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POSTGRADUATE  
SCHOOL**

**MONTEREY, CALIFORNIA**

**THESIS**

**TERROR STING OPERATIONS IN THE MUSLIM  
COMMUNITY—DEVELOPING RECOMMENDATIONS  
FOR IMPROVING PUBLIC SUPPORT**

by

Jason Huerta

September 2013

Thesis Advisor:  
Second Reader:

Lauren Wollman  
Joseph A. Gallucci

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**TERROR STING OPERATIONS IN THE MUSLIM COMMUNITY—  
DEVELOPING RECOMMENDATIONS FOR IMPROVING PUBLIC SUPPORT**

Jason Huerta  
Deputy Inspector, New York City Police Department, New York City  
B.S., St. Joseph's College, Brooklyn, NY, 2007

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**NAVAL POSTGRADUATE SCHOOL  
September 2013**

Author: Jason Huerta

Approved by: Dr. Lauren Wollman  
Thesis Advisor

Joseph A. Gallucci  
Second Reader

Mohammed Hafez  
Chair, Department of National Security Affairs

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## **ABSTRACT**

This thesis analyzes the criticisms surrounding the use of terror sting operations by law enforcement agencies for the purpose of developing recommendations to increase public support, particularly among the American Muslim population. The relevant literature is replete with criticisms surrounding the behavior of civilian informants during terror sting operations and the effect those actions have on community relations. Critics claim that terror sting operations constitute spying, profiling, and entrapment. Contrary to that claim, however, is the fact that these operations have successfully withstood intense legal scrutiny; trials in which defendants are accused of carrying out these plots have always resulted in conviction. The goal of this thesis, therefore, is not to argue that the operations not be conducted, but rather to identify improvements that law enforcement agencies can implement to minimize the perception that terror sting operations are a form of entrapment or profiling. The results of this research are recommendations centered on addressing the most common or legitimate criticisms. The goal of these recommendations is to minimize the negative impact on community relations while simultaneously improving the quality of terror sting operations.

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## LIST OF ACRONYMS AND ABBREVIATIONS

9/11	September 11, 2001
ACLU	American Civil Liberties Union
AIMCOP	African Immigrant Muslim Community Outreach Program
CAIR	Council on American-Islamic Relations
CHDS	Center for Homeland Defense and Security
CHRGJ	Center for Human Rights and Global Justice (NYU)
DIOG	Domestic Investigations and Operations Guide
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
HMIC	Her Majesty's Inspectorate of Constabulary
MJ	Mother Jones Group
NEFA	Nine Eleven Finding Answers Foundation
NYPD	New York City Police Department
NYU	New York University
OIG	Office of Inspector General
RT	Russian Television
SPPD	Saint Paul Police Department

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## EXECUTIVE SUMMARY

This research analyzes terror sting operations that involve the use of informants or undercover officers deployed into targeted locations by law enforcement agencies. Once deployed, the informants or undercover officers seek to identify and befriend potential terrorists, which ultimately afford them an opportunity to commit an act of terrorism that typically involves detonating an inert bomb at a target location. Those who take the bait, if you will, become the subjects of elaborately staged terrorist plots with law enforcement agents posing as co-conspirators. Once the subject commits the act, he is arrested, ultimately charged in federal court, and typically sentenced to lengthy prison terms. These operations have been extremely successful and receive praise from the law enforcement community and the general public to some degree; however, Muslim critics, the media, and civil rights groups have become increasingly critical of the practice and have painted a picture of sinister government abuse. The negative light in which these practices are increasingly cast has arguably set back years of community policing progress in Muslim communities. Critics claim that the practice of conducting terror sting operations, which often involves sending undercover officers or informants into MOSQUES or other Muslim establishments, amounts to spying, entrapment, and profiling. Recently, relations between the Muslim community and the NYPD have been strained as televised protests and demonstrations have become increasingly common.<sup>1</sup> In

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<sup>1</sup> See the following sources: CBS New York, “Fallout Continues From NYPD Muslim Student Group Monitoring,” March 3, 2012, <http://newyork.cbslocal.com/2012/03/03/nj-officials-meeting-with-muslim-community-on-nypd-program/>; Eileen Sullivan and Chris Hawley, “New York Muslims Rally to Protest NYPD Surveillance Program,” *Huffington Post*, November 18, 2011, [http://www.huffingtonpost.com/2011/11/18/new-york-muslims-plan-ral\\_n\\_1101747.html](http://www.huffingtonpost.com/2011/11/18/new-york-muslims-plan-ral_n_1101747.html); Adam Goldman and Matt Apuzzo, “Newark Muslims Hold Protest Rally over NYPD Spy Operation,” *Christian Science Monitor*, February 24, 2012, <http://www.csmonitor.com/USA/Latest-News-Wires/2012/0224/Newark-Muslims-hold-protest-rally-over-NYPD-spy-operation>; CBS New York, “Students Protest NYPD’s Surveillance Of Muslims, Call For Police Commissioner Raymond Kelly’s Resignation,” March 3, 2012, <http://newyork.cbslocal.com/2012/03/03/nj-officials-meeting-with-muslim-community-on-nypd-program/>; Stephen Nessen, “WNYC News–Muslim Groups Protest NYPD Practices,” February 3, 2012, *WNYC News*, [http://www.wnyc.org/articles/wnyc-news/2012/feb/03/blog-muslim-groups-protest-nypd-practices/?utm\\_source=sharedUrl&utm\\_media=metatag&utm\\_campaign=sharedUrl](http://www.wnyc.org/articles/wnyc-news/2012/feb/03/blog-muslim-groups-protest-nypd-practices/?utm_source=sharedUrl&utm_media=metatag&utm_campaign=sharedUrl).

addition, much inflammatory literature and media has been circulated online and in news sources, which has further incited Muslim opposition against American law enforcement agencies.

This increasingly negative perception that many Muslims have of being spied upon and profiled may be strengthening the appeal of radical Islamists who seek to perpetuate the notion that Americans are the enemy of Islam. Of particular concern to critics of this practice is the use of informants, since they are often accused of being overly instrumental in the subject's decision to commit an act of terror.

The purpose of this research is not to judge the efficacy or legality of terror sting operations, since the legality of the practice has been well established, but rather to attempt to understand what the criticisms are and to attempt to address them through changes in policy. To that end, this thesis focuses on analyzing the terror sting operations that have generated significant controversy or that have been researched in academic publications that delineate specific criticisms against the operations. The selected cases and relevant publications are discussed in detail in the literature review and in Chapter III.

At the conclusion of this thesis, several recommendations are presented that will serve to benefit law enforcement agencies as they attempt to balance counter-terrorism efforts with their mission to uphold the rights of the people they serve.

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## I. INTRODUCTION

### A. RESEARCH QUESTION

How can the methods law enforcement agencies employ in terror sting operations be enhanced to mitigate concerns from within the Muslim community pertaining to entrapment, spying, and profiling?

### B. PROBLEM SPACE

*Agent Provocateur*:<sup>1</sup> This term is frequently used to describe an increasingly popular counter-terrorism law enforcement tactic that has generated considerable controversy, particularly within the Muslim community, the press, and within civil liberties activist circles. Since September 11, 2001 (9/11), law enforcement agencies, including the Federal Bureau of Investigation (FBI) and New York City Police Department (NYPD), have been introducing operatives who are either civilian informants or undercover officers into specific locations to apprehend terrorists by staging sophisticated terrorist plots. The tactic involves the use of confidential informants who report back to handling agencies with information concerning potential jihadists and who carry out instructions to bait the suspects into committing what they believe are real terrorist attacks. While the official number of incidents in which this tactic has been employed is not published, one source estimates that as many as 200 Muslim males have been arrested as a result of these types of sting operations since 9/11;<sup>2</sup> another source indicates 138 terrorism prosecutions have involved informants since 2001.<sup>3</sup>

Law enforcement agencies including the FBI and NYPD have been accused of profiling because of their practice of introducing informants into Muslim communities and their houses of worship. Law enforcement agencies have also been accused of

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<sup>1</sup> Free Merriam-Webster Dictionary, "Agent Provocateur—Definition and More," (n.d.), <http://www.merriam-webster.com/dictionary/agent%20provocateur>.

<sup>2</sup> Smita Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States* (New York University, Center for Human Rights and Global Justice, 2011), 2.

<sup>3</sup> Petra Bartosiewicz, "Deploying Informants, the FBI Stings Muslims," *The Nation*, June 13, 2012, <http://www.thenation.com/article/168380/deploying-informants-fbi-stings-muslims#%20>.

maintaining lists and databases regarding locations and the identities of persons who frequent them without having any particular leads or suspicions there. Critics have claimed that this practice constitutes profiling and an infringement upon the constitutional rights of Muslims.<sup>4</sup> They further characterize the practice of using informants and undercover officers to offer individuals terrorist opportunities as acts of entrapment that tend to lead to the incarceration of simple-minded “idiots” or incompetent individuals who would have remained harmless were it not for the active encouragement of law enforcement.<sup>5</sup> Another criticism posits that, by staging scenarios that can amount to millions of dollars in costs, law enforcement officials are creating attacks that do not exist, and celebrating when they prevent them from occurring—the criticism being that such tactics can hardly be effective, or cost-effective counter-terrorism tactics since no real threats actually existed. Stated otherwise, the criticism alleges that agencies are spending large amounts of money and devoting significant resources to apprehend individuals committing plots that never existed.

The aspect of informant/ infiltration operations that seems to draw the greatest criticism throughout the literature is the behavior of informants. Instances have occurred in which informants are accused of manipulating the defendants to the point of getting them to commit the crimes over their repeated objections.<sup>6</sup> In other cases, the informants are portrayed as being the masterminds of the terrorist operation, and serving as mentors to the weak-minded individuals who stand little chance of resisting them.

