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Exploring Change and Stability in Counterterrorism Policy, Prosecution, and Sentencing of Terrorists in America Over the Last Three Decades in the United States

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Exploring Change and Stability in Counterterrorism Policy, Prosecution, and Sentencing of
Terrorists in America Over the Last Three Decades in the United States

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

by

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Abstract

The purpose of the current study is to investigate the effects of legislation changes on how terrorists are adjudicated in American federal courts. The overarching question is: *how have prosecutorial and sentencing outcomes changed in response to homeland security policy shifts over the last few decades?* The project examines the impact of policy on changes to terrorists' sentencing in three time periods, marked by three major events: The 1993 World Trade Center Attack, the 1995 Oklahoma City Bombing, and the attack on the Twin Towers (9/11/2001). In addition to terrorists' demographic and background attributes (e.g., gender, age, terrorism category), the following sentencing variables were examined: USC Chapter codes, sentence length, count resolution and case resolution. Data were retrieved from the American Terrorism Study (ATS) and used to explore potential changes. The results support expectations that there has been a change to the prosecution and sentencing of terrorism across the last several decades.

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Chapter 1

Introduction

An increased threat of terrorism in the United States in recent years has challenged law enforcement and Homeland Security officials to recognize new forms of terrorism and devise new counterterrorism strategies. Domestic terrorism prior to the 1990's consisted of violent extremism from the extreme far-left and in retaliation for American colonialist and capitalist policies, and by extreme far-right anti-government and racialist groups (Hewitt, 2003; Smith & Orvis, 1993). However, by the late 1990's, the threats of extreme far-left groups diminished, and the extreme far-rightists transitioned to forms of lone actor terrorism (Gruenewald, Chermak, & Freilich, 2013; Prats, Raymond, & Gasman, 2019). This was especially true after the 1995 Oklahoma City Bombing, which resulted in 168 deaths and more than 600 reported injuries (Michel & Herbeck, 2002). This unexpected and unprecedented act of terrorism highlighted the multifaceted landscape of terrorist threats in the U.S. through both policy discussions and government reform.

The 9/11 terrorist attacks by the radical Islamic terrorist group Al Qaeda also shifted Americans' view of terrorism to the realization that foreign terrorist attacks could occur on American soil (Maguire & King, 2011). With a goal of increasing the understanding of and appropriate response to emerging terrorist threats, the 9/11 Commission Report suggested that the goals of homeland security should be to "...attack terrorists and their organizations; prevent the continued growth of Islamist terrorism; and protect against and prepare for terrorist attacks" (National Commission on Terrorist Attacks, 2004). Recognizing, reorienting, retraining, and responding to new and different terrorism threats is difficult and costly. According to Mueller and Stewart (2014), the United States spent approximately \$25 billion annually fighting

terrorism prior to 9/11/2001. Spending increased drastically to an estimated \$2.8 trillion on counterterrorism from 2002 to 2017 (Counterterrorism Spending, 2018). These substantial financial commitments reflect the importance that the United States government places on preventing and responding to terrorism.

Evolving terrorism threats and attacks have spurred reviews of and changes to how law enforcement and intelligence communities respond to terrorism. Some of the most notable changes have been implemented in the last 25 years. Passed following the 1995 Oklahoma City bombing, the 1996 Antiterrorism and Effective Death Penalty Act (Antiterrorism and Effective Death Penalty Act, 1996) focused primarily on the material support for terrorist organizations. The 2001 USA Patriot Act (USA Patriot Act, 2001) then focused on the surveillance and investigation of terrorism. Later, the 2002 Homeland Security Act established the Department of Homeland Security (Homeland Security Act, 2002).

There have also been several changes in strategies and methods of terrorism investigations reflected in changes to the United States Attorney General Guidelines (AG Guidelines) (The Attorney General's Guidelines for Domestic FBI Operations, 2008). In general, these shifts reflect a transition from a reactive approach to increasing terrorist threats and attacks to an emphasis on the need to implement a more proactive, preventative approach. Additionally, this shift provides law enforcement agencies with more tools and strategies to effectively prevent and respond to terrorism actions and provides court actors with more tools for prosecuting and sentencing terrorists operating in the United States.

Despite major shifts in the homeland security enterprise over the last few decades, how these shifts have potentially shaped court responses to terrorism, has not been well documented. More than 25 years ago, Smith and Orvis (1993) examined the prosecution of terrorism in the

United States after the creation of the FBI's Counterterrorism Program in 1983 and the RICO Act of 1970 were passed. Others have since examined prosecutorial decision-making and sentencing of those federally charged with committing terrorism and terrorism-related activities (Shields & Damphousse, 2007; Smith & Damphousse, 1996; 1998). However, there has been no study since Smith and Orvis (1993) to examine the effects of legislative changes on federal court responses to terrorism and terrorism-related charges. Therefore, little is known about the prosecutorial strategies used, or if terrorists have been punished more or less harshly over time.

