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FINAL REPORT¹

**THE AMERICAN TERRORISM STUDY: PATTERNS OF BEHAVIOR, INVESTIGATION
AND PROSECUTION OF AMERICAN TERRORISTS**

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FINAL REPORT

Approved By: *[Signature]*

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¹ We would like to express our appreciation to the anonymous reviewers of this report who provided valuable insight into the realm of sentencing theory and practice.

**THE AMERICAN TERRORISM STUDY:
PATTERNS OF BEHAVIOR, INVESTIGATION AND PROSECUTION OF AMERICAN TERRORISTS**

Although terrorism overseas has dominated news in Europe since the late 1960s, Americans remained somewhat insulated from the phenomenon until the 1990s. Consequently, little empirical focus had been placed on American terrorism as we approached the new millennium. Bombings at the World Trade Center in New York, the Murrah Federal Building in Oklahoma City, and at the Olympics in Atlanta forced America to confront terrorism face to face. Equally as sobering were governmental responses at Ruby Ridge, Idaho and Waco, Texas that called into question America's motives and preparedness for responding to dissident and terrorist groups.

Efforts to study terrorism in America have been difficult at best. Little national level data has been available for analysis. Subsequently, scholars have been forced to collect data independently, using definitions of terrorism that frequently reflect the ideological persuasions of the researcher and employing empirical methods that are suspect at best. The American Terrorism Study attempts to overcome some of these deficiencies by adhering strictly to the Federal Bureau of Investigation's definition of terrorism.² Furthermore, the study ensures adherence to the practical application of the definition by restricting itself to data collection only on cases that occurred as a result of an indictment stemming from a federal "domestic security/terrorism investigation." These investigations, conducted by the FBI in accordance with the *Attorney General Guidelines on General Crimes, Racketeering Enterprises, and Domestic Security/Terrorism Investigations*, "set forth the predication threshold and limits for

² The FBI defines terrorism as "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives," *Terrorism in the United States: 1997*, Washington, DC: U.S. Government Printing Office.

investigations of crimes...in support of terrorist objectives" (FBI, 1999:2). The American Terrorism Study was conducted with the cooperation of the Federal Bureau of Investigation's Terrorist Research and Analytical Center and was sponsored by the U. S. House of Representatives Judiciary Subcommittee on Crime.³

Objectives

Research on domestic terrorism has suffered from a lack of high quality, empirical, quantitative data. A primary goal of the American Terrorism Study was to create an empirical database from which criminological theories and governmental policies could be effectively evaluated. In addition to this primary goal, we had three additional objectives:

- (1) To examine the characteristics, patterns of behavior, and tactics of American terrorist groups in the post-guidelines era to determine if terrorist groups have been modifying their tactics in response to prosecutorial successes;
- (2) To assess the impact of potential changes in #1 above on prosecutorial and sanctioning strategies employed during the post-guidelines era and to determine the types of evidence and charges most likely to lead to successful prosecution of terrorism cases; and
- (3) To determine whether the introduction of federal sentencing guidelines have reduced the sentence disparity between terrorists and similarly situated nonterrorists.

In the sections that follow, we will discuss the method used to address these objectives and the relevant findings associated with each.

Method

The FBI conducts hundreds of investigations regarding suspected terrorist activities each year. Many of these crimes are investigated through the more than one dozen FBI Joint Terrorism Task Forces. Occasionally, the crimes committed indicate a pattern or suspected

³ We would like to thank Mr. Kevin Giblin, Unit Chief, FBI Terrorist Research and Analytical Center, and Mr. Dan Bryant, staff counsel, U.S. House of Representatives Judiciary Subcommittee on Crime, for their efforts in bringing this project to fruition.

pattern that involves the continued threat of political violence from an individual or group.

When that occurs, the FBI may open a "domestic security/terrorism" investigation (in lieu of a "general crimes" investigation). During the 1990s, the FBI routinely was investigating between eight and twelve terrorist groups under these guidelines at any one time. The exact number of groups being investigated and the names of groups under active investigation are classified.

Once an indictment is issued, however, these cases become a matter of public record, retained in the federal criminal case files at the federal district courts where the cases were tried. Although the court cases are public record, the FBI is precluded from *collating* data or creating lists for private individuals that would identify these cases. Consequently, the U. S. House of Representatives Judiciary Subcommittee on Crime has acted as a sponsor for the project. The Subcommittee requests the collated data from the FBI, and once collated, it can be submitted to the P.I. for further data collection. The procedure for release of the data was evaluated and approved by the Office of General Counsel at both FBI Headquarters and the House of Representatives.

In November 1997, the P.I. received a list of 201 persons indicted in federal criminal court from 1990-1996 as a result of an official terrorism investigation. The principal investigators reviewed the cases at either the federal district court where the cases were tried or at the federal regional records center where the cases were archived. Table 1 provides a summary of the travel involved in data collection. Information on 186 of the "indictees" has been obtained. Data on some cases, such as the Oklahoma City bombing, have already been collected but have not yet been entered into the data set. Data on other cases continue to be collected. Currently, the sample includes over 90% of the terrorists indicted under the FBI's Counterterrorism Program from 1990-1996. In April 2000, the House Judiciary Subcommittee

on Crime received the list of persons indicted from 1997- July 1999 from the FBI. Due to the late arrival of this information, data collection on this additional list of 32 "indictes" has not begun.

(Table 1 about here)

The dataset allows analysis on four major units of analysis: federal criminal cases, individuals, "indictes," and federal criminal counts. Table 2 provides a summary of the different units of analysis. Information on 33 cases involving 186 "indictes" charged with 1241 criminal counts has been coded. The dataset currently includes individual data on 178 persons. The difference between the number of "indictes" and the number of persons occurs because some persons were indicted more than one time.⁴

The dataset includes information on approximately 80 variables divided into four major categories: (1) demographic information such as the age, race, and sex of the defendant; (2) information about the terrorist group to which the individual belongs including types of preferred and actual targets of the group; (3) prosecution and defense data, which includes precise identification of the charges, method of prosecution and other variables reflecting defense strategies such as types of motions filed; and (4) count/case outcome and sentencing data for each defendant. The "common denominator" for all cases in the sample is the *count*. All subsequent data on individuals, terrorist group affiliations, prosecution/defense strategies, and sentencing data are replicated for each count. Consequently, analyses can be conducted on variables using any of the four major units of analysis. Obviously, some variables are not appropriate for all units of analysis. Due to the complexity of the dataset, we highly recommend training on the appropriate analytic methods before release of the data to the public.

⁴ Demographic analyses are conducted using "persons" as the unit of analysis. When analyzing sentencing data, we use "indictes" as the unit of analysis.

This dataset was created in such a way that it could be merged with Brent Smith's dataset that includes terrorists indicted under the FBI's Counterterrorism Program from 1980 to 1987 (hereafter referred to as "the pre-guidelines era dataset"). While considerable additional data needs to be collected to make the two datasets completely compatible, the primary objectives of the study involve comparisons of changes that have taken place during the past two decades. Due to the relevance of the original pre-guidelines era data, a brief summary of that dataset is in order. The pre-guidelines era dataset includes information on 186 persons (210 "indictees") from 21 different terrorist groups. These 210 indictees were charged with over 1300 violations of federal criminal law. Coding of the pre-guidelines era data was accomplished in much the same way as the current study. Consequently, the comparisons rendered in the remainder of this report reflect analysis of over 2500 counts involving nearly 400 terrorists from over 50 terrorist groups.

Findings

As noted in the paragraph above, to accomplish the objectives of the study, data collected in the current study are compared with findings from Smith's pre-guidelines era terrorism dataset. The findings section is divided into three major subsections, each reflecting one of the major objectives. Due to the important policy implications of some of these rather unexpected findings, a discussion of policy issues and recommendations is provided.

General Patterns (Objective 1)

- *To examine the characteristics, patterns of behavior, and tactics of American terrorist groups in the post-guidelines era to determine if terrorist groups have been modifying their tactics in response to prosecutorial successes*

Several noticeable differences appear in a simple comparison of the two samples. The pre-guidelines era sample includes 183 terrorists from 21 different terrorist organizations and three additional terrorists of unknown affiliation. In the post-guideline data, 186 terrorists,

representing approximately 30 groups, had been indicted. Information on an additional ten groups and 32 indictees from 1997 to mid-1999 remain to be collected and coded. Terrorism, once the scourge of Europe, the Middle East and Latin America has finally established a foothold on American soil.

