included legal, demographic, community ties, and other personal information collected by the court and pretrial services agency of the court. The study found that, in regards to a defendant being released on his or her own recognizance, being held without bail, and the amount of cash bail, charge seriousness was a major factor in making these decisions and

community ties were found to be largely unimportant in these decisions (Goldkamp & Gottfriedson, 1979). However, sometimes community ties do have an effect, albeit a small one, on pretrial decisions. Looking at 6,014 felony cases processed at the Superior Court of Washington, D.C. during 1974, and collected by the U.S. Attorney's Office, Albonetti (1980) found that community ties has a small, yet significant effect on bail decisions. However, Albonetti found that prior convictions and crime severity had a stronger positive effect on whether financial restrictions were placed on the pretrial decisions as opposed to a defendant being released on his or her own recognizance (Albonetti, 1989).

Examining the outcomes of 10,000 felony cases in Florida, Williams (2003) found that pretrial detention was a significant predictor of incarceration and sentence length even after controlling for offense seriousness, prior record, and attorney type. This study also found evidence that black defendants received more severe incarceration and sentence lengths than white defendants (Williams, 2003).

Future dangerousness is not the only reason defendants can be given pre-trial detention. Flemming (1983) found that uncertainty is "intrinsic to the task of making bail decisions" (p. 1216). To avoid uncertainty, courts with limited information tend to detain defendants prior to trial to reduce the possibility of uncertain outcomes (p. 1216). Flemming also found that judges may relent to public opinion to avoid losing elections. The amount of prison space available, and whether a judge needs to conserve space or fill empty cells, affects bail decisions as well.

The inability of defendants to receive pretrial detention may have far-reaching results on their trials. Researching judicial release and bail decisions in two New York City boroughs by collecting day and evening courtroom data over a six-month period, researchers found that the prosecutor's bail request (the amount of bail requested by the prosecutor) was the most important

predictor of the likelihood of a defendant being released on his or her own recognizance (“ROR”) and of the bail amount. In fact, the prosecutor’s bail request was found to be the only important factor regarding bail amount whereas the ROR decision was affected by criminal history variables, type of offense, and Criminal Justice Agency recommendations. In addition, it was found that judges often sided with the prosecution regarding release and bail decisions (Phillips, 2004). Research regarding New Jersey’s Criminal Disposition Commission found that defendants held in pretrial detention will plead guilty faster than defendants who were released on bail. Pretrial detention had a strong effect on not only the rate of guilty pleas but also the timing of those pleas. For those defendants who could not afford their bail, the quickest way to secure release from incarceration was to enter a guilty plea (Sacks & Ackerman, 2012). Sacks (2011) studied bail decisions in 634 New Jersey superior court cases and found that a defendant’s ability to post bail did not have an impact on whether the defendant was sentenced. However, once the defendant was sentenced the bail posting did have an effect on the length of the sentence that was given. The defendants who were held in pretrial detention received longer prison sentences than defendants who secured pretrial release (Sacks, 2011).

### **Terrorism Trials and Explicit Politicality**

Smith, et al, (2002) found that terrorism cases have become more and more politicized in the preceding decades, but this politicization has been used more for international terrorism cases than domestic ones (which are more likely to be charged under Racketeering and RICO statutes). Smith determined that international terrorists, when convicted, were more likely to be punished more severely than domestic terrorists and the sentences of international terrorists were more often in the higher end of the guidelines range (Smith, et al, 2002). This study by Smith et al. used data collected from the American Terrorism Study from 1980-1998 and consisted of

approximately 80 percent of the population of persons indicted in federal court for terrorism related crimes between 1980 and 2000. For the purpose of Smith's study, and because the ATS works in coordination with the FBI's Terrorist Research and Analytical Center, he used the FBI's definition of the term "terrorism." According to the FBI, terrorism consists of "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives" (Terrorism in the United States, 1997). Smith (2002) found that the prosecutors use of charges related to treason, sedition, or subversive activities had mostly been limited to international terrorists. Borrowing from a typology originally identified by Turk (1982), Smith identified two prosecution strategies: 'explicit politicality' and 'exceptional vagueness' (Smith, et al, 2002).

Smith defined explicit politicality as cases where the government publically referred to the actions of a defendant as being terroristic in nature. According to Smith, those cases sometimes involved charges such as sedition or treason, but the method was not often used because convincing a jury of the motive behind a crime is difficult and exposes prosecutors to acquittals and dismissals. Smith found that prosecutor typically did not mention any connection to terrorism in the pretrial phase. Shields (2012) notes an exception in one case: in *US v. Fernandez* (84-CR-0134, U.S. District Court for the Southern District of New York), prosecutors connected the defendant to the actions of the terrorist group Omega 7. He was offered immunity and ordered to testify before the Grand Jury. Fernandez refused and the judge held him in civil contempt for 18 months. Fernandez eventually went to trial for failure to appear. However, during the bond hearing, prosecutors called Fernandez a terrorist and mentioned his connections to Omega 7 in open court, which resulted in the court holding him without bail (Shields, 2012).

According to Smith (2002), exceptional vagueness involves cases where the government does not raise any issues regarding the political or ideological motives of the defendants. These cases tend to be tried like similar non-terroristic criminal cases (such as immigration or weapons violations).

There is evidence that when prosecutors introduce politicality in a case it can affect both the way a case is processed and the punishment phase after conviction (Smith & Damphousse, 1996; Shields 2012). Defendants identified as terrorists were much more likely to go to trial than defendants charged with the same crimes, but not identified as terrorists (Smith & Damphousse, 1996; Smith et al., 2002, Shields 2008; Shields 2012). Smith (1994), found that in cases where explicit politicality was used terrorist indictees received longer sentences than conventional indictees who committed similar crimes. Similarly, Smith and Damphousse (1996) found that political motivation was the best predictor of sentence severity. In fact, the harshest sentences were given to those defendants who were charged with the most serious crimes, who went to trial, and who were officially investigated as terrorists (Smith & Damphousse, 1998). They also found that crime severity and case disposition were more important predictors of sentence length for terrorism indictees than non-terrorism indictees, and that most of the disparity between these two groups came during the sentencing phase of the trial where prosecutors enjoyed more discretion to enter highly politicized evidence. In fact, in politicized cases, like terrorism trials, Smith and Damphousse (1996) found evidence that the components of the criminal justice system (e.g. law enforcement, prosecutors, and judges) tend to work together more closely, and that “tightening of the system” increased the predictive power of the models making it is easier to predict the sentences of terrorism indictees versus traditional criminals.