Federal legislation and changes to AG Guidelines were designed to empower criminal justice actors to more proactively prevent and effectively respond to terrorism. These reforms have been expensive, and, in some instances, controversial threats to civil liberties (Chang, 2011). For these reasons, it is important to examine how changes to legislation and homeland security policies are associated with change and stability in the adjudication of terrorists and justice for victims of terrorism. In doing so, we may more effectively inform future policy aimed at more effectively preventing and responding to terrorism in the United States.

The purpose of the current study is to document legislation changes and their potential effects on changes and stability in the adjudication of terrorists in American federal courts. The overarching question is: *have prosecutorial and sentencing outcomes changed as homeland security policy and practice have shifted over the last few decades?* Building on previous works (Smith & Orvis, 1993; Smith, 1994; Shields, & Damphousse, 2011), data from the American Terrorism Study (ATS) are used to comparatively examine how prosecutorial and sentencing outcomes vary across three different eras in America's counterterrorism.

The remainder of this study unfolds in the following way. First, existing literature on terrorism and counterterrorism in the United States were reviewed, with a specific focus on

major attacks and subsequent homeland security policies that have occurred over the last forty years. Second, data extracted for this study from the ATS are described and methodological and analytical approaches are provided. Third, findings are presented. Fourth, and finally, a discussion of the key findings and their implications are provided along with possible explanations and potential influences on the outcomes.

Chapter 2

Theoretical Orientation and Literature Review

This chapter provides key definitions and presents the theoretical framework for the study. Additionally, several major attacks, their legislative responses, and the changes that have occurred in law enforcement as a response to them are described. Lastly, this chapter reviews prior research most relevant to the current study.

Defining Terrorism

Understanding terrorism begins with recognition that it is not easy to define. The literature certainly bears this out. Among various agencies and lawmakers, there are a wide array of definitions used to define terrorism. For this study, the Federal Bureau of Investigation's (FBI) definition of terrorism is used. The FBI defines terrorism as "the unlawful use of force and 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" (U.S. Department of Justice, 2010, para. 9).

International terrorism consists of groups or individuals correlated with foreign terrorist organizations or nations (FBI, 2016). Until the early 1990's, the threat of international terrorism occurring on American soil was perceived as low. After the 1993 World Trade Center attack it became evident that the United States was not immune to international terrorists attacking on its soil. The attacks on 9/11 only confirmed this notion. These attacks awoke Americans to a very real threat of radical Islamic terrorism in the United States, and it led to a critical turning point in combating terrorism for the country and the FBI. On the other hand, *domestic terrorism* involves individuals or groups inspired by movements originating in the United States that affirm extremist ideologies of religious, political, racial, social, or an environmental nature (FBI, 2016).

Overall, international terrorism is usually associated with radical Islamic terrorism, while domestic terrorism usually encompasses left and right wing movements.

There are several categories of terrorist ideologies that are at the focus of the current study, including: far-left terrorism, far-right terrorism, and radical Islamic terrorism. Far-left terrorists are those who profess revolutionary socialist doctrine who view themselves as protectors of the people against the “dehumanizing effects” of capitalism and imperialism. Far-right terrorists typically maintain principles of racial supremacy, anti-government, and survivalist ideologies. Lastly, radical Islamic terrorism centers around the Muslim duty of jihad, the duty to wage a holy war through direct action against enemies of Islam, both internally and externally (Hashmi, 2012; Mohapatra, 2002).

Theoretical Framework

Terrorism often leads to panic for the public and a sense of urgency for policy makers. With increased fear, also comes increased skepticism in the effectiveness of the government and its methods of protecting the country and the citizens of the United States (Institute of Medicine, 2003). After a major terrorism event, such as the 1993 World Trade Center attack, the Oklahoma City bombing, and the 9/11 attacks, it is expected that the public will perceive higher levels of danger and to increase pressure on the government and policy makers to mitigate such threats. Existing criminological theory supports this notion.

Hagan’s (1989) structural contextual theory suggests that major events create instances in which the full extent of the law is applied through a process called *couple tightening* (see also Shields & Damphousse, 2006 p. 180). This theory suggests that when the government’s focus is directed at specific anti-crime goals, the government takes a more proactive approach in apprehending individuals to *tighten* laws and regulations regarding criminal justice goals (Hagen

1989). This *coupling effect* occurs when some types of criminal cases receive high priority for sentencing and investigations. For this study, a potential result of *couple tightening* is a higher frequency of terrorist indictments and inditees, as well as an increase in the average sentence length in the aftermath of these monumental events. Proactive responses to prioritized crime prevention goals can also lead to net widening (Walker, 2005). Net widening places more individuals who commit relatively minor offenses in the criminal justice system, as a larger “net” is cast to provide the notion that the government is successfully reducing terrorism (Klein, 1979, Nadel et al., 2018).

In this study, three time periods are thought to potentially result in couple tightening and net widening in the United States: 1980-1994, 1995-2000, and 2001-present. These time periods are roughly delineated by major terrorist events including the 1993 World Trade Center bombing, the 1995 Oklahoma City Bombing, and the 9/11 terrorist attacks. It is known that these incidents were followed by changes in the nature of attacks, as well as shifts in policy and new legislation. How these shifts translate to change and stability in judicial responses to terrorism over time has yet to be adequately explored.