(Table 3 about here)

A second notable finding is that the increase in the number of groups during the post-guidelines era corresponds to a significant decrease in the average size of the groups to which the indictees belonged. For example, during the pre-guidelines era, the average number of members indicted in each right-wing group was 9.4 persons. During the post-guidelines era, however, the average group size of indicted right-wing members has dropped to 5.8 persons. The trend is less clear among the international terrorists. In the pre-guidelines era, the average size of the international terrorist groups was about 6 members (the figure was only 4 when an outlier (PIRA) was removed). In the post-guidelines era, the average size of the international terrorist groups was about 8 members (the figure was only 3 when the PIRA and 1993 WTC outliers were removed).

Despite our rather crude indicators, these changes indicate a significant shift in strategy among international and right wing domestic terrorist groups. With the exception of the PIRA, revolutionary models based on a military hierarchy and the cellular model advocated by Marighella and the leftist extremists of the 1960s and 1970s have been replaced by an "uncoordinated violence" model (Barkun, 1997). Although the development of the cellular model of terrorist organization was intended to minimize criminal liability for revolutionary leaders, most terrorist cells based on the classic Marighella model maintained some contact with upper echelon commanders.

In contrast, Islamic extremists and members of the extreme right in America have leapfrogged over the cellular model in their development of terrorist tactics. The use of the "fatwa" by Islamic extremists and the development of "leaderless resistance" in the Identity movement are reflected in our data set by more individual indictments, smaller groups, and fewer large conspiracy cases. Other than the Freeman case in Montana, where a large group was joined by other extremists who converged at the scene of the standoff, the extreme right in the late 1990s was characterized by groups of two to five individuals. This is substantially different from the twenty-eight Order members and seventeen Covenant, Sword and Arm of the Lord members indicted during the extreme right's "war in '84."

Historically, this shift in strategy among the extreme right occurred following Louis Beam's acquittal in the 1988 Fort Smith seditious conspiracy trial of right-wing group leaders. Implementation of new Attorney General Guidelines in 1983 (hereafter referred to as the Smith Guidelines), replaced the more restrictive "Levi Guidelines" put in place in 1976. Renewed focus on the investigation of American terrorism in the mid-1980s had resulted in the arrests and convictions of scores of active terrorist group members, both left and right. Beam's arrest and subsequent acquittal in 1988 gave the extreme right opportunity to explore new strategies. During the next four years, he began to advance the use of "proclamations" by extremist group leaders, which would signal individual adherents to take action. The standoff at Ruby Ridge, Idaho in 1992 served as the catalyst from which "leaderless resistance" was launched. Following the Ruby Ridge incident, Beam "formally" introduced the concept to a hastily called meeting of over 150 right-wing extremists at Estes Park, Colorado in the summer of 1992. Since that time, numerous small groups and individuals have taken up the "sword" in the name of Phineas to alleviate their righteous indignation.

Even the environmental extremists have adopted an “uncoordinated violence” strategy. Although only one environmental case was identified in the post-guidelines era database (the Rodney Coronado, ALF case), their shift to this new strategy is exemplary and may signal an increase in environmental terror in the near future. Since 1994, the movement has renounced criminal actions across the broad spectrum of its membership and has instead recommended that “it’s time to leave the night work to the elves” (Barcott, 2000:115), a distinct reference to the radical Earth Liberation Front (ELF). By posting “hit lists” on their websites and allowing individual readers to select their own targets, leaders in the environmental movement mimic the “fatwas” of the Islamic fundamentalists and the leaderless resistance strategy of the extreme right. This, of course, mirrors the anti-abortion websites that have similar “hit lists”. With no membership lists, no hierarchy, and no direct orders from the leadership, “membership by deed”(Barcott, 2000:112) has become the common thread of terrorists operating under “uncoordinated violence” strategies.

One final difference between the pre-guidelines era and the post-guidelines era can be seen in Table 3. Leftist terrorism, born of the anti-war movement in the 1960s and fueled by Castro’s influence among Latin American revolutionaries, was quickly silenced following the mid-1980s FBI roundup of extremists following implementation of the 1983 Smith AG Guidelines. With the exception of the Puerto Rican nationalists/separatists, the violent left extremists of the 1960s-1980s have been silenced. We have listed Yahweh, a black separatist group, among the leftists only because of their “forward-looking” ideology, rather than the “return to a former way of life” characteristic of most right-wing groups. In actuality, the Black Hebrews, as they are sometimes called, are similar in many ways to the white supremacists affiliated with the Identity movement. Other than these extremists, the only leftist terrorists

making the news recently have been a result of President Clinton's pardon of a score of FALN members imprisoned since the 1980s; the recent transferal of noted FALN and Black Liberation Army supporter Sylvia Baraldini to serve out the remainder of her sentence in Italy; and the surfacing of aging Weather Underground and Prairie Fire Organizing Committee members tired of life underground. This decline in leftist terror and concomitant rise in right wing terror is noteworthy because substantial differences existed in the way in which left wing and right wing terrorists conducted themselves at trial. Such shifts require prosecutors to be prepared for variations in defense strategies and willingness to plea bargain and testify against other indictees.

Before proceeding to some of the preliminary findings, it is also useful to examine briefly the demographic characteristics of the sample. Tables 4, 5, and 6 provide a summary comparison of left wing, right wing, and international terrorists on six variables: age at indictment, sex, race, education, occupation, and place of residence. We noted in our earlier studies that terrorists indicted in the United States differ from traditional offenders, suggesting that the causes of conventional crime and terrorism are substantially different. Although the basic patterns have remained fairly consistent through the post-guidelines era, some changes have occurred. The average age of both left and right wing terrorists indicted in the United States has risen since the pre-guidelines era. Terrorists on the right, particularly among the leadership, reflect an aging population whose members grew up prior to the civil rights movement in America. The international terrorists in the sample are slightly younger than the other terrorists and the only group to record a slight decrease in their average age from the pre-guidelines era to the post-guidelines era.

(Tables 4, 5, and 6 about here)

With regard to gender, terrorism, like traditional criminality, is predominately a male occupation. Earlier studies (Russell and Miller, 1977; Smith and Morgan, 1994) had suggested otherwise, due to the rather large proportion of females in leftist groups. As leftist terror declined in the 1990s, so has egalitarianism among terrorist groups. Gone are the United Freedom Front, the May 19th Communist Party, the Weather Underground, and the Black Liberation Army – all of which had females in leadership or active, participatory roles. In contrast, the role of females in right wing groups has been largely supportive in noncriminal ways, rather than as active participants in the terrorist enterprise.

Educationally, leftist terrorists of the pre-guidelines era were the most educated subsample within our population. Arising out of the student movement of the 1960s, over half of our pre-guidelines era sample of leftists were college graduates and the remainder typically had some college training. Although we have not completed data collection on this variable, the post-guidelines era leftists reflect a different recruitment base, and ultimately, we anticipate a much lower average educational background. Among the right-wing terrorists, little change is noted from the pre-guidelines era to the post-guidelines era. One peculiar characteristic of right-wing group members, particularly among the leadership, is the disproportionate number employed in the aerospace or aeronautical industry.

With regard to occupation, leftists in the pre-guidelines era were much more likely than other terrorists to be employed in prestigious jobs or to have emerged from wealthy family backgrounds. With the leadership of most leftist terrorist groups in prison by the early 1990s, the remaining leftists are substantially less privileged. Among the extreme right, little has changed. Most of the groups included at least one or more members who were of middle class background, but most were either unemployed, part-time employees, or impoverished self-

employed, semi-skilled laborers. Once again, however, we notice the oddly disproportionate number of right-wing extremists employed in the aerospace or aeronautical industry. This occupation seems to be a particularly fertile recruiting source for Identity and anti-tax groups.

Finally, in our earlier study, we noted the distinctly urban nature of leftist organizations. Following the failure of Guevara in 1967, leftist revolutionaries took Marighella's advice, moving toward the urban, cellular model epitomized in Marighella's *Mini-Manual of the Urban Guerrilla*. The extreme right, in contrast, is a distinctly rural movement. Isolationists by nature, the violent fringes of the extreme right have for 30 years sought to establish isolated strongholds and compounds in remote areas. Efforts to escape the social pollutants of urban life, terrorists of the right have either emerged from rural America or moved to it. While part of its emergence is related to the farm crisis of the 1980s, Dyer (1997) notes that rural culture finds itself under attack by ever-advancing urbanization and the far-reaching arms of a federal government that does not recognize the distinct character of rural-urban social differences. The 1990s has witnessed the emergence of the "sovereign," the "freemen," and perhaps most foreboding of all, the rise of "jural societies".