The general use of informants by law enforcement agencies is a topic worthy of significant research on its own. According to some of the literature concerning informants, the practice of utilizing informants has even been said to be contributing to a significant change in the very sociological fabric itself of inner city neighborhoods.<sup>7</sup>

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<sup>4</sup> Muslim Advocates, “Losing Liberty: The State of Freedom 10 Years After the Patriot Act,” November 11, 2011, 12.

<sup>5</sup> Bruce Schneier, “Portrait of the Modern Terrorist as an Idiot,” WIRED, June 14, 2007, [http://www.wired.com/politics/security/commentary/securitymatters/2007/06/securitymatters\\_0614](http://www.wired.com/politics/security/commentary/securitymatters/2007/06/securitymatters_0614).

<sup>6</sup> Narula, *Targeted and Entrapped: Manufacturing the “Homegrown Threat” in the United States*, 36.

<sup>7</sup> Alexandra Natapoff, “Snitching: The Institutional and Communal Consequences,” *U. Cin. L. Rev.* 73 (2004).

Although the full argument contains many nuances, it can be summarized this way: Informants are almost always convicted criminals who, while being “employed” by the law enforcement agency, continue to engage in criminal conduct. In exchange for their work with the agencies, informants are granted benefits ranging from monetary compensation to criminal immunity. While law enforcement officials certainly reap rewards from the use of informants, these individuals are rewarded with a kind of state-sponsored legitimacy that serves to promote their self-interests. A notable example within the literature is an individual who continued to deal drugs and carry a firearm while acting as an informant. He carefully chose which information to provide to his handler, which included the crimes that rival drug dealers, his girlfriend’s ex boyfriend, his landlord, and other individuals he had personal issues with committed. During his time as an informant, he was arrested, his handler was contacted, and the arresting officer released him as a courtesy, which provided the informant with an incredible amount of power and influence in the neighborhood in which he conducted his illicit activities. Not only was crime in the neighborhood inadvertently facilitated by local police who acted on his directions, but this situation also created a widespread sense of distrust that fueled violence and may have actually led to increased crime.

This example is a microcosm of what may be transpiring in urban areas throughout the nation. Informants are used in almost all major investigations throughout American urban areas, and have the potential to influence their surroundings in a substantial manner if they are keen enough to manipulate the system to their benefit.

Despite the negative implications of utilizing informants and the possibly significant sociological repercussions, their use has repeatedly been determined to be proper by juries as, according to one estimate, 92% of FBI informant cases resulted in conviction.<sup>8</sup> According to some of the literature, particularly the ideological and political literature, this sentiment is certainly not baseless. The use of informants is described as a

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<sup>8</sup> Democracy Now! “Entrapment or Foiling Terror? FBI’s Reliance on Paid Informants Raises Questions About Validity of Terrorism Cases,” October 6, 2010, [http://www.democracynow.org/2010/10/6/entrapment\\_or\\_foiling\\_terror\\_fbis\\_reliance](http://www.democracynow.org/2010/10/6/entrapment_or_foiling_terror_fbis_reliance).

“...legally permissive, yet ethically repugnant activity” by one authority on the subject.<sup>9</sup> Indeed, police work, if it is to be effective against criminal activity, routinely requires that law enforcement officials employ methods that are not normally acceptable social behavior. The use of trickery and deceit by law enforcement has been repeatedly upheld by the Supreme Court that, through its decisions, has sanctioned the use of various deceptive techniques that have equipped law enforcement agencies with the tools they need to gain the upper hand against complex criminal organizations. Such tactics include sting operations that may involve elaborate schemes including false store fronts; fencing operations where goods are sold to persons who are informed that the goods are stolen and are subsequently arrested for the purchase; the use of bait vehicles that shut off or trap thieves inside vehicles once they are stolen; intentional lying or deceptive techniques used on suspects during questioning; and the use of surrogates, that is, other persons who are not law enforcement officials but rather are local criminals who serve to facilitate the deceptive operation; or the use of secreted equipment including microphones, video cameras, or other devices to gather required evidence secretly.<sup>10</sup>

Regarding the use of terror sting operations, a persistent pattern of criticism seems to arise from many in the private sector on one hand, and a complete dismissal of the criticisms from the legal and professional field of the criticisms on the other. It is almost as though the legal authorities have concluded that since the entrapment defense has never amounted to a not-guilty verdict or a dismissal of charges, addressing the criticisms is unnecessary. Given the persistent public outcry from Muslim communities and civil rights groups, law enforcement may benefit from formulating changes in policy to at least address the perception of profiling or entrapment. Allegations of spying, infiltrating, entrapment, and profiling fill urban newspapers and may possibly be setting back years of community policing progress.

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<sup>9</sup> Dr. Thomas O'Connor, “Informants, Surveillance, and Other Sources of Information,” *North Carolina Wesleyan College*, 2004, <https://www.hsdl.org/?view&did=447656>, 1.

<sup>10</sup> Graeme R. Newman, Kelly Socia, and United States Department of Justice Office of Community Oriented Policing Services, *Sting Operations: By Graeme R. Newman with the Assistance of Kelly Socia, Issue 6, Problem-oriented Guide for Police, Response Series* (U.S. Department of Justice, Office of Community Oriented Policing Services, 2007), <http://books.google.com/books?id=jya8tgAACAAJ>.

No doubt exists that the proactive approach to homeland security that agencies like the NYPD and FBI have taken has served to prevent terrorist attacks since 9/11.<sup>11</sup> These sting operations may also have contributed, at least in part, to the strong reluctance of Muslim community leaders to allow extremist rhetoric inside their facilities. The cause for this disinclination may very well be the Muslim community's general willingness to combat radicalization and terrorism in their communities in most cases; but it may also be the sense of police omnipresence having an effect in some instances as well. An interesting aspect of this relationship between the use of infiltrative techniques and the general perception of police omnipresence within Muslim circles is that perhaps these techniques are having an active silencing effect on those who would otherwise feel free to espouse radical beliefs in public. Since radicals have now been somewhat limited in their ability to express their radical views in Muslim circles due to the perception that law enforcement agents are everywhere, perhaps the spread of radicalization itself is being curtailed by this practice to some degree since the Muslim population, particularly the youth who are more susceptible, are less exposed to it.<sup>12</sup>

Undeniable value exists in defeating the ideology behind the radical Islamists through the use of these terror sting operations. However, the research in this thesis is conducted based upon the belief that a legitimate need, and potential benefit to the law enforcement community does exist, to address the Muslim community's perception of these operations as spying, profiling, and entrapment. Therefore, this research concerns itself with this complex problem by beginning with the assumption that these operations are constitutional, as none of the criticisms has resulted in even a single overturned case. Yet, how much more effective would these operations be on a sociological or criminological level if they were better supported by the Muslim community and if law enforcement agencies sufficiently addressed the general criticisms against their use? Do meaningful ways exist to increase public support for this practice, particularly within Muslim circles?

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<sup>11</sup> NYPD, "Terrorist Plots Targeting New York City," (n.d.), [http://www.nyc.gov/html/nypd/html/pr/plots\\_targeting\\_nyc.shtml](http://www.nyc.gov/html/nypd/html/pr/plots_targeting_nyc.shtml).

<sup>12</sup> Angela Gendron, "Militant Jihadism: Radicalization, Conversion, Recruitment," *Trends in Terrorism Series 4* (2006): 9.

## **C. LITERATURE REVIEW**

### **1. Three Classes of Relevant Literature**

The relevant literature for this research can be categorized into three classes. The most widely available, and perhaps the most valuable, the scholarly literature, which includes academic journals, reports, theses, think tank publications, and other documents, provides analyses of both individual cases and of the larger theoretical implications and aspects of terror sting operations. This class of literature represents the core of substantive material most relevant to the research.

The next class of literature reviewed is informational, which is comprised of news reports, government press releases, court transcripts, and other publicly released statements and narratives surrounding the capture of individuals apprehended during sting operations. This type of literature offers relatively straightforward, summary accounts of each of the instances in which plots were disrupted based upon court testimony, statements released by law enforcement officials, or interviews obtained by the press. This class of literature proved to be very useful in the preparation for this research since the vast majority of subject matter on the issue at hand is riddled with opinion and judgments regarding the morality or ethics of using informants or trickery to apprehend individuals with carefully orchestrated plots. Therefore, when considering the validity of certain arguments, it was useful to be able to extract the core evidence from each case within court transcripts or reports and measure the usefulness of the argument being made according to the facts presented. In fact, it is doubtful that it is possible to make an informed judgment on whether or not the tactic is fair, justified, or otherwise appropriate without carefully reviewing the facts as they were recorded during official testimony by the affected parties.

The final type of literature applicable to this research is opinion-based, which is comprised of editorials, newspaper articles, blogs, web sites, and other sources that almost unanimously criticize this practice. Indeed, it was difficult to locate any literature of this kind that held a supporting viewpoint for terror sting operations. The volume of

critical literature is so large, in fact, that it was difficult to weed out the legitimate research or policy works from rants and non-factual accounts.

*a. Academics/Professional*

For the purposes of this research the academic/professional class of literature can be divided into three subcategories: academic journals/publications, government journals/publications, and private organizations/think tank publications.

(1) Academic Journals/Publications. In considering the questions evaluating contrived government plots with the use of informants, and the subsequent effectiveness, morality, or legality of such tactics, a variety of academic publications proved to be useful. Many academic institutions have made well-researched contributions to this topic including New York University, University of Wisconsin, North Carolina Wesleyan College, University of Chicago, and the University of Cincinnati, all of which have published legal journals that have hosted some discourse on this topic. The journals produced by these institutions differ in their conclusions regarding the use of informants and deceptive plots that may contribute to entrapment, or at least the perception of it; however, regardless of the position or conclusions regarding such practices, they almost unanimously indicate that negative consequences resulted from using these tactics—some being community outrage, setbacks in delicate relationships with the Muslim community, political pressure hindering counter-terrorism progress, and the reliance on the contributions of informants who are almost always men of questionable integrity from the outset.

