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## Human Intelligence in Federal Terrorism Cases

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## Human Intelligence in Federal Terrorism Cases

Human Intelligence in Federal Terrorism Cases

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

by

Noah Schneider  
University of Arkansas  
Bachelor of Arts in Criminal Justice, 2013

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This thesis is approved for recommendation to the Graduate Council.

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## **ABSTRACT**

Though it has often been quipped that the September 11<sup>th</sup> attacks changed “everything”, domestic policy alterations were among the most significant changes after 9/11. Specifically, the 2002 Ashcroft Attorney General Guidelines and the 2008 Mukasey Attorney General Guidelines were two of the most impactful policy changes following 9/11. These Attorney General Guidelines changed the way the Federal Bureau of Investigation (FBI) investigated terrorism in the United States in addition to making counterterrorism the FBI’s top priority. One of the ways the FBI prevents terrorism is through the use of undercover agents and confidential informants. How the 2002 and 2008 Attorney General Guidelines influenced the FBI’s use of human intelligence in terrorism investigations has remained to be seen. This study reviews the historical policy changes following 9/11 and examines their influence on the FBI’s use of undercover operatives in terrorism cases. While I found that the percentage of terrorism investigations that used undercover operatives dropped by over 40% after the Ashcroft Guidelines were implemented, I also found that investigations that used undercover operatives were more successful in preventing terrorism incidents compared to terrorism investigations that did not use undercover operatives. Thus, policy makers should use caution when amending guidelines to terrorism investigations and perhaps a lot more resources to undercover operations.

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Finally, I would like to thank my wife, my family, and all of my fellow TRC co-workers for everything they have done for me throughout my time in graduate school. I am forever grateful to each and every one of you. Thank you all.

## **DEDICATION**

I dedicate this paper to Linda and Andrew Schneider. Mom, while your unexpected death occurred the day before I walked across the stage to receive my bachelor's degree, I hope to honor you by walking across that stage two years later with my master's degree. Dad, while I recently learned that you are not my biological father, I have only come to appreciate and love you more. You have made me realize that family is not about blood relationships, but about the love you show to those you care about. Thank you both for everything you have done for me. I love you both.

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## **HUMAN INTELLIGENCE IN FEDERAL TERRORISM CASES**

### **I. Introduction**

The terrorist attacks on September 11, 2001 took the lives of nearly 3,000 people in New York, Washington D.C., and Pennsylvania. During the aftermath of those attacks, the media and the public looked for someone to blame. Among those who received blame, the intelligence community faced some of the heaviest criticism. In the decade following the 9/11 attacks, policymakers amended guidelines upon which the intelligence community operated. The changes in guidelines were intended to help law enforcement and intelligence analysts prevent future terrorist attacks like those that occurred on September 11<sup>th</sup>, from happening again.

The intelligence community in the United States encompasses sixteen different agencies and offices, each handled by the Office of the Director of National Intelligence (Kaplan, 2012). Within these sixteen agencies are six program managers who are responsible for gathering and examining various types of intelligence information (Kaplan, 2012). Amid these program manager agencies is the Federal Bureau of Investigation (FBI). As a member of the intelligence community, the FBI is responsible for warning policymakers of potential threats to the nation's security (Schalch, 2003). Moreover, the FBI is the lead authority in investigating terrorism in the United States. In order to warn policymakers of potential threats, the FBI obtains and examines intelligence information gathered via human intelligence, also known as confidential informants and undercover agents. The procedures governing the FBI's domestic investigative operations are known as the Attorney General Guidelines. Since the attacks on September 11, 2001, there have been two changes in these guidelines: the 2002 John Ashcroft Attorney General Guidelines, and the 2008 Michael Mukasey Attorney General Guidelines. The Ashcroft Guidelines expanded the FBI's investigative procedures and revived the agency's domestic intelligence role. Six years

later, the 2008 Mukasey Guidelines again bolstered the FBI's investigative abilities by imposing fewer restrictions (Shields, 2012).

Changes to the guidelines over the past decade have not only increased the FBI's power, but they also changed its ability to use confidential informants and undercover agents. Few empirical studies have analyzed the FBI's use of confidential informants and undercover agents in domestic terrorism incidents. Of those that have, there have been several key findings. First, it is known that just over 40% of domestic terrorism cases use human intelligence (Greenberg, 2011). Second, there was nearly a 40% drop in the use of informants and over a 25% drop in the use of undercover agents in the immediate years following 9/11 (Shields, 2012). Finally, confidential informants and undercover agents represent some of the most successful tactics in detecting terrorist plots and in identifying and apprehending perpetrators in completed terrorist attacks (Hewitt, 2014). Thus, limited research on human intelligence in terrorism cases has shown the significance of undercover operatives.

To better understand changes in the use of human intelligence in terrorism investigations, Structural Contextual Theory will be applied to an analysis of terrorism data before and after the 9/11 attacks. Structural Contextual Theory suggests that components of the justice system normally work rather autonomously of one another, but also that in some political environments of the criminal justice operations come together to collectively target a specific type of crime and criminal for the purposes of prosecution (Hagan, 1989). In the past, Structural Contextual Theory has been used to help explain responses to terrorism in terms of sentencing outcomes. Smith and Damphousse (1998) hypothesized that if terrorism caught the public's attention the justice system would work together to target terrorist actors using the justice system. Collaboration throughout the justice system would then limit discretion among prosecuting and sentencing

terrorists. Thus, the more seriously terrorism is viewed by the public, the less difference there should be in sentencing outcomes in terrorism cases. Smith and Damphousse (1998) found nearly four times more explained variance in sentence outcomes for terrorists than nonterrorists, supporting structural contextual theory. Using Structural Contextual Theory, this paper will examine the use of confidential informants and undercover agents post-9/11 to address two research questions. The first research question asks how the Ashcroft and Mukasey Guidelines changed the use of confidential informants and undercover agents used in terrorism cases. The second research question asks what impact, if any, the changes in the use of undercover agents and confidential informants have had on case processing and outcomes in terrorism cases.

As mentioned previously, there is a shortcoming in empirical research on the use of confidential informants and undercover agents in domestic terrorism cases. In particular, prior literature has yet to examine the use of human intelligence in the last several years (Shields, 2012; Greenberg, 2011). Additionally, the most recent study involving human intelligence did not examine the nature of terrorism case outcomes in cases with informants and undercover agents (see Hewitt, 2014). My study builds directly on Shields (2012), as well as Greenberg (2011) and Hewitt (2014), by extending the time frame of analyzing human intelligence to 2014 and by examining how the use of confidential informants and undercover agents varies across category of terrorism, intended target type, and conviction rate in cases with human intelligence (compared to cases without human intelligence among other factors).

Examining confidential informants and undercover agents through this study will add to existing literature while also being socially relevant. After 9/11 the FBI was criticized for not connecting the dots concerning information they possessed that potentially could have prevented the attacks from that day. One criticism was that the FBI was too reactive and suffered from

structural weaknesses (Zegart, 2007). FBI agents were trained to be reactive, case driven, and conviction oriented- to investigate past crimes and not to prevent future ones (Zegart, 2007). In response to this criticism, Attorney General John Ashcroft changed the FBI from a reactive agency to a proactive agency with his 2002 Attorney General Guidelines by bolstering investigative procedures. While Ashcroft changed the structure of the FBI into a proactive agency, recent criticism has suggested that the FBI is being too proactive, especially through sting operations using confidential informants and undercover agents. One example was showcased in the 2014 HBO documentary *The Newburgh Sting*, which depicts a 2009 terrorism plot where four men were allegedly coaxed by an FBI informant to attack U.S. military planes in New York. Findings from the current study may be relevant for homeland security policy, as the entrapment of defendants and other socially relevant human rights issues have arisen from cases involving human intelligence.

This study is set up as follows. First, I provide a historical account of policy changes and their impact on federal terrorism investigations. Second, I review extant literature on confidential informants and undercover agents. Third, I lay out research questions followed by a discussion of research methods and specific hypotheses. Fifth, I present the results from my analyses and, finally, I end with a discussion of my findings and their implications for policy and future research.

## **II. Policy Change and Terrorism Investigations**

### ***Background***

Terrorism is not a new social problem, but has occurred in its various forms over the course of history in most every corner of the world (Mahan & Griset, 2013). In the United States, two monumental events changed America's understanding of modern American terrorism. The

first terrorism event was bombing of the Alfred P. Murrah federal building in Oklahoma City by far-right extremists Timothy McVeigh and his accomplices in 1995 (Michel & Herbeck, 2001). The bombing awakened America to the threat of homegrown, anti-government terrorism. The second event was of course the 9/11 hijackings and suicide attacks in New York City, Washington D.C., and Pennsylvania by Al Qaeda. The culmination of these attacks demonstrated the threat of international terrorism to the country and ushered in vast changes to federal anti-terrorism policies. Since the 9/11 terrorism attacks, several other smaller-scale terrorism attacks (e.g., Boston Marathon bombings), thwarted plots, and revisions to anti-terrorism laws have shaped the practices of law enforcement agencies.

The FBI was understandably most affected by these changes given its primary responsibility to counter terrorism in the United States. While government and intelligence agencies may define terrorism differently (Schmid, 2004; Schmid & Jongman, 1988), the FBI defines terrorism as “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” (FBI, 2009, p.ii). In addition to maintaining a clear definition of terrorism, the FBI adheres to a set of procedures known as the “Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations” that dictate the circumstances in which terrorism investigations can be initiated. The Attorney General Guidelines have evolved over the last several decades by the Department of Justice and in response to social criticism and the changing landscape of social and political violence in the United States.

Attorney General Edward Levi created the first Attorney General Guidelines in 1976. The guidelines were developed in part as a response to the Watergate scandal and the free speech

and privacy violations uncovered during the Nixon Administration. The purpose of the stricter guidelines was to impose new standards by which “domestic security investigations” could be initiated (FBI Statutory Charter, 1978). The proactive domestic intelligence gathering capabilities of the FBI were curbed and domestic terrorism cases were opened based strictly on the predicate of known criminal activity.

While the Levi guidelines were created to restrict the FBI’s investigative authority, a series of attacks by left-wing terrorists would lead the government to reconsider such changes (Smith, 1994). In response to these attacks, Attorney General William Smith issued a new set of guidelines in 1983 that gave FBI field offices around the nation greater flexibility in the investigative process (Smith, 1994). The FBI, however, continued to avoid opening investigations of individual terrorists and relied on the establishment of criminal predicate before opening counterterrorism investigations throughout the 1980s.

After the 9/11 terrorist attacks, the 9/11 Commission Report revealed that a number of opportunities for the FBI and other law enforcement agencies to intercept the deadly plot against the United States were missed (9/11 Commission, 2004; see also Zegart, 2007). The Report also publicly unveiled how organizational “red tape” designed to check the FBI’s authority to investigate terrorism in the United States might have inadvertently led to missed opportunities for law enforcement and intelligence agencies to “connect the dots.”