All of these patterns, and shifts in patterns, affect the manner in which terrorists are prosecuted, the defense strategies used by terrorists, the way they are perceived by juries, and the extent to which they are punished. In the sections that follow, we examine how these issues have varied over the past two decades and the events that prompted modifications to previously accepted methods.

Prosecution and Defense in Terrorism Trials (Objective 2)

- *To assess the impact of potential changes in terrorist tactics on prosecutorial and sanctioning strategies employed during the post-guidelines era and to*

determine the types of evidence and charges most likely to lead to successful prosecution of terrorism cases.

In this section, we compare and contrast how federal prosecutors have dealt with political offenders over the course of the past two decades. In particular, we discuss how the defendants were charged, the case outcomes, defense strategies, and, finally, how prosecutors have had to adapt in the face of changing defense strategies.

CHARACTERISTICS OF CHARGES.

Suspected terrorists are indicted on hundreds of federal charges reflecting a wide variety of illegal acts (table not shown). Seldom do these charges indicate that the suspects were involved in politically motivated violence. Despite this, prosecutors in the pre-guidelines era typically chose between: (1) explicitly describing the suspects as terrorists to the judge, the jury and the media or (2) intentionally avoiding the mention of the terrorist's political goals and instead, treating them as conventional criminals. Turk (1982) has referred to these strategies as "explicit politicality" and "exceptional vagueness", respectively. The latter approach was by far the most common strategy used during the pre-guidelines era and continues to be a prominent prosecutorial technique used in terrorism trials today. Unlike other countries, this approach is in keeping with a longstanding American tradition of avoiding the creation of "political" crimes (Ingraham and Tokoro, 1969). Although the political motive of the suspect is the primary reason for opening a domestic security/terrorism investigation, the American system of justice traditionally has avoided including motive as an essential element of a crime. Utilization of this strategy does not mean, however, that terrorists are ultimately prosecuted and punished the same as nonterrorists.

The punishment process begins long before a judge signs the Judgment Order. Early in the development of a terrorism trial, particularly one that involves multiple defendants, prosecutors begin to prioritize punishment strategies. Most importantly, during these sessions the prosecution identifies defendants it wants to convict and punish severely. In contrast, other defendants of lesser importance are identified and allowed to plead guilty to substantially reduced charges. Frequently, in exchange for these minimal sentences, defendants may be required to testify against terrorist group leaders as part of the bargain. These defendants, as witnesses for the state, are central to establishing the prosecution's case and goals of the *Attorney General's Guidelines for Domestic Security/Terrorism Investigations* – to wit, the “decapitation” of the leadership of terrorist organizations in an effort to gain “early interdiction of unlawful violent activity”⁵. The data in the tables presented in the following pages suggest that substantial variation exists in case outcomes depending on the motive and ideological persuasion of the defendant.

CASE OUTCOMES.

Nationally, about 85 percent of convictions obtained in federal trials during the pre-guidelines era resulted from plea bargains (U.S. Sentencing Commission, 1991). By 1998, this proportion had risen to over 92 percent (Conaboy, 1999). In contrast, Tables 7 and 8 emphasize the extremely low guilty-plea rate among indicted terrorists. Note that Table 7 refers to “counts,” while Table 8 refers to “case” outcomes.⁶ Table 8a reveals that less than 40 percent of American terrorists pleaded guilty to one or more of the charges for which they were indicted, in stark contrast to the 85-92 percent national rate in federal trials during this time. Although the

⁵ Oversight Hearing on FBI Domestic Security Guidelines Before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary. 98th Congress., 1st session., Apr. 27, 1983. (Washington, DC: U.S. Government Printing Office, 1987, p. 25.

guilty plea rate in federal trials has increased during the past decade, the opposite has been true in terrorism cases, declining from 43 percent in the pre-guidelines era (Table 8b) to 35 percent from post-guidelines era (Table 8c). Furthermore, these guilty pleas represent only eight percent of the total charges for which these persons were indicted (Table 7a). This percentage declined slightly during the post-guidelines era (from 8.5% to 7.4%). The exact cause of these differences is not clear. On the one hand, terrorists may be unwilling to plead guilty because they desire the stage of the courtroom to air their grievances. On the other hand, it may be that prosecutors are less willing to offer "acceptable" reductions. This might be for political reasons or because "leaderless resistance" has left terrorists little capital with which to bargain.

(Tables 7 and 8 about here)

A comparison of left wing and right wing count and case outcomes in Tables 7 and 8 illustrates some of the changes taking place among terrorist groups and the federal response to these changes. In the pre-guidelines era, left-wing terrorists appeared to be much more committed ideologically than their right-wing counterparts – refusing to plead guilty, demanding the public attention that a trial brings, and generally filling the air with political rhetoric and the galleys of federal courts with leftist supporters. Illustrative of this attitude were the final trials of Marilyn Buck, Linda Evans, and Laura Whitehorn, who when sentenced in Washington, D.C. raised their hands in clenched fists and saluted the approximately fifty supporters who jeered the judge's sentencing decision.⁷

In contrast, right-wing terrorists were much more likely to "turn state's evidence" during their pre-guideline era trials. The "silent brotherhood," as members of the Order liked to be called, were anything but silent following their arrests. Even some of the group leaders, like the

⁶ "Case outcome" refers to whether the defendant was convicted on one or more counts of the indictment.

⁷ Woman Gets 20-year Term for Bombing the U.S. Capitol," *Birmingham Post Herald*, 7 December 1990, p. a12.

Covenant, Sword, and Arm of the Lord's Jim Ellison testified against other right-wing extremists at the 1988 trial of right-wing group leaders in Fort Smith, Arkansas. Table 8 illustrates this pattern. During the pre-guidelines era, slightly more than one-fourth of the leftists pleaded guilty to one or more charges, while nearly one-half of the right-wing terrorists pleaded guilty. Similarly, only about one-fourth of the right-wing defendants were convicted at trial. In contrast, one-half of the left-wing defendants were convicted as the result of a trial.

During the post-guidelines era, we have witnessed a dramatic shift in this pattern. In an almost exact reversal of roles, over one-half (53.6%) of the leftists in the post-guidelines era (Table 8c) have pleaded guilty to indictment charges, while only 20 percent have been convicted at trial. To some extent this reflects the aging of the leftist movement. Some of the defendants who pleaded guilty in recent years include 1970s Weathermen Claude Marks and Donna Wilmott who tired of life as fugitives and negotiated plea agreements before surrendering. Among the extreme right, maturation of the movement has led to increased commitment and new tactics. About one-fourth of post-guidelines era right-wing extremists pleaded guilty in their cases, while the percentage of right-wing defendants who went to trial rose to nearly six out of every ten defendants (58.2%).

Prosecutors must be prepared to take these cases to trial. Right wing defendants have invoked a variety of new trial tactics since 1990 that have been successfully countered by federal prosecutors. Most of these new initiatives involve issues of sovereignty, posse comitatus, and authority of the federal courts. Since these legal arguments are so widely used by the extreme right, prosecutors would be well advised to carefully examine the rebuttals and precedents established in previous trials of right wing defendants.

DEFENSE STRATEGIES.

In some ways these shifts in behavior on the part of defendants may reflect the focus of federal prosecutors during these respective decades. Federal prosecutors in the pre-guidelines era had a tendency to “overbook” leftists more than rightists during this era. Furthermore, they were less willing to offer acceptable plea bargains to these defendants, due primarily to their refusal to provide “substantial assistance to the government” in its prosecution of these cases. The same phenomenon may have occurred during the post-guidelines era as more focus and public pressure was placed upon federal authorities to counter the violence of the extreme right. This strategy would have caused defendants to be willing to go to trial more often, particularly if acceptable plea bargains were not offered.

There is no question, however, that we witnessed in the post-guidelines era a growing commitment among right-wing defendants. This should come as no surprise. Leaderless resistance is characterized by violent action by those willing to “go it alone”—bearing all of the responsibility for target selection, weapons or bomb procurement, and planning the terrorist incident. The parade of right-wing extremists who testified against other members of right-wing terrorist conspiracies in the 1980s has been replaced with the silence of extremists like McVeigh, Nichols, and the so-called “Phineas Priests” bombers in Spokane, Washington; Ohio; and Pennsylvania. Events at Ruby Ridge, Idaho and Waco, Texas seem to have been the major catalysts that hardened these adherents.