Some of the more useful components of this class of literature are the in-depth analyses regarding some of the core issues behind the deceptive practices. Memphis State University's *Law and Philosophy* journal serves as a good example as it closely examines the entrapment defense and the ethical issues and consequences of law enforcement's continued use of infiltrative methods.<sup>13</sup> Another example of academic literature that proved to be relevant is the journal *Crime, Law, and Social Change*, which

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<sup>13</sup> B. Grant Stitt and Gene G. James, "Entrapment and the Entrapment Defense: Dilemmas for a Democratic Society," *Law and Philosophy* 3, no. 1 (1984): 111–131.

confronts the general ethical questions regarding the necessity of the use of deception in law enforcement, and further delves into the dangers of treading the fine line between entrapment and effective law enforcement practices.<sup>14</sup> Some of the literature provides in-depth analyses of some of the infamous court cases revolving around the issues of entrapment and informants including the 1992 case of *Jacobson v. United States*—a rare victory on the side of the defendant, which ultimately revived the entrapment defense for use in subsequent proceedings.

Academic publications are without a doubt where the vast majority of substance for this research lies; as their strength is not only in their generally vigorous and meticulous approaches to the subject matter, but also in their widely varying views that enable a broad understanding of the relevant contributing factors. In a later section of this thesis, a particular academic publication by New York University (NYU's) Center for Human Rights and Global Justice (CHRGJ) is analyzed in detail to provide the reader with a clear picture of what the exact criticisms are against terror sting operations.

(2) Government Journals/Publications. These government-published works are similar in quality to the academic types of literature but tend to focus more on best practice research or evaluative research designed to measure the effectiveness of the practices and policies. Some of this literature is useful in improving the general understanding of the subject matter. One example is the Library of Congress' Congressional Research Service publication entitled, "American Jihadist Terrorism: Combating a Complex Threat," which provides valuable insight into homegrown violent jihadists. Others include agency narratives surrounding notorious court cases, radicalism in general, and the government's creative methods used to combat this phenomenon.<sup>15</sup> Another example is the National Preparedness Group's publication, *Preventing Violent Radicalization in America*, which gives detailed recommendations regarding what steps government officials can take in addressing some of the Muslim community's concerns

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<sup>14</sup> Julius Wachtel, "From Morals to Practice: Dilemmas of Control in Undercover Policing," *Crime, Law and Social Change* 18, no. 1 (1992): 137–158.

<sup>15</sup> Jerome P. Bjelopera and Mark A. Randol, "American Jihadist Terrorism: Combating a Complex Threat," *DTIC Online*, December 7, 2010, <http://oai.dtic.mil/oai/oai?verb=getRecord&metadataPrefix=html&identifier=ADA536056>.

regarding what it perceives as government spying in their communities.<sup>16</sup> Some of this class of literature does not necessarily emanate from American government agencies but is nonetheless relevant to the research. One example is Great Britain's Her Majesty's Inspectorate of Constabulary (HMIC) report, which discusses in great detail undercover police tactics and makes recommendations for their use while delineating the benefits of addressing the public's concerns regarding such tactics. The U.S. Department of Justice (DOJ) discusses sting operations in great detail in its *Problem-Oriented Guide for Police Response* series. In this journal, the DOJ identifies and analyzes each of the widely used police sting operations, as well as their benefits and negative effects.

Collectively, government publications serve as a strong foundation for gaining a deep understanding of the core issues and practices surrounding deceptive law enforcement practices. Much effort has gone into government research projects post 9/11, and what results is a vast array of resources of significant value to this research.

(3) Private Organizations/Think Tank Publications. Private resources in this genre of literature are useful for gaining an understanding of the different views and positions regarding law enforcement's proactive counterterrorism efforts. While they appear to be somewhat biased at times, an understanding of the main positions is beneficial to the research. The Muslim Public Affairs Council, a Muslim advocacy group, offers an excellent example by detailing the phenomenon of radical extremism while explaining the effects of proactive policing on the Muslim community and terrorism itself, and by concluding with useful recommendations for improving police-community relations. While the report comes from the perspective of the group's goals, it is well written, researched, and of value to the relevant research. Of particular interest is their conclusion that proactive, infiltrative law enforcement efforts have served to create the fear within terrorist groups themselves that informants are present within their groups.<sup>17</sup>

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<sup>16</sup> Dr. Peter Neumann, *Preventing Violent Radicalization in America* (National Security Preparedness Group, 2011), 31.

<sup>17</sup> Alejandro J. Beutel, "Building Bridges to Strengthen America, Forging an Effective Counterterrorism Enterprise Between Muslim Americans and Law Enforcement," *Muslim Public Affairs Council* 19 (2010).

Other publications in this class offer particularly good summaries of each of the most notorious police informant/fake plot arrests in the past few years to include the Nine Eleven Finding Answers Foundation (NEFA) and a publication by The Council on Foreign Relations to name two.<sup>18</sup> Other sources in this class offer extremely valuable contributions to this research, including the New America Foundation's policy paper entitled, "The FBI's Secret War Against the 'Patriot' Movement, and How Infiltration Tactics Relate to Radicalizing Influences," which provides an in-depth analysis of law enforcement's infiltration efforts to include the use of agent provocateurs.<sup>19</sup> Another example is the Muslim Advocate's study of the Patriot Act's effect on the Muslim community entitled, "Losing Liberty: The State of Freedom Ten Years After the Patriot Act." This publication offers a highly critical study of the expanded government powers that arose out of a post 9/11 era.<sup>20</sup>

Overall, the publications released by privately-funded organizations offer interesting and well-researched perspectives into the core issues surrounding law enforcement's proactive, post 9/11 tactics, as well as analyses of the more notorious cases of infiltration given from the perspective of non-governmental observers, which is useful for study as well.

### ***b. Informational***

Materials reviewed in this category of literature can be divided into two sub-categories of hearings/testimony and news publications/sites.

(1) Hearings/Testimony. Some of the most vocal critics of law enforcement's infiltrative practices were not particularly careful to provide accurate portrayals of the relevant cases; most notably, those publications that were particularly biased or political in nature. A good example in practice is the academic publication, "Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States"

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<sup>18</sup> See <http://www.nefafoundation.org>; Toni Johnson, "Threat of Homegrown Islamist Terrorism," September 30, 2011, <http://www.cfr.org/terrorism/threat-homegrown-islamist-terrorism/p11509>.

<sup>19</sup> J. M. Berger. "PATCON, The FBI's Secret War Against the 'Patriot' Movement, and How Infiltration Tactics Relate to Radicalizing Influences," *New America Foundation*, May 21, 2012, <http://newamerica.net/publications/policy/patcon>.

<sup>20</sup> Muslim Advocates, "Losing Liberty: The State of Freedom 10 Years After the Patriot Act," 12.

by NYU's Center for Human Rights and Global Justice. The publication's portrayal of defendants arrested in certain cases as innocent individuals tricked into committing terrorist acts is a red flag for researchers. Although the NYU publication is significantly politically influenced, and exudes bias in that regard, it was valuable as a synthesized source of widely held criticisms against terror sting operations. The publication, therefore, served well as a primary source of what amounts to a detailed, scholarly expression of the substance and logic of the "anti-sting" argument.

The single best sources of verification were the court testimony transcripts themselves. Indeed, the courtroom transcripts painted a very different, factual picture—core material facts, such as defendants' incriminating statements or actions, were present in the courtroom but were routinely omitted in the preceding document. Other documents, including the transcript for the U.S. House of Representatives Committee on Homeland Security's Muslim Radicalization, and the intelligence-sharing and terrorism risk assessment hearings, provide a much needed indication of the current political conversation on these topics and how current efforts are being measured.<sup>21</sup>

Both courtroom transcripts for the relevant criminal trials, and hearing transcripts, provide unabridged data for review when it is particularly useful to test hypotheses or conclusions.

(2) News Publications/Sites. The news reports reviewed provided interesting perspectives into arrests resulting from the use of informants or other infiltrative tactics by law enforcement. Although this type of literature is distinct from the opinion-based class discussed further on, these reports do generally follow the political bias of the news site reporting. The difference is that the opinion-based class of literature is a public statement of opinion, while the manner in which the news bias is presented is more subtle. An interesting example is the contrast from which the *New York Times*, a politically left-leaning newspaper, differs from the *New York Post*, a politically conservative newspaper in reporting the same subject matter. The *New York Times*

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<sup>21</sup> Committee on Homeland Security, "Hearing on the Extent of Radicalization in the American Muslim Community and That Community's Response," March 10, 2011, <http://homeland.house.gov/hearing/hearing-%E2%80%9Cextent-radicalization-american-muslim-community-and-communitys-response%E2%80%9D>.

reports on August 31, 2010, on the trial of James Cromitie, one of the Bronx synagogue plot conspirators, and the focus is almost completely on Cromitie's apparent coercion by the government to commit his acts. The *Times* indicates that he was offered an enormous amount of money to commit the act by a government informant, and that he tried to back out on more than one occasion.<sup>22</sup> Meanwhile, the *Post*, reporting on the same hearing on the same date, paints the picture of Cromitie as a flagrant anti-Semite whose recorded statements are described as "chilling" in the trial, and how he bragged about being a soldier, but not for America.<sup>23</sup> The news publications vary from highly opinionated examples like the ones just mentioned, to more politically neutral accounts of the trials and arrests.

News publications and sites provide the researcher with different highlighted points, perhaps the most sensational, which is useful for gauging the effect of the news on the public psyche. Perhaps loyal followers of each source are highly influenced by the political bias of the media reporting on the issue; or perhaps, the effect is not measurable enough to sway public opinion. In either case, these classes of literature provide useful samples of the public discourse.

### *c. Opinion-Based*

For the purposes of this research, opinion-based literature is divided into two sub-categories: magazines and videos.