In response to the 9/11 hijackings, the primary mission of the FBI was changed to preventing the next terrorist attack (Mueller, 2003). In other words, the FBI essentially overnight transitioned back into a proactive domestic intelligence-gathering agency. Attorney General John Ashcroft created a new set of guidelines (“Ashcroft Guidelines”) that included allowances for longer investigation periods, centralizing fieldwork analysis at FBI headquarters, and eliminating

the need to gain permission from FBI Headquarters to open investigations (Office of the Attorney General, 2002a; Shields, 2012).

While the Ashcroft guidelines were being formed in late 2001, Congress passed the USA PATRIOT Act. The PATRIOT Act strengthened the FBI's investigative authority in terms of surveillance and wiretapping. Additionally, the PATRIOT Act loosened standards for obtaining warrants and issuing subpoenas in investigative matters (Jones, 2009). After creation of the PATRIOT Act there would be no significant policy changes until the 2008 Mukasey Guidelines were issued which further enhanced the FBI's power to investigate cases. In addition to outlining the purposes and procedures for three types of investigations (discussed more below), the Mukasey Guidelines permitted these investigations on either the violation of federal statutes or "threats to national security" (Jones, 2009).

While the Ashcroft Guidelines were the first significant changes to the Attorney General Guidelines since 1983, they are especially significant to this study because of changes to the *Confidential Informant Guidelines* (Office of the Attorney General, 2002b) and *Undercover Operations Guidelines* (Office of the Attorney General, 2002c). Both of these guidelines provide detailed rules regarding the use of confidential informants and undercover agents. A 2005 OIG special report reviewing the Confidential Informant Guidelines noted that FBI personnel ranging from new agents to the Director stated that the paperwork associated with opening and operating informants was excessive, burdensome, and time-consuming. The report also noted that some FBI agents had become reluctant to use informants because of these and other administrative and operational burdens (Office of the Inspector General, 2005).

### **III. Policy Changes**

The events of 9/11 significantly influenced counterterrorism policy. The 9/11 Commission scrutinized the FBI for being rooted in law enforcement and not equipped to accomplish intelligence assignments (Shields et al, 2009). Changes in policy after these attacks substantially altered the way the federal government investigated and prosecuted those individuals suspected to be involved in terrorism (Shields et al, 2009). Prior to the specific 2002 policy changes regarding confidential informants and undercover agents and the general changes to the FBI's investigation of terrorism, domestic antiterrorism policy focused on infiltrating and "beheading" terrorist organizations (Shields et al, 2009). After the 2002 policy changes, the FBI's focus as mandated by Attorney General Ashcroft was to intervene early and investigate aggressively. Ashcroft<sup>i</sup> stated that, "our philosophy today is not to wait and sift through the rubble following a terrorist attack. Rather, the FBI must intervene early and investigate aggressively where information exists suggesting the possibility of terrorism, so as to prevent acts of terrorism". The 2002 Ashcroft Attorney General Guidelines, the USA Patriot Act, and the 2008 Mukasey Attorney General Guidelines altered the FBI's approach to combating terrorism. The most dramatic of all the post 9/11 policy changes, though, were the Ashcroft Guidelines. These guidelines swiftly and singlehandedly transitioned the FBI from being a proactive agency to a reactive agency.

#### ***Ashcroft Guidelines***

On May 30, 2002, Attorney General John Ashcroft issued the first Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations after 9/11. At the time these were issued, Ashcroft and FBI Director Robert Mueller stated that the revised guidelines were necessary to abolish departmental barriers limiting field agents and

their superiors to handle terrorist threats, while simultaneously directing day-to-day activities of federal law enforcement departments within legal and constitutional boundaries (Office of the Attorney General, 2005). The 2002 guidelines authorized several new tools for the FBI. The first was the authority to start specific types of investigations with fewer evidentiary thresholds and without approval from FBI Headquarters (Office of the Attorney General, 2002). Previously, the Smith guidelines required FBI Headquarters to approve all terrorism investigations before initiation, and the director was to supervise the investigation in 180-day intervals (Ellif, 1984; Shields et al, 2009). The new Ashcroft Guidelines provided FBI field offices with the authority to commence investigations unilaterally, and allowed those investigations to proceed up to a year before reporting them to FBI Headquarters (Shields et al, 2009). Second, the Ashcroft Guidelines extended authority to the FBI to use undercover techniques in criminal intelligence investigations (racketeering enterprise and terrorism enterprise investigations) that were previously only allowed in general crimes investigations (Office of the Attorney General, 2002). The guidelines stated that, “In obtaining the foregoing information, any lawful investigative technique may be used” (Office of the Attorney General, 2002, pp. 14-17). A third authorization involved public places and events. The guidelines maintained that, “for the purpose of detecting or preventing terrorist activities, the FBI is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally” (Office of the Attorney General, 2002, p. 22). Lastly, the guidelines allowed the FBI to conduct online searches, and access online forums and sites, just as the public may for purposes of preventing or detecting terrorism or other criminal activities (Office of the Attorney General, 2002). In a speech addressing the revisions to the guidelines, Ashcroft<sup>ii</sup> suggested up that a key objective for

the FBI was to prevent terrorism by intervening early and investigating aggressively.

### ***Confidential Informant Guidelines***

The *Confidential Informant Guidelines* define confidential informant as, “any individual who provides useful and credible information to a Department of Justice Law Enforcement Agency (JLEA) regarding felonious criminal activities, and from whom the JLEA expects or intends to obtain useful and credible information regarding such activities in the future” (Office of the Attorney General, 2002, p.2). The 2002 Ashcroft guidelines contained three minor revisions to the Confidential Informant Guidelines. The first change involved the verbatim reading of instructions to informants. Under previous guidelines, agents working with confidential informants were required to read, verbatim, specific instructions concerning the boundaries set on the CIs’ activities (Office of the Inspector General, 2005). The 2002 revision to this rule removed the verbatim reading requirement, stating that, “at least one agent of the JLEA, along with one additional agent or other law enforcement official present as a witness, shall review with the CI written instructions” (Office of Attorney General, 2002, p. 11). FBI Director Robert Mueller deemed this change necessary because, “the verbatim instructions, written in often intimidating legalese, were proving to have a chilling effect, causing confidential informants to leave the program” (Oversight Hearing on Counterterrorism, 2003, p. 89).

The second alteration to the CI Guidelines permitted agents to adapt the instructions – including instructions that safeguard the confidentiality of the informant’s identity – to the informant’s distinct situation (Office of the Inspector General, 2005). The final modification to the informant guidelines involved promising immunity from prosecution. Prior guidelines required agents handling CIs to instruct them that investigative agencies could not promise immunity from prosecution (Office of the Inspector General, 2005). The 2002 Guidelines

adamantly clarified agents' roles stating that, "whether or not this instruction is given to a CI, the JLEA does not have any authority to make any promise or commitment that would prevent the government from prosecuting an individual...and a JLEA agent must avoid giving any person the erroneous impression that he or she has such authority" (Office of the Attorney General, 2002, p.12).

### ***Undercover Operations Guidelines***

The Undercover Operations Guidelines defines an undercover employee as, "any employee of the FBI, or employee of a Federal, or local law enforcement agency working under the direction and control of the FBI in a particular investigation, whose relationship with the FBI is concealed from third parties in the course of an investigative operation by the maintenance of a cover or alias identity" (Office of the Attorney General, 2002c, p.1). The 2002 Ashcroft Guidelines also provided four major counterterrorism-related revisions to the *Undercover Operations Guidelines*. The first change simply placed an emphasis on terrorism prevention as a legitimate goal of undercover operations (Office of the Attorney General, 2005). The 2002 guidelines stated that, "The use of undercover techniques...is essential to the detection, prevention, and prosecution... of terrorism" (Office of the Attorney General, 2002c, p.1).

The second amendment to the guidelines made explicit and emphasized the FBI's authority to use undercover techniques towards its criminal intelligence investigations goals (Office of the Attorney General, 2002c). The guidelines stated that, "In criminal intelligence investigations – i.e., racketeering enterprise investigations and terrorism enterprise investigations – these methods may be used to further the investigative objective... of detection, prevention, and prosecution of the criminal activities of the enterprise" (Office of the Attorney General, 2002c, p.2).

The third alteration to the UCO Guidelines gave Special Agents in Charge (SAC) more authority to initiate undercover operations. The guidelines stated that, “the SAC may approve an undercover operation when...the initiation, extension, or renewal of an operation is necessary to avoid the loss of a significant investigative opportunity” (Office of the Attorney General, 2002c, p.15). The fourth and final revision to the UCO Guidelines added one additional factor that SAC’s must take into account before approving an operation. The additional factor was, “[t]he risk of invasion of privacy or interference with privileged or confidential relationships and any potential constitutional concerns or other legal concerns” (Office of the Attorney General, 2002c, p.3). In sum, the 2002 revisions of the UCO Guidelines overall gave the FBI more authority to utilize undercover operations in terrorism investigations.

### ***USA PATRIOT Act***

Like the *Attorney General Guidelines*, the passing of the USA PATRIOT Act by Congress in 2001 significantly enhanced law enforcement’s investigative abilities. Among new powers the PATRIOT Act gave to the FBI was the capability to obtain a warrant and conduct investigations and surveillance without first notifying the individual, in addition to delaying notification given proper conditions (Jones, 2009). As stated in Section 213 of the Act, providing immediate notification could be delayed if the court found reasonable cause that execution of the warrant may have an adverse result (USA PATRIOT Act, 2001). Furthermore, the PATRIOT Act allowed the government to issue a subpoena and acquire information from targets without conferring with a court of law (Jones, 2009). Significantly, the PATRIOT Act stated that, “‘foreign intelligence information’ means information that relates to the national defense or the security of the United States” (USA PATRIOT Act, 2001). These semantics relaxed boundaries of the procedure and scope of intelligence operations (Jones, 2009). This permitted the FBI to

administer FISA in any way the agency believes applies to the context of national security (Jones, 2009). Other noteworthy changes resulting from the PATRIOT Act included enhanced surveillance procedures resulting in new pen register and trap and trace devices. This provided the government more authority to monitor telephone numbers received and called from specific telephone lines.

### ***Mukasey Guidelines***

On December 1, 2008, Attorney General Michael Mukasey further modified the Attorney General Guidelines for terrorism investigations by consolidating FBI investigative guidelines under a single rubric. The issuance of the 2008 guidelines represented the pinnacle of the evolution of the FBI towards an intelligence agency rather than strictly being a law enforcement organization. More specifically, these guidelines outlined three types of terrorism investigations, including *Assessments*, *Predicated Investigations*, and *Enterprise Investigations*.

