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Measuring Intervention Success in Countering Terrorism

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MEASURING INTERVENTION SUCCESS IN COUNTERING TERRORISM

MEASURING INTERVENTION SUCCESS IN COUNTERING TERRORISM

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

By

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University of Arkansas
Bachelor of Arts in Political Science, 2009

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ABSTRACT

This study examines the shift of Attorney General Guidelines in the wake of September 11th, 2001, and the consequences for both federal law enforcement and federal prosecutors. Previous research has found that prosecutors are more apt to use an exceptional vagueness approach and try terrorists like traditional offenders. Likewise, terrorist are more likely to act like traditional offenders and plead guilty in the post-9/11 era. This study further supports the existing knowledge by providing evidence of increased plea bargain rates post-9/11 of terrorists. In addition, this study is important because it examines the consequences of the early intervention approach and its effect on the prevention of terrorism in the United States.

The first and primary research question examines whether the proactive approach adopted after the attacks on September 11, 2001, has been effective in preventing terrorist attacks. The results indicated a decrease in terrorism incidents post-9/11. The second research question investigates the changes prosecutors have made to prosecute and charge defendants as a result of the shift from reactive to proactive policies. The majority of the hypotheses developed under this research question were supported, such as fewer counts per indictment, fewer defendants per case, and increases in plea bargains. However, count severity appears to remain consistent pre and post-9/11. The third research question examines the amount of evidence prosecutors have pre-9/11 to post-9/11 and the quantity of unconvicted counts per indictment in each era. The findings supported a decrease in evidence post-9/11 and an increase in unconvicted counts per indictment post-9/11. The final research question examines the change in conviction rate pre and post-9/11. The results indicate no change in the conviction rate pre-9/11 to post 9/11.

This thesis is approved for
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THESIS DUPLICATION RELEASE

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when needed for research and/or scholarship.

Agreed

Summer Marie Jackson

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I. Introduction

Following the attacks of September 11, 2001, Attorney General Ashcroft implemented a change in policy to combat terrorism. In previous administrations, the FBI took a more reactive approach to fight terrorism that stressed targeting the leadership of terrorists groups and building a strong case against the group through informants and undercover agents. After September 11th, it was clear that, due to a lack of information sharing among agencies a change in policy was needed. The enactment of the 2002 Ashcroft guidelines focused on intercepting and interrupting terror groups before plans could be made and fulfilled. The FBI sought to prevent future incidents by arresting terrorists for less severe charges and deterring further conspiracies from developing. The FBI, under the 2008 Mukasey Guidelines, were identified as an intelligence agency and given greater power in order to become a more proactive agency.

The goal of this study is to determine if the ‘early intervention’ approach has been successful in preventing terrorist incidents as well as if the policy changes employed after 9/11 have had an impact on how the federal government investigates and prosecutes those suspected of partaking in terrorism. I developed four research questions to investigate these inquiries. The first and primary research question examined whether the proactive approach adopted after the attacks on September 11, 2001, has been effective in preventing terrorist attacks. The next research question analyzed the changes prosecutors have made to prosecute and charge defendants as a result of the shift from reactive to proactive policies. The third research question compared the amount of evidence prosecutors have pre-9/11 to post-9/11 and the quantity of unconvicted counts per indictment in each era. The final research question examined the change in conviction

rate pre and post-9/11. This question looked to determine if the proactive policy changes adopted by prosecutors to process cases and charge defendants more quickly post-9/11 had an impact on the overall conviction of terrorists.

II. **Background**

Although the United States witnessed a rise in terrorism in the 1980s, it wasn't until the bombing of the Murrah Federal Building in Oklahoma City in 1995 that terrorism became a topic of household discussion across the nation (Smith 1994). At that time, the Oklahoma City Bombing was the first successful large-scale act of terrorism on American soil to produce mass casualties. This event highlighted the threat of domestic terrorism in the United States (Damphousse & Shields 2007). Six years later, in the early morning hours of September 11, 2001, Islamic terrorists took the lives of roughly 3,000 victims along the East Coast. Replicating a multiple airline hijacking that spawned the creation of Black September nearly thirty years prior, the terrorists successfully crashed into the World Trade Center (WTC) towers and the Pentagon. Both the bombing of the Murrah Federal Building and the attacks on 9/11, created a demand for increased security from the American people. These two events incited negative media attention that focused on the government and forced a change in policy to combat terrorism.

Because the Federal Bureau of Investigation (FBI) has exclusive authority to investigate acts of terrorism in the United States and against American citizens and property abroad, that agency was most directly affected by the demands for policy change. Knowledge of the policies used to guide FBI terrorism investigations is critical to understanding the changes that affected the agency. 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 goals” (28 C.F.R. Section 0.85). This definition has remained fairly consistent over the past three decades. The regulations that determine how this definition is interpreted, however, have changed substantially over the years.

The FBI’s authority and responsibility to investigate *domestic* terrorism cases is outlined in the “Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations” (1981; 1989; 2002). *International* terrorism cases are investigated under the “Attorney General’s Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations.”¹ New guidelines in 2008 eliminated the distinctions among these types of investigations.

The aforementioned Attorney General Guidelines outlined the requisites for launching a terrorism investigation, and set the minimum requirements of each case (Shields et al. 2009). During the Hoover administration, the FBI maintained a lionized reputation as a distinguished agency. However, the Watergate scandal revealed gross wrongdoings of the agencies’ practices and extensive changes followed (Poveda 1990). The adoption of the Levi Guidelines on April 5, 1976 (named after Attorney General Edward Levi), was a reflection of the nation’s discontent, and this regulation greatly restricted the freedoms the organization once enjoyed (Smith 1994). The threat of terrorism resurfaced with the robbery of a Brinks armored truck in Nyack, New York, on October 20, 1981. Evidence later revealed that the attack was carried out by the

¹ This information was derived from the Terrorist Research and Analytical Center’s annual report entitled *Terrorism in the United States*. This report documents each specific year’s incidents, suspected incidents, preventions and significant accomplishments. It also analyses trends and patterns by group, target, and type of terrorist incident. The report further examines topical issues and current threats.

combined efforts of numerous left-wing terrorist groups (Smith 1994). The constricting Levi Guidelines were relaxed and the FBI was given greater flexibility under the new Attorney General Smith Guidelines (after Attorney General William French Smith) (Smith 1994). Although the Oklahoma City bombing resulted in a critical appraisal of the AG Guidelines, little changes occurred in either their wording or interpretation (Congressional Hearing May 1995). The Smith Guidelines exhibited a more balanced approach. These guidelines remained in effect, with only minor changes until after the 9/11 attacks. But after the attacks on September 11th, further changes to the AG Guidelines resulted in a return to pre-1976 era strategies. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, and the Ashcroft Guidelines (after Attorney General John Ashcroft) implemented in May 2002, greatly increased the FBI's capacity in investigative procedures including the nature, length and scope of such investigations.

In previous administrations, the FBI took a more reactive approach to fight terrorism. This counterterrorism strategy “emphasized the ‘decapitation’ of the leadership of terrorist organizations in an effort to gain ‘early interdiction of unlawful activity’” (Smith 1994: 12). In other words, this strategy was aimed at targeting the leaders of terrorist groups and gaining sufficient evidence to build a case against the principal activists (Shields et al. 2009). These investigations involved greater use of informants and undercover agents who infiltrated these groups.

After September 11th, it was obvious that, due to a lack of information sharing within and among all levels of intelligence, as well as law enforcement communities, a change in policy was needed. The enactment of the 2002 Ashcroft guidelines focused on

intercepting and interrupting terror groups before plans could be made and perpetrated. The FBI sought to prevent future incidents by arresting terrorists for less severe charges and deterring further conspiracies from developing. The 2008 Mukasey Guidelines (after Attorney General Michael B. Mukasey), redefined the FBI's role as an intelligence agency and further broadened the bureau's powers in the hope of it becoming a more proactive agency.