(1) Magazines. This class of literature is somewhat more of a philosophically sophisticated approach to arguments from particular corners of the political spectrum than the politically-leaning news sites above. An example is an article entitled, "Deploying Informants, the FBI Stings Muslims" by the self-described "Flagship of the Left," The Nation, which presents a skillfully crafted perspective on some of the more notorious cases of informant and terror sting operation cases. The article goes into great depth on the history of the practice, as well as some of the effects it has had on U.S.

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<sup>22</sup> Kareem Fahim, "Tapes Show James Cromitie Wavering on Terror Plot," *The New York Times*, August 31, 2010, <http://www.nytimes.com/2010/09/01/nyregion/01plot.html>.

<sup>23</sup> Rick Calder, "Bx. 'Bomber's Hatred for Jews," *New York Post*, August 31, 2010, [http://www.nypost.com/p/news/local/bronx/bx\\_bomber\\_hatred\\_for\\_jews\\_CUr7F41Pn9Nj10PqJCGfpK](http://www.nypost.com/p/news/local/bronx/bx_bomber_hatred_for_jews_CUr7F41Pn9Nj10PqJCGfpK).

freedoms. While one may agree or disagree, the article is well-supported by factual references and makes for good debate material. The value to the researcher is that these articles paint a detailed picture of how these practices tend to rile up people in opposition to them. All the materials in this category made similar criticisms, and, unfortunately, opinion-based magazines supporting law enforcement's use of informants and contrived plots have been elusive thus far.

(2) Video Reports. Video specials and documentaries in support of convicted terror plot arrestees generally critical of the FBI's practices abound on Youtube.com and throughout the Internet, in particular those by RT (Russian Television), which holds the monopoly on these types of programs, are highly critical anti-FBI productions presented as documentaries or newscasts.<sup>24</sup> Democracy Now!, an independent left-leaning news program, also produced several news commentaries on the law enforcement practice.<sup>25</sup> While generally highly biased against law enforcement in general, these programs provide a valuable insight into the exact cases being made against the government by supporters and family members of individuals arrested in these plots. They generally cite coercion and persistence on the part of the government as the driving force behind the actions of the individuals arrested in these plots.

## **2. Key Publications**

While hundreds of highly critical articles and publications regarding terror sting operations exist, two publications stand out particularly as representing serious research efforts into the subject, and have therefore, been selected for closer analysis. Both these publications chronicle the facts surrounding specific cases in which the authors make their cases that terror sting operations constitute entrapment or other forms of government abuse.

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<sup>24</sup> See <http://rt.com> or [youtube.com](http://youtube.com). Searches for "rt fbi sting" yield multiple results of various broadcasts surrounding the same subject matter. One example: YouTube, "FBI Agents Craft Their Own Terror Plots," 2012, [http://www.youtube.com/watch?v=Vzb4aaTGNjk&feature=youtube\\_gdata\\_player](http://www.youtube.com/watch?v=Vzb4aaTGNjk&feature=youtube_gdata_player).

<sup>25</sup> Example: Democracy Now! "Entrapment or Foiling Terror? FBI's Reliance on Paid Informants Raises Questions About Validity of Terrorism Cases."

*a. NYU CHRGGJ Publication*

In 2011, NYU CHRGGJ published a report entitled *Targeted and Entrapped: Manufacturing the “Homegrown Threat” in the United States*. As a significant academic undertaking on the subject, it bears mentioning in this thesis since it articulates the more common criticisms against terror sting operations. The research value of the report, however, is somewhat limited since it can be argued that the report is replete with inflammatory rhetoric and politically influenced predispositions which, at minimum, take away from its objective value and otherwise substantial presentation. Examples include broad sweeping characterizations of government intent, unsupported claims regarding the innocence of subjects, and statements that exude political bias including the presumption that terrorism and radical Islamist ideology is not a problem among Muslims at all, and that the Muslim community should not be a focus of law enforcement efforts.<sup>26</sup> While this hypothesis can certainly be raised and researched, it is naïve or disingenuous at this point to suggest that radical Islamism in Muslim communities is not, at minimum, an issue worth discussing. Putting 9/11, the Fort Hood shooting, the recent Boston bombings, and the many failed terrorist attempts aside, it is not a stretch to the imagination to realize that an ideology does exist among many in the Muslim world that calls for violent attacks on civilians to further its goals. While the overwhelming majority of Muslim Americans are opposed to acts of terrorism against civilians in defense of Islam, according to the most recent Pew poll, 8% say that such terrorism is often, or sometimes, justified.<sup>27</sup> This estimate indicates that nearly one in 10 Muslims in the United States believe this to be true.

The CHRGGJ report then goes as far as labeling the radicalization process as myth.<sup>28</sup> The tendency of the authors to deny that problems with radicalization and violent Islamist ideology even exist in the Muslim community anywhere, takes away

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<sup>26</sup> Narula, *Targeted and Entrapped: Manufacturing the “Homegrown Threat” in the United States*, 6–7.

<sup>27</sup> PewResearch Religion & Public Life Project, *The World’s Muslims: Religion, Politics and Society*, “Executive Summary,” April 30, 2013, <http://www.pewforum.org/Muslim/the-worlds-muslims-religion-politics-society-exec.aspx>.

<sup>28</sup> Narula, *Targeted and Entrapped: Manufacturing the “Homegrown Threat” in the United States*, 7.

from the credibility of the report; as does their apparent defense of the defendants' conduct in each of the cases covered. An example is a passage in its analysis of one of the cases covered in the report—the case of the Fort Dix Five. The report begins by laying out the family's picture—perfect American story, how the family traveled to Six Flags every year, went on picnics, attended the mosque every Friday, and then it makes the following statement about the family:

They had no idea that two decades later their sons would themselves end up the victims of discrimination—at the hands of the country they had believed in—with all three sent to prison for the rest of their lives on terrorism charges for a plot that was, in fact, created by the FBI.<sup>29</sup>

The report minimizes the disturbing facts surrounding the case, among them that these men were convicted by a jury, were recorded numerous times making jihadist statements, purchased machine guns illegally, and were in possession of Al Qaeda videos and propaganda. The publication glosses over these facts and makes inflammatory, politically motivated statements, which again, seems to take away from its academic value. The report does serve, however, as a valuable summation of the most common of criticisms, which are presented in a clear, understandable manner; and raises legitimate points of concern regarding informant behavior; and is therefore, worth analyzing for the purposes of understanding the criticisms against this practice more clearly. In addition, the report makes specific, well thought-out recommendations that merit serious consideration.

In *Targeted and Entrapped*, the CHRGI accuses American law enforcement agencies, specifically the FBI and NYPD, of entrapping Muslim males in contrived terror plots. The publication specifically cites abuses by untrained informants as being particularly problematic, and challenges many fundamentally held beliefs of law enforcement agencies regarding the radicalization process and proactive policing in general.<sup>30</sup> The report continues to criticize the FBI's Domestic Investigations and Operations Guide (DIOG) guidelines, which characterizes them as practically the

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<sup>29</sup> Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*, 26.

<sup>30</sup> *Ibid.*, 6–8.

equivalent of not having guidelines at all, and further emphasizes that the guidelines allow agents to engage in surveillance and infiltration of individuals with no prerequisite criminality on the part of the subject.<sup>31</sup> It further states that, under the guidelines, informants are basically given carte blanche to engage in criminal conduct. In fact, the report alleges that through the guidelines, informants are basically granted the right to engage in entrapment with no legal protections afforded to targets of the operations.<sup>32</sup> The report also further criticizes the NYPD's Handschu guidelines, which were modified post 9/11 in 2003 to expand the department's intelligence gathering abilities by stating that the amendment to the guidelines is based upon the "flawed radicalization model."<sup>33</sup> Finally, the report accuses the American government of engaging in international human rights violations and recommends that sweeping changes be implemented to bring a stop to what it characterizes as a direct assault on the Muslim community.

(1) Entrapment. *Targeted and Entrapped* spends a substantial amount of time explaining the entrapment defense since it is a central tenet of the argument the journal is making against the use of terror sting operations, particularly in the cases cited. The report explains that when a defense of entrapment is raised, the defense must prove by a preponderance of the evidence (51%) that the defendant was induced by the government to commit the crime. Once the inducement is established, the prosecution must then prove beyond a reasonable doubt the defendant's predisposition to committing the crime. The report then identifies the fact that two tests determine entrapment—the subjective test, which relies on proving the defendant's predisposition to the crime, and the objective test, which deals with the government's conduct in inducing the crime instead of the defendant's mental culpability. The authors concede that the entrapment defense never produces favorable results for the defendants and blame Islamophobia and sensationalism in conjunction with the unpopular jihadist speech and media that often arises in these cases and is shown to juries to determine predisposition.<sup>34</sup>

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<sup>31</sup> Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*, 10.

<sup>32</sup> *Ibid.*, 14, 18.

<sup>33</sup> *Ibid.*, 13.

<sup>34</sup> *Ibid.*, 16.

The argument is that such speech and written material should be protected as free speech, however unpopular, but is not because it is sensational in nature and adds to the allegedly erroneous sentiment that a homegrown threat of terrorism exists.<sup>35</sup>

(2) Cases. Each of the three cases discussed in *Targeted and Entrapped* are presented in three sections—The Family, The Case, and The Impacts. The apparent purpose of the report is to elicit the reader’s sympathy for the families affected by the subsequent arrests of their relatives and to convince readers that terror sting operations are government acts of entrapment. Noticeably missing from each case study are the implications of each of the subject’s actions. Their culpability and intentions in each of the plots are not addressed; the reader is led to infer that the suspects’ willingness to plant bombs and shoot people is not really a determination of guilt if significantly influential external forces compel them to action.

(3) Recommendations by the Authors. The CHRGI concludes its report with specific recommendations it believes must be enacted to prevent what constitutes international human rights violations against the Muslim community. The recommendations are paraphrased in abridged form as follows.