This deepening commitment among right-wing indictees in the later part of the 1990s is also reflected in their behavior at trial. When compared to leftist terrorists of the pre-guidelines era, right-wing terrorists of that era seemed almost sedate and restrained. Right-wing terrorists since Ruby Ridge and Waco generally have been more defiant during trial – calling into question

the jurisdictional authority of the federal government through legal motions, attacking the integrity of court-appointed attorneys and demanding the right to serve as either their own counsel or to seek the advice of a "common law attorney". In the pre-guidelines era, many right-wing terrorists sought to disassociate themselves from extremist ideology by filing motions requesting that their affiliation with certain groups not be mentioned or that their trials be severed to distance themselves from the "political activism" of more outspoken defendants. Although these tactics remain fairly common in terrorists' trials, a non-quantified examination of our data suggests that right wing terrorists have been much less likely to request severance or demand that group affiliation not be mentioned at trial. In essence, contemporary right-wing defendants have begun to act more like left-wing terrorists did during the height of leftist extremism.

PROSECUTORIAL STRATEGIES AND RECENT ADAPTATIONS.

"Politically active" defenses are particularly frustrating to prosecutors and judges. Generally, prosecutors tend to believe that the less political motive is introduced during the course of a trial, the better. Federal prosecutors learned rather quickly in the pre-guidelines era that trying domestic terrorists as "conventional criminals" was a much more effective strategy than explicitly labeling them as terrorists and using their political motive as a hammer with which to convince the jury of their guilt and danger to society. The best examples of this strategy involved the "seditious conspiracy" trials in the late 1980s of right-wing group leaders, the May 19th Communist Organization (M19CO), and the United Freedom Front (UFF). Each of these trials had similar outcomes. The Fort Smith trial of the extreme right leaders resulted in acquittal of all of the defendants. The UFF trial resulted in acquittal on the major counts and mistrial on the remaining counts when the jury could not reach a verdict. The Washington trial

of M19CO members was a partial success. Three persons were convicted on two counts each; but charges against the remaining defendants were dropped.

During the post-guidelines era, the strategy of explicit politicality has been used sparingly. With right wing terrorists becoming more committed and outspoken at trial, they see less reason to file motions preventing the government from identifying their group affiliation and raising issues about their ideological beliefs. In fact, they raise the issues themselves. Consequently, during the past few years we have seen more prosecutors filing motions *in limine* attempting to restrict defendants from raising these issues so much. In essence, prosecutors want the jury to know that these defendants have attracted the attention of the FBI's Counterterrorism Program—implying that their behaviors are considered extremely serious. But they don't want too much of a good thing – allowing the trial to be subverted into a debate about religious or political beliefs has sidetracked many a jury.

Consequently, during the late 1990s, a third prosecutorial strategy has emerged, reflecting a middle ground between “exceptional vagueness” and “explicit politicality.” For lack of a better term, we will refer to it as “subtle innuendo.” Unlike the “exceptional vagueness” approach, where prosecutors avoid all mention of the defendant's political motivation or group affiliation, prosecutors using the “subtle innuendo” approach continue to try the defendants as conventional criminals, but will subtly mention the defendant's relationship with a terrorist group at opportune times. Simultaneously, however, prosecutors will file motions *in limine* to suppress efforts by the defendants that would allow open discussion of the ideology or motivations of the terrorist group. The trial of the Oklahoma City bombers in Denver, the second Freeman trial in Billings and the Mountaineer militia trial in Wheeling, West Virginia are good examples. Since 1990, about one-half of the prosecutors in terrorism trials have used this

approach. Whether prosecutorial success can be attributed to this change in strategy is debatable, but conviction rates for right-wing defendants have increased from 70% in the pre-guidelines era to over 85% in the post-guidelines era.

PROSECUTION OF INTERNATIONAL TERRORISTS

Prosecutors have been more willing to explicitly refer to foreign terrorists in court as "terrorists." They also have a somewhat better record when using this strategy against international terrorists than against domestic terrorists. Prosecution of the 1993 World Trade Center bombers, for example, represented the first successful use of seditious conspiracy statutes against terrorists in America for over a decade. It cannot, however, be assumed that because these were international, as opposed to "homegrown" terrorists, that an American jury was simply more willing to recognize these "foreigners" as a threat to American security. The 1993 WTC case differed from previous seditious conspiracy trials on another important issue. In the previous seditious conspiracy cases involving the leaders of the extreme right, the UFF, and the M19CO, almost all of the defendants had been convicted in previous trials and were being brought back from prison for the conspiracy trial. Although the conspiracy represents a separate crime from the completed act, convincing a jury that that charges involving inchoate offenses do not represent double jeopardy is another story. One federal prosecutor succinctly described the problem in our original study:

"Part of our problem is that we have already convicted these defendants in previous trials. Some of the offenses described as "overt acts" of the conspiracy for which they are currently being tried were parts of previous trials. It becomes increasingly difficult to convince a jury who is asking, "but haven't they already been convicted of this before?"⁸

⁸ Author's field notes, telephone interview with assistant U.S. attorney (name and office withheld by request), 10 May 1991.

In the 1993 WTC bombing case, prosecutors did not have to contend with the baggage of previous trials. The seditious conspiracy charges represented the first trial for these defendants. Although risky, the case marked an important success for federal prosecutors.

However, raising the banner of "politically motivated terrorist" can be risky even when used against international terrorists, particularly if the defendants have not committed or planned to commit violent acts against persons *in* the United States or if they have substantial community support for their political positions. The acquittals in the trial of Provisional IRA members in Tucson, Arizona in 1994 are exemplary.

Trials of international terrorists are further complicated by the necessity to maintain the anonymity of CIA operatives or other Department of State informants. The plea bargain in the recent Wen Ho Lee case (which was not a terrorism case) made national headlines and is illustrative of this dilemma. Most charges were dropped to avoid having to discuss classified materials in open court. The same phenomenon occurs in terrorism cases. Following the 1994 indictment of Abu Nidal Organization (ANO) members in St. Louis, prosecutors resorted to the odd, and somewhat dubious, tactic of releasing some classified material to the defendants' lawyers and requiring the defendants to sign an agreement that they would not divulge any of the material. Eventually, even this tactic failed and most charges were dropped after the defense demanded the release of more documents.

Punishing Terrorists

The sentencing phase is particularly important to accomplishing the *AG Guideline's* goal of dismantling terrorist organizations. The federal courts have a long tradition of allowing consideration of "uncharged and unconvicted conduct at sentencing" (U.S. Sentencing Commission, 1991:9). Consequently, over the years the strategy emerged in which discussion of

the terrorists' motives were avoided at trial, but figured prominently during the sentencing phase. Two issues regarding punishment emerged in the earlier pre-guidelines era studies. First, we found that terrorists convicted during the pre-guidelines era could expect to receive particularly harsh treatment when sentenced. The original study revealed that terrorists during this era received, on average, sentences that were 3½ times longer than the sentences given to similarly situated nonterrorists convicted of the same lead offenses (Smith and Damphousse, 1996). Second, we found that terrorist group leaders received sentences that were 2 ½ times longer than subordinate group members (Smith and Damphousse, 1998). These two strategies became particularly effective in efforts to "dismantle terrorist organizations".

IMPACT OF THE FEDERAL SENTENCING GUIDELINES

Although the introduction of new *Federal Sentencing Guidelines* in 1987 continued to provide for the inclusion of uncharged and unconvicted conduct at sentencing, the goal of the *Sentencing Guidelines* is to provide "certainty and fairness" in the sentencing process by reducing unwarranted disparity. Ultimately, similarly charged and situated defendants should receive similar sentences. This goal is somewhat counterproductive to the goals of the *AG Guidelines* for terrorism/domestic security investigations.

Two modifications to the government's war on terrorism have emerged since introduction of the *Sentencing Guidelines* to enable prosecutors to obtain longer sentences for terrorists. First, changes to the *Federal Criminal Code* in 1992 provide for enhanced sentencing for terrorists based upon "target selection". Timothy McVeigh's sentencing reflects this new approach. Political motive does not have to be raised at trial, but is implied by the "target selected" and punishment is enhanced as a result. Second, the *Sentencing Guidelines* include a sentencing adjustment for felonies associated with a federal crime of terrorism. The effect of this

adjustment is to add time to an offender's sentence length if the court deems the act to be "associated" with terrorism. Despite these efforts, however, it appears that the *Sentencing Guidelines* may have had a debilitating effect on the government's counterterrorism efforts, while accomplishing its stated goals of reducing unwarranted sentence disparity.