III. Literature Review

Policy changes employed after 9/11 have had a prominent impact on how the federal government investigates and prosecutes those suspected of partaking in terrorism (Shields et al. 2009). The "early intervention" approach of post-9/11 generated an increase in the number of terrorism cases prosecuted, changes in the type of prosecution strategy used, and placed special emphasis on criminal acts that were previously overlooked (Shields et al. 2009). Attorney General Ashcroft's policy demanded a more rapid prosecution of suspected terrorists as soon as there was enough evidence of any transgression to win a conviction. These offenses, whether terror-related or not, resulted in a considerable increase of cases prosecuted post-9/11 (Shields et al. 2009).

Theoretical Framework

One theoretical model used to explain governmental responses to terrorism is Hagan's "structural-contextual" theory (Hagan 1980). According to Hagan, the different branches of the criminal justice system work autonomously without much cross communication. He refers to this system as "loosely coupled" (Hagan 1989: 118). However, Hagan stated that in crimes associated with intense federal responses, such as the war on drugs, political power becomes a major factor in bringing that specific crime

into focus of the political figures, law enforcement, and the public. This aspect of Hagan's theory was later referred to as a "proactive political environment" (Smith and Damphousse 1998:71). A proactive political environment is defined as "contexts where the surrounding political environment has mandated departures from normal criminal justice operations" (Smith and Damphousse 1998:72). In these circumstances, a tightening of proactive techniques arises, "leading to a more tightly coupled criminal system" (Smith and Damphousse 1998:72). A tightly coupled system occurs when resources are focused on a particular form of criminality from various arms of the criminal justice system (Shields 2008). Transparency and enhanced communication between departments are characteristics of a tightly coupled criminal system. Hagan proposes that when these branches function collectively as a result of this tightly coupled system, the levels of explained variance in sentence outcomes will decrease because of less discretion on the part of police, prosecutors, and judges.

Hagan's theory can be readily applied to terrorism as it elicits an intense federal response. After September 11th, terrorism became a top political priority, creating a more proactive political environment. This tightening of proactive techniques generated a change in the Attorney General Guidelines from a restricted model to one with expanded FBI freedom in investigative strategies. The tightening of proactive techniques also aided in the development of the USA PATRIOT Act as well as the creation of the Department of Homeland Security (DHS).

The most obvious goal of a more tightly coupled system is to increase conviction rates by improving lines of communication and cooperation between law enforcement agencies and the judicial system. How this might be accomplished, while also pursuing a

more proactive policing agenda, is questionable. However, a more tightly coupled system should produce a greater rate of less severe crimes prosecuted. The prosecution of crimes with lower count severity may indicate that offenders are being apprehended before a higher count severity crime is committed. Thus, a more proactive criminal justice system is created. Shifts to a more proactive policing model, combined with a tightly coupled system, may also affect other aspects of the prosecutorial effort. These changes may also be manifested in alterations to charge strategies, plea rates, and conviction rates.

Prosecution Strategies

There are three main strategies that prosecutors employ in a domestic terrorism enterprise case. These concepts were first developed by Turk (2002) and later expanded by Smith and Damphousse (Smith et al. 2002). The first approach, called *explicit politicality*, is used when there is greater public consensus that the offenders are terrorists (Turk 1982). Characteristics of explicit politicality include using the terrorist label, ample examination of the defendants' motives, and the use of charges that allude to a facet of conspiracy (Shields et al. 2009). A central focus on the offender's political motivation has been shown to hinder successful prosecution by forcing prosecutors to establish motive (Shields 2008, Bradley-Engen et al. 2009). America has often avoided the concept of "political crime", and has experienced failures in using the explicit politicality prosecution-style, as seen in a number of high profile terrorism cases in the late 1980s (Bradley-Engen et al. 2009, Smith, 1994).

If there is greater conflict in public opinion that offenders are terrorists, the prosecutor will likely utilize the *exceptional vagueness* approach. This strategy involves

treating the defendant like a ‘traditional’ offender. This tactic intentionally avoids the mention of terrorism. After 9/11, the preferred approach by prosecutors appears to be trying terrorists more like ‘traditional’ offenders, using exceptional vagueness in what is known as a diffusion case (refer to Figure A) (Chesney 2007, Shields 2009).

The third strategy used by prosecutors, referred to as *political innuendo*, charges defendants on “presumed liability statutes or with some ‘traditional’ crimes where motive was not an issue” (Shields et al. 2009: 133). However, at bail hearings, trials, and later at sentencing, prosecutors would provide subtle, and not so subtle, clues linking the defendant to a terrorist group or ideology (Shields et al. 2009). All of these strategies affect the plea bargaining process.

Plea Bargaining

Plea bargaining, often a source of controversy, “is a legal negotiation between the prosecutor and the defense lawyer or client to reach an agreement that avoids a court trial” and is commonly used in the criminal justice system (Hess and Orthmann 2009: 504). Numerous factors and decisions have come to the forefront when evaluating the option of plea bargaining. According to Emmelman (1996), the defense attorney must first estimate the value of a case by determining the prospect of a conviction via trial. Assessments of this possibility produce three contingent actions: plea bargain immediately, proceed further, or go to trial. The defense attorney’s knowledge and understanding of the case leads him or her to the formulation of these tailored negotiating procedures. The final aspect of this process requires the defense attorney to counsel the defendant on the best course of action. Emmelman calls this activity “recursive decision making,” which occurs continuously until the culmination of the case (1996:355).

The prosecutor is also a major player in the plea bargaining process. At least four factors have been linked to the prosecutors' decision making process. These variables comprise the "evidentiary strength of the defendant's case, the seriousness of the crime charged, the defendant's criminal record, and extra-legal variables such as gender and race" (Harris and Springer 1984: 245). Shields et al. (2006) demonstrated that strength of evidence is the greatest factor in determining if a prosecutor would pursue or drop a terrorism case, supporting Harris and Springer's conclusions.

Previous research indicates that terrorists plea bargain at a lesser rate than traditional defendants (Shields et al. 2006). Roughly 90% of felony defendants in the United States plea bargain while less than 50% of terrorist cases end in plea bargains (Shields et al. 2006). This can be attributed to the fact that terrorists are unlike traditional defendants and are motivated by political or social agendas (Shields et al. 2006).

Prosecutors' policies toward plea bargaining are often influenced by the current political environment. In the new early intervention era under the direction of Attorney General Ashcroft, the FBI and U.S. attorneys were expected to intercept and prosecute cases sooner. This focus on intercepting and interrupting terror groups before plans could be made and executed, presumably lowers the amount of evidence necessary to pursue event-linked cases (refer to Figure A) (Shields et al. 2009). As a consequence, more straightforward cases were prosecuted, and defendants were treated like 'traditional' offenders to a greater degree (Shields et al. 2009). As a result of this paradigm shift, much like 'traditional' offenders, terrorist defendants in Shields et al. study were more likely to plead guilty in the post-9/11 era. These changes also affected conviction rates post September 11th.

Convictions

Convicting and sentencing a terrorist is complicated. Terrorism is the most basic illustration of a politically motivated crime. This complexity of associating a defendant to a politically motivated crime is not always straight forward, and punishing these persons more harshly than other non-political criminals can lead to some contention in a society that prides itself on rights of free speech and assembly (Smith 1994, Bradley-Engen 2009). America avoided prosecuting ‘political crimes’ for precisely these challenges. Nevertheless, September 11th forced the United States to confront the matter of terrorism directly. Conviction rates are one measure of how successful a new policy’s strategy has been at handling those challenges.

As noted earlier, the intervention strategy imposed after September 11th had a pronounced effect on prosecution techniques. Chesney (2007) developed case types by terrorism link called “event-linked, pretextual, and diffusion cases”. These concepts were later expanded by Shields (2008). Event-linked cases are cases in which a defendant is linked to a terrorist group or ideology and then indicted on charges related to an act of terrorism (planned or completed) (Shields et al. 2009). Pretextual cases are cases where the defendant is charged with crimes not directly related to an act of terrorism, but is linked to terrorist group or ideology (Shields et al. 2009). In diffusion cases, the prosecutor focuses on particular types of crimes a terrorist is likely to engage in, and prosecutes all violators with extra vigor. The hope is that by making it harder for anyone to engage in that activity, the prosecutor is making it harder for the terrorists as well—therefore diffusing potential terrorist plots before they can take seed (Shields et al. 2009).