- Muslim radicalization theories should be rejected
- Congress should hold hearings on informant practices and intelligence gathering in the affected communities to determine what the impact of the practices are
- The End Racial Profiling Act should be passed to ban racial profiling by law enforcement agencies
- The DOJ must modify its 2003 Federal Guidance on Racial Profiling to ban profiling and to make the guidance enforceable and to eliminate loopholes
- The DOJ should reopen and investigate all informant terrorism cases since 9/11 to identify abuse by informants
- The U.S. Attorney General should produce new guidelines for the FBI and other agencies to follow for the purposes of allowing terrorism cases only when prior suspicion has been established; preventing acts of entrapment by law enforcement; and eliminating profiling based on religion, race, etc.

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<sup>35</sup> Narula, *Targeted and Entrapped: Manufacturing the “Homegrown Threat” in the United States*, 16.

- The NYPD should only conduct operations on subjects already reasonably suspected of criminal activity

***b. The Terror Factory***

Trevor Aaronson is the author of *The Terror Factory: Inside the FBI's Manufactured War on Terrorism*. This book is a product of his substantial research into 500 terrorism related arrests following 9/11. As an investigating reporting fellow at the University of California, Berkeley, Aaronson spent months reading through court transcripts across the country, and his work represents the product of a significant academic research effort into terror sting operations. The data generated from his research has proven to be useful to this thesis. His research and data is based upon the DOJ's clearly delineated definition of terrorism-related arrests.<sup>36</sup> Aaronson's data sets of terrorism-related arrests, meeting the DOJ's criteria, have been deposited into a searchable database online at MotherJones.com (MJ), a politically left-leaning online magazine.

While the title of the book, its affiliation with MJ, and its basic conclusions represent left-leaning political views held by the author and its affiliates, unlike the CHRGI publication, this book is presented in such a way that it does not minimize, deny, or gloss over any of the defendants' actions. As he presents each of the cases, he interjects his opinion that consistently and repeatedly amounts to one basic premise—each of the defendants was operationally incapable, either financially, intellectually, or otherwise, of committing the crimes he committed without the assistance of law enforcement, and would therefore, have never been a threat absent the terror sting operation. Aaronson levels some very serious allegations at law enforcement in this work.

While *The Terror Factory* is not divided into sections in which each case is discussed in structured form, it is helpful for the purposes of extracting Aaronson's core criticisms to highlight at least one case that demonstrates the claim that persists

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<sup>36</sup> Trevor Aaronson, *The Terror Factory: Inside the FBI's Manufactured War on Terrorism* (Ig Publishing, 2013), 12–13.

throughout the book—that targets of these operations are not in and of themselves dangerous without the elaborate scenarios constructed by the government.

(1) Michael Curtis Reynolds. Aaronson describes Reynolds as a drifter with bad credit and serious mental problems. He immediately emphasizes that Reynolds attempted to blow up his parents' home in 1978 by creating a homemade bomb made of gasoline, paint, propane fuel, and an ignition device complete with a timer.<sup>37</sup> Reynolds eventually married, and the author stresses that his wife left him because of the extreme nature of his ideas, including a reported desire to build a castle complete with turrets. Eventually, Reynolds logged into a pro-Osama bin Laden online forum and asked for help in bombing the Trans-Alaska Pipeline. Within a day, he was contacted by someone who ultimately turned out to be an FBI informant, and who offered him the means and finances (\$40,000) to realize his desire. Reynolds was arrested by the FBI upon attempting to meet the accomplice, and after his subsequent trial, was sentenced to 30 years in prison.<sup>38</sup>

What follows after this narrative is the position that Aaronson takes repeatedly throughout the book; that is, that individuals targeted in these operations are not a danger to anyone without the assistance and involvement of law enforcement. His sentiment is expressed as follows.

Despite his conviction, was Reynolds a dangerous terrorist? The answer is no—he was a troubled man unlikely to escape the fringes of society. He talked big and had a history of doing stupid things. He was unemployed, broke, and living with his mother at middle age, a caricature of the all-American loser. But an informant posing as an Al Qaeda operative offered him more money than he had ever seen at one time in his entire life and overnight he became a “threat to our safety.”<sup>39</sup>

While this section of this thesis is not intended to be a book review, but rather an attempt to provide context from the literature, it may be beneficial

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<sup>37</sup> Aaronson, *The Terror Factory: Inside the FBI's Manufactured War on Terrorism*, 10.

<sup>38</sup> National Terror Alert Response Center, “Man Gets 30 Years in Terror Plot to Blow Up Pipelines,” November 6, 2007, <http://www.nationalterroralert.com/2007/11/06/man-gets-30-years-in-terror-plot-to-blow-up-pipelines/>.

<sup>39</sup> Aaronson, *The Terror Factory: Inside the FBI's Manufactured War on Terrorism*, 11.

to give serious thought to Aaronson's fundamental and persistent premise which the author believes those who support the use of terror sting operations would disagree with—that premise being that Reynolds is not dangerous. If the person answering him in the forum were not an informant, but rather a real person capable of financing such a task, would he not be just as dangerous then? The FBI in this instance has possibly saved lives by apprehending this individual before he encountered someone willing and able to finance a real attack.

(2) Informants. Aaronson has a clear disdain for informants as they are quite often criminals themselves and often engage in ethically reprehensible behavior for money, befriending individuals, making the targets of the operations, which he views as weak minded or naïve, look up to them, eating dinner in their homes, and ultimately, in his view, entrapping them into committing acts that land them in prison for decades. In the book, he highlights that the informants have cumulatively committed acts worse than those they are attempting to instigate. These individuals often continue to commit crimes while acting as informants for the FBI, and despite being caught committing these acts, continue to be utilized for the terror sting operations. All this, says Aaronson, is to fulfill a need that the law enforcement community, and the general public to some degree, have to catch terrorists. Radical Islamist terrorism is obviously a phenomenon that Aaronson does not perceive as a real threat, and he therefore views much of the FBI's \$3.5 billion a year approach to counter-terrorism as a waste of resources. The vehicle that enables what he views as a misappropriation of public funds is the informant network—without which the effectiveness of the FBI and other law enforcement agencies would be substantially degraded.

(3) FBI Ulterior Motives. Aaronson aims most of his criticisms at the FBI and believes that their ever-increasing informant base constitutes a nefarious and sinister spy network—a network that blankets the entire nation and creates eyes and ears for the government. Aaronson harbors very suspicious beliefs about the FBI's approach to terror sting operations. Among them, he indicates that the FBI intentionally fails to record certain aspects of its operations so that it can hide informant misconduct or other aspects of each case that may endanger the outcome. Aaronson also clearly believes

that the FBI uses its operations to justify its enormous budget by sensationalizing cases in which what he believes to be harmless individuals are showcased as extremely dangerous persons caught in the nick of time. He believes that, with these operations, the FBI demonstrates to the taxpaying public that the FBI's hefty \$8 billion annual budget is necessary to protect Americans from a danger he does not believe exists. Additionally, Aaronson makes clear that the FBI intentionally targets easily influenced individuals who are what he frequently describes as on the fringes of society—individuals who are naïve, young, destitute, unemployed, or otherwise inept , and are easily lured into these elaborate plots that are ultimately a justification for the existence of large counter-terrorism budgets. Aaronson also makes clear that he believes that the FBI intentionally targets the Muslim community because, under the guise of countering terrorism, the American public tolerates the overly aggressive tactics. He indicates that Americans would not tolerate these same exact tactics for other nationalities.<sup>40</sup>

(4) Core Criticisms Extracted. The following list represents the core criticisms Aaronson has expressed regarding the use of terror sting operations. While most of his book directly or indirectly targeted the use of informants by the FBI, the accusations were fueled by some of the same sentiments seen in other critical literature.

- The Muslim community is being targeted because of who they are
- The threat to the American public is exaggerated or non-existent
- Informants are overly aggressive and overly instrumental, if not completely responsible for the plots
- Suspects in these operations are harmless without the government plots
- Terror sting operations amount to a complete waste of money
- The operations are used to justify the existence of large budgets
- The use of informants requires more oversight
- The entrapment defense is insufficient because of widespread anti-Muslim bias

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<sup>40</sup> Aaronson, *The Terror Factory: Inside the FBI's Manufactured War on Terrorism*, 225.

*c. Conclusion*

These two bodies of literature analyzed in this section represent good examples of the litany of articles, journals, blogs, videos, and other material that harshly criticize the use of terror sting operations. After reading a vast amount of these examples of critical literature, themes began to emerge; and they are well-codified in the two works reviewed in this section. With little difficulty, it can be concluded that informant conduct is among the most criticized elements of terror sting operations. Informants are repeatedly accused of being overly instrumental in contributing to each suspect's decision to engage in acts of terrorism. While law enforcement agencies, and the American public to some degree, may disagree with many of these criticisms, both sides of the arguments can meet on some of the concerns. It is apparent that central to this issue is the lack of adequate standards of acceptable behavior with regard to informants. Throughout the literature, informants consistently generate the most controversy, and their behavior can be described as bizarre at times.

It is also apparent that the Muslim community, civil rights activists, and critics maintain that Muslims are being taken advantage of to some degree during the course of these operations. The lack of success that the entrapment defense has experienced throughout the 500 cases reviewed, and the very long prison sentences that suspects receive, are believed to be signs that the American public is viewing this issue differently than other criminal issues, which may be obvious considering the post 9/11 counter-terrorism culture under which Americans currently live. Perhaps some methods exist, however, that law enforcement agencies can utilize to close the gaps between critics and proponents of terror sting operations; and those methods are discussed in the recommendations chapter.

**3. Conclusion**

A dichotomy of opinions is found in the literature on this topic. On the one side is outrage from the private sector, and on the other, a complete dismissal of the criticisms from the legal and professional field. It is as though the legal authorities do not consider it necessary to even entertain any of the accusations from the Muslim community and

civil rights circles. Indeed, it may be unnecessary from a legal standpoint considering the very successful track record the practice has from a prosecutorial point of view.