Major Terrorism Events

1993 World Trade Center Attack. In February of 1993, the parking garage of the World Trade Center was bombed, demarcating the targeting of United States civilians by international terrorists. The attack had a major impact on counterterrorism and ushered in a new era of terrorism, in which civilians were targeted, having immediate suspects on counterterrorism policy. Terrorists actors included Ramzi Yousef, Mohammad Salameh, Mahmud Abouhalima, Nidal Ayyad, and Ahmad Mohammad Ajaj. Together, they built a 1,500-pound bomb by mixing at least 13 different chemicals (Parachini, 2000). On February 26th, they drove a rental van into

the basement of the World Trade Center and set a timer to detonate the bomb. The explosion created a 200 by 100-foot-wide crater that was seven stories deep. The smoke from the bomb rose to the 46th floor, crumbling the parking garage, killing 6 and injuring more than 1,000 individuals, and resulting in more than \$300 million in property damages (Parachini, 2000).

After the attack, Nidal Ayyad called the *New York Daily* tip line, claiming responsibility for the attack in the name of the “Liberation Army” (Parachini, 2000). Additionally, he sent a letter to the *New York Times* claiming that “the American people are responsible for the actions of their government, and they must question all of the crimes that their government is committing against other people” (Parachini, 2000, p. 191). For the first time, international terrorism was no longer just a threat, but a reality for the United States. Previously, Americans felt as if they were immune to this kind of attack (National Commission on Terrorist Attacks, 2004).

Several policy changes were made following the 1993 attack. One of the major changes occurred in passenger prescreening for flights. Air carriers were to implement an FAA-approved computerized algorithm created with the goal of identifying passengers whose profile suggested they might be of more than a minimal risk to aircrafts. While the algorithm included hijacker profile data, only passengers checking bags were eligible to be selected to be examined further (National Commission on Terrorist Attacks, 2004). This policy change suggested that non-suicide sabotage was the primary threat to civil airplanes. Additionally, seed money was provided to the State Department's Consular Affairs Bureau to automate its terrorist watchlist. This watchlist was used by consular officers and border inspectors. A new "lookout" unit for watch-listing suspected terrorists was created to aid the FBI in determining how to deal with suspected terrorists when they appeared at ports of entry.

1995 Oklahoma City Bombing. On April 19, 1995, at 9:02 AM, Timothy McVeigh set off the bombs that exploded outside of Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma. There were 169 fatalities, including 19 children, and 675 injuries (Linder, 2006). This explosion cost the city more than \$652 million and is considered one of the largest domestic terrorism acts ever in the United States (Linder, 2006). The masterminds of this explosion were Timothy McVeigh, Terry Nichols, and Michael Fortier.

McVeigh drove a Ryder rental truck loaded with a diesel fuel- fertilizer bomb (nearly 5,000 lbs. of explosives) and left it outside the Murrah Building. Inside of the Murrah Federal Building housed fourteen government agencies. Ninety-eight of the victims were government officials and agents. There were two events that occurred on United States soil that primarily fueled McVeigh's hatred for the government. One occurred in 1992 when separatist Randy Weaver engaged in a standoff with federal agents at his home in Ruby Ridge, Idaho after being suspected of selling illegal, sawed-off shotguns. His wife and child died (Linder, 2006). The second event was in 1993 when agents surrounded the compound of Branch Davidians religious cult to arrest the leader, David Koresh. He was wanted on illegal weapons charges (Ward & Pilat, 2016). The fiery standoff with federal agents ended in dozens of Davidians and law enforcement deaths.

McVeigh began planning his attack in 1994, after the siege on the Davidians. He planned to execute the attack on the Murrah building on the 2nd anniversary of the government's infiltration of the compound. He was arrested during a traffic stop soon after the bombing for unrelated charges and unlawfully carrying a handgun (Sage Encyclopedia of Terrorism, 2011). Within days, McVeigh was suspected of being the Oklahoma City Bombing, the FBI finding that his clothes were covered in the explosive residue and earplugs in his pocket. Additionally, the

FBI found receipts of purchase for 2,000 lbs. of fertilizer that was used in making the bomb (Sage Encyclopedia of Terrorism, 2011).

McVeigh's trial began in April 1997 and after a 23-hour deliberation he was convicted on all charges on June 2, 1997 (Nye, 2013). His 11 charges included: conspiring to use a weapon of mass destruction to kill people and destroy federal property; using a weapon of mass destruction that caused death and injury; the malicious destruction of federal property by explosives; and eight counts of first-degree murder of federal law enforcement officers. McVeigh was sentenced to death, which was carried out by lethal injection on June 11, 2001. Michael Fortier later agreed to testify against McVeigh and Nichols. He had helped finance the attack by selling guns that McVeigh and Nichols had stolen. In doing so, he received a reduced sentence of 12 years for aiding the government in the matter. He was charged and convicted of failing to report the planned attack and for lying to the FBI. He has since been placed in the witness protection program. Nichols surrendered himself in Herrington, Kansas. He was found guilty of the same 11 crimes as McVeigh and is now serving life without parole.