Tables 9 and 10 summarize the sentences given to terrorists during the pre-guidelines era, post-guidelines era and for the sample as a whole. Information on four variables (race, gender, group type, and role in the group) is provided. In the pre-guidelines era, the demographic variables (race and sex) were not significantly related to sentence length, while type of group and role were. International terrorists received significantly shorter sentences than domestic terrorists, primarily because a large number of them were sentenced to time served and then deported. One's role in the terrorist organization was also significant, with leaders receiving sentences that were over twice as long as those given to subordinates.

(Tables 9 and 10 about here)

During the post-guidelines era, however, we have witnessed a complete reversal of the influence of these factors. Race has emerged as a significant predictor and gender approaches statistical significance. Group type remains significant, but for precisely opposite reasons. International terrorists, who in the pre-guidelines era received the shortest sentences (due to deportation) received the longest sentences in the post-guidelines era. Most of this change can be attributed to the lengthy sentences received by defendants in the World Trade Center bombing case. Most importantly, one's role in the terrorist group, which may be a good indicator of governmental efforts to dismantle terrorist organizations, is no longer a significant predictor of sentence length.

For analytic purposes, it is important to note that comparing sentence lengths between terrorists and non-terrorists over the course of the transition from the pre-guidelines era to the post-guidelines era is relatively meaningless. A matched sample of nonterrorists convicted of the same lead offenses during the post-guideline era is needed to test whether the disparity in sentence length has actually dissipated. In addition, we still need to collect more data about the post-guideline cases from the U.S. Sentencing Commission. These additional data will allow us to examine more closely the impact of other legal and extra-legal variables on the variation of sentence length. Further multivariate analyses will need to be conducted to control for the effect of offense severity and other important factors. We provide in Table 10, however, a preliminary analysis of the issue. The table uses "sentences imposed" as the measure of sentence length.

In the pre-guidelines era, the average sentence imposed on terrorists was 165 months. During the post-guidelines era, this mean remained consistent (160 months). The lengthy sentences imposed on the 1993 WTC bombers, however, skew this comparison substantially. When the 1993 WTC defendants are excluded from the analysis, the mean sentence for the remaining post-guidelines era terrorists is 81.2 months. This is less than one-half the mean sentence for terrorists during the pre-guidelines era. When we factor in the potential 1/3 reduction in time served due to parole, the sentence length for pre-guideline terrorists was about 55 months (again, we do not know how much time the terrorists actually served). The post-guideline terrorists would serve (on average) 69 months (using the 85% rule).

This does not necessarily mean, however, that terrorists in the post-guidelines era will serve shorter prison terms. Post-guideline convictions require that defendants serve a substantial portion of the sentence imposed (at least 85%). This restriction is not applicable to pre-guideline cases. On the other hand, it is well known that people indicted in the pre-guideline era did not

serve their entire imposed sentence because they had the opportunity for parole after having served one-third of their sentence. The extent to which terrorists were granted parole at different rates from non-terrorists is an interesting question and is as yet unknown. Future analyses will benefit from an examination of the amount of time actually served when comparing pre-guideline and post-guideline indictes.

This change in the distinction between “time served” versus “sentence imposed” during the transition from pre- and post-guidelines makes comparison difficult at best. Since many of the terrorists in both data sets are still in prison, a measure of time served is not yet available. This prevents a meaningful comparative analysis of sentence *length* over both time periods.

Most important for our previous discussion, however, is the finding that the federal sentencing guidelines appear to have mitigated the disparity in sentencing between terrorist group leaders and their subordinates during the post-guidelines era. Although leaders⁹ in the post-guidelines era still received longer sentences than subordinates, the disparity seen in previous years has been reduced considerably. This is likely due to the changing features of the terrorist group over time (especially the advent of “leaderless resistance”). In addition, the courts have not chosen to give terrorists as many “upward departures” at sentencing during the post-guidelines era as we would have expected. Only one of our post-guideline terrorists received an upward departure (table not shown).

POSSIBLE IMPACT OF MANDATORY SENTENCING LAWS

During the late 1980s and early 1990s, Congress passed numerous mandatory sentencing statutes. These statutes supercede the *Sentencing Guidelines* and, when recorded on the

⁹ We did not rely on the court definition of a Chapter 3 “role in the offense” adjustment to determine who the leaders were. Since the burden of proof of “leadership” is on the prosecution, this would be a conservative estimate of the extent to which an indictee was a leaders. Instead, we defined “leadership role” by studying the facts of the cases as described in the court documents.

Judgment Order, are excluded from consideration when calculating whether the total sentence exceeds the *Guidelines* range. Most of these statutes involve illegal weapons possession or possession of a weapon during the commission of other felonies.

The most common first step used by federal prosecutors in their efforts to dismantle terrorist organizations has been to indict and convict subordinate group members on presumed (strict) liability statutes. This effort served two major purposes. First, it precluded the introduction of political motive during the trial, since "possession served as prima facie evidence of intent." During the pre-guidelines era, prosecutors found these presumed or strict liability statutes an excellent tool to obtain quick convictions. Second, prior to the implementation of mandatory sentencing gun laws, prosecutors used convictions on these relatively minor felonies, particularly illegal possession statutes, as a means to convince subordinate terrorist group members to testify against leading figures in the organization. Prosecutors were able to obtain quick convictions, offer attractive plea agreements, and obtain needed testimony to put together larger conspiracy cases.

Mandatory sentencing statutes have changed the manner in which prosecutors exercise this option. The statutes specifically targeted the very offenses that had served as the backbone of prosecutorial efforts to achieve the goals of the *AG Guidelines for Domestic Security/Terrorism Investigations*. Although prosecutors may still recommend a sentence reduction for "substantial government assistance" by a defendant (a 5K1.1 motion), the climate in the offices of most federal prosecutors is that the dismissal of guideline counts is heavily discouraged once an indictment has been issued. Charges are infrequently dismissed after indictment unless the counts become "not readily provable" or if dismissal will not affect the guideline range.

During the later half of the 1990s federal prosecutors right wing defendants became increasingly unwilling to plea bargain. Similarly, as previously noted, sentence disparity between leaders and subordinate terrorists declined significantly. The reasons for this change are extremely complex and demand further study. An interaction among several factors is probably at work. Due to "leaderless resistance" and other uncoordinated violence models, prosecutors may have found that despite a defendant's willingness to turn state's evidence, the defendant's knowledge was insufficient to warrant a "substantial assistance motion." Furthermore, due to the conspiratorial nature of many of these cases, new information may be discovered after the indictment is issued. Defendants who may have had a chance to plead guilty earlier now find it unacceptable to do so, since prosecutors will be reluctant to drop charges at this point. With the use of "relevant conduct" playing such a major role in the sentencing process, the dropping of other charges through a plea bargain becomes less meaningful anyway.

In essence the use of "lone wolf" strategies by terrorists, when combined with a prosecutorial climate that heavily discourages the dropping of charges post-indictment and incorporates the use of "relevant conduct" at sentencing, leaves little reason for terrorists to plead guilty. The result has been a substantial increase in punishment for minor participants or subordinate terrorists due to changes in the sentencing process. This has potentially had a negative effect on the prosecution and punishment of terrorist group leaders, both indicted (known) and unindicted (unknown). Federal investigators and prosecutors are faced with a terrorist tactic (uncoordinated violence through the use of the *fatwa* and *leaderless resistance*) intended to minimize liability for group leaders, that in combination with current plea bargaining practices may, on occasion, inhibit their efforts to dismantle terrorist organizations.

Implications and Recommendations

This study examined three major issues relevant to American terrorism: (1) whether terrorist tactics have changed over the past decade; (2) how prosecutors have adapted to changes in terrorist tactics; and (3) whether the introduction of the federal *Sentencing Guidelines* adversely affected *AG Guideline* efforts to severely punish the leaders of terrorist groups and dismantle these organizations. Important findings were reported for each of the three major areas. First, the use of uncoordinated violence strategies by terrorist groups appears to be much more widespread than anticipated. Not limited only to extremist Identity groups through the highly publicized concept of "leaderless resistance," uncoordinated violence methods have now been used by Islamic militants and appear to be the favored method among emerging environmental extremists. Although federal prosecution success rates increased from approximately 75 percent in the pre-guidelines era to 85 percent in the post-guidelines era, we cannot be certain that the leadership in these organizations has been neutralized due to the fragmented nature of uncoordinated violence strategies.