These terms and their associated meanings have been operationalized and are available for reference in Figure A. Prior to 9/11 event-linked cases accounted for roughly 85% of all terrorism cases (Shields et al. 2009). In contrast, pretextual cases represented only 15% (Shields et al. 2009). After the new policy was implemented, diffusion cases represented nearly half of the cases prosecuted. As expected, with the reduced amount of evidence available to U.S. prosecutors, event-linked cases greatly decreased while pretextual cases nearly tripled post-9/11 (Shields et al. 2009). The significant increase in pretextual cases supports the proposition that the government has become more proactive and is intervening earlier.

Under the new paradigm, Shields et al, (2009) predicted that limited evidence gathering from undercover agents and informants would result in fewer convictions (137). Current research shows an increase in conviction rates across all case-types (event-linked, pretextual, and diffusion) amid a significant decline in evidence collected from confidential informants and undercover agents (Shields et al. 2009). This could be attributed to the FBI's increased sphere of control to investigate terrorism cases for longer periods of time, and the use of more aggressive tactics. Shields (2009:144) concluded that "the conviction rates for terrorist defendants tried after 9/11 was significantly higher than it was before."

Figure A
Case Type by Terrorism Link

Case Type	Linked to Extremist Group or Ideology	Linked to a completed or planned act of terrorism
Event-linked	Defendant(s) linked in case documents	Defendants Linked in Case Documents
Pretextual	Defendant(s) linked in case documents	No Link
Diffusion*	No Link	No Link

* It should be noted that some prosecutors have attempted to use circumstantial evidence to link a defendant to a terrorist organization/ideology.

Source: Shields, Christopher A. 2008. "An Analysis of Prosecutorial and Defense Strategies in Federal Terrorism Trials from 1980 to 2004".

IV. Research Question

Counterterrorism is one of the main priorities of the Department of Justice since the attacks of September 11th. Time and money have been invested and dispersed to alter policies and procedures in order to proactively fight terrorism. The significance of this study is to determine whether the changes in the post-9/11 era have been effective in countering terrorism and if so, what kind of adjustments have been implemented in law enforcement and the judicial system. Based on the above discussion and literature review I have developed four research questions.

1. Have the proactive polices of the post-9/11 era been successful in preventing terrorist incidents?

The goal of the 2002 Ashcroft guidelines was to intercept and interrupt terrorist

groups before plans could be made and implemented. The FBI's aim was to prevent another terrorism incident from occurring by arresting terrorists for less severe crimes in order to disrupt further terrorist activity. The FBI, through the USA PATRIOT Act, has used more invasive investigation strategies to accomplish this goal. If the FBI has been successful in intervening earlier, then prevented acts should increase and completed acts should decrease in the post-9/11 era. Based on this information, I created the following hypothesis:

H1 Early intervention should result in an increase in the ratio of prevented to completed acts of terror in the post-9/11 era.

If the government has adopted a proactive approach, the prosecution of these cases would also have to shift to the proactive paradigm in order to obtain convictions in these cases. The following two research questions examine this issue.

2. Has the proactive political environment of the post-9/11 era resulted in changes to how prosecutors process cases and charge defendants?

The government's shift from reactive to proactive policies has produced numerous changes in the FBI and U.S. attorney's procedures. First, early intervention of law enforcement should result in fewer counts per indictment as they are interrupting terrorist activity earlier in the planning process. In other words, the terrorist will likely be charged with fewer counts per indictment in the post-9/11 era because they are prevented from committing further crimes. This line of reasoning also applies to count severity. If the FBI and other government agencies are adhering to the new AG guidelines, then terrorist activity is being interrupted earlier. Therefore charge severity should decrease in the

post-9/11 era because terrorists are being caught before they can commit more severe crimes. Based on the above discussion, one would expect the number of counts per indictment and count severity to be lower post-9/11. To test these, the following hypotheses have been developed:

H2 The number of counts per indictment will be lower for post-9/11 cases than among pre-9/11 cases.

H3 Count severity will decrease post September 11th.

In theory, the FBI is disrupting terrorist activity before planning can progress into completed acts of terrorism. Following this logic, the number of defendants should decrease in the post-9/11 era, because law enforcement is disrupting terrorist activity before more individuals can be involved in the conspiracy. To test this, I created the following:

H4 The average number of defendants per case post September 11th will decrease.

In order for the government to appear proactive and aggressive in its pursuit of terror cases, research has shown U.S. attorneys are more apt to offer plea bargains. I postulate this could be due to several reasons. First, the authorities may be collecting less evidence in the investigation process. This diminished amount of evidence makes cases more difficult to prosecute, and in turn, affects how attorneys treat defendants.

Second, instead of being politicized as terrorists, defendants are treated more like traditional offenders and subsequently, act more like traditional defendants, and plead guilty at higher rates (Shields et al. 2009). Based on these assumptions, one would expect plea rates in terrorist cases to be more similar to plea-rates among traditional offenders. Plea rates are often measured in two different ways. I created two hypotheses

and tested each measure of plea bargains in the post-9/11 era. With the first hypothesis, I examined the proportion of plea bargains of all convictions post September 11th.

H5A There will be an increase in plea bargaining post September 11th.

With the second plea bargain hypothesis, I examined all post-9/11 case outcomes (dismissals, plea bargains, trial convictions, and acquittals). I did this to examine what percentage of cases resulted in plea bargains post-9/11. I created the following hypothesis to test this information.

H5B The total percentage of plea bargains will be higher post September 11th.

3. Have cases been prosecuted sooner with less evidence resulting in fewer convictions per indicted count in the post-9/11 era?

Previously the FBI infiltrated terrorist organizations to gather information. However, the Ashcroft guidelines emphasized the need for early intervention where these techniques were no longer a priority. The new policy stressed the importance of intercepting and interrupting terrorist groups before plans could be made and achieved. Due to the new emphasis on early intervention, it follows that in the post-9/11 era, evidence derived from confidential informants and undercover agents would decrease. I tested that proposition with the following hypothesis:

H6 The prosecutor will have less evidence due to less time to infiltrate terrorist groups in the post September 11th era.

If the literature is correct, and the U.S. attorneys have offered more pleas, one should be able to quantify the increase. Along those lines, one possible tactic would be to indict suspects on as many charges as possible and later negotiate plea bargains by

dropping some charges that, perhaps, didn't have substantial evidence in the first place. This approach of 'excessive charging' should result in more unconvicted counts per indictment post-9/11 because of this lack of evidence. To test this assumption, I created the following hypothesis:

H7 The percentage of unconvicted counts per indictment will increase post September 11th.

4. Have conviction rates increased after September 11th?

A gauge of success can be measured in conviction rates, as they indicate the efficiency with which the prosecution processes cases. Using a surrogate measure of evidentiary strength, Shields (2009) found that the early intervention strategy has significantly reduced the amount of evidence collected by undercover agents and confidential informants. However, despite the fact that less evidence was being gathered, research conducted by Shields et al. (2009) indicates conviction rates for terrorist defendants tried after 9/11 is significantly higher than it was before.

Another aspect of the early intervention era is pressure on the FBI and U.S. attorneys to intercept and prosecute cases faster. Some contend that event-linked style prosecution is used less frequently due to a reduced amount of information available to U.S. attorneys (Shields et al. 2009). To determine whether that contention is correct, I tested the following hypothesis:

H8 Proactive policies post September 11th will result in higher conviction rates.

V. **Methods**

The data used in this study came from two sources. The first data source is from the FBI's annual report titled *Terrorism in the United States*. This report began in the early 1980's and was the first official account of terrorism in the United States. It documents multiple features including completed incidents and preventions by year, successful techniques used to combat terrorism, terrorist groups, arrests, indictments, and convictions. It also offers the number of killed or injured in an attack as well as descriptive statistics by group, target, and type of incident.

The second data source is the American Terrorism Study (ATS). The ATS includes federal terrorism cases dating back to 1980 and represents a nearly complete record of the FBI's Counterterrorism Program from 1983-2004.