## **Limitations of Past Research**

This section identifies the limitations of the prior research pertinent to this study. As mentioned above, existing research on pretrial decisions (Goldkamp and Gottfredson, 1979) and extralegal factors is contradictory. This research found no relationship between the defendants' race and gender, and whether they received bail. However, other studies have noted a significant disparity of pretrial decisions based on race (Ayres & Waldfogel, 1994; Demuth, 2003; Steffensmeier & Demuth, 2000). Similarly, Demuth and Steffensmeier (2004) also noted disparity between males and females regarding pretrial detention and release decisions. Beyond the contradictions, none of the aforementioned studies examined politically motivated crimes, so other factors may be influencing bail decisions and case outcomes in terrorism cases.

Rankin (1964) found a causal relationship between pretrial decisions and case dispositions. William (2003) found that pretrial detention was a significant predictor of incarceration and sentence length even after controlling for offense seriousness, prior record, and attorney type. Prior research also suggests that the prosecutor's bail request was the most important factor in determining bail decisions (Phillips, 2004). Sack and Ackerman (2012) found that pretrial detention increased the timing and rate of defendants' guilty pleas. While pretrial detention did not affect conviction rates, the sentences were much harsher for those who were held in pretrial detention (Sacks, 2011). While this research makes important contributions to our understanding of the factors influencing pretrial decisions and the impact those decisions have on case outcomes, it does not address prosecutorial strategies nor does it factor in how the politicization of a trial affects pretrial decisions.

While there is prior research on politically motivated crime that identifies different political prosecutorial strategies (*for example*, Turk, 1982; Smith, 1994; Shields, 2012),

subsequent research that suggests explicit politicality leads to longer sentencing for terrorist defendants (*for example*, Smith, et al, 2002), and studies that indicate political motivation is the best predictor of sentence severity (Smith & Damphousse, 1996), none of it analyzes pretrial decisions. There is, then, a gap that needs to be examined. We know that terrorist defendants plea guilty at a dramatically lower rate than non-terrorist defendants (Smith and Damphousse, 1996; Shields, et al, 2006), and those terrorists who plead guilty receive shorter sentences than those who do not (Shields, 2012). This study will attempt to answer whether pretrial decisions in politically motivated cases impact the ways in which terrorism cases are processed through the federal courts.

### **Theoretical Orientation**

This research draws from Hagan's structural-contextual theory of criminal justice, which states that normally the components of the American criminal justice system are loosely connected, resulting in a large amount of variance in the apprehension, prosecution, and sentencing of indictees. According to Hagan (1989), the normal method of operation for North American, and possibly most Western democratic systems of criminal justice, is a "loosely coupled form of organization" where every level of the justice system has varying degrees of discretion, and mechanisms for organizing this discretion appear to be the exception as much as the rule (*see also*, Hagan, Nagel & Albonetti, 1980). As a result, this discretion can lead to large amounts of unexplained variance in arrests, prosecution, and sentencing. The unexplained variance gives the criminal justice system a random and capricious appearance, although Hagan (1989) believes the loose coupling in the American justice system may accommodate diverse social interests and preserve autonomy and impartiality for the judicial branch of government (p. 118).

The criminal justice system is not always loosely coupled. Abnormal political environments, created by social and political events, lead to structural relationships forming from the organizational and political forces within the justice system. When this occurs, Hagan (1989) believes the political environment demands a more proactive response (p. 123) and as a result, the coupling between groups in the criminal justice operations tighten to focus greater attention on political goals (p. 130). When the different segments of the justice system are more tightly coupled our ability to predict the outcomes of sentencing for certain crimes is also increased (Hagan, 1989; Hagan, Nagel & Albonetti, 1980). Smith & Damphousse (1996) used structural-contextual theory and found support for it by determining that political motive serves as an indicator for the tightening of the judicial system. Later, Shields (2012) used structural-contextual theory to determine the impact of explicit politicality used on terrorism trials affected case outcomes. If structural-contextual theory is correct, the tightening of the criminal justice system could affect pretrial decisions which may, in turn, impact the rest of the trials.

### **Research Question and Hypotheses**

Based on the information in the literature review, we know that pretrial decisions have an impact on plea bargain rates in some cases, and that that pretrial decisions themselves are sometimes affected by extra-legal variables. Furthermore, while existing research on terrorism cases reveals that terrorist defendants behave differently in the justice system than non-terrorist defendants, pleading guilty substantially less often, and prosecutors use highly politicized prosecution strategies unique to terrorism cases, there is a gap in the research on the potential impact that pretrial decisions may be having in terrorism cases. Therefore, I have two primary research questions. First, does an explicitly politicized prosecution strategy have an impact on

pretrial bail decisions?<sup>1</sup> Second, do pretrial bail decisions impact the way in which terrorism cases are processed in the justice system regarding whether a case ends in a plea bargain or a trial? To address these research questions, I have developed five hypotheses.

The research presented above suggests that terrorism cases will result in tightened coupling in the components of the criminal justice system, which in turn results in less unexplained variance in the ways in which terrorist defendants are processed in the system. Steffensmeier and Demuth (2000) found that that Hispanics and Blacks are more likely to be given harsher penalties compared to white defendants in similar situations, and that Hispanics are more likely to receive the harshest punishment because they are a racial and ethnic minority. Ayres & Waldfogel (1994) found disparate racial treatment by minority individuals receiving higher bail amounts, which indicates that minorities are treated too harshly in pretrial release decisions. Demuth (2003) found that Hispanics and black defendants were less likely than white defendants to be given pretrial release, and Hispanics and black defendants were more likely than white defendants to be held because of an inability to post bail. However, Hispanics were less likely to be released on their own recognizance, and they paid a higher amount for release than black or white defendants. Demuth and Steffensmeier (2004) found Hispanic and black defendants received less favorable treatment when compared to white defendants concerning pretrial release decisions, but they also found a gender difference in pretrial decisions with females being more likely than males to have pretrial decisions that encouraged release as well as actually receiving pretrial release. Since prior research in non-terrorism cases suggests that extralegal factors, such as race and gender, sometimes play a role in pretrial bail decisions, we

---

<sup>1</sup> Pretrial bail hearings are specifically looked at because we want to know if politicizing a case has an impact on these decisions. At other times during the pretrial phase, such as at the indictment, terrorism links can be mentioned. Also it is worth noting that we do not have transcripts at all of the bail hearings. It is possible that links to terrorism were made earlier in the process.

would expect less discretion in terrorism cases because of the tightened coupling between criminal justice agencies. Therefore, I hypothesize that extra-legal factors such as race and gender will not significantly impact pretrial bail decisions.