The 9/11 Attacks. On September 11, 2001, hijacked commercial airlines crashed into the World Trade Center and the Pentagon. American Airlines Flight 11 had left the Boston Airport at 8:00 A.M. and was carrying 11 passengers (Datta, 2015). The plane crashed into the WTC at 8:45 A.M. At 8:28 A.M., a hijacker on the plane told an air traffic controller, "We have more planes, we have other planes." United Airlines Flight 175 took off from Boston and struck the South tower at 9:03 A.M. American Airlines Flight 77 crashed into the Pentagon soon after at 9:43 A.M.. Additionally, United Airlines Flight 93 is believed to have been heading to attack the Capitol when passengers acted, crashing the plane into the ground in Shanksville, Pennsylvania. This series of events proved to be the most destructive terrorist attack in world history. Nearly

3,000 people died (Holden et al., 2009; Morgan, 2004). In 2004, the National Commission on Terrorism Attacks upon the United States found that rather than political interests being a key motivator for terrorists, fanaticism seemed to be more likely the motivation behind these unrestrained attacks on America (Morgan, 2004). The 9/11 attack's effects ushered in the modern era of homeland security.

Responses to Terrorism

In the aftermath of the 1993 World Trade Center Attack and the 1995 Oklahoma City Bombing, Congress passed the 1996 Anti-terrorism and Effective Death Penalty Act (AEDPA) that focused on limiting the procedural and substantive scope of writs of habeas corpus. It also enacted mandatory victim restitution, as well as allowed the government to designate Foreign Terrorist Organizations (FTO's) and punish those who support these organizations (104th Congress, 1996). Additionally, AEDPA elevated certain terrorism related crimes as federal offenses, such as immigration and providing material support to terrorists, and imposed harsher sentences, exposing defendants to the full investigative scope of the federal government (Carson, 2017; Shields, 2015).

Before 9/11, terrorism financing was of little concern to the FBI (Eckert, 2008). There were no methods of collecting data of terrorism financing (Yager, 2005). In the wake of 9/11, the government realized that there was much to be evaluated when it comes to the methods of funding terrorism. In particular, the FBI found that the use of material support was becoming increasingly self-sufficient through the exploitation of funding that did not require ideological sympathy, such as charity (Giraldo & Trinkunas, 2007).

Additional statutes (18 USC 2339A) were established in 2008, allowing prosecutors to target terrorists and investigators to interrupt the planning of terrorists while in the early plotting

stages (DOJ, 2008a). The FBI became increasingly competent in seizing assets and intercepting wire transfers between terrorism-based organizations and individuals. As a response, terrorists began turning to a plethora of conventional crimes to obtain funds (Passas, 2007; Williams, 2007). The common conventional crimes utilized were ones in which skill and expertise were essential. For example, smuggling and arms emerged as a significant way to secure funds for terrorism. After material support became a focal point, Material Support for Terrorists (18 USC 2339A) and Material Support for Terrorist Groups (18 USC 2339B) became the two of the most frequently indicted charges for radical Islamic terrorism (Shields et al., 2015).

The USA Patriot Act. The Patriot Act was developed less than 6 weeks after 9/11 as a response to the attack. The USA Patriot Act (2001) expanded the definitions of material support from those in the AEDPA of 1996. This included any type of support that had been provided to documented organizations such as humanitarian aid, expert advice, services, and political advocacy (Shields et al., 2015). The USA Patriot Act also allowed for additional wiretapping and surveillance methods by the federal government and gave greater authority to the Attorney General to detain and deport aliens thought to have terrorism ties (Lutz & Ulmschneider, 2019; USA Patriot Act, 2001). Moreover, the act increased the maximum imprisonment from 10 to 15 years, or life in prison if death resulted from the incident. Also, attempts and conspiracy faced the same punishments as a substantive violation (Shields, et al., 2015).

Attorney General Guidelines. Changes to the Attorney General Guidelines over the last several decades have played an important role in how terrorism is investigated. The United States Attorney General is a presidential cabinet level appointment who directs the Department of Justice and has an enormous impact on counterterrorism efforts (Shields, 2012). Since 1976, The Attorney General Guidelines have established the guidelines for FBI investigations for all

federal crimes. The United States Attorney General (AG) Guidelines are used by the FBI during investigations and in establishing consistent policies during these investigations (The Attorney General's Guidelines for Domestic FBI Operations, 2008). Smith (1994) states that these guidelines have been as important to reducing terrorism as are the changing definitions of terrorism by the FBI. These guidelines provide direction in how evidence is gathered, as well as how to conduct investigations and share information. There have been several changes throughout the years that have been made to the AG guidelines to prevent terrorism.