The FBI's Terrorist Research and Analytical Center released a list of persons indicted as a result of investigation under the FBI's Counterterrorism Program and includes over 200 persons from more than 20 terrorist groups active in the United States from 1980-1989. Since that time, the FBI has released multiple lists to the ATS. Those lists include the names of those indicted, the federal district court in which the indictments were issued, the federal court case numbers, date of arrest and indictment, and the name of the terrorist group involved (Shields et al. 2009). A case becomes public record once an indictment is issued. ATS staff retrieved cases "stored in the federal criminal case files housed at the federal district courts where the cases were tried" (Shields et al. 2009:130). Currently, the ATS database comprises information on over 700 indictees charged with roughly 9,600 criminal violations (Shields 2008).

The ATS database was recoded into a new database called Measuring Intervention Success in Countering Terrorism (MISCT) using the Statistical Package for

the Social Sciences (SPSS). The objective of this study was to determine whether federal efforts to intervene earlier in terrorism activities have been successful in preventing terrorist incidents from occurring. If the new proactive policies have been successful, one would expect significant changes in the manner and strategies used to counter terrorism. Both the FBI's annual report and the ATS used congruent dates (1983-2004).

Cases were sorted based on two criteria. First, cases with indictment dates prior to September 11, 2001, were categorized as pre-9/11, while cases with indictment dates after September 11, 2001, were categorized as post-9/11. Second, cases were labeled as either "preventions" or "completions" based on an analysis of the categorization identified in the Federal Bureau of Investigation's annual report. Any inconsistencies between court case documents and the FBI reports were addressed on an individual basis.

Variables and Analysis

I derived the MISCT data from the ATS database and the *Terrorism in the United States* annual reports. I created MISCT by generating a dichotomous variable called *prevention* (prev). I recoded the ATS nominal level variable *intended target* (int_tar1) to create the *Prevention* variable. *Intended target* is a measure of the first target a defendant intended to attack but did not hit. If the defendant was charged with attempting to hit a target, the value was coded 1, if there was no target, the value was coded 0.

I created MISCT *completions* (comp) by recoding the ATS nominal level variable *actual target* (act_tar1) into a dichotomous variable. The ATS variable *Actual target* indicates that a target was actually hit. If the target was hit, the variable was coded with a

1 and all others were coded with a 0. This ensures the MISCT database only includes prevented and completed acts.

September 11th, is a dichotomous variable that segregates cases indicted before September 11, 2001 and cases indicted after September 11, 2001. This allows partitioning of the data into two samples based on the temporal components that were important for this research investigation. ATS demographic variables were first assessed using the grouping variable *September 11th*. *Gender* (sex) is a nominal level variable in which male is coded 1, and female is coded 0. *Age* (age) is a ratio level variable and coded in years of age at indictment.

Figure B is an operationalized table of how I tested my hypotheses. Not included in the table are the two demographic variables, *gender* and *age*. I tested these variables using frequency distributions with the grouping variable *September 11th* (0 = pre-9/11, 1 = post-9/11). I limited the database to indictee level analysis (one line of data on 1st count in each case that a person has been indicted) to examine hypotheses one to five.

Hypothesis One: Early intervention should result in an increase in the ratio of prevented to completed acts of terror in the post-9/11 era.

To examine the ratio of prevented to completed acts in the post-9/11 era, I used the *preventions* and *completions* variables. These variables were sorted using the grouping variable *September 11th*. I used an independent samples *t*-test with these variables to assess the ratio of preventions to completions pre and post September 11th.

Hypothesis Two: The number of counts per indictment will be lower for post-9/11 cases than among pre-9/11 cases.

In order to analyze if there were fewer counts per indictment post September 11th, I used a variable called *total counts per indictment* (totalcts). This variable is a scale level variable and measures the total number of counts per indictment filed against each defendant. Employing the dependent variable *Total counts per indictment* I used an independent samples *t*-test with the grouping variable *September 11th* to determine the average number of counts per indictment pre and post September 11th.

Hypothesis Three: Count severity will decrease post September 11th.

Count severity (ct_sev) is an interval level variable which ranges from 1 to 29:1 representing the lowest severity of charges, and 29 representing the highest severity of charges. *Count severity* was used to determine the average level of an offense. This variable was sorted using the grouping variable *September 11th*. To test hypothesis three, I used an independent samples *t*-test with the grouping variable to determine the average severity of charges pre and post September 11th.

Hypothesis Four: The average number of defendants per case post September 11th will decrease.

To determine the number of defendants per case, I analyzed the ordinal level variable *defendant number* (defendnu). This variable measures the number of defendants per case. To examine this hypothesis at the case level, I used the case

selection variable to find the first defendant in each case ($ct_num = 1$ & $case = 1$). Then I sorted the sample using the grouping variable *September 11th*. To test hypothesis four, I used an independent samples *t*-test with the *total number of defendants in case* variable and *September 11th* grouping variable to determine the mean number of defendants per case pre and post September 11th.

Hypothesis Five A: There will be an increase in plea bargaining post September 11th.

Case result (*case_res*) is a nominal level variable which is coded into the ATS with more than 20 possible outcomes. To specifically examine plea bargaining, I recoded this variable into a dichotomous variable called *Plea Misc* (*plea_misc*).

I coded anything resulting in a plea as 1 and anything resulting in a trial conviction as 0. I coded all other possible outcomes as system missing. I used *Plea Misc* to examine the percentage of plea bargains of total convictions. I sorted this variable using the grouping variable *September 11th*.

I analyzed hypothesis 5A using an independent samples *t*-test with the recoded variable *plea misc* and the *September 11th* grouping variable to determine the proportion of plea bargains to total convictions pre and post September 11th.

Hypothesis Five B: The total number of plea bargains will be higher post September 11th

I recoded the *case result* variable (*case_res*) into a categorical variable. I coded no conviction as a 1, plea bargains a 2, trial convictions a 3, and acquittals a 4. I labeled this variable *outcome recode* (*outcomerecode*). I tested the outcome recode variable at the indictor level analysis. Then, I sorted this variable using

the grouping variable *September 11th*. I examined hypothesis 5B by using a cross-tabulation to determine the distribution of case outcomes in the pre and post-9/11 samples. This determined the proportion of dismissal, plea bargain, trial conviction, and acquittals pre and post-9/11.

Hypothesis Six: The prosecutor will have less evidence due to less time to infiltrate terrorist groups.

In order to examine if the government has less evidence post September 11th, I used two variables called *confidential informant* (infor_mem) and *undercover agent* (infl_gov). *Confidential informant* is a dichotomous variable that measures whether a confidential informant was used in the case. I coded cases that used a confidential informant as 1, all others were coded 0. *Undercover agent* is a dichotomous variable that measures if a government agent infiltrated a terrorist group. I identified cases in which an undercover agent was used, and coded them 1, all others I coded 0. I tested these variables on two different levels: case level and indictee level analysis. I sorted the samples using the grouping variable *September 11th*.

For Hypothesis six, I limited the database to case level analysis and indictee level analysis. I used an independent samples *t*-test with the *September 11th* grouping variable. I used the dependent variables *confidential informant* and *undercover agent* to determine the proportion of cases that use confidential informants and undercover agents pre and post September 11th.

Hypothesis Seven: The percentage of unconvicted counts per indictment will increase post-9/11.

To determine if the percentage of unconvicted counts per indictment has increased post-9/11, I created a new variable called *ratio count* (ratio_count). *Ratio count* is a ratio level variable which represents the number of unconvicted counts per indictment divided by the total number of counts per indictment. I sorted the samples using the grouping variable *September 11th*. I again limited the database to indictee level analysis for hypotheses seven. Using the variable *ratio count*, I used an independent samples *t*-test with the *September 11th* grouping variable to compare the average number of unconvicted counts per indictment pre and post September 11th.

Hypothesis Eight: Proactive policies post September 11th will result in higher conviction rates.

I recoded the *case result* variable (case_res) into a dichotomous variable I called *outcome* (outcome_misct) in which a conviction of any kind received a 1. Everything else received a 0. I tested the new recoded variable *outcome* at the person level analysis (one line of data per person on 1st count in 1st indictment). I sorted these variables using the grouping variable *September 11th*. I limited the database to person level analysis. I used the independent samples *t*-test with the *September 11th* grouping variable. I used the dependent variable *outcome* to determine the proportion of convictions pre and post September 11th.