*H1 If tightened coupling has occurred, neither Race nor Gender will be statistically significant predictors of pretrial detention.*

As mentioned in the literature review, the Bail Reform Act of 1984 (Responding to Terrorism: Crime, Punishment, and War, p. 1233) permits a defendant's perceived danger to the community to be a factor in denying bail. Goldkamp and Gottfriedson (1979) found that charge seriousness was a major factor in making pretrial decisions. Albonetti (1989) found that prior convictions and crime severity had a stronger positive effect on whether financial restrictions were placed on the pretrial decisions. Flemming (1983) found that uncertainty is built in to the bail-making decisions and that judges may relent to public opinion to avoid losing elections. Increased crime severity may sway public opinion and cause the criminal justice system to require higher bail amounts or not allow bail at all. Albonetti (1980) found that community ties have a small, yet significant effect on bail decisions. If structural contextual theory is correct and tightened coupling has occurred in terrorism cases, it holds that legally relevant factors will explain more of the variance in pretrial bail decision as discretion is squeezed out of the system. The more dangerous the offender, especially in terrorism cases, the more likely that defendant will not receive pretrial release. Conversely, the higher the community ties, the less dangerous a defendant may appear and the more likely the defendant will be released prior to trial. The following hypotheses test those propositions.

*H2 If tightened coupling has occurred, more serious charges against a defendant will*

*Result in lower odds of pretrial release.*

*H3 If tightened coupling has occurred, then greater community ties will be a statistically significant predictor of pretrial release.*

As mentioned above, Smith and Damphousse (1996) reported that prosecutors didn't explicitly politicize cases at bail hearings. Similarly, Shields (2012) reported only one example of explicit politicality during a bail hearing. Therefore, one would expect cases involving explicit politicality to have no significant impact on pretrial bail decisions.

*H4 Explicit politicality will not have a statistically significant impact on pretrial bail decisions.*

Finally, Sacks and Ackerman (2012) suggest that defendants who did not receive pretrial release were statistically more likely to plead guilty than those who were released prior to trial. Smith & Damphousse (1996) and Shields, et al., (2006) found that terrorist defendants entered guilty pleas less often than similarly situated non-terrorist defendants. In addition, Shields (2012) reported that plea bargain rates were lower in cases where prosecutors used explicit politicality. Based on this, I hypothesize that positive pretrial decisions will have a negative, but statistically significant impact on the plea rate.

*H5 Pretrial release will have statistically significant, but negative relationship to entering a plea agreement.*

## Methods

### Data Source

While there is a crime known as *terrorism*, individuals who engage in terrorist activities are usually tried for traditional criminal offenses. Unfortunately, this typically makes the cases for those who committed terrorism-related crimes indistinguishable from individuals who committed traditional crimes (Smith & Damphousse, 1998). Since 1988 the American Terrorism Study has been collecting information on the federal prosecutions of terrorists, and data has been collected back to 1980 as well as to the present day. Since the definition of terrorism and crimes considered to be terroristic in nature can be fluid over time and depending on the administration in power, using cases that the federal government has declared to be terrorism-related, as determined by the Federal Bureau of Investigation's definition of terrorism, gives the most reliable depiction of cases of actual terrorism over time (Smith & Damphousse, 1998).

When an indictment is returned on a case the FBI is investigating as terrorism, the case becomes public record, and the documents are made available in the district courts where the case will be tried. The ATS collects these court documents from the individual district courts to extract information regarding the terrorism-related cases.

This study examines the public records of the individual indictees charged for crimes the federal government considers to be terrorism from the years 1980 to 2006. This study uses data collected for 566 individuals indicted during this time period. Because the federal definition of terrorism determines who is indicted as a result of terrorism investigations, and the documents are then made available in public records, this collection of data is comprehensive and represents the target population.

## Variables

### Exogenous Variables

When looking at the variable of crime severity, we will have to also look at the extra-legal exogenous variables of age, AGE; race, RACE; sex, SEX; and education, EDU since these variables all have a potential relationship to the severity levels of crimes.

### Endogenous Variables

The American Terrorism Study measures crime severity for each case in the database. ATS staff code crime severity by the lead offense in each court case. The severity of offense reflects a ranking of maximum punishments available as indicted by the *Federal Criminal Code and Rules*, 1995 (Federal Rules, 1995). The 29 offense codes were ranked from 29, the most severe, to 1, the least severe.

The ATS measures community ties by such characteristics as being married, having children, and being employed. I recoded the category as the dichotomous variable, *comm\_ties*, with being married, having children, and being employed being grouped together and scored as 1 (0 = No, 1 = Yes).

The ATS measures prosecutorial strategies in three values, explicit politicality, subtle innuendo, and exceptional vagueness. For the purposes of this study, I recoded prosecutorial strategies as the dichotomous variable, *pros\_method*, which indicate whether a traditional or politicized strategy was used. I combined subtle innuendo and exceptional vagueness because of findings by Shields (2012) that suggest that the greatest impact on case outcomes and plea rates were those cases using explicit politicality. Therefore, I used the following scheme: explicit politicality = 1 and no explicit politicality = 0.

