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Explaining the Emergence of Entrapment in Post-9/11 Terrorism Investigations

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Abstract
A growing number of studies have examined post-9/11 terrorism sting operations, typically concluding that entrapment is frequent in these cases. Yet no research has documented the full array of mechanisms driving these preemptive prosecutions. Based on in-depth interviews and documentary research, this article identifies the key factors shaping the widespread emergence of entrapment in terrorism sting operations. It concludes that an interconnected set of discursive and policy shifts, institutional processes, and cognitive biases explains the post-9/11 proliferation of terrorism prosecutions with compelling entrapment claims. Neo-orientalism is proposed as the ultimate driver that has set into motion and enabled many of these mechanisms, giving rise to a cultural and political economy of convictions in which a type of racialized police misconduct—itself a state crime—is normalized and rewarded.

Introduction

In terrorism sting operations, government informants facilitate or encourage the commission of terrorism offenses, enabling the prosecution of suspects who agree to commit them (Hay 2005). Stings have the potential to prevent terror attacks by infiltrating terrorist conspiracies, which may have occurred in a few cases. Yet, in numerous post-9/11 investigations, government informants have targeted individuals with no previous terrorist plans for aggressive inducement attempts, even though the defendants would realistically never have committed terror offenses on their own (Said 2015). In some cases, informants attempted to radicalize defendants, repeatedly pressured them, or offered them hundreds of thousands of dollars to commit a terrorist offense (Norris and Grol-Prokopczyk 2015). Many defendants were severely mentally ill or were so inept or dysfunctional that it is extremely unlikely they could have engaged in terrorism independently (Aaronson 2013). As Human Rights Watch concluded, the FBI's "discriminatory and overly aggressive" operations—primarily against Muslim-Americans—"created terrorists out of law-abiding individuals by… facilitate[ing] or invent[ing] the target's willingness to act" (2014: 2, 21).

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Despite compelling entrapment claims in many post-9/11 terrorism cases, the entrapment defense has usually failed in court, influencing acquittals in only a few cases (Norris and Grol-Prokopczyk 2018c). Even so, numerous researchers analyzing individual prosecutions conclude that they constitute entrapment (Aziz 2011/2012; Laguardia 2013; Norris 2016; Norris and Grol-Prokopczyk 2018a; Said 2010, 2015; Szpunar 2017). Quantitative studies have found that dozens of post-9/11 cases had numerous indicators of entrapment (Norris and Grol-Prokopczyk 2015), that strong entrapment claims increased after 9/11 but not after the Oklahoma City bombing (Norris and Grol-Prokopczyk 2018c), and that racial and ethnic minorities are targeted disproportionately for entrapment (Norris and Grol-Prokopczyk 2018b). Moreover, prominent terrorism expert Marc Sageman (2016) argues that most stings target people who would never act independently. Critical criminologists have theorized these operations as an institutionalized form of "policy fraud" providing only the semblance of security (De Lint and Kassa 2015: 364).

Despite this growing body of research, the factors generating entrapment have not yet been documented in a comprehensive manner. In two recent articles, Norris and Grol-Prokopczyk (2018a, b) proposed that a variety of mechanisms lead to frequent entrapment in terrorism cases. Yet, as they acknowledge (2018b: 11), their quantitative data were unable to confirm the significance of these factors, which they presented as "preliminary conceptualization[s]" that "future research could test and further develop" (2018a: 84). Accordingly, this study uses qualitative data to provide a more systematic analysis of the mechanisms enabling and encouraging entrapment in post-9/11 terrorism prosecutions. This includes interviews the author conducted with 37 individuals with close knowledge of relevant cases (including ex-FBI agents), as well as textual sources.

Consistent with exhortations to avoid "micro-chauvinism" or "macro-chauvinism" (Turner 2012: 2–3), and to integrate explanations at different levels of analysis (Lynch 2015), this study catalogues the macro-level discourses and resource shifts; meso-level incentives, beliefs, and institutional processes; and micro-level cognitive mechanisms that together generate and sustain these problematic prosecutions, effectively institutionalizing a type of state crime. Neo-orientalism is proposed as the ultimate driver that has set into motion and enabled many of these mechanisms, creating a cultural and political economy of convictions in which racialized police misconduct is normalized and rewarded.

Entrapment in Terrorism Sting Operations

The FBI's COINTELPRO-related abuses prompted Attorney General Edward H. Levi to issue guidelines in 1976 restricting FBI undercover operations (Jones 2009). From then until 9/11, policies precluded informants from instigating criminal activity by encouraging suspects to commit crimes, and reserved stings for defendants already capable of terrorism (German 2013). Former FBI agent Michael German (2013) maintains that if agents in the 1990s had proposed the kind of operations that are commonplace today, they would have been sent to psychological counseling.

The 9/11 attacks prompted dramatic increases in counterterrorism funding and abrupt changes in informant practices. The FBI resolved to thwart plots at the earliest possible point through "preventative prosecutions," and new FBI guidelines abandoned previous restrictions on undercover operations. Terrorism stings subsequently proliferated. One study found that, in the thirteen years after 9/11, about 300 terrorism defendants were charged in cases involving informants or undercover agents (Norris and Grol-Prokopczyk

2015). The study identified numerous entrapment indicators in about thirty percent of cases. Many defendants had not expressed support for terrorism prior to the operations, were passive sympathizers lacking plans for terrorism involvement, or were pressured relentlessly by informants. In one case, the judge concluded that "real terrorists would not have bothered themselves with a person who was so utterly inept" because "only the government could have made a terrorist out of" the defendant, "a man whose buffoonery is positively Shakespearian in its scope" (Dratel 2011: 76).