Furthermore, different groups have begun to implement strategies specific to their organizational goals and/or ideology. Environmental extremists have begun to use arson and sabotage of both government and private facilities resulting in damage far beyond the original "monkeywrenching" tactics advocated in the 1980s. Right wing extremists in the 1990s initiated the use of "paper terrorism" by filing liens against federal officials and the establishment of common law courts affiliated with jural societies. Local law enforcement agencies and local prosecutors encounter many of these illegal activities over an extended period of time before federal authorities ever become involved. Since these cases are relatively rare, yet occasionally complex (e.g., the arguments made regarding the legitimacy of common law courts), many local

prosecutors are unprepared to prosecute these cases. One particularly noteworthy method of addressing this issue was developed by the State of Montana. There, a special prosecutor working out of the State Attorney General's Office is assigned to assist local district attorneys in responding to the judgments and liens rendered by jural societies and/or common law courts. The strategy appears to be an economical and efficient method of addressing a relatively rare, yet potentially escalating problem. Similar techniques could be used to combat the unique methods of terrorist or extremist groups indigenous to specific parts of the country.

Second, preliminary findings regarding both the impact of the federal sentencing guidelines and mandatory sentencing laws are extremely complex and may be confounded by the interaction of several processes. Although our findings are preliminary and await confirmation through further testing, they are quite suggestive. In the pre-guidelines era, the sentencing disparity between (1) terrorists and nonterrorists and (2) between terrorist group leaders and subordinates was quite striking. Data from the post-guidelines era suggest that these differences have all but dissipated. Analyzed independently, these findings are interesting, but not necessarily of critical importance. When viewed in total context, however, the decline in plea bargaining during an era when plea bargaining has been rising, the suggested reduction in disparity in sentencing between terrorists and nonterrorists, and the elimination of "group role" as a significant predictor of sentence length strongly suggest that the Office of the Attorney General should conduct further analyses of these issues. Although the *Federal Sentencing Guidelines* and mandatory sentencing laws may be accomplishing the general intent of the legislation under which they were created, they may be having an unintended consequence on the prosecution and punishment of this particular subset of federal offenders.

REFERENCES

Barkun, Michael

1997 "Leaderless Resistance and Phineas Priests: Strategies of Uncoordinated Violence on the Far Right." Paper presented at the annual meeting of the American Society of Criminology, San Diego, California.

Becker, Howard

1963 *Outsiders: Studies in the Sociology of Deviance*. New York: Free Press.

Conaboy, Richard

1998 *1998 Sourcebook of Federal Sentencing Statistics*. U.S. Sentencing Commission.

Crenshaw, Martha

1992 "Current Research on Terrorism: The Academic Perspective." *Studies in Conflict and Terrorism*. 15(1):1-11.

Dyer, Joel

1997 *Harvest of Rage*. Westview Press, Boulder, Colorado.

Federal Bureau of Investigation

1990 *Terrorism in the United States: 1989*. Washington: U.S. Government Printing Office.

Hoffman, Bruce

1992 "Current Research on Terrorism and Low-Intensity Conflict." *Studies in Conflict and Terrorism*. 15(1):25-37.

Ingraham, Burton and Kazuhiko Tokoro

1969 Political crime in the United States and Japan: A comparative study. *Issues in Criminology* 4:145-171.

Jacobs, James and Jessica S. Henry

1996 "The Social Construction of a Hate Crime Epidemic." *The Journal of Criminal Law and Criminology*. 86(2):366-391.

Smith, Brent L. and Kelly R. Damphousse

1998 "Terrorism, Politics, and Punishment: A Test of Structural Contextual Theory and the Liberation Hypothesis." *Criminology*. 36(1):67-92.

Smith, Brent L. and Kelly R. Damphousse

1997 "The American Terrorist, 1980-2000: Characteristics, Trends, and Prospects for the Future." Pp. 132 -154 in *The Future of Terrorism*:. Harvey Kushner (ed.) Sage Publications.

Smith, Brent L. and Kelly Damphousse

1996 "Punishing Political Offenders: The Effect of Political Motive on Federal Sentencing Decisions." *Criminology*. 34(3):289-321.

Smith, Brent L. and Gregory Orvis

1994 "America's Response to Terrorism: An Empirical Analysis of Federal Intervention Strategies During the 1980's." *Justice Quarterly*. 10(4):663-683.

Smith, Brent L.

1994 "Profiling the American Terrorist. A Methodological and Empirical Reassessment." *Studies in Conflict and Terrorism*. 17:39-57.

Turk, Austin

1982 *Political Criminality: The Defiance and Defense of Authority*. Newbury Park: Sage.

United States Sentencing Commission

1991 *United States Sentencing Commission: Annual Report, 1990*. Washington, DC: U.S. Government Printing Office.

Table 1: Record of Travel for Data Collection

Date	Place	Federal Court Case Number	Name of Group or incident	Number of Defendants
7/15/99	Boise, ID	CR-90-033	Aryan Nations	3
5/20-21/99	San Juan, PR	CR-90-370	Macheteros	30
10/19/00	Chicago, IL (FRC)	CR-86-513	FALN	7
		CR-95-85(MN)	Patriots Council	2
		CR-94-92(MN)	Patriots Council	2
4/21-22/99	Tucson, AZ	CR-92-587	PIRA	14
11/12/98	Washington, DC	CR-93-284	Palestinian – Malta hijacking	1
		CR-91-645	Libyan – Pan Am 103/Lockerbie, Scotland	2
		CR-91-398	El Salvador	1
		CR-94-219	CNPZ	1
		CR-78-367	Letelier bombing	8
9/28/98	Seattle, WA	CR-96-500	WA State Militia/WA Freeman	11
9/29/98	Spokane, WA	CR-96-257	Phineas Priest	1
		CR-96-258	Phineas Priest	1
		CR-96-259	Phineas Priest	1
		CR-97-66	Phineas Priest	1
7/12-13/99	Billings, MT	CR-96-47	Montana Freeman	10
		CR-97-98	Montana Freeman	1
		CR-98-61	Montana Freeman	1
		CR-95-117	Montana Freeman	14
3/31/99	Muskogee, OK	CR-95-63	OK Constitutional Militia	4
6/17-18/99	Wheeling, WVA	CR-96-40	Ohio Unorganized Militia/Mountaineer	3
		CR-96-41	Militia	3
		CR-96-42	Militia	2
		CR-96-43	Militia	2
10/5/99	Philadelphia, PA	CR-97-51	Aryan Resistance Army	5
10/4/99	Trenton, NJ	CR-93-385	1993 WTC bombing	2
12/2/99	Ft. Lauderdale, FL	CR-90-8005	PIRA	4
		CR-90-868	Yahweh	19
6/28-29/99	St. Louis, MO	CR-93-89	Abu Nidal Organization	4
10/20/99	Kalamazoo, MI	CR-93-116	Animal Liberation Front	1
6/12-14/00	New York, NY	CR-93-180	World Trade Center	10
		CR-93-181	bombing	15
9/21-22/00	Oklahoma City, OK		Oklahoma City bombing	
Total				186
PRESENTATION OF FINDINGS				
Date	Place	Audience		
4/17/2000	Oklahoma City, OK	"Terrorism and Beyond... The 21 st Century Conference" & dedication of the Oklahoma City National Memorial		
9/13/2000	Dallas, TX	Nuclear Regulatory Commission Criminal Investigators		
11/15/2000	San Francisco, CA	Session on Domestic Terrorism, ASC annual meeting		

Table 2: Post-Guideline Sample Description

<u>Name of Terrorist Group</u>	<u>Cases</u>	<u>People</u>	<u>Indictees</u>	<u>Counts</u>
Aryan Nations (AN)	1	3	3	10
EPB-Macheteros	1	30	30	114
FALN	1	7	7	21
Provisional IRA (PROVOS or PIRA)	2	16	18	89
Libyans/Libyan agents	1	2	2	386
Palestinian/Syrian	1	1	1	1
Washington State Militia	1*	7	7	23
Phineas Priests	4	4	4	41
Montana Freeman	4	23	26	160
Oklahoma Constitutional Militia	1	4	4	8
Patriots Council	2	4	4	6
Ohio Unorganized Militia/Mountaineer Militia	4	7	10	33
Aryan Resistance Army	1	5	5	7
Yahweh	1	19	19	32
World Trade Center bombing (1993 WTC), Jihad Organization	3	27	27	237
Abu Nidal Organization (ANO)	1	4	4	4
CNPZ	1	1	1	7
El Salvador	1	1	1	4
Letelier bombing/ Cuban National Movement	1	8	8	40
Animal Liberation Front	1	1	1	7
Freemen (based in Washington)	1*	4	4	11
Total	33*	178	186	1241

*Washington Freeman and Washington State Militia tried in a single case.