The ATS tracks whether the defendant received pretrial detention or was released. In the ATS, BAIL is a categorical variable, so I recoded it into the dichotomous variable, *pretrial\_release*, as a measure of whether the terrorism indictee received pretrial release or not. Demuth (2003) found that only about 8 percent of defendants are denied bail and this is typically for reasons of charge severity or increased involvement with the criminal justice system. However, Demuth also found the strongest predictor for being released on bail is the bail amount which is restrictive for minority defendants. The inability to afford the bail amount accounts for the majority of pretrial detention by black and Hispanic defendants (Demuth, 2003). Since high bail amounts can be used to continue detention of indictees by setting amounts that defendants are unable to pay, the test variable I used in my study measures whether a defendant was released on bail or not. I treated defendants who entered the Witness Protection Program, or who remained fugitive, as outliers and removed from the analysis. International defendants had to be removed as well, because most are held on order of the BICE (INS) regardless of whether they are a flight risk or pose a danger to the community. Therefore, I coded the *pretrial\_release* variable to remove all international defendants who were ineligible for pretrial release. I scored cases with defendants who secured pretrial release as 1 (0 = No, 1 = Yes).

### **Dependent Variable**

For the first research question I want to determine what factors affect whether a defendant received bail. Therefore, I used the dichotomous variable *pretrial\_release*, mentioned above, where 1 means the defendant was released on bail, and 0 means the defendant did not receive a pretrial release.

For the second research question, I want to determine whether the defendant pleaded

guilty or not as my dependent variable. I measured case disposition by recoding the ATS overall case outcome variable into the dichotomous variable, *disposition*, with cases that end in a jury trial, acquittal, and dismissal scored as 1 (0 = Plea, 1 = Trial). I omitted defendants who were fugitive, extradited, and deceased prior to trial.

### **Plan of Analysis**

The first step in the analysis involved running a frequency distribution and a series of bivariate analyses to determine the distribution of my variables. For research question 1 a logistic regression was run with pretrial decisions (*pretrial\_release*) as the dependent variable (Long, 1997). The independent variables were *age* (an interval variable representing the ages of the defendants); *education*: college graduate, (1) below high school graduate level, (2) high school diploma/G.E.D., (3) above high school-level education; *severity* (an interval variable between 1 and 29 with one being the least severe and 29 being the most severe); *race*, (0 = non-white, 1 = white); *sex*, (0 = female, 1 = male); *comm\_ties*, (0 = No, 1 = Yes); and *pros\_method* (0 = traditional, 1 = politicized). Once that was complete, I performed a binary logistic regression, with *pretrial\_release* as my dependent variable and my endogenous and exogenous variables as covariates to determine whether race or gender was a significant factor in pretrial bail decisions.

H1 *If tightened coupling has occurred, neither Race nor Gender will be statistically significant predictors of pretrial detention.*

H2 *If tightened coupling has occurred, more serious charges against a defendant will result in lower odds of pretrial release.*

H3 *If tightened coupling has occurred, then greater community ties will be a statistically significant predictor of pretrial release.*

H4 *Explicit politicality will not have a statistically significant impact on pretrial bail decisions.*

For research question 2 a full model was run with case disposition (*disposition*) as the dependent variable. The independent variables were *age* (an interval variable representing the ages of the defendants); *education*: college graduate, (1) below high school graduate level, (2) high school diploma/G.E.D., (3) above high school-level education; *severity* (an interval variable between 1 and 29 with one being the least severe and 29 being the most severe); *race*, (0 = non-white, 1 = white); *sex1*, (0 = female, 1 = male); *comm\_ties*, (0 = No, 1 = Yes); *pros\_method* (0 = traditional, 1 = politicized); *pretrial\_release*, (0 = No, 1 = Yes). Once that was completed, I performed a binary logistic regression, with *disposition* as my dependent variable and my endogenous and exogenous variables as covariates to determine whether pretrial release was a significant factor in whether a terrorism defendant goes to trial or accepts a plea agreement.

H5 *Pretrial release will have statistically significant, but negative relationship to entering a plea agreement.*

### **Sample**

To see how explicit politicality affects trials, all of the defendants in this study were part of terrorism investigations by the FBI, so all of the defendants were charged with crimes that were considered terrorism. However, some of the defendants were prosecuted in a manner consistent with conventional crimes and others were prosecuted in an explicitly political manner. This sample included 480 Indictees.

## Frequency Distribution of Variables

The variable *pros\_method* is measured as a dummy variable, with those tried in a traditional way (including subtle innuendo and exceptional vagueness) coded as 0, and indictees tried in an explicit way coded as 1. There were 478 valid cases, with 2 missing. There were 139 traditional cases and 339 explicit cases.

The variable *comm\_ties* is a dichotomous variable, with being married, having children, and being employed being grouped together. Weak ties were coded as 0, and strong ties were coded as 1. There were 247 valid cases with 233 missing. There were 118 cases with weak ties and 129 cases with strong ties.

The variable *sex* is a dichotomous variable in which I coded females as 0 and males as 1. There were 479 valid cases, with 1 missing. There were 45 female defendants and 434 male defendants.

*Race* was measured as a dichotomous variable with non-white coded as 0, and white coded as 1. There were 469 valid cases, with 11 missing. There were 107 indictees in the non-white category and 362 indictees in the white category.

*Education* is an ordinal variable ranging from lowest to highest. I recoded the original ATS education variable into four categories: less than (completed) high school education, high school graduate (includes GED graduates), some college (or vocational school), and college graduate. There were 317 valid cases, with 163 missing. There were 48 defendants with less than high school, 90 high school graduates, 102 defendants with some college and 77 college graduates.

*Age* is an ordinal variable measuring indictee age at the time of indictment. A frequency distribution revealed indictees between the ages 16 and 76 in the sample. There were 424 valid cases, with 56 missing. The median age was 36.

I recoded the ATS case result variable into case disposition (*disposition*), a dummy variable. I gave defendants not accepting a plea a value of 0 and those agreeing to a plea bargain a value of 1. There were 392 valid cases, with 88 missing. There were 212 defendants with no plea and 180 who ended their trials with a plea bargain.

Crime severity is measured using definitions by the Administrative Office of the US Courts ranking from lowest to highest severity (1-29). In this study, I used the variable *severity*, which I recoded as a dichotomous variable with low severity categorized as crimes 1-17 and high severity categorized as 18-29 (manslaughter, the lowest level of homicide, is coded 18 in the original variable). There were 405 valid cases, with 56 missing. There were 122 defendants coded as low severity and 283 coded as high severity.

In this study, I created the variable pretrial release as a measured of whether a defendant was released prior to trial. If defendants were not offered bail, or could not afford bail, I gave them a value of 0, and if defendants were released before trial they were coded as 1. There were 424 valid cases with 56 missing. There were 320 indictees who were not released before trial and 104 who were.