Under the entrapment defense, a case must be dismissed if the government induced the defendant to commit the crime, and the prosecution cannot prove the defendant's predisposition to commit the same type of offense (Marcus 2009). The defense, however, is widely understood as ineffective in policing entrapment because juries and judges often assume predisposition from successful inducement, negating the defense through circular reasoning (Marx 1988).

A comparative analysis of entrapment claims after the 1995 Oklahoma City bombing and after 9/11 found that sting operations increased after both attacks, while entrapment increased only after 9/11 (Norris and Grol-Prokopczyk 2018c). Norris and Grol-Prokopczyk suggest that this discrepancy resulted from several factors, including the post-9/11 "emergence of an ideology of absolute prevention and preemptive prosecution," greater "hydraulic pressure to generate convictions… the cultivation of thousands of new informants…and greater tolerance towards violating Muslims' rights" (2018c: 260).

Another quantitative study found that non-white Muslims, and particularly Black Muslims, experienced more entrapment than non-Muslims and White Muslims prosecuted for terrorism offenses (Norris and Grol-Prokopczyk 2018b). While their data could not identify particular explanations, they proposed that "the widespread stereotype of Muslims as inherently dangerous… likely encouraged the FBI to develop its practice of aggressively inducing previously law-abiding Muslims to commit terrorism offenses" (2018b: 11). The authors also discuss other potential mechanisms, including "cognitive biases, institutional incentives….and the perception that certain groups represent a threat to the social order" (2018b: 14). They note that "in-depth qualitative analyses" are better-suited for documenting these factors (2018b: 13).

A mixed-methods analysis of entrapment claims in right-wing terrorism cases found that such claims were far less frequent, and less severe in their alleged abuses, than in stings targeting Muslims (Norris and Grol-Prokopczyk 2018a). As a "preliminary" theoretical explanation, the authors propose that "post-9/11 terrorism discourses and the sharp rise in terrorism funding" incentivized terrorism convictions, which in combination with "micro-level mechanisms," such as individual biases, encouraged the entrapment of Muslims but not right-wing extremists (2018a: 85–86). They suggest that "future research could test and further develop" these explanations (2018b: 84)—a task this article undertakes by employing a mixed-method, qualitative approach.

Data and Methods

This article draws on semi-structured phone interviews with 37 individuals with in-depth knowledge of one or more terrorism stings, and on the analysis of relevant documents. Such mixed-method approaches are increasingly used by researchers seeking comprehensive analyzes of particular topics while capitalizing on the strengths of different data sources (Brent and Kraska 2010). Interviewees included two former FBI agents, one former

FBI informant, 10 experts, three terrorism suspects, two journalists, and 24 attorneys. (The total is larger than 37 because several individuals fell into more than one category.) The experts that I interviewed had conducted independent research into one or more stings, or were insiders with extensive knowledge of counterterrorism operations. Interviews were conducted from 2015 to 2018. The average interview was 42 min; interviews ranged from 9 to 100 min.

Interview questions were designed to identify causal explanations, based on experience and observation, for the occurrence of post-9/11 entrapment cases. Interviews were transcribed and coded for different explanations, including both expected mechanisms and those emerging from the data (Lichterman and Reed 2015). Expected mechanisms formulated into interview questions included pressure on agents and informants to produce convictions, concerns about suspects committing attacks or being recruited if they were not targeted in stings, beliefs about deterrent effects of stings, the assumption that if courts uphold these cases they must be valid, and the role of informants disobeying their handlers. In order to reveal other potential factors, interviewees were also asked generally about what caused entrapment. Additional mechanisms were identified through inductive coding procedures (Gibson and Hartman 2013).

Various textual sources, such as in-depth examinations of particular cases by journalists and court documents in relevant cases, were also analyzed to identify evidence for different mechanisms. This included transcripts of entrapment-related conversations among FBI agents, which were released by an investigative journalist (Aaronson 2015).

Historical Genesis

The initial spread of post-9/11 terrorism stings resulted from patterns of resource allocation, administrative changes, and the emergence of novel ideologies. Similar to Cheney's "1%" doctrine that even minute probabilities should be treated as certainties, officials after 9/11 developed an ideology of preemptive prosecution, geared toward thwarting terrorist plots at the earliest possible point. This was consistent with prevailing ideas that further attacks were imminent and must be prevented at all costs (Mueller and Stewart 2016).

The vast post-9/11 infusion of counterterrorism funding led the FBI to transfer numerous agents toward counterterrorism. Sociologists observed long ago that the amount of deviance discovered rises in proportion to the number of those employed to find it (Erikson 1966). Consequently, "specialized agencies" may pursue "trivial criminal cases to justify their existence and continued federal funding" (Larkin 2013: 740). As one expert that I interviewed noted, "funneling more money in a certain direction necessarily means there will be more agents looking, and if you're looking for something, you're going to find something. If all you've got is a hammer…".

These increased resources and ideological shifts at the macro-level translated into increased convictions at the meso-level through the FBI's deployment of informants. After 9/11, aided by loosened informant guidelines, agents cultivated thousands of informants in Muslim communities, tasked with detecting terrorist activity in exchange for payments (sometimes over $200,000) or leniency in pending criminal or immigration charges. That is, many informants were told that they would not be charged with particular crimes, or would not be deported, if they served as informants. Some of these informants were charismatic and manipulative enough to successfully induce previously law-abiding defendants.