Figure B
Analytical Methods Table

Hypotheses	Independent Variables	Dependent Variables	Statistical Test	Unit of Analysis
H1 Early intervention should result in an increase in the ratio of prevented to completed acts of terror in the post September 11th era	September 11 th (sept_11)	Completed (comp) Prevented (prev)	Independent Samples T-Test	Indictee Level
H2 The number of counts per indictment will be lower for post-9/11 cases than among pre-9/11 cases.	September 11 th (sept_11))	Total counts per indictment (totalacts)	Independent Samples T-Test	Indictee Level
H3 Count severity will decrease post September 11th	September 11 th (sept_11)	Count Severity (ct_sev)	Independent Samples T-Test	Indictee Level
H4 The average number of defendants per case post September 11th will decrease	September 11 th (sept_11)	Total number of defendants in case (defendnu)	Independent Samples T-Test	Indictee Level
H5A There will be an increase in	September 11 th (sept_11)	Plea Misc (plea_misct)	Independent Samples T-Test	Indictee Level

plea bargaining post September 11th.	September 11 th (sept_11)	Outcome Recode (outcomerecode)	Chi Square	Indictee Level
H5B The total number of plea bargains will be higher post September 11th				
H6 The prosecutor will have less evidence due to less time to infiltrate terrorist	September 11 th (sept_11)	Confidential Informant (infor_mem) Undercover Agent (infil_gov)	Independent Samples T-Test	Case Level and Indictee Level
H7 The percentage of unconvicted counts per indictment will increase post-9/11	September 11 th (sept_11)	Ratio Count (ratio_count)	Independent Samples T-Test	Indictee Level
H8 Proactive policies post September 11th will result in higher conviction rates	September 11 th (sept_11)	Outcome (outcome_misct)	Independent Samples T-Test	Person Level

VI. Results

Introduction

I divided the results section into five parts. First, I created a descriptive statistics table of my sample using frequency distributions (refer to Table 1). I found the database contains 476 cases (N=476). The pre-9/11 sample included 390 cases and the post-9/11

sample included 50 cases (36 cases were in the process during the shift in policy and were coded as missing). Variables used in later analysis were also examined in this table. Following Table 1, I examined the findings of the basic demographic information.

I divided the remaining four sections by research question. Each research question is further subdivided by specific hypotheses. Research question one was my umbrella question that if supported, allowed me to further examine my other research questions. The results supported hypothesis one and allowed me to move forward with research questions two, three and four. Results from research question two generally supported the hypotheses; however, I did not find support for hypothesis three in which I predicted a decrease in count severity. The next section focuses on the findings for research question three. The results supported all the hypotheses in this section. I present the findings of research question four in the last section. I did not find support for hypothesis eight which predicted an increase in conviction rates post-9/11.

Frequency distributions were used to examine general demographic information before the hypotheses were tested. Using the grouping variable *September 11th*, I found 89.1 % of the pre-9/11 sample (N = 339) were male and 88.8 % of the post-9/11 sample (N = 47) were male (refer to Table 2). The average age at indictment in the pre-9/11 sample was 38.19 (N = 297) and the average age for the post-9/11 sample was 35.64 (N = 39) (refer to Table 3). These results were not statistically significant (Levene's $F=.177$, EVA, $p>.05$).

As indicated by the analytical methods table (refer to Analytical Methods section), I used independent samples *t*-test to analyze the majority of the following hypotheses as I compared two groups, pre-9/11 era and post-9/11 era. Levene's test for

equality of variance tests the variance homogeneity of the groups. The Levene's test produces two possible outcomes for testing the significance of a *t*-test: equal variance assumed (significance >.05) and equal variances not assumed (significance <.05). Based on the variance produced, I used either equal variance assumed (EVA) or equal variance not assumed (EVNA) for each individual hypothesis.

Table 1: MISCT Descriptive Statistics Table

Variable	N	
Measuring Intervention Success in Countering Terrorism	N = 476	Pre-9/11 = 390 Post-9/11 =50 (36 Missing)
Completed Incidents	N = 476 (0 Missing) N = 340	71.4%
Prevented Incidents	N = 136	28.6%
Gender	N = 475 (1 Missing) Males = 413 Females = 61	86.8% 12.8%
Age	N = 420 (56 Missing) Mean = 37.53	Standard Deviation = 10.77
Total number of counts per indictment	N = 476 (0 Missing) Mean = 7.27	Standard Deviation = 15.21
Number of defendants per case	N = 476 (0 Missing) Mean = 7.91	Standard Deviation = 6.54
Count Severity	N = 414 (62 Missing)	

	Mean = 19.98	Standard Deviation = 8.41
Percent of plea bargains of total convictions	N = 476 (0 Missing) Convictions = 334 No Conviction = 142	70.2% 29.8%
Number of plea bargains of all case outcomes	N = 476 (0 Missing) Dismissals = 100 Plea Bargain = 185 Trial Conviction = 149 Acquittal = 42	21.0% 38.9% 31.3% 8.8%
Did government have confidential informant who was a group member	N = 387 (89 Missing) No = 90 Yes = 297	23.3% 76.7%
Did government agent infiltrate group	N = 375 (101 Missing) No = 253 Yes = 122	67.5% 32.5%

Table 2: T-test Comparison of Gender Pre-9/11 and Post-9/11

Pre and Post-9/11 Gender^α

	Frequency	Valid Percent
Pre-9/11 Gender		
Female	37	10.9
Male	302	89.1
Total	339	100.0
Post-9/11 Gender		
Female	6	11.2
Male	40	88.8
Total	47	100.0

^α Pre-9/11 N(missing) = 1, ^α Post-9/11 N(missing) = 2

Table 3: T-test Comparison of Mean Age

	Era	N	Mean Age	Std. Dev
Age	Pre-911	297	38.19	10.854
	Post-9/11	39	35.64	12.598
	Total	336		

Research Question One Results

Hypothesis 1

First, I tested hypothesis one to determine if the proactive polices of the post-9/11 era were successful in preventing terrorist incidents. I hypothesized that early

intervention should result in an increase in the ratio of prevented to completed acts of terror in the post September 11th era. The results of my analyses are presented in Table 4. Pre-9/11 completed incidents had a mean of .71 while post-9/11 completed incidents had a mean of .40. The results indicate a significant decrease in completed acts of terrorism post September 11th (Levene's $F=.013$, EVNA, $p<.001$).

Table 4: T-test Comparison of Mean Completed Incidents

	Era	N	Mean Completed Incidents	Std. Deviation
Completed Incidents	pre 9/11	340	.71	.454
	post 9/11	47	.40	.496

Research Question Two Results

Research question two examines how the changes made after September 11th have affected the strategies prosecutors use to process cases and charge defendants.

Hypothesis two through hypothesis five B were tested to help answer research question two.

Hypothesis 2

The results of my analysis of hypothesis two are presented in Table 5. The findings point to a significant decrease in the total number of counts per indictment post-9/11. The results of the independent samples *t*-test indicate that the number of counts per indictment were lower for post-9/11 cases (mean=13.81) than among pre-9/11 cases

(mean=13.81). These results were statistically significant (Levene's $F=.001$, EVNA, $p<.001$).

Table 5: T-test Comparison of Mean Number of Counts per Indictment

	Era	N	Mean Counts per Indictment	Std. Deviation
Total Number of Counts in Indictment	pre 9/11	326	13.81	14.608
	post 9/11	47	7.91	8.174

Hypothesis 3

Table 6 presents the results of a *t*-test comparison of count severity pre and post-9/11. I hypothesized that count severity would decrease post-9/11. However, the results did not support this conclusion. The average severity of charges in pre-9/11 terrorism cases was 19.69 while the average severity of charges in post-9/11 cases was 21.15. As indicated by Table 6, there was not a statically significant decrease in count severity post September 11th (Levene's $F=.036$, EVNA, $p>.05$).