### **Results of Study**

The results from my analyses generally supported hypotheses one, two, three, and four, but did not support the fifth hypothesis. My first research question was: does an explicitly politicized prosecution strategy have an impact on pretrial decisions? The results for this can be found in Table 1.

## Results Research Question 1

The sections contains information on the analysis ran to determine if an explicitly politicized prosecution strategy has an impact on pretrial decisions. This analysis included 143 cases (29.8 percent) out of 480 (337 missing cases). The logistic regression presented in Table 1 produced an  $R^2$  of .250, so 25 percent of the variance surrounding case pretrial decisions is explained by the model.

Hypothesis 1 stated that if tightened coupling has occurred neither race nor gender will be significant predictors of pretrial detention. The race of the defendant was found to be a statistically significant factor on whether the defendant received pretrial release or not (.033). The coefficient for *race* is negative (-1.113) and the Odds Ratio is .329, so being white decreases the likelihood of a defendant receiving pretrial release by 67 percent compared with non-white defendants.

Also, the gender of the defendant was found to be very close to being statistically significant (.075). The coefficient for *sex* is -1.028, and the Odds Ratio is .358, so being male decreases the likelihood of a defendant receiving pretrial release by 64 percent. Given these findings, we have partial support for Hypothesis 1: the sex of the defendant is not a statistically significant indicator of pretrial release in federal terrorism trials, but race is.

Hypothesis 2 stated that if tightened coupling has occurred, more serious charges will result in lower odds of that defendant getting pretrial release. Crime severity is statistically significant (.047). The coefficient for this variable is a negative one (-.978), and the Odds Ratio is .376. So as crime severity increases, the likelihood of getting pretrial release decreases by 62 percent. These findings support the hypothesis that the increased crime severity lowers the likelihood of pretrial release.

Hypothesis 3 stated that if tightened coupling has occurred, greater community ties will be a significant predictor of pretrial release. *Comm\_ties* has a positive coefficient (1.224), and an Odds Ratio of 3.400, so for every unit community ties increase, the likelihood of a defendant getting pretrial release increases by 3.4. This analysis is significant at the 99 percent confidence interval (<.01). These findings support the hypothesis that an increased amount of community ties increases the likelihood of a defendant being released before trial.

Hypothesis 4 stated that the use of explicit politicality will not have a significant impact on pretrial decisions. For this analysis *prosmeth* has a negative coefficient (-.408) and an Odds Ratio of .665. However, this analysis was not found to be significant (.428), so this supports the hypothesis that the use of explicit politicality does not have a significant impact on a defendant securing pretrial release.

Table 1: Binary Logistic Regression—Pretrial decisions

	B	S.E.	Sig.	Odds ratio/Exp(B)
age	-.007	.023	.750	.993
Education*			.150	
education (1)	-1.978	.876	.024	.138
education (2)	-.143	.623	.819	.867
education (3)	-.351	.565	.535	.704
severity	-.978	.493	.047	.376
race	-1.113	.523	.033	.329
sex	-1.028	.577	.075	.358
comm_ties	1.224	.467	.009	3.400
pros_method	-.408	.515	.428	.665

\* represents college graduates—the other categories are compared against this category

My second research question was: do pretrial decisions impact the way in which terrorism cases are processed in the justice system? The results for this can be found in Table 2.

### **Results Research Question 2**

Hypothesis 5 predicted that pretrial release will have a statistically significant negative relationship to a defendant entering a plea agreement. *Pretrial\_release* has a negative coefficient (-.023) and an Odds Ratio of .978. However, this analysis was found to not be significant (.963). These findings do not support the hypothesis that the failure to secure pretrial release increases the likelihood of a defendant striking a plea bargain.<sup>2</sup>

While this hypothesis was not supported, it is interesting to mention the variables that were found to be significant in this analysis. Being a high school graduate has a significant (.003) and positive relationship with a defendant accepting plea deals compared to defendants with college degrees. Having community ties also has a significant (.046) and positive relationship, so as community ties increase, the likelihood of a defendant accepting a plea deal also increases. The method of prosecution is also significant in trial dispositions (.005), but has a negative relationship regarding case dispositions, so the use of explicit politicality in terrorism trials decreases the likelihood of a defendant accepting a plea bargain.

---

<sup>2</sup> As a follow up to the full model ran with case disposition as the dependent variable, another model was ran to test whether the terrorist attacks on September 11, 2001 had an effect on whether terrorism trials ended in plea bargains. Federal terrorism trials before 2001 were considered *Pre 9/11* and cases from 2002 and later were considered *Post 9/11*. No appreciable difference was found between these two categories, and the results were not included.

Table 2: Binary Logistic Regression—Full model

	B	S.E.	Sig.	Odds ratio/Exp(B)
age	.010	.020	.612	1.010
Education*			.014	
education (1)	.619	.688	.368	1.858
education (2)	2.023	.676	.003	7.558
education (3)	.507	.585	.385	1.661
severity	.005	.515	.992	1.005
race	.715	.539	.184	2.044
sex	-.099	.598	.869	.906
comm_ties	.905	.452	.046	2.471
pros_method	-1.679	.601	.005	.978
pretrial_release	-.023	.492	.963	.546

\* represents college graduates—the other categories are compared against this category

## Discussion

### Pretrial Decisions

Looking at the model that uses pretrial detention as the dependent variable, only four of the variables are statistically significant: below high school-level education, crime severity, race, and community ties.

*Education (1)* has a negative coefficient (-1.978), and an Odds Ratio of .138. This means that, compared to defendants with college education, defendants with the equivalent of less than a high school education are 86 percent less likely to get pretrial release. However, this may be

related to the defendant's inability to afford bail due to low income, or this variable may be another measure of community ties: if the defendant cannot afford well-paying employment, his/her attachment to the community may be weak.

Previous research on pretrial detention by Goldkamp & Gottfriedson (1979) found that the prosecutor's suggestion is more influential than other factors such as legal, demographic, community ties, and other personal information collected for the defendants. The same study also found that charge seriousness is a major factor in making these decisions and that community ties were found to be largely unimportant in these decisions. Other research by Albonetti (1989) shows that community ties have a small, yet significant, effect on bail decisions. However, prior convictions and crime severity have a stronger positive effect on whether financial restrictions will be placed on the pretrial decisions as opposed to a defendant being released on his or her own recognizance.