Once sting operations generated convictions in a few early cases, the FBI expanded the use of aggressive stings. Their precise contours evolved over time. As one attorney that I interviewed noted, authorities initially deemed it "too risky" to provide fake bombs, fearing suspects might go "off the grid" and somehow commit real attacks. Yet, as an ex-FBI agent said, mistrials in the Liberty City Seven case convinced agents to "put bells and whistles on these cases to get convictions," including by having suspects press buttons on fake bombs.

Generative Beliefs

Misperceiving Radicalization

Many interviewees indicated that sting operations with compelling entrapment claims result from several beliefs prevalent among FBI agents and prosecutors. First, unrealistic expectations of violent radicalization, promoted by "conveyer belt" radicalization models, predispose authorities to misperceive law-abiding Muslims as security threats. These models falsely suggest that Muslims harshly criticizing US foreign policy or sympathizing with radicalism are "terrorists in waiting," as one ex-agent said, who will eventually progress to violence. This assumption has been shown to be unwarranted because the number of people sympathizing with terrorists is thousands of times larger than the number of terrorists (McCauley and Moskalenko 2014; Norris 2015). Due to such flawed models, even Muslims simply becoming more devout are seen as threats, making agents think, as an ex-agent told me, "we have to do something with him."

For years after 9/11, the FBI used training materials aptly characterized as Islamophobic, exaggerating threats based on gross stereotypes about Islam (Swenson 2011). Noting that these materials were used for eleven years without objection, an ex-agent explained to me that there were "certainly Islamophobes within the FBI," including "bigoted" agents who thought Muslims can "easily be pushed" into terrorism. A former FBI informant said that agents see all Muslims as radical or potentially radical, and think Muslim communities protect terrorists. A counterterrorism insider reported being "shocked by the amount of prejudice" among agents. One expert noted that some agents had "drunk the kool-aid," embracing alarmist ideas that numerous Al Qaeda agents were in the US, and that many Muslims were radicalized, waiting for opportune moments to attack.

Assuming Dangerousness

According to many sources, an important driver of entrapment is the belief that succumbing to informant pressure necessarily proves dangerousness. In the Newburgh Four case, an FBI informant persuaded James Cromitie to participate in a terrorist plot by offering him $250,000, as well as other expensive gifts, such as a barbershop and a vacation (*Cromitie v. United States*, 727 F. 3d 194, 211 (2nd Cir. 2013)). The government sentencing memorandum in that case stated that:

> It is irrelevant that the defendants were not themselves associated with a terrorist group or that they may have lacked the ability (or maybe even the inclination) to carry off something like this on their own: their dangerousfness was their willingness to submit to a person they thought was a terrorist (2011 WL 2556081).

The government memorandum also asserted that it is irrelevant whether there is no realistic chance that a recruiter would ever approach them because eventual acquiescence somehow proves dangerousness.

Yet if successful inducement proves dangerousness, the question is how? This assumption of dangerousness was based solely on what he was persuaded to do with promises of hundreds of thousands of dollars and various other perks. Importantly, there is no record in history of terrorist recruiters fixating on some reluctant and inept individual and offering ever-increasing rewards. His inducement thus says little about the likelihood of his recruitment.

Interviewees confirmed that this belief—that anyone who is successfully induced is necessarily dangerous—is a primary motivator of indiscriminate stings. One expert I interviewed told me that agents held a "genuine belief" that "only someone who might become a terrorist would be willing to go through with" a terrorist offense, creating a "nice clear cutoff line" between the dangerous and harmless. In the words of one prosecutor, informants "can't turn people from anti-government to terrorist—you either have it or you don't." An attorney recalled an FBI agent telling him, in reference to a controversial case against a defendant lacking pro-terrorist views, "we gave him a test [the sting] and he failed," as if this proved conclusively his dangerousness. Notably, this assumption of dangerousness is inconsistent with the entrapment defense because it assumes predisposition regardless of defendants' prior conduct and the nature of inducements.

Recruitment Prevention

The belief that anyone ensnared by a terrorism sting could have been recruited by real terrorists also partly explains entrapment. A federal appeals court mentioned this justification in rejecting Cromitie's entrapment claim (*Cromitie v. United States*, 727 F. 3d 194, 207–208, n.13 (2nd Cir. 2013)). A former informant told me the FBI believes that if the informant "didn't draw them out then some extremist would." Similarly, an expert noted a "genuine belief" among agents and prosecutors that "they can put an attractive bait out here and catch people who otherwise might end up talking with somebody really dangerous."

The problem with this fear of highly active recruiters is that none have been discovered (Sageman 2016). As one interviewee noted, there is an "incredibly low chance" that a Muslim not already planning terrorism would be approached by recruiters. Even if such recruiters were active, many defendants are not feasible recruits. As Judge Colleen McMahon, U.S. District Judge for the Southern District of New York, remarked in Cromitie's trial, he was too inept for any real terrorist to recruit him (Dratel 2011). The Chief Judge of the Second Circuit, Dennis Jacobs, echoed this conclusion, describing Cromitie as "comically incompetent, possibly the last candidate one would pick as the agent of a conspiracy" (*Cromitie*, 727 F. 3d at 230).