There were several significant changes in Attorney General Guidelines prior to 9/11. These include the Edward Levi Attorney General Guidelines in 1976 and the William French Smith Guidelines of 1983 that developed the standards by which internal security investigations could be initiated, as well as the length of time the investigations could last (Hearings Before the Subcommittee on Administrative Practice, 1978). The guidelines had a large impact on the number of domestic security investigations, falling from more than 20,000 in 1973 to less than 200 in 1976 (Elliff, 1979). Under the new guidelines, the FBI followed a very reactive stance towards combating terrorist groups. Investigations of terrorist groups only occurring when agents were able to establish a conventional criminal predicate (Shields, et al., 2015). The Levi Guidelines were effective from 1976 until 1982.

Next, the William French Smith Attorney General Guidelines were implemented in 1983 and lasted until September 11, 2001. The guidelines allowed the FBI to investigate terror groups for longer periods of time than a general crimes investigation. After these guidelines were developed, the FBI began a series of counterterrorism initiatives. These included the creation of counterterrorism task forces around the United States to target specific, regional threats. These initiatives proved to be very successful. Far-leftist groups like the Weather 21 Underground, the

May 19th Communist Organization, the United Freedom Front, and Puerto Rican groups, the Macheteros and the FALN, were obliterated through arrests, indictments, and convictions in federal courts (Smith et al., 2011). However, following the 9/11 attacks another shift in AG Guidelines occurred.

After the 9/11 attacks, the John Ashcroft Attorney General Guidelines changed to focus on intercepting and interrupting terror groups before they could plan and execute an attack (Deflem, 2004; Enders & Su, 2007). The Ashcroft guidelines loosened restrictions that had been placed on the FBI by shifting the agency's role from investigative to intelligence based (Ashcroft, 2002). This change allowed intelligence to more easily be shared across varying government agencies (Ashcroft, 2002). The Ashcroft Guidelines also allowed the Special Agent in Charge to extend investigations without additional authorization from the FBI Headquarters (Ashcroft, 2002; Shields et al., 2015). More changes occurred on December 1, 2008 with the Mukasey Attorney General Guidelines (Schneider, 2015; Shields, et al 2015; The Attorney General's Guidelines for Domestic FBI Operations, 2008). The Mukasey Guidelines continued to allow for a more proactive approach to investigations of terror groups by imposing fewer restrictions on the FBI. The guidelines outlined three groups of investigations, including assessments, predicated investigations, and enterprise investigations. The assessment investigations were to be used to detect and prevent threats towards national security or federal crimes. To obtain authorization, there simply must be an "authorized purpose" and requiring no approval by supervisors (Shields, et al., 2009). The predicated investigations were more restrictive in that they required approval from a Special Agent in Charge or by an official from the FBI Headquarters. These investigations required "allegations, reports, facts or circumstances indicative of possible criminal or national security threatening activity" (The Attorney General's

Guidelines for Domestic FBI Operations, 2008, p.18). Full investigations, under these new guidelines have no time limit. However, preliminary investigations have a limit of 6 months unless a 6-month extension is approved by a SAC or FBI Headquarters approves an even longer extension. Lastly, enterprise investigations are a type of full investigation, in which the structure, scope, and nature of groups or organized syndicates are examined. The focus is groups that are involved in racketeering, terrorism, or threats to national security and require factual predication.

Joint Terrorism Task Force (JTTF). After 9/11, the number of joint terrorism task forces increased across the nation to combat terrorist organizations' recruitment, longevity, and successfulness. The first JTTF was established in New York City in 1980. Today, there are 107 JTTF's in the United States and serve as America's front line of fighting terrorism. They consist of "small cells" of highly trained locally based, passionately committed investigators, analysts, linguists, SWAT experts, and other specialists from dozens of United States law enforcement and intelligence agencies (FBI Joint Terrorism, 2016). The purpose of this task force is to gather evidence, chase down leads in terrorism crimes, make arrests, provide specialized security for certain events, collect and share intelligence with agencies, and respond to threats or incidents of terrorism (FBI Joint Terrorism, 2016.; Maguire & King, 2011).

Gaps in Research

Terrorism is an ever-evolving phenomenon and so are the investigative and court responses to terrorism. While much has been learned about terrorism in the United States over the last 20 years, several questions about responses to terrorism remain. For example, while Smith and Orvis (1993) previously reported the prevalence of certain statutes used when prosecuting terrorism, there have been no studies since that identify the statutes that are currently being used. Have prosecutors become more reliant on different statutes over the course of time?

As a result of these choices, have terrorists been punished more or less harshly over the course of time? Have outcomes and plea deals of terrorism cases changed over time? The answers to these questions are imperative for learning the effectiveness of America's government and federal court system. This thesis begins to answer these important questions by examining the correlates of court responses to terrorism in the United States over the three previously mentioned time periods: 1980-1994, 1995-2000, and 2001- 2017.

Chapter 3

Data and Method

The purpose of this project is to examine the relationship between policy changes and the subsequent prosecution after three significant terrorism events in the United States. This project, based on the work of Smith and Orvis (1993), includes more recent terrorist events and responses. It is expected that as society and the government have experienced high profile cases and terrorism, criminal justice responses to terrorism have changed over time. In particular, I expect that the criminal justice system's net will widen after major terrorist events resulting in an increase in less serious terrorism-related cases. First, such changes will result in more guilty pleas. Second, this will result in reduced sentences over time.