This state of affairs, from the perspective of one conducting research for a thesis, is both undesirable, since it is hoped to be able to draw from an expansive collection of literature, and desirable, since this appears to be a vast, uncharted territory ready to take the researcher wherever he wants to go.

## **D. METHOD OF ANALYSIS**

### **1. Sample**

This research focuses on law enforcement's practice of using confidential informants or undercover officers, particularly within the Muslim community to target potential terrorists who ultimately participate in fake terrorist attacks. The particular focus is on the methods used to introduce the undercover officer or informant, as well as the methods used to encourage the target of the operation to become involved. The purpose of analyzing these methods is to attempt to get to the root of what particular practices generate the most controversy or, at minimum, to get to the root of the practices that lend credence to critics who maintain that they amount to entrapment, spying, or profiling.

### **2. Sample Selection**

The selection of this particular law enforcement policy for this research was motivated particularly by the recent public outcry by some in the Muslim community that has taken the form of public demonstrations and subsequent media attention. Indeed, throughout 2012, the progress made by the NYPD in gaining the cooperation and trust of the Muslim community seems to have been set back somewhat by that community's perception that law enforcement agents are spying on their mosques and conducting surveillance based upon racial profiling. Both the need to maintain a strong partnership with the Muslim community and the need to apprehend potential terrorists are paramount in this post 9/11 era. Therefore, the aim of this research is to simultaneously attempt to

solidify the usefulness of using terror sting operations while attempting to identify ways that law enforcement can reduce these negative perceptions.

Operations selected for analysis were chosen based upon the availability of academic-quality literature that clearly identifies the problematic aspects of the operations as perceived by the Muslim community, civil rights circles, legal professionals, and academics. Terror sting operations were also selected for analysis according to the sheer amount of critical literature available. Therefore, both the quality and quantity of critical literature played a crucial role in the selection of cases reviewed. Cases were required to have generated considerable controversy in the media, and were required to be presented in qualified academic publications for serious consideration and analysis. The four cases selected for analysis in Chapter III were The Newburgh Four, The Fort Dix Five, the Shahawar Siraj Matin case, and the Ahmadullah Sais Niazi and Craig Monteilh case.

### **3. Data Sources**

This research sought to identify the core variables that contribute the most to the controversy surrounding both terror sting operations and the surveillance that precedes them, by identifying the most cited complaints and attempting to synthesize them into an identifiable set of characteristics that can be addressed. While admittedly possessing a somewhat subjective character, constant themes arise throughout the literature, some of which are well-articulated by legal and academic authorities. These sources, which include appeals by academic institutions to the government for regulation or oversight of terror sting operations coupled with media reports covering them, as well as criticisms arising out of Muslim demonstrations and public outcries, provide a basis for summarizing the most common complaints against the use of the terror sting operations.

### **4. Mode of Analysis**

This research used a policy analysis method, whereby the main problem of determining how to continue to use terror sting operations while simultaneously addressing the Muslim community's complaints was analyzed. The current practice was analyzed, frequent criticisms were identified, and changes were proposed based upon the

legitimacy of the criticisms to enhance the policy and address the criticisms against it. Recommended changes were made based upon the impact they would have on actually addressing the shortcomings of the current policies law enforcement agencies adhere to regarding the use of terror sting operations. What should be noted, however, is that the current use of terror sting operations is arguably quite successful. No findings of entrapment have ever been upheld in these cases and no court convictions against terrorists arrested in these operations have ever been reversed. This research, therefore, operated under the assumption that increasing the public support of the Muslim community is something that is desirable, and that such an increase can be achieved without having a detrimental effect on the results of the sting operations. This thesis is summarized as follows.

- Identified the problems by extracting and synthesizing them from the best available literature
- Recommended changes based upon addressing the strongest criticisms against the practice
- Laid out what is at stake, and what the costs and benefits are to implementing the changes
- Identified what is sacrificed in implementing the policy changes and determined if trade offs are possible
- Made recommendations that best preserve the success of the terror sting operations and best addresses what are perceived as civil rights abuses by the Muslim community
- Summarized as clearly as possible the complete recommendation, as well as its implementation to provide a course of action for agencies to take to strengthen the partnerships they have with their Muslim communities, while maximizing the effectiveness and usefulness of terror sting operations<sup>41</sup>

## **5. Output**

Initially, the majority of the literature reviewed for this research, which was overwhelmingly negative, increasingly gave the impression that terror sting operations

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<sup>41</sup> Method based largely upon the following work: Eugene Bardach, *A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving 4E* (CQ Press, 2011), <http://books.google.com/books?id=HQB3N3L7FRIC>.

were perceived to be fraught with abuse, scandal, and carelessness by critics. Careful consideration of the most controversial of cases, as well as the cases that did not generate much publicity, revealed that, while law enforcement has room for improvement (particularly with regard to informants), the real problem exists in the perception that a relatively small amount of operations are producing in the Muslim community and in civil rights circles. The research revealed that the vast majority of these operations, when conducted to fruition, always succeed in court; legally, they are upheld repeatedly and seldom generated controversy. However, instances occur in which informant conduct or instructions given by law enforcement handlers are questionable and leave substantial room for improvement. The research demonstrated that, in these cases, informants and investigators operated independently of agency regulations, and were allowed to improvise to a great degree. The more disconnected the investigator and informant were from agency guidelines, the more likely it became to find controversial actions on the part of the actors—actions including the offering of \$250,000 to a suspect by an informant to commit the act;<sup>42</sup> or the repeated goading of the suspect to commit the act despite his repeated objections.<sup>43</sup> Under normal circumstances, any number of people offered such a large amount of money can arguably be convinced to commit a crime, and it is unclear what real counter-terrorism value exists in such a proposal. In addition, in many instances, informants seemed to play too large of a role in orchestrating the plot and moving it forward. While the suspect is ultimately responsible for his actions, an overly aggressive informant gives the impression to outside observers that law enforcement agents are unscrupulous and that their operations are designed to target the gullible or vulnerable rather than the truly dangerous.

What emerged from this research were recommended policy changes comprised mostly of changes to agency policy regarding decision-making executive oversight, quality control, and training. These recommendations, if implemented, would limit the incidence of problematic cases, and would ultimately bring about reasonable redress of the Muslim community's grievances while not negatively impacting upon the beneficial

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<sup>42</sup> Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*, 22.

<sup>43</sup> *Ibid.*, 36.

effect of utilizing terror sting operations. Ideally, the result of this research is an improved approach to the successful apprehension of terrorists that simultaneously garnishes the support of the Muslim community and sufficiently addresses the criticisms against the practice. The goal of this undertaking was, therefore, to provide valuable recommendations that would serve to close the gap between law enforcement and the Muslim community regarding the use of these tactics to the greatest degree possible.

## **6. Upcoming Chapters**

Chapter II focuses on providing the reader with a basic understanding of sting operations and context for terror sting operations, briefly examining the use of informants in general, giving an overview of the operational guidelines that law enforcement agencies are required to adhere to regarding the use of informants, presenting a look at the statistical data related to terror sting operation arrests, and finally, reviewing the complex nature of Muslim community relations in this post 9/11 counter-terrorism era.

Chapter III focuses on analyzing four terror sting operation cases, which were selected based upon their role in creating controversy, as well as their inclusion in reputable academic journals that sought to garner political action against the use of terror sting operations. The chapter identifies the aggravating factors in each case, and synthesizes them into a simplified set of factors that form the basis for recommendations to follow in the next chapter.

Chapter IV concludes with a recapitulation of the identified problems and a set of recommendations formulated to address the most prevalent of complaints against terror sting operations directly. Each recommendation is discussed in depth, and is followed by a section on implementing the recommendations with benefits, risks, costs, and possible oppositions discussed.

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## **II. BACKGROUND**

### **A. STING OPERATIONS**

American law enforcement agencies have been employing sting operations since the 1970s in their struggle against narcotics trafficking, organized crime, child pornography, political corruption, and a host of other crimes. In its fundamental form, a sting operation is essentially a law enforcement agency's attempt to facilitate the commission of a crime by introducing an undercover officer to a subject and attempting to afford that subject the opportunity to commit the crime that person is predisposed to committing. Typically, the target of the operation is one whom the law enforcement agency reasonably suspects is seeking to commit the crime staged. Some operations, however, do not necessarily target specific persons, but rather, are intended to tempt passersby into committing the crime.

One example of these random types of stings is the decoy operation. Agencies including the NYPD have used these proactive strategies in an effort to arrest potential thieves before they steal from innocent victims. During decoy operations, undercover officers typically pretend to be intoxicated or asleep in public and have money, jewelry, or other valuables readily visible on their person. When a suspect approaches the undercover agent and removes the property, he is immediately arrested and charged with the larceny. In these instances, the law enforcement agents are not targeting any specific person—anyone who takes the bait will be arrested. The general guideline thus paraphrased that has been established for law enforcement to avoid the entrapment defense is that law enforcement must merely afford the perpetrator the opportunity to commit a crime, and not actively encourage the individual to commit the crime.

Many types of sting operations involve the use of deceptive tactics including disguises, storefronts, informants, fake online identities, and others designed to psychologically immerse the target of the operation in the fabricated environment or

situation.<sup>44</sup> For the purposes of this research, the primary type of sting operation studied is the terror sting operation. Typically, terror sting operations involve the use of informants or undercover agents actively engaged in assisting the defendants in detonating inert devices or otherwise executing plots designed to cause mass casualties.