The present study found that both crime severity and community ties had a statistically significant effect on pretrial decisions. Though, as opposed to Albonetti's study, severity did not have as strong of a significance as community ties did. These findings support Hypothesis 3 that the presence of community ties has a positive relationship with an indictee getting pretrial release. When looking at a sample of cases where all the crimes are serious enough to start a federal terrorism investigation, community ties may be more important in deciding pretrial decisions for terrorism cases because, by its very nature, the crime is aimed at attacking society (or at least a specific segment of it). If a terrorism defendant has strong community ties, it may be interpreted as that defendant having some stability in society and not being as much of a danger to society as a person with few or no community ties.

Research by Phillips found that the prosecutor's bail request was the most important predictor of the bail amount as well as whether a defendant was released on his or her own recognizance (2004). However, the present study found that the method of prosecution, which would include the prosecutor's input on the necessary bail amount, was not significant (.428) in determining pretrial decisions, and these findings support Hypothesis 4 that states explicit politicality has no significant effect on defendants getting pretrial release. These findings show that the use of explicit politicality has little to no effect on pretrial decisions which makes sense because typically the use of explicit politicality occurs later in the trial process. These findings also support earlier studies (Smith & Damphousse, 1996; Smith & Damphousse, 1998) which show that proactive prosecution has more affect later in the trial especially sentence length and likelihood of plea bargaining.

The present study also supports many studies that have found that the extralegal characteristic of race (Ayers & Waldfogel, 1994; Demuth, 2003; Demuth & Steffensmeier, 2004) plays an important role in pretrial decisions. However, in the aforementioned studies, racial minorities were less likely to get pretrial release. In this study, being white had a negative effect on gaining pretrial release. The reasons for this are unknown, but there are several reasons why this difference may occur. Defendants with Middle Eastern and Hispanic ethnicities are included in the 'White' category. Although the International cases have been removed from this study, it could be that there are enough ethnic minorities in this sample that it affects the results. If that is the case, then what we are seeing is the result of defendants not receiving pretrial release based on ethnic discrimination. However, there are possible explanations why white defendants are less likely to receive pretrial release. White defendants may be more committed to their cause or may be responsible for more severe acts of terrorism. Another possibility is that these findings are tied

to socio-economics. The majority of the defendants in this study are white, and right-wing terrorism is almost exclusively made up of white members. Previous research (Smith, 1994) has shown that right-wing terrorists are also more likely to be less educated than left-wing and environmental terrorists (which are both more likely to have higher educated and minority members), and, therefore, have less socioeconomic standing.

Race isn't the only extralegal factor that might affect pretrial decisions. Prior research has also shown that female defendants are more likely to be released before trial (Demuth & Steffensmeier, 2004). The results of the present study were not significant, but the findings were close to being significant (.075) with being male having a negative effect on pretrial release decisions. This finding is consistent with prior research which has found women are more likely to be released before trial than men, but why wasn't this finding significant? What makes it different than traditional crime? There are far fewer women than men represented in this sample. It could be that women who are charged with crimes in a terrorism investigation are seen as equally dangerous as their male counterparts. If this is true, structural-contextual theory could be correct, and the tightened couplings between law enforcement agencies, which allows for less discretion in explicitly politicized trials, makes extralegal factors like sex irrelevant. However, I have previously shown that the extralegal factor of race *is* significant in determining pretrial decisions, and I have also shown that explicit politicality has little effect in pretrial decisions. There may be a deeper series of factors at work regarding the effect of sex in these pretrial decisions. Females are more likely to be involved with left-wing and environmental terrorism groups, and females are more likely to have a leadership role in either one of these types of terrorism than they are right-wing groups (Smith, 1994). It is possible that the reason these women are not more likely to be released before trial is because they have a greater leadership

position within their group which increases their charge seriousness and apparent danger to society.

### **Politicization and Disposition of Cases**

Looking at the full model using case disposition as the dependent variable, only three of the variables were statistically significant: education at the high school graduate level, community ties, and the method of prosecution.

Having an education at the high school level is significant at the 99 percent confidence interval ( $>.01$ ) when compared to defendants with college educations. The relationship is a positive one with a coefficient of 2.023 and an Odds Ratio of 7.558, so having a high school education increases the likelihood of a defendant's trial ending in a plea bargain by 7.56. The reason why this level of education is more important than the others is unclear, but it may be another measure of community ties. Unlike the defendants mentioned earlier whose below high school-level education made them less likely to be released on bail, these defendants have finished high school. It is likely that these defendants have greater community ties than defendants with lower education levels, but lower financial resources than defendants with college educations. The increased community ties, as well as the need to be released as soon as possible to get back to work, might be the reason these defendants are more likely to accept a plea bargain. This idea has some merit because of the role community ties has regarding case dispositions.

Community ties were found to be significant in determining if a defendant would accept a plea bargain rather than go to trial. Community ties were statistically significant at the 95 percent confidence interval (.046). The coefficient is positive (.905) and the Odds Ratio is 2.471, so as community ties increase, the odds of the case ending in a plea bargain increases by 2.47. As

mentioned earlier community ties may be more important in terrorism trials because it makes the defendants appear to be less dangerous. As a result, these defendants may get better plea deals than indictees without the same level of community ties and who appear to be a bigger threat to society. It could also be that the increased community ties make these defendants have a greater desire to get out of jail as quickly as possible to return to their families and jobs.

The type of prosecution was also found to be significant at the 99 percent confidence interval (.005). This variable has a negative coefficient (-1.679) and an Odds Ratio of .187, so the use of explicit politicality decreases the likelihood of a plea bargain by 81 percent.

Previous research has shown that International terrorists are more likely to have explicit politicality used against them, and they are more likely to get harsher sentences when convicted (Smith, et al., 2002). Political motivation has also been shown to be the best predictor of sentence severity (Smith & Damphousse, 1996). Defendants prosecuted as terrorists were found to be more likely to go to trial than defendants of conventional charges (Smith & Damphousse, 1996; Smith et al., 2002). The current study supports these earlier studies by showing that the use of explicit politicality decreases the likelihood of a defendant striking a plea bargain instead of going to trial.