The American Terrorism Study

For this project, the American Terrorism Study (ATS) is used, including data on all closed federal court cases that involve persons indicted for "terrorism or terrorism related" activities from FBI investigations that fall under the counterterrorism programs. ATS data encompass data associated with radical Islamic, far-left, far-right, and environmental movements (Smith, et al., 2017). Variables capture demographic attributes, incident attributes, and case outcomes.

Variables

Data for this study is divided into three times periods. The grouping variable **terrorism indictment year** is measured by three categories (1) 1980-1994, (2) 1995-2000, and (3) 2001-2017. These time periods capture key changes in AG guidelines and legislation following terrorist attacks. Several background variables are also included in the current study. **Defendant gender** is coded as a dichotomous variable, where females are coded as '1,' while male is coded

as ‘2.’ **Defendant age** was recoded into 7 categorical groups, where 1= teenage years (17-19 years old), 2= 20-29 years old, 3= 30-39 years old, 4= 40-49 years old, 5=50-59 years old, 6= 60-69 years old, 7= 70-79 years old, and 8= 80-89 years old. **Terrorism category** is coded into three groups, consisting of *far-left* (1), *far-right* (2), and *international terrorism* (3). The *far-left* category included members of FALN, El Rukn, May 19 Communists Organizations, United Freedom Front, Provisional Party of Communists, New African Freedom Front, and the Macheteros. The *far-right* includes members of Aryan Nations, Arizona Patriots, Covenant Sword and Arm of the Lord, The Order, The Order II, Posse Comitatus, Ku Klux Klan, and the White Patriot Party. Lastly, the *international group* consisting of Islamic extremists groups and nationalists/ separatists included the Provisional IRA, Omega 7, Japanese Red Army, Libyans, and Palestinian/ Syrians, along with a large number of AQAM and ISIS members.

Several case outcome variables are also captured. **Case resolution** is measure as “convicted” (1) or “not convicted” (2) of any charge based on USC Chapter codes. **USC Chapter Code** is measured as the lead crime of the terrorism cases. The top 10 most frequently used statues include Terrorism (22.6%), Firearms (13.1%), Racketeering (11.4%), Conspiracy (11%), Fraud or false statements (8.3%), Drug abuse prevention (7.4%), Explosive materials (7.4%), Machine guns, destructive devices, and other firearms (6.7%), RICO (6..1%), and Mail fraud (6.0%) as lead charges. These top 10 were then condensed down into 3 groups: *conventional nonviolent crimes* (1), consisting of racketeering, *RICO*, drug abuse prevention and control, fraud or false statements, and mail fraud, and *conventional violent crimes and* (2), consisting of firearms, explosive materials, and machine guns, destructive devices, and other firearms, *terrorism or similar* (3).

The variable **sentence length** was coded into three groups. Group one, consisting of 0-60 months was coded as '1,' group two, consisting of 61-240 months was coded as '2,' and group three, consisting of more than 241 months was coded as '3.'

Chapter 4

Findings

This chapter presents the descriptive findings followed by the bivariate findings.

Descriptive Findings

The average age for defendants in this study is approximately 32 years old. Those in their 30's have the highest frequency of being indicted in a terrorism related charge, making up 28.6% of all indictees. The 80-year-old group has the lowest frequency with 4 indictees, or .2% of the sample. The 20-year-old age group has the next highest frequency with 27.6% of indictees, followed by the 40-year-old age group with 21% of the indictees. The 50-year-old age group makes up 13.1% of the defendant sample. The other age groups combined make up less than 10% of the total indictees (teens, 60's, and 70's).

Table 1. Defendant Background Attributes		
	Frequency (n)	Percent
Age at Arrest		
Teenagers	43	2.5
20's	474	27.6
30's	491	28.6
40's	361	21.0
50's	225	13.1
60's	90	5.2
70's	27	1.6
80's	4	0.2
Gender		
Female	173	9.2
Male	1708	90.8
Terrorism Category		
Far-left	237	12.7
Far-right	811	43.5

International	816	43.8
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When examining gender, the study finds that only 9.2% of the indictees across all eras were women, while men make up 90.8% of those indicted for terrorism related charges. In addition, 43.8% of those indicted under terrorism related charges fall in the *international* category, followed closely by 43.5% of the indictees who are in the *far-right* category. Only 12.7% of those in the study were *far-left*.

This study finds that the majority of defendants were ultimately convicted of their alleged crimes. Approximately 88% of cases resulted in convictions. Conventional, nonviolent crimes make up 42.5% of lead counts, while conventional, violent crimes make up 31.4% of lead counts. Only 26.1% of indictees' lead counts are for terrorism or similar charges.