## **B. SAMPLE CASE—HEMANT LAKHANI**

The first post 9/11 terror sting operation orchestrated entirely by government officials involved an Indian-born individual named Hemant Lakhani who claimed not to be a supporter of Islamists.<sup>45</sup> Lakhani was an arms dealer who had a reputation for transacting with terrorist groups regardless of their causes. Lakhani exhibited enthusiasm about obtaining rocket launchers (200 of them) for an undercover FBI informant who indicated a desire to take down American jet liners. The informant, Muhammed Habib Ur Rehman, had worked for the FBI before and was reportedly paid more than \$400,000 over 19 years in his role.<sup>46</sup> Lakhani eventually traveled to the Ukraine several times in unsuccessful attempts to secure rocket launchers for Rehman. Eventually, the FBI enlisted the assistance of Russian law enforcement agents who posed as weapons dealers and promised him delivery of the rockets. Lakhani went as far as establishing a network of bank accounts so that he could secrete the \$86,500 he received for the one rocket. The Russian agents eventually came through, shipping a single (inert) rocket launcher to the United States; and Lakhani was placed under arrest in a Newark, New Jersey motel.<sup>47</sup> He was sentenced to 47 years in prison after unsuccessfully raising the entrapment defense. Lakhani failed to convince the jury that he was entrapped, mostly because he had made numerous statements indicating his desire to see 15 airplanes shot down and because of his several self-financed trips to Russia in which he attempted to procure the rocket launchers himself. This situation, the prosecution argued, demonstrated his predisposition

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<sup>44</sup> The following publication provides a general basis for the proceeding examples of sting operations and is valuable for a general understanding of the practice: Newman, Socia, and United States Department of Justice Office of Community Oriented Policing Services, *Sting Operations: By Graeme R. Newman with the Assistance of Kelly Socia, Issue 6, Problem-oriented Guide for Police, Response Series*.

<sup>45</sup> Robert Hanley, "Jury Hears 2 Views of Man Accused in Missile Scheme," *The New York Times*, January 5, 2005, <http://www.nytimes.com/2005/01/05/nyregion/05missile.html>.

<sup>46</sup> Wadie E. Said, "The Terrorist Informant," *Washington Law Review* 85, no. 4 (2010): 720.

<sup>47</sup> Hanley, "Jury Hears 2 Views of Man Accused in Missile Scheme."

to commit the crime, which is an essential factor in defeating the entrapment defense. The defense argued, however unsuccessfully, that Lakhani was the only non-governmental participant in the plot; he was effectively dealing with government agents on all sides, and without the government's involvement no plot would have transpired.

### C. INFORMANTS

Confidential informants represent the most controversial component of the terror sting operation. Throughout the literature, informants were accused by critics of immoral behavior, lying, manipulating, coaxing, and behavior that otherwise allegedly undermined the legitimacy of the charges levied against defendants in these cases. This research would not be complete without providing some background on the use of informants.

The use of confidential informants in American law enforcement is not a recent phenomenon. In fact, as early as 1975, the FBI was utilizing at least 1,500 registered informants for domestic cases.<sup>48</sup> Today, the FBI maintains at least 15,000 registered informants, with some sources alleging three unofficial, unregistered informants for every one that is listed.<sup>49</sup> In any case, it is clear that the FBI, and law enforcement agencies throughout the nation, rely heavily upon the use of informants, which is no surprise since confidential informants enable law enforcement agencies to gain valuable intelligence and strategic information otherwise unobtainable. The importance of the use of informants in law enforcement cannot be overstated. In *United States v. Bernal-Obeso*, where the defendant was arrested for narcotics possession based upon the use of an informant, the U.S. Court of Appeals made the following observation concerning informants.

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<sup>48</sup> U.S. Department of Justice, "The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines, Chapter Two: Historical Background of the Attorney General's Investigative Guidelines," Special Report, September 2005, <http://www.justice.gov/oig/special/0509/chapter2.htm>.

<sup>49</sup> Trevor Aaronson, "The Informants," *Mother Jones*, September/October 2011, <http://www.motherjones.com/politics/2011/08/fbi-terrorist-informants>.

It is also true, however, that our criminal justice system could not adequately function without information provided by informants and without their sworn testimony in certain cases. This need is created by our rules permitting persons accused of crime to confront the witnesses against them, measures that elevate the hearsay rule to Constitutional dimensions. Moreover, it is a well-known phenomena that the higher-ups in criminal enterprises attempt to insulate themselves from detection and exposure by having their unlawful schemes carried out by others. Without informants, law enforcement authorities would be unable to penetrate and destroy organized crime syndicates, drug trafficking cartels, bank frauds, telephone solicitation scams, public corruption, terrorist gangs, money launderers, espionage rings, and the likes.<sup>50</sup>

Informants often evoke skepticism in criminal cases for several reasons, notably the deceptive nature of involving an oftentimes sordid individual acting on behalf of qualified law enforcement agents who themselves possess training and knowledge that the informant does not. Informant involvement and testimony is often characterized as unreliable by defense attorneys who seek to undermine the credibility of these individuals who are frequently career criminals themselves. Therefore, while acknowledging the importance of utilizing informants, the U.S. Court of Appeals in the above case went on to caution.

By definition, criminal informants are cut from untrustworthy cloth and must be managed and carefully watched by the government and the courts to prevent them from falsely accusing the innocent, from manufacturing evidence against those under suspicion of crime, and from lying under oath in the courtroom. As Justice Jackson said forty years ago, “The use of informers, accessories, accomplices, false friends, or any of the other betrayals which are ‘dirty business’ may raise serious questions of credibility.”<sup>51</sup>

Indeed, throughout the literature, the most persistent criticisms of law enforcement from Muslim and civil liberties groups surround the use of informants. Some have alleged that the general use of confidential informants by law enforcement agents has actually contributed to changes in the social fabric of inner city neighborhoods. This alleged phenomenon is argued to be the result of criminal

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<sup>50</sup> Appeals, United States Court of, and Ninth Circuit, “989 F2d 331 United States v. Bernal-Obeso” F2d, no. 989 (November 5, 1992): 331.

<sup>51</sup> Ibid.

informants leveraging their positions for selfish, criminal gain by providing information beneficial to their own criminal enterprises and detrimental to their competition in the streets. Critics allege that police allow, facilitate, or even encourage, their informants to engage in criminal conduct, and thereby, contribute to increases in crime through the use of these individuals; particularly in minority neighborhoods.<sup>52</sup>

This specific component of terror sting operations and counter-terrorism operations in general represents the area that would arguably benefit the most from policy changes. The use of informants, while critical to law enforcement investigations, has resulted in the degradation of law enforcement/community relations because of the level of improvisation and freedom that informants are afforded since they undergo little or no training. A good example is the Craig Monteilh case, which is discussed at length in this thesis. His behavior created a significant disruption in community relations, and ultimately, netted no law enforcement benefit despite costing the government over \$100,000. An additional problem is that investigators do not always follow their informant guidelines (as seen below), which hampers the agency's ability to sustain effective quality control.

In 2005, the FBI Office of the Inspector General (OIG) summarized its findings after a three-year review of FBI practices following the 9/11 attacks. The OIG found compliance errors in 87% of the FBI files they reviewed concerning informants. The OIG offered this finding in its executive summary.

Our review found that FBI Headquarters has not adequately supported the FBI's Criminal Informant Program, which has hindered FBI agents in complying with the Confidential Informant Guidelines. Although we noted some improvements in this area during the course of our review, in many instances agents lacked access to basic administrative resources and guidance that would have promoted compliance with the Confidential Informant Guidelines. For example, the FBI did not have a field guide or standardized and up-to-date forms and compliance checklists. The FBI

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<sup>52</sup> Natapoff, "Snitching: The Institutional and Communal Consequences," 689.

also did not plan for, or provide, adequate training of agents, supervisors, and Confidential Informant Coordinators on informant policies and practices.<sup>53</sup>

Many of the compliance failures surrounded routine notifications or requests for approval for certain informant conduct including committing crimes, which requires the approval of bureau attorneys or upper level executives. Failure to receive approval for allowing informants to commit crimes is a violation of *The Department of Justice's Guidelines Regarding the Use of Informants* as stated in paragraph (III)(C)(1).

A JLEA shall not authorize a CI to engage in any activity that otherwise would constitute a misdemeanor or felony under federal, state, or local law if engaged in by a person acting without authorization, except as provided in the authorization provisions in paragraph (III)(C)(2) below.<sup>54</sup>

The authorization provisions it refers to includes regulations requiring that prior approval is to be obtained in advance and in writing from bureau and judicial sources.<sup>55</sup>

In defense of these findings, FBI Director Robert S. Mueller III was quoted as saying that the informant regulations were difficult to comply with and complicated.<sup>56</sup> Given the size and scope of the FBI, it is undoubtedly true that implementing administrative guidelines that are dynamic in nature is difficult given the size and scope of the FBI's nationwide operation in its 56 field offices. However, in response to the OIG investigation, Kevin R. Brock, an Assistant FBI Director is quoted as saying, "We were handling more and more sources, we had more and more regulations that we added on over the years, and we weren't doing the follow-up quality control on our own."<sup>57</sup> This statement indicates that room exists for improvement in the way the FBI conducts quality control, and in the incidents involving unusual informant conduct, better overview may

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<sup>53</sup> U.S. Department of Justice, "The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines, Chapter Two: Historical Background of the Attorney General's Investigative Guidelines."

<sup>54</sup> U.S. Department of Justice, "Department of Justice Guidelines Regarding the Use of Confidential Informants," January 8, 2001, <http://www.justice.gov/ag/readingroom/ciguideelines.htm>.

<sup>55</sup> Ibid., (III)(C)(2).

<sup>56</sup> Eric Lichtblau, "F.B.I. Found to Violate Its Informant Rules," *The New York Times*, September 13, 2005, <http://www.nytimes.com/2005/09/13/politics/13fbi.html>.

<sup>57</sup> Ibid.

have served to prevent embarrassment of the agency, or at minimum, expenditure of time and resources in addressing litigation against the Bureau. The FBI, however, did attempt to improve upon its DIOG compliance by instituting training in which investigators had to attend 16.5 hours of classroom training on the DIOG and had to pass a written exam afterwards. The purpose of this training and test was to ensure compliance with the DIOG. Unfortunately, during a 2010 investigation, the OIG found that cheating was widespread.