Previous research on non-terrorism crimes has shown that not being released on bail causes defendants to be more likely to plead guilty more quickly as a way to be released from prison sooner (Sacks & Ackerman, 2012). Contrary to this previous research, the current study does not support these findings for this population. Pretrial release is not shown to have a statistically significant relationship whether a case ends with a plea bargain or a trial. This might be because of the need for the prosecution to prove the motive of the indictees, which makes the defendants of terrorism trials more willing to take a chance and go to trial than normal criminals.

None of the other variables were found to be statistically significant. Neither the race nor the sex of the defendants significantly affected whether a case ended in a trial or a plea bargain. Also, the severity of the crime did not significantly factor into the case dispositions.

### **Overall Results of This Study**

What is particularly interesting regarding this topic are the differences between terrorism and other crimes. Terrorism is largely different from traditional crimes. Women are not more likely to get bail, and white defendants are less likely to get bail than minority defendants. Using the U.S. Sentencing Commission's *Overview of Federal Criminal Cases -Fiscal year 2011* and *U.S. Sentencing Commission - 2011 Sourcebook of Federal Sentencing Statistics*, we can get an idea of what typical federal crime looks like. I realize that this isn't a perfect matched sample, but I think the overview of the statistics is close enough to show us major differences between terrorism indictees and other federal criminals.

According to the *Overview of Fiscal Criminal Cases Fiscal Year 2011* (2012), the average male to female ratio in federal crimes is 86.5 percent male to 13.5 percent female. My study found 90.6 percent of terrorism defendants were male and 9.4 percent were female. In the federal report, 52 percent of federal prisoners had not finished high school and only 5.5 percent had completed college. In contrast, 15.1 percent of the terrorism indictees had not finished high school and 24.3 percent had finished college. Additionally, the *U.S. Sentencing Commission – 2011 Sourcebook of Federal Sentencing Statistics* states that in 2011 96.9 percent of defendants pled guilty and 3.1 percent went to trial. In my study, 54.1 percent of the defendants did not accept a plea bargain and 45.9 percent did.

It is interesting how terrorism is different from “normal” federal crime. However, the purpose of this study is not to compare terrorism indictees with other federal criminals. There are

also many interesting findings when we look at the findings of terrorism indictees compared to one another. Regarding pretrial decisions, the system mostly appears to be working as we would expect.

The only significant variables are defendants with a high school equivalent education, crime severity, community ties, and race. As mentioned earlier, the education variable may be an alternative measure of community ties, with people with less than high school educations being less likely to have high-paying jobs, which may translate to weaker community ties. As crimes get more severe, the likelihood of getting pretrial release goes down. And as community ties get stronger, the likelihood of pretrial release increases. However, the findings on race are troubling. Race is an extralegal variable that should not factor into pretrial decisions, and these findings contradict what other studies have found regarding race and pretrial decisions because white defendants are less likely to get pretrial release in these cases. It could be that the types of terrorism done by white defendants are more likely to reduce their chances for pretrial release (possibly due to increased crime severity). It might also be that there is a large enough amount of Middle Eastern and Hispanic defendants (both categorized as 'white') in this study to influence the findings because these defendants are less likely to get pretrial release based on their ethnicity as previous research suggests (Steffensmeier & Demuth, 2000; Ayres & Waldfogel, 1994; Demuth, 2003; Demuth & Steffensmeier, 2004). However, I think it is more likely that the variables regarding the defendants' race, education, and community ties may all be interrelated. What is actually seen in this study may be a result of the impact of socio-economic status. That is, right-wing terrorism indictees are much more likely to be poorly educated and white. Because

the education level of these defendants is so low, the defendants cannot obtain high paying employment and either cannot afford their bail or do not have strong ties to the community which increases the odds of being released before trial.

When looking at the full model regarding cases dispositions, we find exactly what we would expect. Education stills plays a role with defendants having high school degrees being more likely to strike a plea deal as opposed to college graduates. Community ties also have a positive relationship on defendants agreeing to a plea bargain. The method of prosecution, whether the prosecutor uses explicit politicality or not, is also significant (.005), and the use of this strategy decreases the likelihood of a defendant accepting a plea bargain. All of the extralegal variables, and even the severity of the crime, are not significant in determining if a terrorism indictee will go to trial or accept a plea deal. This is consistent with structural-contextual theory because, as the couplings between criminal justice agencies tighten, the individual characteristics of the criminals (race and gender) and even the crime (severity) become less important. As seen in earlier research, the tightening of the system increases the predictive power of the models (Smith & Damphousse, 1996) and increases the likelihood of a defendant entering a not guilty plea (Smith & Damphousse, 1998).

Another interesting finding of this study is how often explicit politicality is used as a prosecution method. Politicizing a case is not the exception, it is the norm. Of the 478 cases measured, 339 had explicit politicality used while only 139 cases were tried in a traditional manner. This may be because the level of evidence collected in federal terrorism investigations makes it easier to prove motive (which is not needed in traditional criminal cases), so traditional prosecution strategies are not required to ensure a conviction. However, I have to believe that federal agents collect ample amounts of conclusive evidence on a regular basis no matter what

the crime is. I think that the reason these cases are so easily politicized is because terrorism, by its very nature, is a political crime. If this is true, by opening a federal terrorism investigation - and labeling the crime as terrorism- the criminal justice system makes it more likely that explicit politicality will be used which has strong, long term effects on the trial and sentencing of the defendants (Smith & Damphousse, 1996; Smith & Damphousse, 1998).

### **Directions for Future Research**

There are several ways future research can expand on this research to give us a clearer view of what is happening regarding the use of explicit politicality and case dispositions. Instead of having the dependent variables of trial and plea bargain, the variables can be expanded further into plea bargain, dismissal, acquittal, and full trial to get a better understanding of how prosecutorial strategy affects federal terrorism trial dispositions.

Future research could look to see if there are differences in case dispositions in regards to the different types of terrorist groups (right-wing, left-wing, and environmental), as well as to see if there is a difference in the pretrial decisions between these groups.

Building off this research, futures researchers could look at the pretrial decisions according to the sex of the members of the different types of terrorism groups to see how many women are accounted for in each type of terrorism, as well as to see if women in left-wing and environmental groups are less likely to get bail than women in right-wing groups (possibly indicating left-wing and environmental leadership roles).