Table 6: T-test Comparison of Mean Count Severity

	Era	N	Mean Severity of Charge	Std. Deviation
Count Severity	pre 9/11	284	19.69	.538
	post 9/11	46	21.15	1.141

Hypothesis 4

I hypothesized that the average number of defendants per case would decrease post-9/11. The results of the independent samples *t*-test, as seen in Table 7, indicates the average number of defendants per case was lower for post-9/11 cases (mean=1.72) than among pre-9/11 cases (mean=3.72). The findings of hypothesis four are statistically significant (Levene's $F=.002$, EVNA, $p<.001$).

Table 7: T-test Comparison of Mean Defendants per Case

	Era	N	Mean Defendants per Case	Std. Deviation
Number of Defendants in Case	pre 9/11	104	3.72	4.343
	post 9/11	29	1.72	1.667

Hypothesis 5A

I examined plea bargaining using two separate techniques. First, I used an independent samples *t*-test to determine the percentage of plea bargains of total convictions. As shown in Table 8, plea bargaining represented 49% of all convictions in the pre-9/11 era. In the post-9/11 era, plea bargaining represented 85% of all convictions (refer to Table 8). These findings support my hypothesis that the percentage of plea bargaining of total convictions increased in the post-9/11 era and are statistically significant (Levene's $F=.000$, EVNA, $p<.001$).

Table 8: T-test Comparison of Plea Bargains of Total Convictions

	Era	N	Mean Plea Bargains of Total Convictions	Std. Deviation
Plea Bargains of Total Convictions	pre 9/11	243	.49	.501
	post 9/11	34	.85	.359

Hypothesis 5B

For testing hypothesis five B, I used a cross tabulation to examine all possible case outcomes pre and post September 11th. More specifically, I focused on changes in plea bargain use pre and post-9/11. I compared pre-9/11 case outcomes to post-9/11 case outcomes. Case outcomes included: dismissal, plea bargain, trial conviction, and acquittals. As indicated by Table 9, plea bargains dramatically increased from 35.6% of total case outcomes pre-9/11 to 60.0% of total case outcomes post-9/11. These results were statistically significant ($p < .001$).

Table 9: T-test Comparison of Plea Bargains of Case Outcomes

Case Outcomes		Pre 9/11	Post 9/11	Total
Dismissal	Count	70	13	83
	% within post-9/11	17.9%	26.0%	18.9%
	% of Total	15.9%	3.0%	18.9%
Plea Bargain	Count	139	30	169
	% within post-9/11	35.6%	60.0%	38.4%
	% of Total	31.6%	6.8%	38.4%
Trial Conviction	Count	141	5	146
	% within post-9/11	36.2%	10.0%	33.2%
	% of Total	32.2%	1.1%	33.2%
Acquittal	Count	40	2	42
	% within post-9/11	10.3%	4.0%	9.5%
	% of Total	9.1%	.5%	9.5%
Total	Count	390	50	440
	% within post-9/11	100.0%	100.0%	100.0%
	% of Total	88.6%	11.4%	100.0%

Research Question Three Results

Hypothesis 6

Research question three examines whether cases have been prosecuted sooner with less evidence resulting in fewer convictions per indicted count in the post-9/11 era.

I hypothesized the prosecutor would have less evidence due to less time to infiltrate terrorist groups post-9/11. I found the results supported hypothesis six both at case level analysis and indictee level analysis. Pre-9/11 informant use had a mean of .73 (refer to Table 10 for Case Level) and a mean of .83 (refer to Table 11 for Indictee Level) while post-9/11 informant use had a mean of .20 (refer to Table 10 for Case Level) and a mean of .18 (refer to Table 11 for Indictee Level). There is a significant decrease in the use of informants post September 11th (refer to Table 10 for Case Level, Levene's $F=.115$, EVA, $p<.001$) (Refer to Table 11 for Indictee Level, Levene's $F=.834$, EVA, $p<.001$).

I also found undercover agent use significantly decreased in the post-9/11 era. Pre-9/11 cases had a mean of .37 (refer to Table 10 for Case Level) and a mean of .39 (refer to Table 11 for Indictee Level). Post-9/11 cases had a mean of .04 (refer to Table 10 for case level) and a mean of .03 (refer to Table 11 for Indictee Level). These findings are statistically significant (refer to Table 10 for Case Level, Levene's $F=.000$, EVNA, $p<.001$)(Refer to Table 11 for Indictee Level Levene's $F=.000$, EVNA, $p<.001$).

Table 10: T-test Comparison of Evidence Gathered Using Case Level Analysis

	Era	N	Mean Evidence	Std. Dev.
Informant Use	Pre 9/11	88	.73	.448
	Post 9/11	25	.20	.408
Undercover Use	Pre 9/11	88	.73	.448
	Post 9/11	25	.20	.408

Table 11: T-test Comparison of Evidence Gathered Using Indictee Level Analysis

	Era	N	Mean Evidence	Std. Dev.
Informant Use	Pre 9/11	321	.83	.380
	Post 9/11	33	.18	.392
Undercover Use	Pre 9/11	309	.39	.489
	Post 9/11	33	.03	.174

Hypothesis 7

Hypothesis 7 predicted the percentage of unconvicted counts per indictment would increase in the post-9/11 era. I found the percentage of unconvicted counts per indictment pre-9/11 was roughly 37%, while the percentage of unconvicted counts per indictment post-9/11 was about 82% (refer to Table 12). These results are statistically significant and support my hypothesis that the ratio of unconvicted counts per indictment increased post September 11th (Levene’s $F=.000$, EVNA, $p<.05$).

Table 12: T-test Comparison of Unconvicted Counts per Indictment

	Era	N	Mean Number of Unconvicted Counts per Indictment	Std. Deviation
Unconvicted Counts per Indictment	pre 9/11	323	.3678	.334
	post 9/11	47	.8227	1.158

Research Question Four Results

In the final research question I sought to determine how conviction rates changed after September 11th.

Hypothesis 8

Hypothesis eight predicted conviction rates would increase post-9/11. However, I did not find support for this hypothesis as indicated in Table 13. Pre-9/11 cases had a mean of .71 while post-9/11 cases had a mean of .72. These results fail to support the hypothesis that conviction rates increased in the post-9/11 era (Levene's $F=.802$, EVA, $p>.05$).

Table 13: T-test Comparison of Convictions

	Era	N	Mean Convictions	Std. Deviation
Convictions	pre 9/11	340	.71	.452
	post 9/11	47	.72	.452

VII. DISCUSSION

Following the attacks of September 11th, Attorney General Ashcroft created new guidelines that enhanced the FBI's power to investigate domestic terrorism (Ashcroft 2002). Such expansions of authority included greater flexibility in the length and scope of investigations. Prosecutors were also expected to prosecute potential threats earlier to interrupt possible attacks (Shields 2008). The goal of this study was to determine if the proactive policy changes initiated after September 11th have been effective in countering

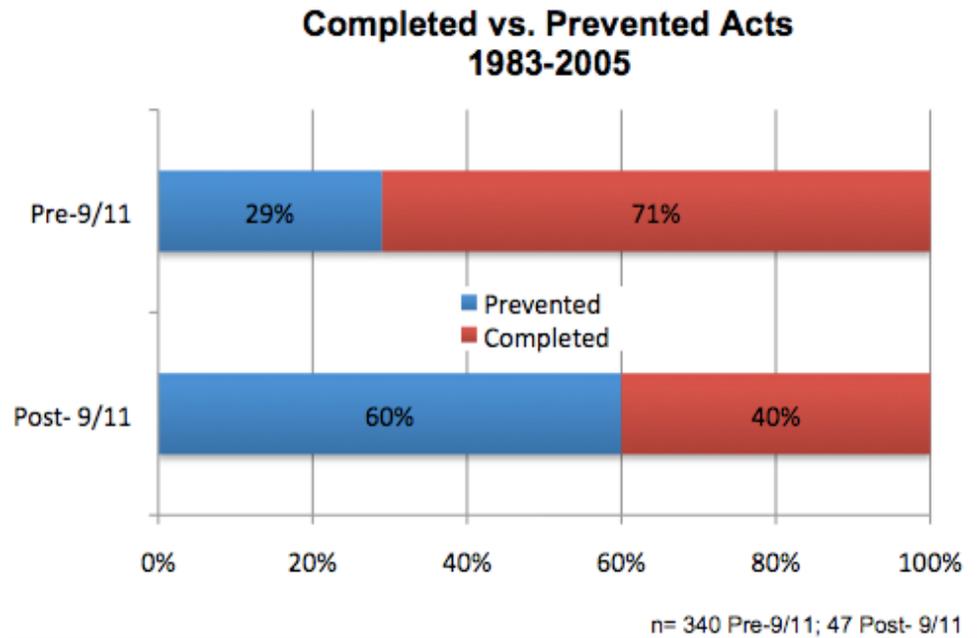
terrorism, and if so, what kind of changes have been adopted to the prosecution of domestic terrorism cases.