Table 3. Sample characteristics of Persons and Groups Indicted for Terrorism/Terrorist Related Activities: 1980-1996.*

DOMESTIC TERRORISM	Pre-Guideline Total Number of:		Post-Guideline Total Number of:		1980-1996 Total Number of:	
	People	Indictees	People	Indictees	People	Indictees
RIGHT-WING						
1. Aryan Nations	3	3	3	3	6	6
2. Arizona Patriots	10	10	0	0	10	10
3. Covenant Sword and Arm of the Lord	17	22	0	0	17	22
4. KKK	1	1	0	0	1	1
5. The Order	28	48	0	0	28	48
6. The Order II	5	5	0	0	5	5
7. Sheriff's Posse Comitatus	4	5	0	0	4	5
8. White Patriot Party	7	9	0	0	7	9
9. Washington State Militia	0	0	7	7	7	7
10. Phineas Priesthood	0	0	4	4	4	4
11. Montana Freeman	0	0	23	26	23	26
12. Oklahoma Constitutional Militia	0	0	4	4	4	4
13. Patriots Council	0	0	4	4	4	4
14. Ohio Unorganized (Mountaineer) Militia	0	0	7	10	7	10
15. Aryan Resistance Army	0	0	5	5	5	5
17. Washington Freeman	<u>0</u>	<u>0</u>	<u>4</u>	<u>4</u>	<u>4</u>	<u>4</u>
Subtotal	75	103	61	67	136	170

Table 3. Sample characteristics of Persons and Groups Indicted for Terrorism/Terrorist Related Activities: 1980-1996, Continued.

DOMESTIC TERRORISM	Pre-Guideline Total Number of:		Post-Guideline Total Number of:		1980-1996 Total Number of:	
	People	Indictees	People	Indictees	People	Indictees
LEFT-WING						
18. El Rukns	7	7	0	0	7	7
19. Macheteros	19	20	30	30	49	50
20. FALN	5	5	7	7	12	12
21. May 19 Communist Order	7	11	0	0	7	11
22. United Freedom Front	8	9	0	0	8	9
23. New African Freedom Fighters	9	9	0	0	9	9
24. Provisional Party of Communists	1	1	0	0	1	1
25. Yahweh	0	0	19	19	19	19
26. EMETIC	5	5	0	0	5	5
27. Animal Liberation Front	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
Subtotal	61	67	57	57	118	124

Table 3. Sample characteristics of Persons and Groups Indicted for Terrorism/Terrorist Related Activities: 1980-1996, Continued.

INTERNATIONAL TERRORISM	Pre-Guideline Total Number of:		Post-Guideline Total Number of:		1980-1996 Total Number of:	
	People	Indictees	People	Indictees	People	Indictees
1. Japanese Red Army (JRA)	1	1	0	0	1	1
2. Provisional IRA	16	21	16	18	32	39
3. Omega 7	4	7	0	0	4	7
4. Libyans/Libyan agents	7	7	2	2	9	9
5. Palestinian/Syrian	4	4	1	1	5	5
6. Letelier bombing/ Cuban National Movement	0	0	8	8	8	8
7. World Trade Center Bombing	0	0	27	27	27	27
8. CNPZ	0	0	1	1	1	1
9. El Salvador (FMLN?)	0	0	1	1	1	1
10. Abu Nidal Organization	0	0	4	4	4	4
Subtotal	32	40	60	62	92	102
Total	168	210	178	195	346	396

Table 4. Demographic Characteristics of Left-Wing, Right-Wing, and International Terrorist Groups in America (1980-1996).*

Demographic Characteristics	Type of Group			
	All Terrorists (n=346)	Left-Wing (n=118)	Right-Wing (n=136)	International (n=92)
Age	Average age at indictment was 38.4 years. 33% over the age of 40.	Average age at indictment was 36.7 years. Only 26% over the age of 40.	Average age at indictment was 41.6 years. 51% over the age of 40.	Average age at indictment was 35.2 years. 22% over the age of 40.
Gender	90% Male	80% Male	91% Male	99% Male
	10% Female	20% Female	9% Female	1% Female
Race	60% White	19% White	97% White	57% White
	40% Non-White	81% Non-White	3% Non-White	43% Non-White
Education	26% have college degrees.	47% have college degrees.	14% have college degrees.	9% have college degrees.
	22% have GED equivalent or less.	17.6% have GED equivalent or less.	29% have GED equivalent or less.	18% have GED equivalent or less.
Occupation	Mixed	Mixed, but many professional workers: e.g., physician, attorney, teacher, social worker.	Mixed, but a large number of unemployed or impoverished self-employed workers.	Mixed, but many worked in sales positions or had government affiliations.
Place of Residence	Urban and Rural	Urban	Rural	Urban

* The demographic information in the table refers to "people", not indictees.

Table 5. Demographic Characteristics of Left-Wing, Right-Wing, and International Terrorist Groups in America (Pre-Guidelines).*

Demographic Characteristics	Type of Group			
	All Terrorists (n=168)	Left-Wing (n=61)	Right-Wing (n=75)	International (n=32)
Age	Average age at indictment was 37.2 years. 27% over the age of 40.	Average age at indictment was 35.9 years. Only 19% over the age of 40.	Average age at indictment was 38.8 years. 36% over the age of 40.	Average age at indictment was 35.9 years. 23% over the age of 40.
Gender	87% Male 13% Female	72% Male 28% Female	93% Male 7% Female	100% Male 0% Female
Race	72% White 28% Non-White	32% White 68% Non-White	97% White 3% Non-White	84% White 16% Non-White
Education	29% have college degrees. 23% have GED equivalent or less.	56% have college degrees. 12% have GED equivalent or less.	14% have college degrees. 33% have GED equivalent or less.	8% have college degrees. 24% have GED equivalent or less.
Occupation	Mixed	Mixed, but many professional workers: e.g., physician, attorney, teacher, social worker.	Mixed, but a large number of unemployed or impoverished self-employed workers.	Mixed, but many worked in sales positions or had government affiliations.
Place of Residence	Urban and Rural	Urban	Rural	Urban

* The demographic information in the table refers to "people", not indictees.

Table 6. Demographic Characteristics of Left-Wing, Right-Wing, and International Terrorist Groups in America (Post-Guidelines Era).*

Demographic Characteristics	Type of Group			
	All Terrorists (n=178)	Left-Wing (n=57)	Right-Wing (n=61)	International (n=60)
Age	Average age at indictment was 39.7 years. 43% over the age of 40.	Average age at indictment was 37.6 years. Only 33% over the age of 40.	Average age at indictment was 44.9 years. 68% over the age of 40.	Average age at indictment was 35.3 years. 21% over the age of 40.
Gender	92% Male 8% Female	89% Male 11% Female	89% Male 11% Female	98% Male 2% Female
Race	49% White 51% Non-White	5% White 95% Non-White	97% White 3% Non-White	41% White 59% Non-White
Education	15% have college degrees. 18% have GED equivalent or less.	18% have college degrees. 35% have GED equivalent or less.	11% have college degrees. 0% have GED equivalent or less.	12.5% have college degrees. 0% have GED equivalent or less.
Occupation	Mixed	Mixed, owners of small businesses (bars, restaurants) and laborers.	Mixed, laborers, musicians, ministers, and high-tech industry.	Mixed, but many worked in sales positions or had government affiliations.
Place of Residence	Urban and Rural	Urban	Rural	Urban

* The demographic information in the table refers to "people", not indictees.

Table 7. Count Results by Type of Terrorist Group.