Assessment investigations are to be used for the purpose of detecting, obtaining information about, or preventing or protecting against threats to national security or federal crimes (Mukasey, 2008). More specifically, they are to be used to detect and interrupt criminal activities at their early stages (Mukasey, 2008). Regarding authorization, assessments do not require any specific factual predication, only an “authorized purpose” and do not warrant approval by supervisors (Shields et al, 2009).

Predicated Investigations are more restricted than assessments in that they require approval from a Special Agent in Charge or by an FBI Headquarters official (Mukasey, 2008). Additionally, predicated investigations require predication – “allegations, reports, facts or circumstances indicative of possible criminal or national security threatening activity” (Mukasey, 2008, p.18). Predicated investigations are partitioned between preliminary investigations and full

investigations. Preliminary investigations can be commenced on any information or allegation indicative of possible national security or criminal threatening activity whereas full investigations require a more factual predication (Mukasey, 2008). Conversely, full investigations have no time limit, whereas preliminary investigations terminate after six months unless a SAC approves a six-month extension or FBI Headquarters approves an extension greater than one year (Mukasey, 2008).

The final type of investigation approved in the 2008 Mukasey Guidelines is the Enterprise Investigation. Enterprise investigations are a form of full investigations, which generally examine the structure, scope, and nature of specific groups and organizations (Mukasey, 2008). While enterprise investigations require a factual predication, they are distinct in their focus on organizations and groups that may be involved in racketeering activity, terrorism, or other threats to national security (Mukasey, 2008).

#### **IV. Literature Review**

Empirical terrorism analyses until recently have been somewhat limited, especially studies concerning the role of human intelligence in terrorism investigations. Nonetheless, a couple of studies have examined confidential informants and undercover agents. Shields (2012) and Greenberg (2011) looked at the prevalence of informants and agents, while Hewitt (2014) studied factors involved in preventing terrorism attacks and apprehending terrorist perpetrators. Confidential informants and undercover agents have also been referenced in relation to analyses of successful terrorist attacks and thwarted terrorism plots (Dahl, 2011; Strom, 2010;).

While empirical studies on the use of undercover agents and confidential informants within the context of terrorism investigations are scarce, Shields' (2012) study of terrorism investigations and case outcomes found that the use of confidential informants dropped

significantly after 9/11. In particular, he found that 58% of court cases used confidential informants before 9/11, but only 20% of cases did so after 9/11 (2012). In addition, the average number of confidential informants used per case decreased from 4 informants pre 9/11 to 1.2 informants post 9/11. The average level of assistance provided by confidential informants also decreased pre to post 9/11 from 2.71 to 2.00 (Shields, 2012)<sup>1</sup>.

Interestingly, only one out of 25 terrorism investigations examined by Shields (2012) relied on an undercover agent in the three years following 9/11. Shields (2012) did note, however, that in cases filed prior to 9/11 there was an average of 2.67 undercover agents used in cases where at least one undercover agent was used. He also noted that these findings could significantly change when the remaining post 9/11 cases were coded and analyzed, but his findings did suggest that there was a significant shift in the pursuit of suspected terrorists by the government after 9/11.

In another study, Greenberg (2011) provides another look at the use of confidential informants in terrorism cases. Using all federal court cases that the Department of Justice labels as terror-related that were inspired by jihadist ideas, this study examined the use of informants from 2001-2009. Greenberg found that since 9/11, 41% of terrorism cases have involved confidential informants (2011). Similar to Shields findings, Greenberg (2011) found that from 2002 to 2003, the same time that Attorney General Ashcroft's guidelines took effect, that there was a consistent decrease in the use of informants. From 2003 to 2007, however, Greenberg found the proportion of terrorism cases involving an informant increased from 10% to 70%. That number decreased to just fewer than 30% from 2007-2008. In 2008, the year following

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<sup>1</sup> The level of assistance provided by confidential informants was measured on a scale from 1-4. 1 = Information only, 2 = Recordings, 3 = Sworn testimony, and 4 = Recordings & sworn testimony.

implementation of the Mukasey Guidelines, the percentage increased back up to 70%. Finally, the 2009-2011 timeframe reveals that the percentage of cases involving informants reverted back to the 2001 level of 10% of cases.

More recently, Hewitt (2014) examined law-enforcement activities in 20 terrorism cases since 1968 and 38 cases of terrorism prevention since 9/11. The twenty completed acts of terrorism all resulted in at least one death. Hewitt (2014) used a seven-fold classification system of police actions to analyze the most successful tactics in identifying and apprehending perpetrators in these twenty cases. These factors included: crime scene, witness, routine policing, informers, surveillance, tips from the public, and rewards. Of the twenty completed terrorism cases examined by Hewitt (2014), ten were perpetrated by organized groups and ten cases were perpetrated by unaffiliated individuals, whether lone wolves or members of autonomous cells. Informants accounted for the second highest total of significant factors in identifying and apprehending terrorists in organized groups and the fourth highest total in identifying and apprehending terrorism by unaffiliated individuals (Hewitt, 2014). In total, informers had the second highest percentage (45%)<sup>2</sup> of significant factors in identifying and apprehending terrorists for both organized and unaffiliated cases.

For the 38 terrorism plots thwarted after 9/11, Hewitt (2014) used a six-fold classification system of factors involved in the detection of plots. These factors included: routine policing, rewards, tips from the public, informants, surveillance, and undercover agents. The top two factors involved in detecting plots were undercover agents and informants, respectively.

Together these two factors equaled 81% of the factors involved in detecting plots (Hewitt, 2014).

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<sup>2</sup> Since multiple factors influence the successful resolution of each completed terrorism case, percentages total to more than 100%, for a grand total of 230% (Hewitt, 2014). Since more than one factor could be involved in detecting plots, the total percent of factors add to more than 100%, for a grand total of 131% (Hewitt, 2014).

Overall, Hewitt (2014) found that organized terrorist groups were most vulnerable to informers and surveillance, and that the most successful terrorist preventions involved undercover agents and informants.

As previous research shows, knowledge about the use of undercover agents and confidential informants is scarce. While several studies have analyzed the use of confidential informants in the past, their role in terrorism investigations since 2004 remains unclear. Additionally, the impact of the Mukasey Guidelines on the use of confidential informants remains unknown. Regarding undercover agents, very little is known about how they have been used in federal terrorism investigations since 2004.

### ***Success vs. Prevention***

Since 9/11, the intelligence community has strived to refine ways to expose and prevent domestic terrorist schemes before they occur (Strom, 2010). The aforementioned Attorney General Guidelines and USA PATRIOT Act were measures taken by the government to assist the intelligence community in the prevention of terrorism after the 9/11 attacks. Since the goal of using undercover agents and confidential informants is to ultimately prevent terrorism incidents from occurring, it is important to review what is known about completed and prevented terrorism cases.

In one study, Strom (2010) study examined 86 prevented and completed terrorist plots against the U.S. from 1999 to 2009 and determined which activities and kinds of information that could either lead to or could have led to the discovery of the plot. Results from this study found that over 80% of thwarted terrorist schemes were uncovered by law enforcement or general public observations. Nearly one in five schemes were prevented “accidentally” through investigations of outwardly unassociated crimes, underscoring the need to understand when

regular crimes might be associated with terrorism (Strom, 2010). Approximately 40% of the foiled plots were the result of tips from confidential informants and the public. Overall, Strom found that investigating leads, along with information sharing among agencies, led to the prevention of the majority of terrorist schemes in his study. All 86 cases contained executed or planned acts of violence in which the defendants intended to cause casualties or catastrophic damage to critical infrastructure (Strom, 2010).

In 2011, Dahl examined 176 terrorist plots from 1987-2010 against American targets that were prevented or otherwise failed. The most significant finding from this study was that human intelligence collected from informants and tips received from members of the public were the most successful counterterrorism tools for breaking up domestic plots (Dahl, 2011). Of the 89 domestic cases that were prevented, 66 involved either undercover agents or informants. Dahl (2011) found that most plots were foiled because officials had precise, tactical-level intelligence, often from human sources, on the activities of plotters.

Based on the findings of previous research, policy changes resulting from the events of September 11 may have significantly altered the use of undercover agents and confidential informants. Shields' (2012) earlier investigations into the use of undercover agents and confidential informants in the years following 9/11 showed a decline in the use of human intelligence. Greenberg's examination of informant's post 9/11 revealed similar findings to Shields', highlighting a decrease in use of informants right after September 11<sup>th</sup>. Additionally, Greenberg found an increase in the use of informants towards the end of the decade after 9/11. The usefulness of human intelligence was demonstrated in Strom (2010) and Dahl (2011), who found that a large percentage of prevented terrorism incidents resulted from cases involving either an undercover agent or confidential informant.

Nonetheless, there are several shortcomings of prior literature on this topic. First, previous research is limited to descriptive analyses of the use of undercover agents in terrorism cases up to 2004 (Shields, 2012) and on confidential informants up to 2011 (Greenberg, 2011). Additionally, while Hewitt (2014) examined human intelligence in preventing terrorism, there is a dearth of research on the various types of case outcomes in cases involving human intelligence.

My contributions to this literature on the use of undercover agents and confidential informants, as well as thwarted terrorism plots, involves expanding the time frame in which cases involving human intelligence are examined. Additionally, I examine the categories of terrorism, the intended target type, the convictions rates, length of prison sentences, and amount of weapons, drugs, and ammunition seized in terrorism cases involving undercover agents and/or confidential informants. Doing so will significantly advance what is known about terrorism cases involving human intelligence in the U.S. following the 9/11 terrorist attacks.

### ***Theoretical Framework***

Paul Wilkinson once quipped that, “Fighting terrorism is like being a goalkeeper. You can make a hundred brilliant saves but the only shot that people remember is the one that gets past you.” The American intelligence community has prevented numerous terrorism plots, however, the attack on September 11<sup>th</sup> remains the infamous event that failed to be thwarted. After 9/11, the FBI was criticized for having deficiencies and other weaknesses that prevented it from seamlessly sharing intelligence across organizational units (Zegart, 2007). While terrorism scholars have thus far focused mostly on issues of defining terrorism (Boyns & Ballard, 2009), several studies have applied criminological theory to causes of terrorism (Clark & Newman, 2009), and the criminal justice response to terrorism (Smith & Damphousse, 1998; Shields, 2012). Two related theories that will be used to explain possible changes in the intelligence

community and government responses to 9/11 are John Hagan's Structural-Contextual Theory and Samuel Walker's net-widening theory.