I developed four research questions based on the history of terrorism in the United States and the current literature concerning the prosecution of terrorism cases. Results from the first analysis, which focused on demographic information, indicated that there were no significant differences between the age and gender of pre-9/11 and post-9/11 terrorists. Both pre and post-9/11 terrorists are almost exclusively male with an average age of mid-to-late thirties.

RESEARCH QUESTION ONE DISCUSSION

My overarching research question was to determine whether the proactive policies have been successful in preventing terrorist attacks. I hypothesized that the intervention strategy post-9/11 would result in an increase in prevented terrorist's incidents and a decrease in completed terrorist attacks. I found a statistically significant increase in the ratio of preventions to completions post-9/11 (refer to Graph 1). This suggests the proactive policies post September 11th have been successful in intercepting and interrupting terrorist activity before attacks could be completed.

Graph 1



RESEARCH QUESTION TWO DISCUSSION

After determining there was a significant difference in preventions to completions post-9/11, I examined my second research question. Research question two focused on how the changes made after September 11th have affected the strategies prosecutors use to process cases and charge defendants. The majority of the hypotheses I tested were supported. Specifically, there was a significant decrease in the total number of counts per indictment post-9/11, the average number of defendants decreased post-9/11 and plea bargaining increased both in percentage of total convictions and as a case outcome.

I had hypothesized that the emphasis of the AG Guidelines to intervene sooner would logically result in a decrease in the total number of counts per indictment as defendants were intercepted before they could commit more crimes. Results from hypothesis two supported this conclusion, and it stands to reason, if there are fewer

crimes being committed, then there should be fewer counts per indictment in the post-9/11 era. Again, I found support for this hypothesis but there is another possible explanation for the decrease in total number of counts per indictment; fewer counts per case might be the result of prosecuting cases sooner with less evidence (see discussion below).

Likewise, I hypothesized that if law enforcement was intervening earlier, the average number of defendants would decrease post-9/11 because terrorists have less time to incorporate more individuals into larger, more evolved conspiracies. I found support for this hypothesis. As demonstrated in Table 7, pre-9/11 terrorism cases averaged roughly four defendants while post-9/11 terrorism cases averaged roughly two defendants per case.

Plea bargains increased in both ways it was examined. 85% of total convictions were plea bargained in the post-9/11 era, a dramatic increase from 49% pre-9/11 (refer to Table 8). Also, when plea bargaining was examined as a case outcome among other case outcomes, plea bargaining represented the largest percentage, 60%, followed by dismissals at 26% (refer to Table 9). Arguably, the percentage of plea bargains of total convictions increased post-9/11 for a number of reasons. One, the stigma of being labeled a terrorist after a terrorism incident such as the attacks on September 11th might steer defendants away from trial and the danger of a hostile jury. Two, prosecutors instructed to prosecute terrorism cases faster, may have less evidence in the post-9/11 era (see discussion below). With support for both of these hypotheses, I believe that it's possible that prosecutors are more likely to offer plea bargains and treat terrorists like traditional defendants to maintain a high conviction rate. This also serves an important

goal of the post-9/11 policy shift: prosecutors appear more proactive in the prosecution of terrorism.

My analysis of hypothesis five B showed an increase in plea bargains among all possible case outcomes. The percent of plea bargains almost doubled in the post-9/11 era (refer to Table 9). Despite the increase in pleas, dismissals increased from 17.9% pre-9/11 to 26.0% post-9/11, an increase of just over 8% post-9/11. This suggests prosecutors were taking fewer cases to trial post-9/11. One possible explanation for this shift in strategy is the lack of evidence available to prosecute a terrorism case effectively. If the surrogate measure for evidence is accurate and the findings are to be believed, then one would expect more cases to be dismissed and the prosecutor more willing to enter pleas. These findings further help to explain the increase in the percentage of plea bargains of total convictions despite the fact conviction rates did not increase (see discussion below). If prosecutors are dismissing more cases in the post-9/11 era, and increasing plea offers, it is reasonable that the percentage of plea bargains would dramatically increase both as a case outcome and as a percent of total convictions post-9/11.

I did not find support for all the hypotheses associated with research question two. I stated in hypothesis three that count severity would decrease post-9/11. The results for count severity were statistically insignificant and were virtually unchanged from one era to the next. I reasoned that law enforcement was intercepting terrorists before higher severity crimes could be committed. However, terrorism cases did not encounter a decrease in severity after September 11th, which means that defendants in the post-9/11 era were being charged with counts of similar severity. One possible explanation for

these results is although, the lead offensive charge has remained relatively consistent pre and post-9/11, prosecutors are dropping more charges with lower severity to gain a plea agreement. I tested this proposition with hypothesis three and seven and found the number of unconvicted counts per indictment increased (refer to Table 12) post-9/11 but the lead offense remains relatively constant (see discussion of research question 3). It is important to point out that count severity for the lead offense is not a measure of case complexity. One possible measure of case complexity would be an analysis of complex conspiracies in both eras, but that analysis was beyond the scope of this inquiry and presents a great area for future research.

RESEARCH QUESTION THREE DISCUSSION

I found support for all the hypotheses during my analysis of the third research question. I asked whether the early intervention strategy has resulted in less evidence which consequently, has resulted in fewer convictions per indicted count post-9/11. I hypothesized that prosecutors would have less evidence in the post September 11th era due to less time to infiltrate terror groups. In hypotheses six and seven I found support for that proposition. Using the average number of informants and undercover agents per case as a surrogate measure of evidentiary strength, the analyses revealed that both informant and undercover agent use significantly decreased post-9/11 (both at a case level and indictee level). This should not come as a surprise. The AG Guidelines no longer emphasized infiltrating terrorist groups to gather information and build a strong case against the principle activist like in previous administrations; rather, the goal of the proactive approach was to disrupt terrorist activity once charges could be made. The aim was to nip criminal plots in the bud before more intricate conspiracies might develop.

The results of hypothesis six serve as a possible explanation for the findings of hypothesis seven. Based on my surrogate measure of evidentiary strength, prosecutors had less evidence available to them in the post-9/11 era. Undercover agent and informant use significantly decreased both at the case level (undercover agent use decreased 33% and informant use decreased 53%) and indictment level (undercover agent use decreased 36% and informant use decreased 65%). It stands to reason, then, the number of unconvicted counts per indictment would increase post-9/11 as there is less evidence to gain a conviction on every charge. Prosecutors on average were winning convictions of roughly 63% of all counts they filed per case pre-9/11. Conversely, in the post-9/11 era, prosecutors won convictions on approximately 18% of counts filed per case. These findings are “likely the result of an unintended consequence of Attorney General Ashcroft’s ‘prosecute early’ policy” (Shields 2008: 144).

RESEARCH QUESTION FOUR DISCUSSION

Finally, in the last research question I sought to examine how conviction rates had changed after September 11th. I hypothesized that conviction rates would increase post-9/11. However, I found that conviction rates were virtually unchanged pre-9/11 to post-9/11. Prosecutors averaged about a 71% conviction rate pre-9/11 and a 72% conviction rate post-9/11. These findings are particularly noteworthy because though there have been significant changes for federal prosecutors, the rate of conviction has remained the essentially the same.

There are several possible explanations for why these findings remained constant. First, as evidenced by Table 9, dismissals and plea bargains have significantly increased post-9/11. As previously discussed, the lack of evidence from undercover agents and

informants likely decreased the strength of the prosecutors' case against defendants. In doing so, the prosecutor is more likely to either dismiss the case or offer a plea bargain. Furthermore, prosecutors who are willing to plea are likely more motivated to accept a guilty plea on fewer active counts therefore increasing the average number of unconvicted counts per indictment (see Table 12 and previous discussion). While the post-9/11 AG Guidelines emphasize faster prosecutions of terrorists, the lack of evidence gathered from the early intervention strategy has resulted in conviction rates remaining fairly static.