Table 2. Defendant Case Outcomes		
	Frequency (n)	Percent
Case Resolution		
Not convicted	196	11.4
Convicted	1522	88.6
USC Chapter Code		
Conventional non-violent	470	42.5
Conventional violent	347	31.4
Terrorism or similar	289	26.1
Sentence Months		
1-60 Months	555	44.0
61-240 months	476	37.7
241+ months	231	18.3
Count Resolution		
Plead Guilty	1006	58.6
Trial Conviction	516	30.0
Dismissal Due to Plea	104	6.1

Acquittal or Mistrial	92	5.4
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This study finds that the sentence length of 1-60 months has the highest frequency with 44% of the indictees receiving this sentence. Approximately 37% of indictees received 61-240 months, and only 18.3% receive the highest sentence of 241+ months. When looking at case resolution at the defendant level, the majority of those indicted plead guilty (58.6%). Thirty percent overall were convicted at trial, and only 6.1% were dismissed due to plea, and 5.4% of defendants received an acquittal or mistrial.

Bivariate Findings

From 1980-1994, the mean indictee age is 36.8 years old, becoming relatively older over time, ranging from approximately 36 to 39 years old across all time periods. When looking at gender across time periods, the study finds that the highest percentage of women involved in terrorism cases occurred between 1995 and 2000, with 13.1% of all indictees being women. Nonetheless, males made up most of all defendants across the three eras.

There was a precipitous increase over the three eras in radical Islamic cases. From only 9.2% of indictees during 1980-1994, to 30.1% during 1995-2000, and 53.8% from 2001-2017 era. On the contrary, the table reveals a decrease in far-left cases from 49.4% in the first era, to 1.1% in the second, and 5.4% in the final era. Additionally, 41.4% of the cases during 1980-1994 were far-right cases, while there were jumps to 69.75% of these cases in the second era and then back down to 40.8% of the cases in the 2001-2017 era.

Table 3. Bivariate Findings: Defendant Background Attributes				
	1980-1994	1995-2000	2001-2017	Chi² or Anova
	Percent/Mean	Percent/Mean	Percent/Mean	p value
Age at Arrest (Mean)	36.8	38.9	38.6	.000
Gender				.109
Female	10.1% (n=35)	13.1% (n=23)	8.5% (n=115)	
Male	89.9% (n=310)	86.9% (n=153)	91.5% (n=1245)	
Terrorism Category				.000
Far-left	49.4% (n=161)	1.1% (n=2)	5.4% (n=74)	
Far-right	41.4% (n=135)	68.8% (n=121)	40.7% (n=555)	
International	9.2% (n=30)	30.1% (n=53)	53.8% (n=733)	

As shown in Table 4, the period from 1995-2000 had the highest rate on convictions of the three time periods with 65.8%. This era is followed by 2001-2017, with a 55.1% conviction rate and then 1980-1994 with a 44.8% conviction rate. During these first two periods, the majority of counts resulted in trial convictions, while most counts resulted in a guilty plea during the final period.

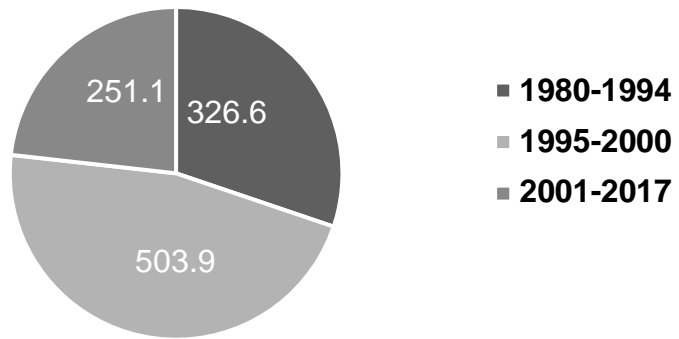
Findings reveal significant differences in how defendants were charged across time periods. There was an increase over time in the proportion of defendants charged with terrorism or some similar charge across all three eras. Terrorism or similar charges jumped from 1.5% in the first era, to 34.1% in the final era. Conventional, violent charges were filed at the highest rate during the second era, with 59.2% of the indictees being charged with a conventional violent

crime based on the USC Chapter Code. Conventional violent crime charges were lowest from the final era, with only 26.8% of indictees being charged in this way during this time. Lastly, conventional, nonviolent crime was highest from the first era with 62.2% of indictees being charged with a nonviolent crime as their lead charge. Conventional, nonviolent crimes were lowest in the second era with only 29.6% followed by the third era with 39.2%.

Table 4. Bivariate Findings: Count Level Outcomes				
	1980-1994	1995-2000	2001-2017	Chi² or Anova
	Percent/Mean	Percent/Mean	Percent/Mean	p value
Count Resolution				.000
Convicted	44.8% (n=779)	65.8% (n=1085)	55.1% (n=3923)	
Not Convicted	55.2% (n=960)	34.2% (n=556)	44.9% (n=3094)	
USC Chapter Code				.000
Conventional non-violent	62.2% (n=125)	29.6% (n=29)	39.2% (n=316)	
Conventional violent	36.3% (n=83)	59.2% (n=58)	26.8% (n=216)	
Terrorism or similar	1.5% (n=3)	11.2% (n=11)	34.1% (n=275)	

Importantly, as shown in Figure 1, there are significant differences in the severity of sentences across time periods. When examining the time periods, 95% of indictees during the first era received a sentence between 235.5 months (19.6 years) and 417.8 months (34.8 years). Ninety-five percent of indictees in the second era received a sentence length between 318.39 months (26.5 years) years and 689.4 months (57.5 years). Lastly, the final era has a lower sentence length with 95% of indictees receiving a sentence between 212.6 months (17.7 years) and 289.7 months (24.1 years).