### ***Structural Contextual Theory***

A key premise of structural-contextual theory is that the criminal justice system is comprised of components that operate autonomously of one another (Hagan, 1989), or as a "loosely coupled" system. Under normal circumstances components of the justice system compete for resources and pursue different goals (Shields, 2012). However, Hagan suggested that when political power is directed towards particular types of crime, the justice system becomes tightly coupled (Hagan, 1989). The justice system may also direct political power towards specific types of crime in what Smith & Damphousse refer to as a "proactive political environment (Smith & Damphousse, 1998, p.71). A proactive political environment is described as, "contexts where the surrounding political environment has mandated departures from normal criminal justice operations" (Hagan, 1989, p.130). Thus, the criminal justice system moves from a reactive to a proactive system "targeting the prosecution of a particular form of crime and criminal" (Hagan, 1989: 130). Proactive political environments ultimately lead to the process of net-widening. Both the proactive political environment and net-widening occur after critical and high-profile events, such as the Oklahoma City Bombing or the September 11<sup>th</sup> attacks. Samuel Walker has furthered a net-widening perspective to explain the implementation of "get tough" laws and other responses to crime. The general idea behind these laws is that getting tougher on criminals will increase public safety by reducing crime victimization (Walker, 1998). Walker has argued, however, that get tough responses to crime also "widen the net" on those who might fall under the authority of the criminal justice system. In other words, get tough policies and

practices target lower level offenders who would not be arrested and adjudicated under normal circumstances (Walker, 1998).

### ***Organizational Resistance to Change***

As previously discussed, the events of 9/11 brought numerous policy changes to the American intelligence community, including the Ashcroft Guidelines, USA Patriot Act, and the Mukasey Guidelines.

Despite these significant policy changes, there are reasons to expect that the FBI might revert back to proven methods the agency has used before the implementation of the Ashcroft Guidelines. This process can be explained by what Lipsky (1980) refers to as *street-level bureaucracy*, which suggests that street level actors, such as police, are active participants in policymaking and make choices based on experience and limited resources that may run counter to agencies' policy objectives. Likewise, Maynard-Moody (2003) found that street level bureaucrats routinely engage in activities that "rub against" policies and rules because they believe them to be ineffective.

The Department of Homeland Security has spent millions of dollars towards developing intelligence-led policing agencies (Jackson & Brown, 2007). Intelligence-led policing is an information-organizing process that allows law enforcement agencies to better understand their crime issues and account for available resources that will aid the decision making process as to what tactic or strategy will prevent crime, (i.e. terrorism) (Ratcliffe & Guidetti, 2008). Nonetheless, twenty-first-century technology and advanced analysis programs cannot serve as a substitute for human relationships (Taylor & Russell, 2012). Information collected by law enforcement through informants, undercover operatives and contacts with general citizens continue to be significant components in the fight against terrorism (Taylor & Russell, 2012).

If Lipsky and Maynard-Moody are correct, then we might expect to see SAC's and FBI field offices faithfully adhere to the policy changes implemented by the Ashcroft and Mukasey Guidelines while the justice system is in a state of heightened coupling, but then revert back to previously tested and proven methods of investigation when the justice system begins to return to its normal state. In other words, though the AG Guidelines may have initially forced the FBI to engage in more proactive policing techniques, effectively sidelining the use of human intelligence, it is also possible that the street-level bureaucrats of the FBI field offices eventually reverted back to developing human intelligence leads.

### ***Applying Theory to Terrorism***

Regarding terrorism, Smith and Damphousse (1998, p.73) suggest, "when a criminal act is officially designated by the polity as an act of terrorism, that designation sets in motion proactive law enforcement and prosecutorial techniques." After a major event like 9/11, there is increased scrutiny from the media and public policy officials on members of the criminal justice system (Damphousse & Shields, 2007). Structural contextual theory would suggest that the events of 9/11 brought the criminal justice system from a group of loosely coupled components to a tightened group of components. These components may have previously worked independently of one another, but after 9/11, pressure from the war on terror would force agencies to work together towards the goal of terrorism prevention.

With regard to terrorism policy after 9/11, Attorney General Ashcroft changed the way the FBI handled terrorism investigations. Prior to 9/11, the FBI used confidential informants and undercover agents to penetrate and take down terrorist groups from the inside. After 9/11, Ashcroft redirected domestic antiterrorism policy to intercept and disrupt terrorist organizations before their members could launch attacks (Shields et al, 2009). This resulted in the casting of a

wider net by law enforcement to arrest terrorists on less serious crimes, such as documentation and financial fraud, which before 9/11 was less of a priority. The results of this proactive environment and net-widening were demonstrated with the swiftly implemented policy changes to the Attorney General Guidelines in 2002. Nonetheless, street-level bureaucrats often reject new or modified rules and policies when they believe them to be unsuccessful (Maynard-Moody, 2003). Thus, I expect that FBI agents would abide by the Ashcroft Guidelines when the justice system is in a tightly coupled state, but then default back to successful tactics and strategies of preventing terrorism through the use of human intelligence when the justice system becomes more loosely coupled. Since the Mukasey Guidelines did not change the FBI's investigative mandate, but only bolstered investigative powers, it may be expected that the FBI's use of using human intelligence to prevent terrorism will increase after the 2008 guidelines implementation. Following the Intelligence Reform and Terrorism Prevention Act of 2004, which called for increased emphasis on human intelligence gathering, and continuing with the FBI's push to expand the use of confidential informants in 2007 (FBI, 2007), I expect the proportion of confidential informants to increase in the middle of the decade, despite diminished impact of tightened coupling as fear decreases and the adoption of the Mukasey guidelines (as they bolstered the FBI's investigative power, but did not change its nature).

## **V. Research Questions**

### **Research Question 1**

The way the FBI conducted terrorism investigations was dramatically altered due to policy changes after the 9/11 terrorist attacks. The fear from 9/11 created a tightly coupled justice system and forced law enforcement personnel to engage in policing activities that widened the net of potential terrorist suspects. Additionally, changes were made regarding the

use of one of the FBI's most successful counterterrorism tools, the use of human intelligence.

This purpose of this study is to examine whether policy changes after 9/11 influenced the FBI's use of human intelligence and if so, what effects has that had on terrorism case outcomes.

***1. How did the Ashcroft and Mukasey Attorney General Guidelines change the use of undercover agents and confidential informants?***

The Ashcroft Guidelines changed the FBI from a reactive agency to a proactive agency. Previously, the FBI's strategy was to penetrate and take down the leaders of terrorist groups, whereas the 2002 Guidelines shifted the focus to targeting subordinate group members. The FBI accomplished this new goal by arresting and prosecuting terrorists earlier and more often to prevent attacks from being planned or attempted (Shields, 2012). In doing so, ostensibly, the FBI would have less time to infiltrate groups and gain human intelligence. By the time the 2008 Mukasey Guidelines came into effect, fear from 9/11 that caused the early intervention and arrest mandates should have subsided, and as noted above, new policy initiatives had been put in place focusing more attention on human intelligence, returning infiltration strategies to pre-9/11 levels. To test whether this is the case using structural contextual theory, I developed the following hypotheses:

**H<sub>1</sub>**= The proportion of cases by year that used undercover agents and/or confidential informants will be lower in the Ashcroft Guidelines era (2002-2007) than in the pre-Ashcroft Guidelines era (1980-2001) or Mukasey era (2008-present).

**H<sub>2</sub>**= The average number of undercover agents and/or confidential informants used per case will be lower in the Ashcroft Guidelines era (2002-2007) than in the pre-Ashcroft Guidelines era (1980-2002) or Mukasey era (2008-present).

If tightened coupling is not a permanent effect, as suggested by Damphousse and Shields (2007), and Lipsky is correct in that street-level bureaucrats often choose to revert to proven methods of police work, then I would expect the proportion of cases involving confidential informants and undercover agents to increase in the latter half of the Ashcroft guidelines (2006 and 2007). To examine this effect, I will test the following hypothesis:

**H<sub>3</sub>**= The proportion of cases using undercover agents and/or confidential informants will increase in the latter half of Ashcroft Guidelines era (2006-2007).

Given the fear that gripped America following the attacks on 9/11, which would, in theory, create a proactive political environment, and given the policy shift towards proactive law enforcement, we would expect the government to have less time to develop human intelligence in the post-Ashcroft Guideline era. That should negatively impact the proportion of cases using confidential informants and undercover agents overall. However, as the attacks were perpetrated by Islamic extremists, we might expect the government to devote more resources to this particular threat compared to right-wing, environmental, and leftist terrorist groups. Therefore, the proportion of Islamic extremist cases using confidential informants and undercover agents should be higher in the post-Ashcroft era than before 9/11 or after implementation of the Mukasey guidelines. Therefore, I will test the following hypothesis:

**H<sub>4</sub>**= The proportion of cases that make use of confidential informants and/or undercover agents will be higher among Islamic Extremist cases than among non-Islamic Extremist cases during the Ashcroft Guidelines era (2002-2007) compared to prior and subsequent eras.

Prior to 9/11, Al-Qaeda and associated movements typically attacked American embassies, warships, and military bases (Bergen et al, 2011). After 9/11, these targets increased security measures, thus forcing Al-Qaeda to attack “soft” economic and business targets that are

easier to hit and ever-present (Bergen et al, 2011). By the time the 2008 Mukasey Guidelines came into effect, fear for the security of government and military targets should have subsided whereas fear for the safety of “soft” targets should have increased. Based on this information, I developed the following hypothesis:

**H<sub>5</sub>**= The proportion of cases involving undercover agents and/or confidential informants with planned attacks targeting government and military facilities will be lower in the Mukasey era (2008-present) compared with the Ashcroft Guidelines era (2002-2007) and the pre-Ashcroft Guidelines era (1980-2001), while planned attacks against economic and business targets will be higher in the Mukasey era (2008-present) compared with the Ashcroft Guidelines era (2002-2007) and the pre-Ashcroft Guidelines era (1980-2001).

The Ashcroft Guidelines caused the FBI to aggressively arrest and prosecute terrorists at a quicker rate than had ever been done. This essentially gave the FBI less time to use undercover agents and/or confidential informants to infiltrate groups. This also likely allowed for undercover agents and/or confidential informants to have less time to collect evidence against terrorists due to quick prosecution demands. By the time the 2008 Mukasey Guidelines came into effect, the impact of tightened coupling might have subsided and street-level bureaucracy may have altered the use of proactive policies, giving undercover agents and confidential informants more time to collect evidence. To test this reasoning, I created the following hypothesis:

**H<sub>6</sub>**= The average level of assistance provided by undercover agents and/or confidential informants will be lower in the Ashcroft Guidelines era (2002-2007) than in the pre-Ashcroft Guidelines era (1980-2001) or Mukasey era (2008-present).