Previous research found that conviction rates increased in the post-9/11 era. My findings provide an interesting alternative view into those findings. Recalling the discussion of diffusion cases from section III, Shields (2008) found that conviction rates increased substantially in the post 9/11 era. Shields (2008) findings were based on evaluating all cases processed after 9/11 regardless of prosecution strategies. Shields (2008) found diffusion cases significantly increased post-9/11 ("diffusion cases made up 53% of the cases filed after 9/11") and resulted in higher conviction rates (78). By focusing on prevented and completed acts of terrorism only, my analyses revealed that diffusion cases might be masking the outcomes of cases more closely tied to terrorism. When cases that did not involve completed or prevented acts of terrorism were removed, the conviction rates remained unchanged between eras. This poses an interesting question that should be addressed in future research

VIII. SUGGESTIONS FOR FUTUTRE RESAERCH

This study used Hagan's structural-contextual theory as the theoretical framework. Again, Hagan argues the different branches of the criminal justice system are loosely coupled, and work independently of one another. Only when a crime elicits an intense federal response and brings into being a proactive political environment does the system tighten. Resources are then aimed on one particular form of criminality such as terrorism. For example, following the attacks of September 11th, "funding related to defense, homeland security and combating terrorism has been increased by some \$145-160 billion" (Kosiak 2003:7). Hagan asserts that when these branches function collectively as a result of this tightly coupled system, the levels of explained variance in sentence outcomes decrease due to less discretion on the part of law enforcement and prosecutors. The attacks on September 11, 2001, and the resulting AG Guidelines shift from reactive to proactive, can be viewed as the criminal justice system tightening.

Using Hagan's theory, I argue that following September 11th, the United States has operated under a tightly coupled system in regards to terrorism. I predict over time, the system will gradually loosen as it has in the past and function again with more autonomy and less cross-communication. I suggest future researchers view structural-contextual theory in a less linear manner and more like a pendulum. The FBI's authority and power have fluctuated over time from very limited restrictions to very limited power.

Future researchers on the topic should investigate if there has been a shift back to a loosely coupled system. I argue an indicator for the desire to return to a loosely coupled system is public discontent. Reminiscent of the nation's dissatisfaction after the Watergate scandal, the USA PATRIOT Act of 2001 and TSA body scans have already

incited heated debates about civil liberty violations. If public discontent is an indicator of the system loosening, then the pendulum is already starting to swing back and the FBI's power and authority might again be limited.

IX. CONCLUSION

This study examined the effects the proactive approach has had on the prevention of terrorism attacks in the United States, as well as the changes to federal law enforcement and federal prosecution strategies. Overall, terrorism attacks in the United States have significantly decreased under the new intervention policy. It appears the FBI's shift from a reactive agency to a proactive agency has aided in the prevention of domestic terrorism.

The findings for research question two suggest there have been significant changes in how prosecutors prosecute cases and charge defendants. After September 11th and the implementation of the proactive approach, prosecutors averaged fewer counts per indictment, fewer defendants per case, and dramatic increases in dismissals and plea bargains. Despite these changes, prosecutors were still charging defendants with roughly the same charge severity on lead offense. In other words, though prosecutors were offering more pleas post-9/11, charge severity of lead offense remained essentially unchanged.

The findings of research question three supported the proposition that the early intervention strategy has resulted in less evidence and consequently fewer convictions per indicted count post-9/11. The shift away from infiltrating terror groups to disrupting terrorist activity immediately reasonably implies less information gathered from undercover agents and informants. As evidenced from the findings in hypothesis six,

both undercover agent and informant use significantly decreased in the post-9/11 era. Insufficient evidence could be one possible rationale for why the average number of unconvicted counts per indictment increased post-9/11. With less evidence, and an emphasis on faster prosecution, prosecutors are getting convictions of fewer counts per indictment post-9/11.

Findings of the fourth and final research question indicate that although there have been substantial changes to the way prosecutors' process cases and charge defendants the conviction rate has remained relatively stable. As indicated in the previous discussion, the lack of evidentiary strength weakens prosecutors' ability to win convictions. Taking this into account, it appears prosecutors are more apt to drop a case or offer a plea bargain than go to trial without sufficient evidence. The stress on faster prosecution and the change in prosecution strategy does not appear to have made a difference in the rate of conviction.

The current study highlighted some possible explanations for the decrease in terrorism incidents and changes in federal law enforcement and prosecution strategies. However, there are many influences on pre and post-9/11 justice decisions that are beyond the scope of this study, therefore making this area of terrorism research an important and interesting area of study with numerous possibilities for future research.

X. REFERENCES

- Ashcroft fact sheet on new FBI investigative guidelines, Politechbot.com, September 21, 2002.
- Bradley-Engen, Mindy S., Kelly R. Damphousse, and Brent L. Smith. 2009. "Punishing Terrorists: An Analysis of Sentencing Patterns in the Pre- and Post-Sentencing Guideline Eras." *International Criminal Justice Review* 19(4): 281-399.
- Chesney, Robert. 2007. "Federal Prosecution of Terrorism-related Cases: Conviction and Sentencing Data in Light of the "Data Reliability" and "Soft Sentience" Critiques. Available at http://ssrn.com/abstract_id=1005478
- Congressional Hearing. 1995, May 3. *Combating Domestic Terrorism*. One Hundred Fourth Congress. First Session. Serial No. 52. U.S. Government Printing Office, Washington: 1996.
- Damphousse, Kelly and Chris Shields. 2007. "The Morning After, Assessing the Effect of Major Terrorism Events of Prosecution Strategies and Outcomes." *Journal of Contemporary Criminal Justice* 23(2): 154-174.
- Emmelman, D. S. 1996. "Trial by plea bargain: Case settlement as a product of recursive decision-making." *Law & Society* 30: 335-360.
- Hagan, J., I. Nagel, and C. Albonetti. 1980. "The differential sentencing of white-collar offenders in ten federal district courts." *American Sociological Review* 45: 802-820.
- Hagan, John. 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: 116-135
- Harris, R. A., and J. F. Springer. 1984. "Plea bargaining as a game: An empirical analysis of negotiated sentencing decisions." *Policy Studies Review* 4(2): 245-258.
- Hess, Karen M., and Christine Hess Orthmann. 2009. "Introduction to Law Enforcement and Criminal Justice". 9th Edition. Wadsworth, Cengage Learning. Belmont, California. 509-510.
- Kosiak, Steven M. 2003. "Funding for Defense, Homeland Security and Combating Terrorism Since 9/11" in *Security After 9/11: Strategy Choices and Budget Tradeoffs*. Washington, D.C: Center for Defense Information.
- Poveda, Tony G. 1990. *Lawlessness and Reform: The FBI in Transition*. Berkeley, CA: University of California Press.

- Shields, Christopher A. 2008. "An Analysis of Prosecutorial and Defense Strategies in Federal Terrorism Trials from 1980 to 2004". Ph.D. Dissertation. Sociology Department, University of Arkansas
- Shields, Christopher A., Kelly R. Damphousse, and Brent L. Smith. 2009. "How 9/11 Changed the Prosecution of Terrorism." Pp. 125-144 in *The Impact of 9/11 and the New Legal Landscape: The Day that Changed Everything?*, edited by M. J. Morgan. New York, NY: Palgrave MacMillan.
- Shields, Christopher A., Brent L. Smith, and Kelly Damphousse. 2006. "Their Day in Court: Assessing Plea Bargain Rates Among Terrorists." *Journal of Contemporary Criminal Justice* 22 (3): 261-276.
- Smith, Brent L. 1994. *Terrorism in America: Pipe Bombs and Pipe Dreams*. Albany, NY: State University of New York Press.
- Smith, Brent L. and Kelly R. Damphousse. 1998. "Terrorism, Politics, and Punishment: A Test of Structural-Contextual Theory and the 'Liberation Hypothesis.'" *Criminology* 36:67-92.