Normative Formalism

Another mechanism encouraging entrapment is the belief that the entrapment defense's failures mean these cases must be legitimate and worthwhile. This can be termed "normative formalism" because it assumes that if something is nominally legal under current law as implemented by courts and juries, it must be normatively valuable. Responding to entrapment concerns, government spokespersons often simply assert that all entrapment claims have failed, as if this definitively settles the issue. Even an ex-agent highly

critical of stings said to me in an interview, "If the evidence was heard before the jury and they convicted [him], how can I sit here and say… those agents were wrong?" One expert thought it "definitely the case" that this normative formalism perpetuates controversial stings, as it was "easy to rationalize [them] because courts have upheld this." He reported agents making statements, such as "I'd rather believe the judicial system than crackpot journalists." (Notably, this ignores widespread pro-prosecution biases, as well as numerous legal experts' identification of these cases as entrapment.) Normative formalism provides another illustration of how state actors use law to legitimize, or deny the existence of, rights abuses (Rothe and Collins 2014; Welch 2004).

Deterrence Optimism

The belief that stings deter terrorist conspiracies may be another factor leading to entrapment. One interviewee was told by agents that if every Muslim believes the person they are talking to may be an informant, discussing violent plans will become impossible. A former FBI informant believed that this deterrence optimism drove problematic cases because stings produce "ripple effects" making people "back off from their plans" due to fears they are in the government's "cross-hairs." While this belief has plausibility, its validity remains uncertain, and entrapment could potentially increase terrorism risks (Norris 2015). Moreover, some interviewees doubted deterrence was a significant motivation. An ex-agent was skeptical that agents believed stings deterred terrorism because terrorists were "pretty suspicious already."

Informant-Specific Influences

Informant Incentives

No one doubts that informants are strongly motivated to please their government handlers, whether they are expecting money or leniency. It seems clear that reporting the absence of threats is insufficient to earn their rewards. Thus, some informants target those easiest to manipulate, even if they would never realistically perpetrate attacks.

An ex-agent reported that informants often experience pressure from handlers to produce convictions. Informants could reasonably fear criminal prosecutions, or even the leaking of private information, if they fail to generate cases (Aaronson 2013). Indeed, a former FBI informant stressed that the "informant system is not voluntary; it's through leverage… you don't voluntarily do this work." He claimed that many informants are recruited via threats to reveal unsavory information, such as telling wives about affairs.

The informant reported employing such tactics to recruit informants, as directed by handlers. From an acronym the FBI taught him—MICE (money, ideology, compromise and ego)—he said that threatening to reveal compromising information was most common. An ex-agent confirmed these methods were used, noting that "improperly motivated informants" helped drive entrapment. One insider recalled his surprise at seeing official FBI forms describing such tactics openly.

Under such circumstances, informants may feel compelled to find "some vulnerable person who could be roped into doing something," as one ex-agent stated. This former agent criticized the FBI's increased willingness to hire informants with numerous convictions,

observing that if a con man can talk someone out of money, he can usually also talk people into committing crimes.

Informant Mendacity

Informants are often dishonest and manipulative individuals, leading to entrapment when their lies prompt agents to approve dubious operations. In the Hemant Lakhani case, the informant told agents Lakhani was a wealthy illegal arms trafficker, when he was actually an impoverished businessman without terrorist ties. Informants also enable entrapment by concealing inappropriate behavior, whether through mendacity or failing to record conversations (Aaronson 2013). For example, agents never authorized the informant to offer Cromitie certain inducements, including a $250,000 reward. Utilizing informants with extensive histories of fraud exacerbates this problem. As an ex-agent said, "Informants are the most dangerous people on the planet," noting that "agents don't like working with informants."

A source close to the Liberty City Seven case said that the FBI "didn't have control over the informant, or they trusted him too much, and [the agents] blew this out of control," resulting in compelling entrapment claims that yielded mistrials and acquittals. As one interviewee noted, the FBI uses informants proven to be serial liars. For example, Shahed Hussain, who perjured himself repeatedly in the Cromitie case, continued as an informant afterward, as shown in the film *(T)error* (St. John et al. 2015). Hussain was so mendacious, with "one lie after the other," and unapproved inducements, that interviewees were shocked that prosecutors went forward with the case, and that courts upheld Cromitie's conviction.

An ex-informant said informants do their utmost to prolong investigations, including by exaggerating threats. He said "there's no honesty and patriotism in becoming an informant"—it is about finding an "angle to keep the money coming in" or to avoid prosecution. He observed that agents are "nowhere near the ground" in stings; their "role has been reduced to a disseminator of information," relying completely on informants for information.

Instrumental and Institutional Considerations

Many allege that instrumental or institutional considerations drive the proliferation of questionable stings. For example, some argue that given massive counterterrorism expenditures, officials feel compelled to generate convictions to justify future funding and foster perceptions that the FBI is keeping Americans safe (De Lint and Kassa 2015). This encompasses several distinct mechanisms.

Status-Quo Preservation

First, a desire for status-quo preservation may prompt officials to approve problematic operations and pressure agents to produce convictions in order to achieve tangible results from counterterrorism spending. For example, a former agent described stings as an "exercise in manufacturing plots, solvable plots to be able to tout to Congress and the public."