The Ashcroft Guidelines mandated that the FBI intervene early and prosecute aggressively. This mandate gave the FBI less time to infiltrate terrorist groups with human

intelligence. Moreover, in cases where the FBI had time to infiltrate a group, they likely had less time to collect evidence and set up stings in order to maximize prosecution chances of a conviction with numerous charges from defendants being caught with drugs or weapons. By the time the 2008 Mukasey Guidelines came into effect, the system may have become more loosely coupled. With loosened time restrictions, undercover agents and confidential informants should have been able to collect evidence and set up sting operations that maximized the charges prosecutors could use against defendants who were in possession of illegal drugs and weapons at the time of arrest. Based on this information, I developed the following hypothesis:

### **Research Question 2**

Assuming the FBI and the criminal justice system followed Attorney General John Ashcroft's guidelines to intervene early and prosecute aggressively, cases that used undercover agents and confidential informants may have been handled differently than cases not involving human intelligence. To analyze this issue, I created the following research question.

#### ***2. What impact, if any, have the changes in use of undercover agents and confidential informants had on case processing and outcomes?***

The FBI's change from a proactive to a reactive agency affected both the goals and the abilities of the FBI. Most significant was the early intervention strategy to prevent terrorism. To accomplish this, law enforcement agents had to arrest terrorists quicker and prosecutors had to convict terrorists sooner than before the Ashcroft Guidelines were put in place. Quicker arrest rates are likely to result in less serious crimes prosecuted as criminals will be caught in the early stages of terroristic activities. The prosecution of less serious crimes should be reflected through lower count severities. With less serious charges to prove a defendant was guilty beyond a

reasonable doubt, prosecutors should be able to more easily convict defendants. To examine this, I created the following hypothesis:

**H<sub>8</sub>**= Cases with undercover agents and/or confidential informants will result in higher conviction rates than cases without undercover agents and/or confidential informants and conviction rates will be higher in the Ashcroft Guidelines era (2002-2007) than in the pre-Ashcroft Guidelines era (1980-2001) or Mukasey era (2008-present).

The Ashcroft Guidelines called for the early arrests and prosecutions of terrorists. To make this happen, the FBI had to arrest terrorists on less serious crimes, such as documentation and financial fraud. The prosecution of less serious crimes such as these should result in less serious sentences. Given the expectation of shorter prison sentences in cases post-Ashcroft Guidelines, however, the use of undercover agents and confidential informants typically involves more serious situations where the agent or informer is able to gather evidence against the defendant(s). Therefore, it is likely that cases involving undercover agents and confidential informants will feature a greater amount of evidence and will result in longer prison sentences than cases without human intelligence. Based on this reasoning, I developed the following hypothesis:

**H<sub>9</sub>**= Cases with undercover agents and/or confidential informants will result in longer prison sentences than cases without undercover agents and/or confidential informants and cases during the Ashcroft Guidelines era (2002-2007) will have shorter prison sentences than cases in the pre-Ashcroft Guidelines era (1980-2001) or Mukasey era (2008-present).

The ultimate purpose of undercover agents and confidential informants is to aid in the prevention of terrorism, whether that is through gathering information or collecting evidence. Since agents and informants put their lives at risk with these duties, and numerous resources

including time and money are invested towards their efforts, the government would not use human intelligence if there were not a high chance of being successful. Moreover, undercover agents and confidential informants are embedded in terrorist groups where they gain knowledge of future plots, just as any other member would. This knowledge should allow the infiltrator to alert authorities before any successful plots are attempted. To analyze this reasoning, the following hypothesis was created:

**H<sub>10</sub>**= Cases with undercover agents and/or confidential informants will result in a higher percentage of prevented incidents than cases without undercover agents and/or confidential informants.

## **VI. Methods**

### ***Data***

This study uses data from the American Terrorism Study (ATS), which is housed in the Fulbright College at the University of Arkansas (Smith & Damphousse, 2000; Smith, 2001). The ATS was created to collect information specifically on American terrorism in order to form a database that could be empirically tested to enrich criminologists' and policy makers' understanding of terrorism. The Federal Bureau of Investigation's Terrorist Research and Analytical Center provided the name of persons indicted under the FBI's counterterrorism program dating back to 1980. Using these, and subsequent lists of cases, the ATS is comprised of federal court cases upon which at least one person was investigated under a terrorism investigation by the Federal Bureau of Investigation and later indicted in federal court. Thus, the primary source of the American Terrorism Study's data is federal court documents. Numerous government funded grant projects have relied on the ATS to examine a variety of terrorism issues including geospatial and pre-incident indicators of terrorist activities, prosecutorial and

defense strategies in terrorism trials, and geographic concentrations of violent extremism and terrorism in the United States. Data from the ATS are housed in an Oracle relational database. While the ATS currently contains 443 court cases, this study focuses on the 156 cases that have been infiltrated by undercover agents and/or confidential informants.

### ***Sorting Variables***

To conduct the majority of my analyses, I created two sorting variables from which I separated the data into different temporal samples. The first sorting variable is referred to as *Time Period*. *Time Period* is a categorical variable that separates all ATS cases into three groups. The first group is composed of persons indicted before the implementation of the Ashcroft Attorney General Guidelines in 2002. The second group contains persons that resulted in indictment between 2002 and 2007, or the time period in which the Ashcroft Guidelines were in effect. The third sample includes cases resulting in indictment between 2008 and 2014, when the Mukasey Guidelines superseded the Ashcroft guidelines. The second sorting variable I created is called *Ashcroft Time Period*. *Ashcroft Time Period* measures the proportion of cases using confidential informants and undercover agents throughout the Ashcroft era based on two samples. The first sample represents the earlier Ashcroft Guidelines era (2002-2005) and the second sample represents the later Ashcroft Guidelines era (2006-2007).

### ***Undercover Operative Variables***

As a central focus of this study is undercover agents and confidential informants, I have several variables related to the use of undercover operatives. First, to measure the year a case involving undercover agents and confidential informants occurred, I used the variable *Infiltrated*. *Infiltrated* is a dichotomous variable that measures whether cases used an undercover agent and/or a confidential informant. I coded cases that used an undercover agent and/or a

confidential informant as *1*, while all other cases were coded as *0*. Second, I measured undercover agents and confidential informants using the variables *Undercover Agent* and *Informant*, respectively. *Undercover Agent* is a dichotomous variable that measures whether a government agent infiltrated the group. *Informant* is a dichotomous variable that measures whether the government had a confidential informant who was a member of the group or closely associated with the group. I coded cases involving an undercover agent as *1*, while all other cases were coded as *0*. I also coded cases in which a confidential informant was used as *1*, and all other cases were coded as *0*. Third, I used the variables *Informant Number* and *Undercover Number* to measure how many confidential informants and undercover agents were involved in each case, respectively. *Informant Number* is a ratio level variable and measures how many confidential informants the government used. *Undercover Number* is also a ratio level variable and measures how many undercover agents the government used. I analyzed only cases in which at least one confidential informant and/or undercover agent, and values for both variables ranged from 1 to 10. Fourth, in order to measure the average level of assistance provided by undercover agents and confidential informants, I used the variables *Undercover Assistance* and *Informant Assistance*. *Undercover Assistance* measures the level of assistance provided by a government agent. It is an ordinal level variable (provided some information, but no recording or testimony (1), provided recorded conversations (2), provided sworn testimony (3), provided both sworn testimony and recorded conversations (4)). *Informant Assistance* is also an ordinal level variable and is coded in the same way as *Undercover Assistance*.

### ***Case Processing and Outcome Variables***

I have three variables (*Convicted*, *Prison Sentence*, *Prevented Incident*) that measure how court cases were processed and what their outcomes were. To measure conviction rates I created

a dichotomous variable that I called *Convicted*. In this variable, cases were coded as 1 where a conviction of any type occurred and all other instances were coded as 0. To measure prison sentences I created the variable *Prison Sentence*. *Prison Sentence* is a ratio level variable that measures the sentence length in months of prison that a defendant receives. This variable was recoded to give the death penalty and life sentences numerical values. I ran a frequency distribution to determine the longest sentence in months of defendants in my sample, which was 2880 months. I then added one month to that sentence for the death penalty value and life sentence value to give each of those the values of 2881 and 2882, respectively. In order to assess the prevention of incidents, I used the variable *Prevented Incident*. *Prevented Incident* is a dichotomous variable that measures whether an attack was prevented or not as result of human intervention. I coded cases that contained no prevented incidents as 0 and cases that contained a prevented incident as 1.

### ***Other Variables***

In relation to my outcome variable *Convicted*, I have two control variables that were used. These variables are *Count Severity* and *Prosecution Strategy*. *Count Severity* and *Prosecution Strategy* were used to determine the conviction rate in infiltrated cases across the three Attorney General Guidelines eras. *Count Severity* is an interval level variable that measures the severity of every count a defendant is charged with. It is coded as 1-29 on a scale that increases in severity. *Prosecution Strategy* is an ordinal level variable that measures the prosecution strategy used against a defendant. There are three prosecution strategy categories: conventional criminality, political innuendo and explicit politicality, coded as 1, 2 and 3 respectively. Conventional Criminality involves cases where the defendant is not linked to a terrorist group or a terrorist act and is charged with conventional criminal charges (Shields,

2012). Political Innuendo involves cases where the defendant is linked to a terrorist group or terrorist act and is charged with conventional crimes. The last prosecution strategy, explicit politicality- involves cases where the defendants motive for committing a crime is questioned and where the defendant is linked to a terrorist group outright (Shields, 2012).

I also created a variable called *Category*. This variable measures the category of terrorism and is a nominal level variable, (Environmental (1), Far-left (2), Far-right (3), Islamic Extremist (4)).

Finally, I created the variable *Intended Target*. *Intended Target* is the primary target that a group or individual intended to attack but was unsuccessful in doing so. *Intended Target* is a nominal level variable, and was recoded into a categorical variable (financial (1), government (2), military (3), business (4), private property (5), transportation (6), and other (7)).

## **VII. Results**

### ***Analysis and Findings***

The findings for this study are presented below and organized by the two research questions and the ten corresponding hypotheses. Bivariate statistical test (chi-square, ANOVA) are used to test each hypothesis. Table 1 represents descriptive statistics for the study. Frequency distributions from Table 1 show that the American Terrorism Study database contains 443 cases that meet my inclusion criteria. I divided those cases into eras corresponding to the different Attorney General Guidelines. This resulted in a sample of 397 cases, as it was not known if an undercover operative was used in 46 cases of the original sample. The Pre-Ashcroft Era contained 150 cases, the Ashcroft Era contained 172 cases, and the Mukasey Era contained 75 cases. Furthermore, in the sample of 397 Attorney General Guidelines Era cases, 156 cases (39.3%) contained a confidential informant, an undercover agent, or both. The Pre-Ashcroft era

comprised the majority of cases infiltrated by operatives (65%) followed by the Ashcroft (24%) and Mukasey (23%) eras, respectively.