Table 7a. 1980-1996 (2,361 Counts – 277 missing cases)					
Type of Terrorist Group	Jury Conviction	Pleaded Guilty	Dismissed Due to Plea on Other Counts	Dismissed Due to Mistrial or Acquittal	Fugitive
Domestic					
Left-wing	263 (34.3%)	52 (6.8)	183 (23.9)	245 (32.0%)	1 (0.1%)
Right-wing	242 (39.5%)	88 (14.4%)	169 (27.6%)	84 (13.7%)	0 (0%)
International (386 awaiting trial, 1 dismissed in prison elsewhere)	197 (20.0%)	61 (6.2%)	164 (16.7%)	100 (10.2%)	23 (2.3%)
Total	702 (29.7%)	201 (8.5%)	516 (21.9%)	531 (22.5%)	24 (1.0%)

Table 7b. Pre-Guidelines (1,151 Counts – 246 missing cases)					
Type of Terrorist Group	Jury Conviction	Pleaded Guilty	Dismissed Due to Plea on Other Counts	Dismissed Due to Mistrial or Acquittal	Fugitive
Domestic					
Left-wing	244 (41.1%)	22 (3.7%)	93 (15.7%)	234 (39.5%)	0 (0%)
Right-wing	89 (25.9%)	53 (15.5%)	146 (42.6%)	55 (16.0%)	0 (0%)
International	55 (25.6%)	37 (17.2%)	115 (53.5%)	8 (3.7%)	0 (0%)
Total	388 (33.7%)	112 (9.7%)	354 (30.8%)	297 (25.8%)	0 (0%)

Table 7c. Post-Guidelines (1,210 Counts – 31 missing cases)

Type of Terrorist Group	Jury Conviction	Pleaded Guilty	Dismissed Due to Plea on Other Counts	Dismissed Due to Mistrial or Acquittal	Fugitive
Domestic					
Left-wing	19 (11.0%)	30 (17.3%)	90 (52.0%)	33 (19.1%)	1 (0.6%)
Right-wing	153 (56.9%)	35 (13.0%)	23 (8.6%)	58 (21.6%)	0 (0%)
International (386 awaiting trial, 1 dismissed in prison elsewhere)					
	142 (18.5%)	24 (3.1%)	49 (6.4%)	115 (18.6%)	23 (3.0%)
Total	314 (26.0%)	89 (7.4%)	162 (13.4%)	234 (19.3%)	24 (2.0%)

Table 8. Case Outcomes by Type of Terrorist Group.

Table 8a.		1980-1996 (356 Cases – 10 missing)			
Type of Terrorist Group	Jury Conviction	Pleaded Guilty	Dismissed Due to Mistrial or Government Motion	Dismissed Due to Acquittal	Fugitive
Domestic					
Left-wing	37 (34.3%)	45 (41.7%)	16 (14.9%)	9 (8.3%)	1 (0.9%)
Right-wing (1 combined)	58 (38.2%)	57 (37.5%)	17 (11.2%)	19 (12.5%)	0 (0%)
International (2 awaiting trial)	35 (36.5%)	38 (39.6%)	11 (11.4%)	7 (7.3%)	3 (3.1%)
Total	130 (36.5%)	140 (39.3%)	44 (12.3%)	35 (9.8%)	4 (1.1%)

Table 8b.		Pre-Guidelines (184 Cases – 26 missing)			
Type of Terrorist Group	Jury Conviction	Pleaded Guilty	Dismissed Due to Mistrial or Government Motion	Dismissed Due to Acquittal	Fugitive
Domestic					
Left-wing	26 (50.0%)	15 (28.8%)	9 (17.3%)	2 (3.8%)	0 (0%)
Right-wing	26 (26.8%)	42 (43.3%)	12 (12.4%)	17 (17.5%)	0 (0%)
International	9 (25.7%)	22 (62.9%)	4 (11.4%)	0 (0%)	0 (0%)
Total	61 (33.2%)	79 (42.9%)	25 (13.6%)	19 (10.3%)	0 (0%)

Table 8c. Post-Guidelines (172 Cases – 14 missing)

Type of Terrorist Group	Jury Conviction	Pleaded Guilty	Dismissed Due to Mistrial or Government Motion	Dismissed Due to Acquittal	Fugitive
Domestic					
Left-wing	11 (19.6%)	30 (53.6%)	7 (12.5%)	7 (12.5%)	1 (1.8%)
Right-wing (1 combined)	32 (58.2%)	15 (27.3%)	5 (9.1%)	2 (3.6%)	0 (0%)
International					
(2 awaiting trial)	26 (42.6%)	16 (26.2%)	7 (11.4%)	7 (11.5%)	3 (4.9%)
Total	69 (40.1%)	61 (35.5%)	19 (11.0%)	16 (9.3%)	4 (2.3%)

Table 9. Total Sentence Length by Defendant Characteristics for Whole Sample (N=396).

Total Sentence Length in Months (1980-1996)						
Characteristics	Number	Mean	Range	Median	Standard Deviation	Statistical Significance
Gender						
Male	232	169.6	685	63.0	220.6	p=0.17
Female	<u>31</u>	<u>112.1</u>	<u>685</u>	<u>36.0</u>	<u>173.2</u>	
Total	263	162.8	685	60.0	216.0	
Race						
White	163	131.6	685	57.0	193.0	p=0.002
Minority	<u>99</u>	<u>215.7</u>	<u>685</u>	<u>96.0</u>	<u>241.8</u>	E ² = .04
Total	262	163.4	685	60.0	216.2	
Group Type						
Right-wing	114	144.9	685	60.0	199.3	p=0.09
Left-wing	79	145.4	685	63.0	193.8	E ² = .02
International	<u>70</u>	<u>211.4</u>	<u>685</u>	<u>78.0</u>	<u>257.7</u>	
Total	263	162.8	685	60.0	216.0	
Role						
Leader	73	226.8	685	120.0	254.3	p=0.003
Subordinate	<u>190</u>	<u>138.2</u>	<u>685</u>	<u>60.0</u>	<u>194.6</u>	E ² = .034
Total	263	162.8	685	60.0	216.0	

Table 10. Total Sentence Length by Defendant Characteristics for Each Decade.

Table 10a.		Total Sentence Length in Months (Pre-Guidelines, N=210)				
Characteristics	Number	Mean	Range	Median	Standard Deviation	Statistical Significance
Gender						
Male	113	169.0	685	60.0	223.9	p=0.63
Female	<u>21</u>	<u>143.7</u>	<u>685</u>	<u>60.0</u>	<u>200.5</u>	
Total	134	165.0	685	60.0	219.8	
Race						
White	100	154.2	685	60.0	207.3	p=0.28
Minority	<u>33</u>	<u>202.4</u>	<u>685</u>	<u>60.0</u>	<u>255.6</u>	
Total	133	166.2	685	60.0	220.2	
Group Type						
Right-wing	66	174.2	685	60.0	219.7	p=0.26
Left-wing	40	191.5	960	60.0	256.3	
International	<u>28</u>	<u>105.6</u>	<u>685</u>	<u>57.0</u>	<u>148.5</u>	
Total	134	165.0	685	60.0	<u>219.8</u>	
Role						
Leader	38	267.1	685	120.0	280.6	p=0.001 E ² = .09
Subordinate	<u>96</u>	<u>124.1</u>	<u>685</u>	<u>58.5</u>	<u>176.6</u>	
Total	134	165.0	685	60.0	219.8	

Table 10b.		Total Sentence Length in Months (Post-Guidelines, N=186)				
Characteristics	Number	Mean	Range	Median	Standard Deviation	Statistical Significance
Gender						
Male	119	170.1	685	78.0	218.3	p=0.08 E ² = .03
Female	<u>10</u>	<u>45.9</u>	<u>192</u>	<u>30.0</u>	<u>58.9</u>	
Total	129	160.5	685	63.0	212.9	
Race						
White	63	95.6	685	48.0	163.1	p=0.001 E ² = .09
Minority	<u>66</u>	<u>222.4</u>	<u>685</u>	<u>120.0</u>	<u>236.4</u>	
Total	129	160.5	685	63.0	212.9	
Group Type						
Right-wing	48	104.8	685	53.5	161.0	p=0.000 E ² = .16
Left-wing	39	98.2	292	78.0	71.8	
International	<u>42</u>	<u>282.0</u>	<u>685</u>	<u>138.0</u>	<u>290.6</u>	
Total	129	160.5	685	63.0	212.9	
Role						
Leader	35	183.0	685	120.0	218.0	p=0.47
Subordinate	<u>94</u>	<u>152.1</u>	<u>685</u>	<u>63.0</u>	<u>211.5</u>	
Total	129	160.5	685	63.0	212.9	

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