This same ex-agent reported that some officials identify strongly with the War on Terror, and desire convictions to illustrate why the US should combat terrorism domestically and abroad with current or increased budgets and powers. He said that "keeping the War

on Terror in the public mind…. to maximize authority and resources" was the goal of these FBI personnel, even if it involved "misleading the public and manipulating public fear." Similarly, an expert noted that officials "absolutely need" the semblance of a "terrorist army" to justify controversial counterterrorism policies. Remarkably, former FBI Assistant Director Thomas Fuentes said he tried to "keep fear alive" to prevent budget cuts, as shown in the HBO documentary *The Newburgh Sting* (Davis and Heilbroner 2014). Indeed, officials tout to Congress even the most questionable stings as demonstrating why funding is needed. One expert concluded that a West African DEA sting featuring Al Qaeda and FARC (*Fuerzas Armadas Revolucionarias de Colombia*)—even though defendants had been unaware of FARC's existence—was designed to generate evidence of international terrorist collaboration.

An ex-agent said the FBI also feels a need to "convince the American public that they are doing everything they can to catch these terrorists." Thus, he said, "what happens is that you have these low[-hanging] fruit"—low-functioning people capable of being induced—whom the government pursues to demonstrate productivity. A counterterrorism insider said stings are used increasingly "because it's been successful," but "success for them is not protection of society—success is the number of convictions."

One former prosecutor said:

> [S]ome prosecutors see generating cases as what the business of the investigation and prosecution of the criminal law is, so they make cases. They're literally making cases, manufacturing cases. Are they doing it because these people are really guilty, or are they doing it because that's what they're supposed to do?

He described the Cromitie case as "a production" in which government "produced, directed and starred," while defendants were "minor actors." Similarly, an attorney discussing another case described a "scenario…. crafted by the informant, ma[king] it seem like they were dangerous people, but it wasn't their idea—it was all written, produced and choreographed by the FBI.".

As another attorney described it, defendants were "led down the primrose path by an informant" because FBI agents assigned to "terrorism squads" were "trying to justify their existence" and respond to the bureaucratic imperative "to make cases." Because terrorism is the crime "du jour, these are the cases they want to push," due to the publicity and "tremendous funding" such cases yield. On a more local scale, one attorney believed strongly that entrapment by city police in one case resulted from officials' desire to show that security expenditures for a major international conference were not wasted.

An ex-agent reported that "the statistics they take from these things, they use them to get resources and funding, and some people get accolades." He noted that many defendants had "obvious mental problems," posed no threat, and should have been referred to local authorities rather than making "a federal case out of it," but suggested that "there are pressures with respect to working cases that they would rather not work." These pressures come from FBI administrators who say, "we've got so many resources we need to commit to terrorism," and so "we want you to work terrorism" cases. Agents hoping to "ferret out crime and chase bad guys" are disappointed with cases in which "at best these people have mental problems and have a hard time getting up in the morning, much less making a bomb." Convictions result from such cases because "if you pay a third party to incite these guys, you can you probably get them to say anything." Yet interviewees never depicted agents as purely cynical, intentionally pursuing cases without public safety value. As noted above, agents apparently believe that anyone who could be induced is necessarily dangerous.

Promotion Incentives

Second, incentives to achieve promotions or avoid negative evaluations also explain entrapment. It is well understood that "making cases" is an important career goal for law enforcement. A former FBI agent noted that "everybody's measured by statistical accomplishments," which was "certainly a driver" of entrapment cases. He said that because agents spend considerable time chasing "ridiculous leads," stings provide tangible accomplishments with which to "furnish" careers. He noted that everyone involved in operations, from agents to higher-level administrators, gets a "gold star by their name that … they were a great terrorist hunter." One expert reported that agents need to "work a terrorism case" to be promoted and become one of the "golden boys of the department…. you have to make your bones with a terrorist case or you can't go up.".

Recorded conversations among FBI agents in the Sami Osmakac case demonstrate agents' fixation on manipulating him to maximize punishment. Agents were enthusiastic about ideas to offer Osmakac "multiple explosive devices" to enable a "much bigger charge," and wanted the informant to steer Osmakac toward selecting government rather than private targets for his attack, which would facilitate harsher penalties (Aaronson 2015). Discussing sentences based on different scenarios, one agent remarked, "20 years adds a lot of value to a product," as if convictions were factory widgets. In response to a comment about completing the operation, an agent replied, "As long as you get me my press release. As long as you get me my press release." Thus, agents acknowledge among themselves that publicity about their roles in completing stings and achieving lengthy sentences are major motivators of their behavior. To further illustrate, an attorney reported that FBI agents attending a sentencing hearing were visibly furious after a terrorism defendant received a far lower sentence than prosecutors requested.

The transcripts also contain revealing comments suggesting agents realized Osmakac's harmlessness. Agents were recorded mocking Osmakac (who was mentally ill, impoverished and low-functioning) as a "retarded fool who is hard up for money" and "doesn't have a pot to piss in" (Aaronson 2015). Agents also noted that Osmakac "doesn't understand what's realistic" and generates only "pipedream scenarios"; he "talks to himself" and he fears that "spy satellites will see." Agents regarded him as incapable of planning attacks: "He's an irrational guy, it's not like us where you have an objective and do all the planning toward it. I mean, I don't think he cares." They said he is not a "hardworking logical human being," complaining that "the whole issue is" they needed him to "be reliable enough to show up" at a meeting with the informant. Pessimistic about the case, they feared arguments that "the FBI made this happen," noting that "Everything we can do to strengthen our case, *and this case sucks*, we should do" [emphasis added].