**Table 1: Descriptive Statistics**

<b>Variables</b>	<b>N (Percent)</b>
<i>American Terrorism Study Cases</i>	443
<i>Attorney General Guidelines Eras</i>	397
Pre-Ashcroft	150 (38%)
Ashcroft	172 (43%)
Mukasey	75 (19%)
<i>Cases Infiltrated By Operatives</i>	156
Pre-Ashcroft	97 (65%)
Ashcroft	41 (24%)
Mukasey	17 (23%)
<i>Cases with Informants</i>	127
Pre-Ashcroft	79 (62%)
Ashcroft	36 (28%)
Mukasey	12 (9%)
<i>Cases with Undercover Agents</i>	54
Pre-Ashcroft	38 (70%)
Ashcroft	6 (11%)
Mukasey	10 (18%)
<i>Ashcroft Era Divided</i>	172
2002-2005	144 (84%)
2006-2007	28 (16%)
<i>Category of Terrorism in Infiltrated Cases</i>	88
Environmental	29 (33%)
Far-Left	1 (1%)
Far-Right	33 (38%)
Islamic	25 (28%)

<b>Variables (Continued)</b>	<b>N (Percent)</b>
<i>Intended Targets in Infiltrated Cases</i>	96
Government	42 (44%)
Military	5 (5%)
Business	16 (17%)
Private Property	4 (4%)
Transportation	9 (9%)
Other	20 (21%)
 <i>Conviction Rate: Infiltrated vs. Non-Infiltrated Cases</i>	 840 Indictees
Non-Infiltrated Cases	349 (87%)
Infiltrated Cases	491 (76%)
 <i>Prison Sentence in Months: Infiltrated vs. Non-Infiltrated Cases</i>	 364
Non-Infiltrated Cases	222 (73 months)
Infiltrated Cases	142 (336 months)

### ***Research Question 1***

***How did the Ashcroft & Mukasey Attorney General Guidelines change the use of undercover agents and confidential informants?***

#### ***Hypothesis 1***

Hypothesis one tested for differences in the use of undercover operatives throughout different time periods. Specifically, I hypothesized that the proportion of cases that used undercover agents and/or confidential informants would be lower in the Ashcroft Guidelines era (2002-2007) than in the pre-Ashcroft Guidelines era (1980-2001) or the Mukasey era (2008-2014). Findings from testing this hypothesis are presented in Table 2, and partially support my hypothesis. Results indicate that the proportion of cases with undercover operatives was significantly lower in the Ashcroft era than the pre-Ashcroft era, however, the proportion of cases with undercover operatives in the Ashcroft era was nearly identical to the proportion of

cases with undercover operatives in the Mukasey era. The pre-Ashcroft era had 64.7% of cases containing operatives that dramatically decreased to 23.7% of cases in the Ashcroft era ( $p < .05$ ) and then remained stable at 22.7% of cases in the Mukasey era ( $p < .05$ ).

**Table 2: Crosstabulation of AGG Eras in Infiltrated Cases**

<b>Era</b>	<b>No Operative</b>	<b>Operative Used</b>	<b>% Of Cases with Operative</b>
Pre-Ashcroft	53	97	64.7 %
Ashcroft	131	41	23.8 %
Mukasey	58	17	22.7 %

*Chi-Square = 66.54 Df = 2 p < .05*

### ***Hypothesis 2***

Table 3 represents ANOVA results comparing the average number of confidential informants and undercover agents used in cases throughout the pre-Ashcroft, Ashcroft and Mukasey eras. I hypothesized that the average number of undercover operatives would be the lowest in the Ashcroft Guidelines era. Counter to my hypothesis, the average number of informants was the highest during the Ashcroft era. The average number of undercover agents during the Ashcroft era was in-between the other two eras. The findings did not support my hypothesis, but the findings were statistically significant.

**Table 3: ANOVA of Avg # of Informants and Undercover Agents Per Case**

	<b>Era</b>	<b>N</b>	<b>Mean</b>	<b>Sig.</b>	<b>Df</b>
<b>Informant</b>	Pre-Ashcroft	79	2.02	.000	2
	Ashcroft	36	4.05		
	Mukasey	12	1.08		
<b>Undercover</b>	Pre-Ashcroft	38	1.94	.010	2
	Ashcroft	6	1.16		
	Mukasey	10	1.00		

### ***Hypothesis 3***

In hypothesis three I examined the Ashcroft era in depth by dividing it into two time periods, 2002-2005 and 2006-2007. I hypothesized that the latter half of the Ashcroft Guidelines era would feature a greater proportion of cases that used undercover operatives. Results supported the hypothesis and were statistically significant. I found that the proportion of cases using operatives dramatically increased from 16% during the 2002-2005 time frame to 64% during the 2006-2007 time frame.

**Table 4: Crosstabulation of *Ashcroft Era Divided in Infiltrated Cases***

<b>Era</b>	<b>No Operative</b>	<b>Operative Used</b>	<b>% Of Cases with Operative</b>
2002-2005	121	23	16 %
2006-2007	10	18	64 %

*Chi-Square = 30.319 Df = 1 p < .05*

### ***Hypothesis 4***

Table 5 represents crosstabulation results examining different categories of terrorism and levels of case infiltration. I hypothesized that Islamic Extremist cases would have the highest proportion of cases involving undercover operatives compared to cases in other categories of terrorism. The findings did not support hypothesis four. Statistically, Far-Left terrorism contained the highest proportion of cases that used undercover operatives, at 100%, however, there was only one Far-Left terrorism case in the sample. Islamic Extremist cases contained a nearly identical proportion of cases using undercover operatives as Far-Right cases at 24.0% and 24.2%, respectively. Notably, 62% of Environmental cases made use of undercover operatives.

**Table 5: Crosstabulation of *Category of Terrorism in Infiltrated Cases***

<b>Category</b>	<b>No Operative</b>	<b>Operative Used</b>	<b>% Of Cases with Operative</b>
Environmental	11	18	62 %
Far-Left	0	1	100 %
Far-Right	25	8	24.0 %
Islamic Extremist	19	6	24.2 %

*Chi-Square = 13.554 Df = 3 p < .05*

### ***Hypothesis 5***

In hypothesis five, I examined the intended target type in infiltrated cases across the three Attorney General Guidelines Eras. I hypothesized that the proportion of cases involving undercover operatives (both confidential informants and undercover agents) with the planned attacks targeting government and military facilities would be the lowest during the Mukasey era, while planned attacks against economic and business targets would be the highest during the Mukasey era. The results did not support the hypothesis. The Mukasey era did have the lowest proportion of infiltrated cases with the intended target being government or military facilities as well as the highest proportion of cases with business targets; however, the findings were not statistically significant at the .05 level.

**Table 6: Crosstabulation of *Intended Targets in Infiltrated Cases***

<b>Era</b>	<b>Government</b>	<b>Military</b>	<b>Business</b>
Pre-Ashcroft	46 %	5 %	15 %
Ashcroft	33 %	8 %	16 %
Mukasey	28 %	0 %	28 %

*Chi-Square = 9.069 Df = 10 Sig. = NS*

### ***Hypothesis 6***

Table 7 represents ANOVA results comparing the average level of assistance provided by undercover agents across the three Attorney General Guidelines Eras. In addition, I performed a

second ANOVA to measure the level of assistance provided by confidential informants. I hypothesized that the average level of assistance provided by either undercover agents or confidential informants would be the lowest during the Ashcroft Guidelines. The findings partially supported the hypothesis. I found that informants provided the highest level of assistance during the Ashcroft era and that this result was non-significant. In support of the hypothesis, I found that undercover agents had the lowest level of assistance during the Ashcroft era and that this was statistically significant.

**Table 7: ANOVA of Informant and Undercover Assistance**

	<b>Era</b>	<b>N</b>	<b>Mean</b>	<b>Sig.</b>	<b>Df</b>
<b>Informant</b>	Pre-Ashcroft	74	2.39	.520	2
	Ashcroft	36	2.55		
	Mukasey	9	2.11		
<b>Undercover</b>	Pre-Ashcroft	38	3.52	.012	2
	Ashcroft	5	2.40		
	Mukasey	7	2.57		

### ***Research Question 2***

***What impact, if any, have the changes in use of undercover agents and confidential informants had on case processing and outcomes?***

### ***Hypothesis 8***

I hypothesized that cases with undercover operatives would result in higher conviction rates than cases without undercover operatives and that conviction rates among the three Attorney General Guidelines eras would be highest in the Ashcroft era. I first used an independent samples t-test to find the conviction rate percentage in both types of cases (See Table 8a). The t-test results did not support the hypothesis and showed that the conviction rate in cases with undercover operatives was 75%, whereas the conviction rate in cases without

undercover operatives was 86% ( $p < .05$ ). Next, I ran a one-way ANOVA test to compare the conviction rate in infiltrated cases across the three Attorney General Guidelines eras (See Table 8b). The ANOVA results, however, were not statistically significant between Attorney General Guidelines eras ( $p > .05$ ). I then ran logistic regression controlling for count severity and prosecution strategy to measure the significance of undercover operatives on conviction rates (See Table 8c). The Hosmer/Lemeshow Chi-Square indicated that there were no fitness problems, but the percentage of explained variance did not increase beyond the initial model. Count severity was not significant when controlling for prosecution strategy and infiltration, and infiltration was not significant when controlling for count severity and prosecution strategy, though it was very close (.059) with a negative impact on the likelihood of conviction. The only significant variable was prosecution strategy; consistent with prior research, the more politicized the case became the greater the log odds that there would not be a conviction. The Nagelkerke value shows that only 6.5% of the variation in conviction outcomes in my model can be explained by count severity, prosecution strategy and infiltration.

**Table 8a: Independent Samples T-Test of Conviction Rates in Infiltrated Cases**

	<b>N</b>	<b>Mean</b>	<b>Std. Deviation</b>
<b>No Operative</b>	349	.86	.338
<b>Operative Used</b>	491	.75	.430

$t = 4.073 \quad Df = 838 \quad p < .05$

**Table 8b: ANOVA of Conviction Rates in Infiltrated Cases**

<b>Era</b>	<b>N</b>	<b>Mean</b>	<b>Sig.</b>	<b>Df</b>
Pre-Ashcroft	168	.78	.070	2
Ashcroft	19	.63		
Mukasey	10	1.00		

**Table 8c: Logistic Regression of Conviction Rates in Infiltrated Cases**

	<b>B</b>	<b>Df</b>	<b>Sig.</b>	<b>Exp(B)</b>
<b>Count Severity</b>	-.004	1	.620	.996
<b>Conventional</b>		2	.001	
<b>Innuendo</b>	-.681	1	.018	.506
<b>Explicit</b>	-1.009	1	.000	.364
<b>Infiltrate</b>	-.406	1	.059	.666

*Nagelkerke = .065*  
*Hosmer/Lemeshow Chi-Square = 9.656, Df = 8, p > .05*

### ***Hypothesis 9***

Table 9a represents independent samples t-test results of the average prison sentence length in months in cases with undercover operatives compared to cases without undercover operatives. I hypothesized that cases with undercover operatives would result in longer prison sentences than cases without undercover operatives (See Table 9a). The results support the hypothesis and are statistically significant, but I report these findings with a caveat. In order to properly measure sentence lengths, prior research indicates that I should control for overall case severity and prior criminal history. Ideally, I would have done so, but very few cases in the post-9/11 are available for these variables. I found that cases with undercover operatives have an average prison sentence of 336 months whereas cases that do not use undercover operatives have an average prison sentence of 73 months. Additionally, I ran a one-way ANOVA test to compare the prison sentence lengths in infiltrated cases across the three Attorney General Guidelines eras (See Table 9b). I hypothesized that cases during the Ashcroft era would have the shortest prison sentences among the three eras. The ANOVA results were statistically significant between Attorney General Guidelines eras with defendants in the Ashcroft era having the lowest average prison sentence length in months with an average of 72 months ( $p < .05$ ).