Figure 1. Defendant Sentence in Months



Chapter 5

Discussion

The purpose of the current study was to document legislative changes and to investigate the effects of changes on the adjudication of terrorists in American federal courts. The overarching question is: *have prosecutorial and sentencing outcomes changed as homeland security policy has shifted over the last few decades?* To answer this question simply, yes, prosecutorial and sentencing outcomes have changed over time. By examining the data from the American Terrorism Study (ATS), the changes in sentencing and prosecution of terrorism are evaluated.

Importantly, the United States government turned its attention to international terrorism and “widened its net” to prevent future attacks and reduce the panic felt throughout the country following the 9/11 attacks. Following a major terrorism attack like 9/11 or the 1995 OKC Bombing, there is typically an increase in persons investigated for terrorism related crimes. After a terrorist incident, the government casts a wider net in policing and prosecuting terrorism-related criminal acts. Doing so reassures the public that the government is proactively addressing terrorist threats and preventing future attacks. Net widening is an intelligence-led approach in which “a new and urgent emphasis upon the need for security, the containment of danger, the identification and management of any kind of risk” is enacted (Garland, 2001; Walker, 2007, p. 1396). This approach promotes a broader sweep of terrorism related crimes in general, while attempting to gather intelligence and to reduce the number of risks that agencies should address at a time.

The study finds that the most recent post 9/11 era of terrorism saw more federal prosecutions of international (radical Islamic) terrorists than in the first and second eras

combined. The Anti-Terrorism and Effective Death Penalty Act of 1996 was an early attempt to widen the net on what types of crimes could be considered terrorism-related by punishing those who provided material support to foreign terrorists. The USA Patriot Act revised the federal criminal code to authorize the interception of wire, oral, and electronic communications to produce evidence of: (1) specified chemical weapons or terrorism offenses; and (2) computer fraud and abuse. The act allowed the sharing of grand jury information concerning foreign intelligence or counterintelligence between enforcement, intelligence, protective, immigration, national defense, or national security officials (such officials) (H.R.3162 - 107th Congress). All these changes served to cast wider nets on what types of crimes were considered terrorism-related, leading to more individuals being investigated by the FBI and federally indicted for terrorism.

There were also major changes in the disposition of cases. The era of 1995-2000, the era following the Oklahoma City bombing, has the highest percentage of cases ending in a trial conviction (65.8%.) In contrast, 2001-2017 saw a majority (56.5%) of federal terrorism defendants pleading guilty. This could be due to the types of cases being prosecuted during the more recent era. That is, court actors may be more willing to offer plea deals for less serious cases, or cases in which there is less evidence to convict. Interestingly, while those accused of terrorism have been increasingly more likely to plead guilty, terrorism defendants are still much more likely to go to trial than those accused of more routine crimes. One study, for example, found that 95% of convictions more generally were the result of a plea deal, rather than going to trial (Durocher, 2018).

Notably, as plea deals and conviction rates increased, the average sentence length of federal terrorism defendants decreased from the second era, reducing from approximately 504 months to

approximately 251 months during the final era. This could be attributed to several factors. For example, there could be more dismissals of counts due to guilty pleas on other counts, meaning that defendants are more likely to make a plea deal in which some of the more significant counts are dismissed. It could also be that as the scope of crimes considered to be terrorism-related widened, more individuals were prosecuted for less serious crimes. As previously discussed, the Ashcroft Guidelines loosened restrictions on the FBI in more recent years by shifting from a reactive, investigative agency to a more intelligence-based agency. This allowed intelligence to be shared quickly across varying government agencies (Ashcroft, 2002). Ideally, the FBI can prevent terrorist attacks from occurring earlier on in the planning stage, more serious, as well as prevent more developed terrorist plots. In this way, reductions in sentence lengths may reflect the effectiveness of legal and policy changes, especially after 9/11, and the capability of law enforcement and intelligence officials to prevent terrorism. In short, this study found that net widening, proactive investigative approaches, an increasing number of federal defendants who commit less serious crimes, and more plea deals have impacted the sentence lengths of convicted terrorists in the United States since the 9/11 attacks.

Conclusion

This study extends the limited body of work examining how terrorism defendants are prosecuted and sentenced in American federal courts (Shields, & Damphousse, 2011; Smith & Orvis, 1993; Smith, 1994). Findings showed that the federal government transitioned from a reactive to a much more proactive approach regarding responding to threats to homeland security in the 21st century. It is clear from this study that the nature of prosecution and sentencing of terrorism defendants has evolved along with major changes to Attorney General Guidelines, the evolving focus of the FBI, and the reconfiguration of the homeland security enterprise following

9/11. Specifically, findings showed that broader legal and policy changes cast a wider net of crimes that were considered terrorism-related, resulting in disproportionately more international terrorists being convicted of less serious terrorism-related crimes.

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