Other cases also suggest authorities continued operations despite believing defendants were harmless. A source reported that tapes in which agents mocked the Cleveland Five's stupidity and ineptness appeared in that case. When Cromitie left town, agents told local police not to worry because he would never perpetrate terrorism independently. An attorney for a Liberty City Seven defendant noted that despite the "unprecedented audio" recordings available in that case, including months of conversations, you "couldn't find an iota of radicalization," indicating that authorities must have realized their harmlessness. Another attorney reported that when one defendant later tried to join the army, the FBI case agent actually "talked [the recruiter] into" letting him join despite the terrorism prosecution, assuring him that he was not dangerous.

In many cases, agents should have been fully aware of informants engaging in extreme tactics, such as intense, repeated pressure on unmotivated defendants (McDavid, Cromitie, Cleveland Five), promising exorbitant sums to individuals lacking terrorist sympathies (Hassoun, Hossain/Aref, Liberty City Seven), the use of a romantic relationship to manipulate a suspect (McDavid), and the informant threatening to kill the defendant or himself (Shareef). None of this is to say, however, that agents cynically pursued worthless cases purely for selfish or bureaucratic reasons. If agents already shared the beliefs outlined above, instrumental considerations may have simply provided another driver.

Institutional Culture

Third, institutional culture may also explain entrapment cases. One insider reported a "healthy debate within the FBI" about stings, with "lots of people" saying "this is crazy." Yet a culture of conformity stigmatizing internal critics as disloyal may stifle such conversations. For example, one ex-agent reported experiencing marginalization by colleagues after criticizing an investigation. Both a former agent and an insider indicated that higher-level administrators are generally unwilling to terminate questionable operations. In addition, the FBI's long history of targeting minority or left-wing activists for aggressive operations may have had lasting impacts on institutional culture, manifesting itself today in entrapment (Norris 2016).

One expert reported that FBI agents often said, "Look, it's not as if we're judge, jury and executioner—we just build these cases and the judge and jury decide if it's OK." An attorney noted that this is an "accepted point of view:" agents make arrests and "pass it on to the next person for their evaluation," avoiding personal responsibility. This "pass the buck" mentality may quell misgivings, prompting agents to continue with cases despite their doubts.

Vertical Coordination

Fourth, coordination with higher-level officials partially explains why even dubious operations continue once they begin. Sources indicated that from the beginning of each case, agents coordinate closely with prosecutors to plan the details of the case. This could have a reinforcing effect, preventing agents from terminating operations even after a suspect's reluctance or incompetence becomes clear. An ex-agent noted that once agents discuss operations with prosecutors, perhaps selectively filtering information, they are reluctant to terminate them, potentially undermining their credibility. This role of coordination is consistent with structural-contextual theory, which predicts that high-priority areas, such as terrorism, yield more convictions because actors coordinate in a tightly-coupled manner (Damphousse and Shields 2007).

Cognitive Biases

As previous research suggests, cognitive biases, such as the alarmist bias (which encourages more alarmist interpretations of the same facts), may make it difficult for agents to make rational decisions in terror stings (Norris 2015). Moreover, anxieties about marginalized outgroups likely drive their targeting for entrapment (Norris and Grol-Prokopczyk 2018b). Such mechanisms influence agents to exaggerate threats posed by individuals,

ascribe behavior to inner tendencies while neglecting situational influences, and to interpret ambiguous information as confirming preexisting views. Along similar lines, a counterterrorism insider ascribed entrapment cases to identity-based groupthink, in which the FBI is on a "team" and "winning trumps justice," given that agents see themselves "as saviors of society" and "resent anybody who is sympathetic to the other side and [who] want[s] to set them up," considering them to be "traitors" because of their views alone. Two additional mechanisms are highlighted below.

Probability Neglect

First, probability neglect with respect to personal accountability partially explains entrapment. Even if agents think defendants would never realistically commit attacks, fears of being held responsible in the unlikely event of such attacks may prevent them from closing investigations. Research shows that people are notoriously bad at responding appropriately to minute probabilities, often making decisions unjustified by actual risks (Sunstein 2005). When probability neglect is combined with personal accountability concerns, agents may hesitate to halt even operations that clearly constitute entrapment.

An ex-agent related that agents routinely closed non-terrorism investigations, while in terrorism cases, "nobody wants to take that responsibility" because if afterwards, the person "does something bad, it all comes back to you." One attorney believed that agents sometimes concluded suspects were not dangerous, but higher-level officials insisted they continue the operations, in case the suspects committed attacks and the officials were blamed. Another source described an "abundance of caution… in the psychology of agents," based on speculation about the tiny chance that apparently harmless malcontents could "stumble upon some opportunity" and somehow manage to commit attacks.

Robert Fuller, the FBI agent responsible for the Cromitie investigation, was criticized for dropping investigations of a 9/11 hijacker, forgoing an opportunity to prevent the attacks. Such agents may be hypersensitive to potential harms from closing cases. By contrast, the costs of continuing dubious operations are unknown, given uncertainty about where resources would have been directed instead. More broadly, agents tend to rationalize pursuing questionable suspects with stock phrases like "we couldn't take a chance" or "we couldn't just sit on our hands and wait for him to do something"—as if continued surveillance were not an option.