**Table 9a: Independent Samples T-Test of *Prison Sentences in Infiltrated Cases***

	<b>N</b>	<b>Mean</b>
<b>Cases No Operative</b>	302	73
<b>Cases With Operative</b>	433	336

$t = -3.844 \quad Df = 733 \quad p < .05$

**Table 9b: ANOVA of *Prison Sentences in Infiltrated Cases***

<b>Era</b>	<b>N</b>	<b>Mean</b>	<b>Sig.</b>	<b>Df</b>
Pre-Ashcroft	464	265	.000	2
Ashcroft	265	72		
Mukasey	90	115		

### ***Hypothesis 10***

In hypothesis ten, I examined prevented incidents in both cases with and without undercover operatives. I hypothesized that cases with undercover operatives would result in a higher percentage of prevented incidents than cases without undercover operatives. The findings support the hypothesis and were statistically significant (See Table 10). I found that 23% of cases without undercover operatives contained a prevented incident whereas 27% of cases with undercover operatives contained a prevented incident.

**Table 10: Crosstabulation of *Prevented Incidents and Infiltrated Cases***

	<b>Prevented Incidents</b>	<b>% of Cases Prevented</b>
<b>No Operative</b>	56	23 %
<b>Operative Used</b>	43	27 %

$Chi-Square = 44.626 \quad Df = 2 \quad p < .05$

## **VIII. Discussion**

The events of 9/11 were the stimulus needed to change America's counterterrorism efforts. As a response to that infamous day, some of the major changes the U.S. government made were policy related, most significantly the Ashcroft Attorney General Guidelines. The FBI's investigative scope was expanded through the Ashcroft Guidelines, ultimately changing

the mission of the FBI from a reactive to a proactive agency and making counterterrorism its top priority. The purpose of this study was to explore the relationship of policy changes on the use of undercover operatives. Specifically, this study sought to determine whether the Attorney General Guidelines that were implemented after 9/11 changed the use of undercover agents and confidential informants in federal terrorism cases. Additionally, this study had the goal of examining what impact, if any, the changes in use of undercover operatives had on case processing and outcomes. The results of my analyses were mixed in providing support for my hypotheses.

### ***Research Question 1***

My first research question was designed to explore the influence of the 2002 and 2008 Attorney General Guidelines in terrorism cases that used undercover agents and confidential informants. I predicted that the Ashcroft Guidelines era would have the lowest proportion of cases that used undercover operatives compared to the pre-Ashcroft Guidelines era and the Mukasey era. I found a statistically significant decrease in the proportion of cases that used undercover operatives from the pre-Ashcroft era to the Ashcroft era (64% to 23%). However, the Ashcroft era contained a slightly higher proportion of cases that used undercover operatives than the Mukasey era (23% to 22%). These findings suggest that the FBI's counterterrorism goals via the Ashcroft Guidelines to arrest and prosecute terrorists earlier and more often were successful. These results do not suggest, however, that by the time the Mukasey Guidelines came into effect, fear, driven by the 9/11 attacks that caused the early intervention and arrest mandates, had subsided returning infiltration strategies and levels to what they were pre 9/11. While the justice system may still be in a state of tightened coupling causing a low proportion of Mukasey era cases to contain undercover operatives, the findings may be reflective of an absence of cases that

await coding in the American Terrorism Study database. I ran a frequency distribution of the number of infiltrated cases by year. There were 9 infiltrated cases in 2010 and 6 infiltrated cases in 2011. These high numbers of infiltrated cases suggest that the Mukasey era may actually contain a higher proportion of cases that used undercover operatives than the Ashcroft era as there are numerous cases from the last five years still being coded and entered into the ATS database.

Regarding the average number of undercover agents and confidential informants used per case, I hypothesized that the Ashcroft era would have the lowest average number of undercover operatives used among the three eras. The results indicated cases in the Ashcroft era had neither the lowest average number of informants nor agents. In fact, Ashcroft era cases had the highest number of confidential informants as compared to the Mukasey era. After closer examination of the cases during this time period, I found 14 related cases where informants were used in 2006, and each of those cases featured eight confidential informants—the same informants. These 14 cases are collectively known as the “ELF Family,” and involved numerous defendants in multiple cases, some of whom turned state evidence and testified against their fellow Earth Liberation Front (ELF) members to mitigate their sentences. Thus, the ELF Family case study likely skews the number of informants per case, which makes the analysis of undercover agents a more accurate depiction of the average number of operatives used during the guidelines. Nonetheless, the Ashcroft era contained an average of 1.16 agents whereas the Mukasey era contained an average of 1.00 agents indicating a minimal change between time periods, at least among those cases currently coded. While the Ashcroft era did not contain the lowest average number of undercover agents, it was significantly less than the average number of agents used in the Pre-Ashcroft era (1.16 to 1.94 agents). This decrease from nearly 2 agents to 1 agent per case

is likely the result of early arrest and prosecution strategies brought on by the justice system being tightly coupled.

Turning to the category of terrorism, I hypothesized that Islamic Extremist cases would have the highest proportion of cases with undercover operatives compared to other categories of terrorism during the Ashcroft era. Not counting the Far-Left typology, as there was only one valid case, Environmental cases had the highest proportion, at 62%, whereas Far-Right and Islamic Extremist cases were proportionate to one another at 24.2% and 24.0%, respectively. It could be argued that the ELF Family cases skew results for this hypothesis as well. However, even by excluding the 14 ELF Family cases, the proportion of Environmental cases that used undercover operatives is still the highest at 26.6%. A possible explanation for why Environmental terrorism had the highest proportion of cases involving undercover operatives may be a reflection of the organizational structure and tactics of the Earth Liberation Front. ELF operates under a leaderless resistance model and the Ashcroft Guidelines changed the FBI's tactics from targeting group leaders prior to 9/11 to targeting subordinate group members after 9/11 (Joosse, 2007). With little to no established groups and/or group members to maintain loyalty to, it is likely easier for defendant's to turn state evidence on any other environmental terrorists they may know to receive a better sentence in court. Likewise, it is likely also easier for the FBI to establish informants to single individuals to gain their trust rather than attempting to gain the trust of an entire terrorist group. Thus, the FBI's post 9/11 counterterrorism strategy directly aligned with how environmental terrorists operated. Structural contextual theory would suggest that the FBI would have established undercover operatives in a greater proportion of Islamic extremist cases due to the involvement of Islamic extremists in the 9/11 attacks. However, the Ashcroft Guidelines demand for early intervention in terrorism cases aligned with

the tactics of environmental terrorists more so than Islamic extremists, represented by the higher proportion of environmental terrorism cases.

Concerning the intended target type in infiltrated cases, I hypothesized that the Mukasey era would have the lowest proportion of infiltrated cases that featured government and military facility targets, and that the Mukasey era cases would have the highest proportion of business targets. While there were no statistically significant differences between the three eras (sig. = .526) regarding actual targets, the Mukasey era did have the lowest proportion of infiltrated cases where the target in the case was a government or military facility. The Mukasey era cases also contained the highest proportion of cases where the target in the case was a business target. These findings, while not significant, coincide with prior literature on terrorist group tactics post 9/11. As Bergen et al (2011) found, terrorists have shifted from attacking hard targets such as American embassies, warships, and military bases, which are better defended after 9/11, to attacking soft targets such as economic and business organizations. While structural contextual theory does not explain terrorist behaviors, it may suggest why terrorist tactics have changed after 9/11. The fear from 9/11, with the Pentagon being attacked and potentially the nation's capitol being targeted, left the justice system believing that it was only a matter of time before the next government or military facility was attacked. Thus, when the justice system was tightly coupled, it worked together to increase security on both government and military facilities while security measures for economic and business organizations remain relatively unchanged.

When I examined the average level of assistance provided by confidential informants and undercover agents, I hypothesized that the Ashcroft era would have the lowest level of assistance for both types of undercover operatives. Regarding informants, there was no statistical difference between eras. Undercover agents, however, did provide the lowest average level of assistance

during the Ashcroft era, supporting my hypothesis, and providing evidence of structural contextual theory in effect after 9/11. This finding represents another example of how fear from the 9/11 attacks caused the criminal justice system to become tightly coupled. Undercover agents provided less assistance during the Ashcroft era, which represented a change in FBI investigations which stemming from the Ashcroft Guidelines demanding arrests earlier and more often, thus giving undercover agents less time to collect evidence.

### ***Research Question 2***

My second research question was created to measure what impact, if any, the changes in the use of undercover operatives had on case processing and outcomes. Looking at conviction rates, I hypothesized that cases with undercover operatives would have higher conviction rates than cases without operatives, and that the Ashcroft Guidelines era would have the highest rate of convictions among the three eras. None of my findings supported this hypothesis. Conviction rates were 11% higher in cases that did not use undercover operatives. Furthermore, results were not significant ( $p > .05$ ) concerning the conviction rates between Attorney General Guidelines eras. Additionally, when I examined conviction rates controlling for count severity and prosecution strategy I found that undercover operatives were not a significant factor. As previously stated, these findings are consistent with previous research in that the prosecution strategy is the most significant factor in determining conviction rates. Logically, as Shields (2012) suggests, if prosecutors have more evidence, in this case, via confidential informants and undercover agents, they may be more likely to pursue more politicized charges. This would explain the negative relationship I found between level of assistance provided and conviction rates. While the “early and often” arrest and prosecution strategies were brought on by the justice system being in a state of tightened coupling from fear from 9/11, it appears that quicker and

more frequent arrests and prosecutions did not significantly impact conviction rates, at least not in my sample of infiltrated cases. Thus, while the justice system being in a state of tightened coupling did not influence conviction rates in infiltrated cases, as prior research suggests, tightened coupling was in effect as the overall amount of plea rates and conviction rates increased after 9/11.