Future research could also try to determine the affect race has on pretrial decisions. The 'White' category could be recoded to differentiate ethnic minorities from non-minorities to see if ethnic minority indictees are less likely to receive pretrial release. If ethnic discrimination is not

apparent, this supports the idea that white defendants failing to get pretrial release in terrorism trials is a result of socio-economic status.

## References

- Albonetti, C. A. (1989). Bail and judicial discretion in the district of columbia. *Sociology and Social Research*, 74(1), 40-45.
- Ayres, I., & Waldfogel, J. (1994). A market test for race discrimination in bail setting. *Stanford Law Review*, 46(5), 987-1047.
- Cole, D. (2009). Out of the shadows: Preventive detention, suspected terrorists, and war. *California Law Review*, 97(3), 693-750.
- Damphousse, K. R., & Shields, C. (2007). The morning after: Assessing the effect of major terrorism events on prosecution strategies and outcomes. *Journal of Contemporary Criminal Justice*, 23(2), 174-194.
- Demuth, S. (2003). Racial and ethnic differences in pretrial release decisions and outcomes: A comparison of Hispanic, black, and white felony arrestees. *Criminology*, 41(3), 873-907
- Demuth, S., & Steffensmeier, D. (2004). The impact of gender and race-ethnicity in the pretrial release process. *Social Problems*, 51(2), 222-242.
- Ewing, C. P. (1991). Preventive detention and execution: The constitutionality of punishing future crimes. *Law and Human Behavior*, 15(2), 139-163.
- Federal criminal code and rules*. (1995). St. Paul, MN: West Publishing Co..
- Flemming, R. B. (1983). Punishment before trial: An organizational perspective of felony bail processes. *Michigan Law Review*, 81(4), 1215-1218.
- Gearty, C. (2005). 11 September 2001, counter-terrorism, and the human rights act. *Journal of Law and Society*, 32(1), 18-33.
- Goldkamp, J. S., & Gottfredson, M. R. (1979). Bail decision making and pretrial detention: Surfacing judicial policy. *Law and Human Behavior*, 3(4), 227-249.
- Hagan, J. (1989). Why is there so little criminal justice theory? Neglected macro-and micro-level links between organization and power. *Journal of Research in Crime and Delinquency*, 26(2), 116-135.
- Hagan, J., Nagel, I. H., & Albonetti, C. (1980). The differential sentencing of white-collar offenders in ten federal district courts. *American Sociological Review*, 45(5), 802-820.
- Hoffman, P. (2004). Human rights and terrorism. *Human Rights Quarterly*, 26(4), 932-955.
- Levenson, L. L. (2001). Detention, material witnesses & the war on terrorism. *Loyola of Los Angeles Law Review*, 35, 1217-1226.

- Long, J.S. (1997). *Regression models for categorical and limited dependent variables*. Thousand Oaks, CA: Sage.
- Natalini, R. S. (1985). Preventive detention and presuming dangerousness under the bail reform act of 1984. *University of Pennsylvania Law Review*, 134(1), 225-250.
- Phillips, M. T., & Revere, E. J. (2004). Factors influencing release and bail decisions in new york city part 3 cross-borough analysis. *New York City Criminal Justice Agency*, 1-53.
- Preventive detention before trial. (1966). *Harvard Law Review*, 79(7), 1489-1510.
- Responding to terrorism: Crime punishment and war. (2002). *Harvard Law Review*, 115(4), 1217-1238.
- Sacks, M. R. (2011). *Don't I have a right to bail? A study of bail decisions/outcomes and their effects on plea bargaining and sentencing*. City University of New York). *ProQuest Dissertations and Theses*, 144.
- Sacks, M., & Ackerman, A. R. (2012). Pretrial detention and guilty pleas: If they cannot afford bail they must be guilty. *Criminal Justice Studies: a Critical Journal of Crime, Law and Society*, 25(3), 265-278.
- Shields, C. A., Smith, B.L. & Damphousse, K.R. (2006). "Their Day in Court; Assessing Plea Bargain Rates Among Terrorists," *Journal of Contemporary Criminal Justice*, Vol. 22, No. 3, pp. 261–276.
- Shields, C. A. (2012). *American Terrorism Trials: Prosecutorial and Defense Strategies*. El Paso: LFB Scholarly Pub. LLC.
- Smith, B. L. (1994). *Terrorism in America: Pipe bombs and pipe dreams*. Albany: State University Of New York Press
- Smith, B. L., & Damphousse, K. R. (1996). Punishing political offenders: The effect of political motive on federal sentencing decisions. *Criminology*, 34(3), 289-321.
- Smith, B. L., & Damphousse, K. R. (1998). Terrorism, politics, and punishment: A test of structural-contextual theory and the "liberation hypothesis". *Criminology*, 36(1), 67-92.
- Smith, B. L., Damphousse, K. R., Jackson, F., & Sellers, A. (2002). The prosecution and punishment of international terrorists in federal courts: 1980-1998. *Criminology and Public Policy*, 1(3), 311-338.
- Steffensmeier, D., & Demuth, S. (2000). Ethnicity and sentencing outcomes in the u.s. federal courts: Who is punished more harshly? *American Sociological Review*, 65(5), 705-729.
- The Yale Law Journal. (1970). The costs of preventive detention. *The Yale Law Journal*, 79(5), 926-940.

Turk, A. (1982). *Political criminality: The defiance and defense of authority*. Beverly Hills, CA: Sage Publications, Inc..

Turk, A. T. (1982). Social dynamics of terrorism. *The Annals of the American Academy of Political and Social Science*, 463(1), 119-128.

(n.d.). U.s. constitution. Retrieved from [usconstitution.com/](http://usconstitution.com/) website:  
<http://usconstitution.com/bill-of-rights>

United States. United States Sentencing Commission. Office of Research and Data. *Overview of Fiscal Criminal Cases Fiscal Year 2011*. By Louis Reedt and Melissa Reimer. U.S. Sentencing Commission, Sept. 2012. Web. 2 July 2013.

United States. United States Sentencing Commission. Office of Research and Data. *U.S. Sentencing Commission - 2011 Sourcebook of Federal Sentencing Statistics*. By U.S. Sentencing Commission. U.S. Sentencing Commission, n.d. Web. 02 July 2013.