Sunk Cost Fallacy

The sunk cost fallacy also likely encourages questionable stings. This fallacy motivates continued investment in worthless endeavors without net benefit because one feels as if the money already invested will be wasted unless additional investment is made (such as resources needed to complete stings) (Friedman et al. 2007). In reality, when operations lack public safety value, additional investment simply wastes more resources. Yet, fears of "wasting" already-spent resources may motivate agents to complete problematic operations. This may have happened in Sami Hassoun's prosecution, in which a young man without radical ideology was convinced to plan an attack with promises of a million-dollar reward. According to internal documents, the FBI was concerned the informant was entrapping him, but nevertheless continued the operation.

An expert considered it "unquestionably" true that sunk costs influenced entrapment because "over and over again" they "spend an enormous amount of time on a case and find

there's nothing there," but "go ahead with" the operation anyway, "even though it doesn't make any sense." In the Lakhani case, a businessman was targeted for a missile sting despite lacking prior interest in terrorism, and despite his inability to acquire missiles. A source close to the case said that authorities "came to the conclusion over the course of the investigation that he was not an authentic threat, but they were so invested in the investigation by the time they came to that conclusion that they continued to pursue it." As he put it, "these things take on a life of their own. Everybody invests tons of time and resources, and nobody wants to be the one who says, 'We're wasting our time here.'" Similarly, a Canadian judge, in ruling that terrorism suspects had been entrapped, ascribed their entrapment to officers' desire to avoid wasting their considerable investment in the case (*Regina v. Nuttall*, 2015 BCSC 1404, 245).

The desire to ensure payoff from cases is evident in efforts to establish "back-up charges." In one case, that of Al-Akili, after an informant failed to induce him, Al-Akili discovered he was an informant, and publicized his case. As chronicled in the film *(T)error* (St. John et al. 2015), the day before his scheduled press conference criticizing the FBI, the FBI arrested him, seeking a long sentence based on a Facebook picture of him holding a weapon (which he, as a felon, was banned from possessing). In the case of Samy Hamzeh, who deradicalized himself after imams convinced him terrorism was forbidden, informants nonetheless pressured him into an illegal weapons transaction, apparently to avoid the appearance that the operation was a waste.

Discussion/Conclusion

As described above, the continued production since 9/11 of numerous preemptive prosecutions with compelling entrapment claims results from several factors at different levels of analysis. First, macro-level shifts in administrative rules, discourses and resource allocation created an enabling context for terror stings. Second, these factors translated into meso-level mechanisms, including incentives to achieve terrorism convictions, close vertical coordination, and beliefs promoting the indiscriminate use of stings. Finally, micro-level biases further encourage the approval of problematic operations.

Terrorism stings represent an approach to risk that differs dramatically from the actuarial risk assessment associated with preventative penology (Peeters 2015). Rather than conducting assessments to determine whether surveillance is appropriate, the government instead uses a much cruder, and more protracted and expensive, tool—the aggressive sting operation—to ostensibly determine dangerousness, ascribe blameworthiness, and justify preemptive punishment. Despite dissonance between preemptive prosecutions and other preventative approaches, these practices continue unabated because they are consonant with the speculative logic underlying many overwrought responses to terrorism. As Richard Jackson argues, counterterrorism is characterized by an "extreme precautionary dogmatism in which the 'unknown' is reflexively governed through preemptive action…. even if it means constructing a self-fulfilling prophesy" (2015: 36). Authorities operating under this logic "act upon what is unknown as projected through imagination and fantasy," leading to "false positives" in which harmless individuals are targeted (2015: 36, 48). This entails a "zero-risk, hyper-cautious approach to public safety: no level of risk… can now be tolerated" (2007: 44).

Though sting operations are not mentioned in Jackson's analysis, his framework describes their logic and consequences remarkably well. Certain features of these

operations, however, particularly those with strong entrapment claims, distinguish them from analogous preemptive measures. First, the state's role in these offenses is generative and performative because state informants bring about their commission, limited only by the imagination of informants and their handlers and by suspects' impressionability (McCulloch and Wilson 2016).

Second, these "pre-crime terrorism offenses" often receive more severe sentences than "many completed crimes of violence" (2016: 72). This shows that preemptive counterterrorism generates not only extrajudicial measures, such as torture and drone strikes, or the short sentences common for those convicted of preparing for terrorism (De Goede and De Graaf 2013), but also the harshest punishments available. Indeed, some cases regarded as egregious examples of entrapment have yielded extreme sentences, including Cromitie (25 years), the Duka brothers (life sentences), and Lakhani (40 years).

Third, as cataloged above, entrapment in sting operations does not arise from preemptive ideologies alone, but results from an interconnected array of mechanisms. In short, a cultural and political economy of convictions emerges, in which specific beliefs and incentives strongly motivate agents, informants and policymakers to continue prosecuting cases with apparently valid entrapment claims. As a result, what the "law on the books" suggests is that illegal entrapment, and thus police misconduct, is promoted systematically as a matter of "law in action." What might be called "conviction capitalism" drives police and prosecutors to accumulate "capital" by generating convictions. As state crime theorists have argued, "organizational deviance is most likely to occur when pressures for goal attainment… intersect with attractive and available illegitimate means in the absence or neutralization of effective social control" (Kramer and Michalowski 2005: 453–454). In their terms, the entrapment defense's ineffectiveness in redressing abuses, and the attractiveness of the resulting convictions for individual and organizational goal attainment, allow the state crime of entrapment to persist. Along similar lines, this article's multilevel analysis of the mechanisms driving entrapment provides a further example of how criminologists can advance understanding of state crime's "institutional dynamics"—an area identified as being in need of conceptual development within state crime research (Grewcock 2008: 155).