Turning to prison sentence lengths, I hypothesized that cases with undercover operatives would have longer prison sentences than cases without operatives and that among the three Attorney General Guidelines eras the Ashcroft era would have the shortest prison sentences. As mentioned in my findings section, I would have preferred to run a multivariate analysis controlling for count severity and prior criminal history, but the data are not available for those two variables after 9/11, due in large part to changes in the way courts prepare and report judgments. With this limitation in mind, the first part of my hypothesis was supported. Cases with undercover operatives had a statistically significant greater prison sentence lengths than cases without operatives (336 months compared to 73 months,  $p < .05$ ). This finding supports the notion that undercover operations involve more serious situations in which the undercover agent or informant is able to gather a greater amount of evidence to use against the defendant, ultimately resulting in a longer prison sentence. While this finding was significant, it does come with the caveat of needing to be tested with multivariate analysis. The ATS database contains a large proportion of cases that do not involve intended or actual targets. Instead, these cases involve individuals who have been prosecuted for what are referred to as ‘paper crimes’, or crimes involving immigration violations and financial fraud. These paper crime cases contain less severe charges that result in shorter prison sentences. Cases such as these indicate the necessity to measure overall case severity and to run further statistical analyses.

My last finding regarding prison sentences showed that the difference in prison sentence lengths between eras was significant with the Ashcroft Era containing the shortest average prison sentence length in months. Thus, it appears that structural contextual theory and the net-widening theory are helpful in predicting prison sentence lengths. Of course while my models derived from these theories are statistically significant, the theories themselves may indirectly influence statistical findings through the type of cases that are brought through the justice system. If the criminal justice system is in a state of tightened coupling with a wider net casted on crimes being investigated, then cases with undercover operatives will only continue to have greater prison sentence lengths than cases without operatives.

My last hypothesis analyzed case outcomes in terms of whether an incident was prevented in that case. Specifically, I hypothesized that cases with undercover operatives would result in a higher percentage of prevented incidents than cases without undercover operatives. The results were statistically significant and supported my hypothesis. There was a greater percentage of prevented incidents in cases with undercover operatives (27.6%) than there were in cases without operatives (23%). As presented, this finding shows that the time and resources put into undercover operations are successful in the FBI's highest priority of countering terrorism. However, this may not be the entire story. When coding prevented incidents, I used a conservative measure that only included cases that had no actual targets. The sample of prevented incidents was comprised of cases that only had intended targets that were never physically attacked, as apposed to cases that contained both intended targets and actual targets. By including cases with both intended and actual targets (mixed cases), the difference may be greater than my results indicate because mixed cases mask the true number of prevented attacks. Nonetheless, cases with undercover operatives result in a higher percentage of prevented

incidents than cases without operatives. This finding, along with my previous findings that prison sentences in cases with operatives are longer than prison sentences in cases without operatives, suggests that undercover operations are not only more successful in preventing terrorism incidents, but they are more successful in putting defendants behind bars for a longer period of time.

## **IX. Conclusion & Future Research**

The purpose of this study was to add to the limited body of empirical research that has been conducted on undercover operatives in federal terrorism cases. This study contributed to prior literature by focusing on the impact of policy changes on the use of undercover operatives. Specifically, the 2002 Ashcroft and 2008 Mukasey Attorney General Guidelines served as a defining line between when undercover operatives were used and how policy changes influenced undercover operations throughout different temporal periods.

Future research on undercover agents and confidential informants in federal terrorism cases has numerous possible avenues to explore. Expanding this study's findings, the addition of more cases into the ATS database would allow for more advanced statistical analyses into examining prison sentence lengths among infiltrated and non-infiltrated cases. Additionally, adding cases to the ATS database would allow greater insight into the Mukasey era and its influence on undercover operatives as the most recent year with infiltrated cases in the database is 2011. Another avenue for future research would be to examine the length of investigations in cases with undercover operatives versus cases without undercover operatives. By analyzing how long the government takes from the first day of the investigation to the day of arrest, the FBI may be able to better allocate time and resources in a more appropriate manner by balancing budget and safety issues.

## X. References:

- Boyns, D., & Ballard, J. D. (2004). Developing a sociological theory for the empirical understanding of terrorism. *The American Sociologist*, 35(2), 5-25.
- Clark, R. V., & Newman, G. R. (2009). Reducing the opportunities for terrorism: Applying the principles of situational crime prevention. In W. G. K. Werner (Ed.), *Terrorism and torture: An interdisciplinary perspective* (pp. 86-105). Cambridge: Cambridge University Press.
- Dahl, E. J. (2011). The plots that failed: Intelligence lessons learned from unsuccessful terrorist attacks against the United States. *Studies in Conflict & Terrorism*, 34(8), 621-648.
- 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.
- Department of Justice. (2002). *Remarks of Attorney General John Ashcroft*. Retrieved from <http://www.justice.gov/archive/ag/speeches/2002/53002agpreparedremarks.htm>
- Elliff, J.T. (1984). Attorney General's Guidelines for FBI investigations. *Cornell Law Review*, 69(4), 785-815.
- FBI Statutory Charter: Hearing before the Subcommittee on Administrative Practice and Procedure of the Committee of the Judiciary on the Judiciary on FBI statutory charter*. 95<sup>th</sup> Cong. 2 (1978).
- Federal Bureau of Investigation. (2007). *FY 2008 Authorization and budget request to Congress*. Department of Justice. Retrieved from <https://www.documentcloud.org/documents/238034-33-fbi-se-2.html>
- Federal Bureau of Investigation. (1999). *Terrorism in the United States*. Department of Justice. Retrieved for [http://www.fbi.gov/stats-services/publications/terror\\_99.pdf](http://www.fbi.gov/stats-services/publications/terror_99.pdf)
- Greenberg, K. (2011). *Terrorism trial report card: September 11, 2001-September 11, 2011*. New York: New York University School of Law.
- 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.
- Hewitt, C. (2014). Law enforcement tactics and their effectiveness in dealing with American terrorism: Organizations, autonomous cells, and lone wolves. *Terrorism and Political Violence*, 26(1), 58-68.

- Jackson, A. L., & Brown, M. (2007). Ensuring efficiency, interagency cooperation, and protection of civil liberties: Shifting from a traditional model of policing to an intelligence-led policing (ILP) paradigm. *Criminal Justice Studies*, 20(2), 111-129.
- Joosse, P. (2007). Leaderless resistance and ideological inclusion: The case of the Earth Liberation Front. *Terrorism and Political Violence*, 19(3), 351-368.
- Jones, A. (2009). 2008 FBI guidelines: Contradiction of original purpose. *Public Interest Law Journal*, 19, 137-174.
- Kaplan, E. H. (2012). OR forum: Intelligence operations research-The 2010 Philip McCord Morse lecture. *Operations Research*, 60(6), 1297-1309.
- Lipsky, M. (1980). *Street-level bureaucracy: Dilemmas of the individual in public services*. New York: Russell Sage Foundation.
- Mahan, S., & Griset, P. L. (2013). *Terrorism in perspective*. Sage Publications.
- Michel, L., & Herbeck, D. (2001). *American terrorist: Timothy McVeigh and the Oklahoma City bombing*. New York: HarperCollins.
- Moody, S., & Musheno, M. (2003). *Cops, teachers, counselors: Stories from the front lines of public service*. Ann Arbor: University of Michigan Press.
- Mueller, R. (2003). The new FBI: Protecting Americans against terrorism. *Notre Dame Journal of Law, Ethics, & Public Policy*, 19, 327-332.
- Office of the Attorney General. (2002a). *The Attorney General's guidelines on general crimes, racketeering enterprise and terrorism enterprise investigations*. (2002). Washington, D.C.: Office of Legal Policy.
- Office of the Attorney General. (2002b). *The Attorney General's guidelines regarding the use of confidential informants*. (2002). Washington, D.C.: Department of Justice.
- Office of the Attorney General. (2002c). *The Attorney General's guidelines on Federal Bureau of Investigation undercover operations*. Washington, D.C.: Office of Legal Policy.
- Office of the Attorney General. (2008). *The Attorney General's guidelines for domestic FBI operations*. (2008). Washington, D.C.: Dept. of Justice.
- Office of the Inspector General. (2005). *A Review of the FBI's handling of intelligence information related to the September 11 attacks*. Department of Justice.  
<http://www.justice.gov/oig/special/s0606/final.pdf>
- Oversight Hearing on Counterterrorism: Hearing Before the Senate Committee on the Judiciary*, 107<sup>th</sup> Cong. 187 (2003).

- Ratcliffe, J. H., & Guidetti, R. (2008). State police investigative structure and the adoption of intelligence-led policing. *Policing: An International Journal of Police Strategies & Management*, 31(1), 109-128.
- Schalch, M. E. (2003). *Intelligence reform: The "Phoenix" of 9/11?* Army War College Carlisle Barracks, Pennsylvania.
- Schmid, A. (2004). Frameworks for conceptualising terrorism. *Terrorism and Political Violence*, 16(2), 197–221.
- Schmid, A., & Jongman, A. (1988). *Political terrorism. A new guide to actors, authors, concepts, databases, theories and literature*. Amsterdam: North Holland Publishing Company.
- Shields, C., Damphousse, K., & Smith, B. (2009). How 9/11 changed the prosecution of terrorism. In M. J. Morgan (Ed.), *The impact of 9/11 and the new legal landscape: The day that changed everything?* (pp.125-144). New York, NY: Palgrave MacMillan.
- Shields, C. (2012). *American terrorism trials prosecutorial and defense strategies*. El Paso: LFB Scholarly Pub. LLC.
- Smith, B. (1994). *Terrorism in America: Pipe bombs and pipe dreams*. Albany, NY: State University of New York Press.
- Smith, B., & Damphousse, K. (1998). Terrorism, politics, and punishment: A test of structural-contextual theory and the "liberation hypothesis". *Criminology*, 36(1), 67-92.
- Strom, K. (2010). *Building on clues: Examining successes and failures in detecting U.S. terrorist plots, 1999-2009*. North Carolina: Institute for Homeland Security Solutions.
- Taylor, R. W., & Russell, A. L. (2012). The failure of police ‘fusion’ centers and the concept of a national intelligence sharing plan. *Police Practice and Research*, 13(2), 184-200.
- The 9/11 Commission. (2004). *The 9/11 commission report. Final report of the commission on terrorist attacks upon the United States*. New York: N.W. Norton & Company.
- Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act*, Pub. L. 107-56 (H.R. 3162), 115 Stat. 272, 107<sup>th</sup> Cong. 1 (2001).
- Walker, S. (1998). *Sense and nonsense about crime and drugs: A policy guide* (4th ed.). Belmont, CA: West/Wadsworth Publishing Company.
- Zegart, A. (2007). 9/11 and the FBI: The organizational roots of failure. *Intelligence and National Security*, 22(2), 165-184.

## **XI. End Notes**

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<sup>i</sup> <http://www.justice.gov/archive/ag/speeches/2002/53002agpreparedremarks.htm>

<sup>ii</sup> <http://www.justice.gov/archive/ag/speeches/2002/53002agpreparedremarks.htm>