State crime scholarship has often focused on such topics as police violence and state terrorism (Green and Ward 2004; Rothe 2009), but has not yet examined entrapment in terrorism stings. Entrapment in these cases qualifies as state crime for two reasons, however. First, entrapment necessarily involves informants committing state-sponsored crimes (such as aiding and abetting terrorism). Accordingly, perpetrating entrapment can be prosecuted as a crime in many countries, as undercover police or government informants could be charged with inciting terrorism or other offenses they commit during stings. To illustrate, under Italian law, undercover police who induce suspects illegally in sting operations can be prosecuted as accomplices to the offenses committed by suspects (Ross 2004). Theoretically, this could occur under US law as well because prosecutors could use their discretion to charge government *agents provocateurs* for soliciting, or aiding or abetting, a suspect's criminal offense (Joh 2009). In practice, however, prosecutors and courts widely tolerate these state crimes, preferring to rely on the entrapment defense to remedy abuses rather than prosecuting informants or undercover agents (Ross 2014).

Second, following Green and Ward's (2004: 2) influential definition of state crime as "organizational deviance involving the violation of human rights," entrapment could also be considered a state crime because entrapment is a human rights violation—a crime against human dignity (Goldstein 1975). Sageman (2016) reports that the US is "alone in using" terrorism stings because "other Western countries rightfully condemn

them as incompatible with liberal democracy" (2016: 170). The European Court of Human Rights' leading entrapment opinion concluded that a defendant was "definitively deprived of a fair trial," as required by the European Convention on Human Rights, because agents "instigated" him to commit an offense and because authorities lacked "good reason to suspect" the defendant of criminal involvement (*Teixeira de Castro v. Portugal*, ECHR 9 June 1998). Presumably, entrapment breeches international human rights norms because inducing someone to commit an offense without a valid reason (such as evidence of ongoing crimes) violates individual autonomy and privacy, and the freedom from arbitrary state abuses, guaranteed by liberal democracies (Ashworth 1999).

Leaving aside debates about whether human rights violations necessarily constitute state crimes (Rothe 2009), entrapment in terrorism stings exemplifies how "[s]tate crime… masquerades as pre-emptive security or is labeled counterterrorism" (McCulloch and Wilson 2016: 48). The state manufacturing of crime, enabling harsh punishments for previously law-abiding citizens, also illustrates how states socially construct criminality, using the cover of legal process to legitimize actions that create rather than prevent crime. In effect, the state simulates threats of non-state violence while inflicting real harms on marginalized individuals.

Indeed, as in the War on Drugs, the powerless are the most convenient targets of terrorism stings (Chambliss 2001). In both drug policing and terrorism stings, a set of discursive justifications and institutional incentives empower state actors to engage in racially-discriminatory forms of aggressive policing, characterized by arbitrary targeting and widespread misconduct (Hallsworth 2006). As suggested by critical race theorists, if racism is so embedded in the "personality of the modern state" that "state emergencies invariably service white supremacy" (Goldberg 2002: 246–247), then it should not be surprising that socially-constructed states of emergency—such as the War on Crime and the War on Terror—lead to parallel forms of racial domination. In both cases, racially-coded discourses translate into widespread institutional mechanisms, which, from the beginning, disproportionately targeted groups stigmatized by stereotypical associations with particular types of crime (Ward 2015).

Although a number of mechanisms encourage entrapment, neo-orientalism—the pervasive view of Muslims, and particularly Arabs, as inherently violent, irrational and fanatical—may be the ultimate driver that has set into motion and enabled many of these mechanisms. Extensive critical race research has documented that neo-orientalist themes have been commonplace for decades, and dominate contemporary popular and government discourses on terrorism (Said 1978; Jackson 2007; Naseem 2012). Major terrorist attacks by white men, such as Timothy McVeigh and Anders Breivik, may invigorate counterterrorism efforts, but they never inspire the absurd extremes of preemptive counterterrorism, of which entrapment is one of many examples. Perhaps the novel ideology of preemptive prosecutions—which then brought forth a system of incentives encouraging problematic stings—could arise only in the context of a neo-orientalist worldview, in which individual Muslims, even those lacking any resources, terrorist ties or ideology, are implausibly feared as a source of existential danger, prompting the most aggressive and manipulative responses to the most speculative of risks. More broadly, entrapment in terrorism stings can be understood as one of many ways in which the racialization of Muslims as terrorists leads to Muslims being treated as criminals for engaging in behaviors—such as traditional religious observances or impassioned political talk—considered harmless when performed by non-Muslim whites (Alimahomed-Wilson 2018). As previous research has documented (Norris and Grol-Prokopczyk 2018a, b), terrorism defendants with strong entrapment

claims have been overwhelmingly Muslim, due in part to the government's neglect of white-supremacist and anti-government terrorism.

Despite the deeply-entrenched nature of preemptive abuses, it is important to emphasize, as does Jackson (2015), that they are not inevitable features of counterterrorism, but can be readily changed. Potential methods for preventing entrapment are relatively straightforward. Shifting towards passive surveillance of individuals who pose genuine threats, rather than the active encouragement of those lacking preexisting terrorist intent, would perhaps be most effective. If one assumes that sting operations will continue to occur, then requiring reasonable suspicion of terrorist plans before initiating stings, as do Canada and Europe (Roach 2011), could significantly reduce the prevalence of entrapment.

Compliance with Ethical Standards

Conflict of interest The author declares that he has no conflict of interest.

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