In our limited investigation, we found that a significant number of FBI employees engaged in some form of improper conduct or cheating on the DIOG exam, some in clear violation of FBI directives regarding the exam. Some consulted with others while taking the exam when that was specifically forbidden by the test-taking protocols. Others used or distributed answers sheets or study guides that essentially provided the answers to the test. A few exploited a programming flaw to reveal the answers to the exam. Several supervisors, including two ASACs, two SSAs, and a legal advisor, were involved in such cheating. Almost all of those who cheated falsely certified on Question 51 (the final question of the exam) that they had not consulted with others.<sup>58</sup>

It is apparent that much simpler regulations would be more effective in improving agency-wide adherence to fundamental regulations governing the use of informants. The relative freedom that informants and handlers enjoy independent of complex, unwieldy guidelines, results in further damage being done to sensitive community relations.

#### **D. OPERATIONAL GUIDELINES**

The FBI and NYPD are presently the only two agencies that conduct terror sting operations on their own. Therefore, the Handschu guidelines that the NYPD is required to follow, and the Mukasey and DIOG guidelines that regulate the FBI's intelligence capabilities, are discussed briefly as follows.

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<sup>58</sup> U.S. Department of Justice, Office of the Inspector General, "Investigations of Allegations of Cheating on the FBI's Domestic Investigations and Operations Guide (DIOG) Exam," September 2010, [www.justice.gov/oig/special/s100927.pdf](http://www.justice.gov/oig/special/s100927.pdf).

## **1. The NYPD and Handschu Guidelines**

In the 1960s, political unrest arising out of anti-war movements produced protests and demonstrations in the streets of New York City. The NYPD's Special Services Division conducted surveillance of political groups including the Black Panthers. That group and others teamed up with an attorney named Barbara Handschu who filed suit against the NYPD in *Handschu v. Special Services Division*, and the case remained in litigation until 14 years later. A negotiated settlement was reached that resulted in the NYPD being required to adhere to the Handschu guidelines. The guidelines basically stated that to monitor or investigate political activity, the NYPD had to have reasonable suspicion that the group was involved in criminal activity beforehand. The purpose of these guidelines was to prohibit the NYPD from engaging in the surveillance or infiltration of political groups without cause as such surveillance was determined to impede free speech. The guidelines required that the NYPD gain the approval of an independent panel before commencing political investigations.

### ***a. Modified Handschu Guidelines***

On February 11, 2003, Judge Charles S. Haight Jr. for the United States District Court of the Southern District of New York, ruled that the NYPD could modify the original Handschu guidelines, which now give the NYPD greater latitude in conducting investigations against individuals or groups by allowing the investigations to be approved by the department's own Deputy Commissioner of Intelligence as opposed to the previous guidelines that required the approval of an external panel.<sup>59</sup> This determination was made in consideration of the threats that New York City faced in a post 9/11 era and gave the NYPD the ability to initiate investigations in advance of unlawful conduct, particularly under exigent circumstances, without having to obtain prior approval from a legislative body.

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<sup>59</sup> Brett M. Ringo, "Domestic Terrorism: Fighting the Local Threat with Local Enforcement" (master's thesis, Naval Postgraduate School, 2013), 36-37.

**b. Discussion**

Muslim activist groups have accused the NYPD of spying and profiling, and some view the expanded Handschu guidelines as granting the NYPD a dangerous amount of flexibility that requires more oversight.<sup>60</sup> Under the modified guidelines, the NYPD can initiate investigations and conduct surveillance of groups for many months with the initial requirement being that the facts reasonably indicate that a future crime will be possible.<sup>61</sup> It can be imagined that the NYPD would have great freedom to monitor the activities of the Occupy Wall Street movement, for example, since many participants of the movement did frequently break the law, and the movement in general did repeatedly plan to disrupt financial institutions by blocking entrances to crucial finance sector facilities—an act which in and of itself is illegal. With 9/11 in this nation’s rear view mirror, it would seem to most that expanding the abilities of the NYPD is crucial to the department’s mission to stay ahead of violent jihadists, and the NYPD’s excellent record of terrorism prevention is at minimum a testament to the necessity of relaxing overly stringent laws. Since 9/11, the NYPD has prevented 16 radical Islamist terrorist attacks,<sup>62</sup> which is undoubtedly due to the NYPD’s enormous counter-terrorism efforts to which it devotes a significant portion of its manpower.

**2. Mukasey Guidelines**

On September 29, 2008, the 81st U.S. Attorney General, Michael B. Mukasey, published *The Attorney General’s Guidelines for Domestic FBI Operations*.<sup>63</sup> The “Mukasey Guidelines,” as they are frequently called, deal with the FBI’s powers to conduct operations domestically and to collect foreign intelligence. One of its purposes was to broaden the FBI’s analysis capabilities to combat domestic acts of terrorism effectively. The document’s primary function was to establish the FBI as an intelligence

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<sup>60</sup> Michael Price and Faiza Patel, “Unchecked NYPD Operations In Need Of Oversight,” *Brennan Center for Justice at New York University’s School of Law*, October 6, 2011, <http://www.brennancenter.org/analysis/unchecked-nypd-operations-need-oversight>.

<sup>61</sup> Ringo, “Domestic Terrorism: Fighting the Local Threat With Local Enforcement,” 37.

<sup>62</sup> NYPD, “Terrorist Plots Targeting New York City.”

<sup>63</sup> Michael B. Mukasey, *The Attorney General’s Guidelines for Domestic FBI Operations*, 2008.

gathering agency and not just as a law enforcement agency. The Mukasey guidelines also specified that the National Security Division's Oversight Section and the FBI's Office of General Counsel were responsible for regularly inspecting the Bureau for compliance with the guidelines and other applicable laws.<sup>64</sup> While broadly empowering the FBI for domestic intelligence activities, the guidelines clearly require that the FBI conduct its operations within the boundaries of the U.S. Constitution and prohibit the FBI from monitoring activities protected by the First Amendment and constitute free speech.

The Mukasey guidelines also served to firmly establish the FBI's authority to conduct intelligence and counter-intelligence operations against groups or individuals when such persons are reasonably suspected of engaging in acts that threaten the national security of the United States.<sup>65</sup> The guidelines established broad information-gathering powers for the FBI in the interests of detecting and preventing acts of domestic terrorism. The document further established "predicated" investigative powers, particularly a new phase called an assessment, which permits the FBI to engage in an investigation without a threat to national security or substantiated criminality,<sup>66</sup> which is the portion of the Mukasey and DIOG guidelines most relevant to this thesis, as it significantly expands an investigator's powers by allowing this person to conduct a threat assessment with only these requirements.

The investigator must determine an authorized purpose; follow specific work flows for management and documentation; not initiate based solely on the exercise of these First Amendment rights (unless a group exercising its First Amendment rights also threatens or advocates violence or destruction of property); and must ensure that the assessment is an appropriate use of personnel and financial resources.<sup>67</sup>

The requirements grant an investigator significant authority in assessing the danger coming from a particular person or group as long as it is for an authorized

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<sup>64</sup> Mukasey, *The Attorney General's Guidelines for Domestic FBI Operations*, 10.

<sup>65</sup> *Ibid.*, 21–22.

<sup>66</sup> *Ibid.*, 18.

<sup>67</sup> Federal Bureau of Investigation, *Federal Bureau of Investigation Briefing to the Senate Judiciary Committee: Domestic Investigations and Operations Guide Overview*, 2009, 4.

purpose. It would follow logically that preventing jihadist terrorism is an authorized purpose and this is what grants the FBI significant latitude in beginning investigations in locations sensitive to the Muslim community.

The predicated powers further permit the agency to engage in broad investigative actions in response to any allegation of criminal activity or activity that threatens national security provided that preliminary investigations last no longer than six months.<sup>68</sup> The guidelines further establish the enterprise investigative powers of the FBI that empower the agency to investigate groups or organizations provided that the organization is suspected of engaging in clearly delineated criminal activity. The guidelines also provide the FBI with authority to assist local agencies in conducting investigations and intelligence analysis. In summary, the Mukasey guidelines were established to define and delineate clearly the FBI's domestic intelligence and investigatory powers, and to provide an oversight structure. The document does this in a very detailed and meticulous manner by specifying exact methods that the agency is authorized to use and the levels of authorization needed at each stage. Interestingly, the Mukasey guidelines make no mention of informants specifically, which is surprising given the major part informants play in FBI intelligence gathering; however, it does bear mentioning that other internal guidelines do govern the use of informants.<sup>69</sup>

### **3. DIOG**

The *Domestic Investigations and Operations Guide* was issued by the FBI on December 16, 2008, in response to the Mukasey guidelines. The purpose of the DIOG was to help implement the Mukasey guidelines in terms of FBI operational procedures by releasing regulations that codified all the previous regulations into one guide that was in compliance with *The Attorney General's Guidelines for Domestic FBI Operations*. One of its stated purposes was to standardize policy and create consistency throughout the FBI. The document concerns itself with the three stages of the FBI investigative process:

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<sup>68</sup> Mukasey, *The Attorney General's Guidelines for Domestic FBI Operations*, 10.

<sup>69</sup> John Ashcroft, *The Attorney General's Guidelines Regarding the Use of Confidential Informants*, 2002.

assessment, preliminary investigation, and full investigation. The DIOG delineates when and how each stage can be conducted by field agents. For example, to conduct a preliminary investigation, the following must be met: “A federal crime or a threat to national security has, is, or may occur; or, an individual, group, property, or activity is, or may be, a target of federal criminal activity or threats to the national security, and the investigation may obtain information relating to the subject(s) involvement in such activities or protect against the activity or threat.”<sup>70</sup> The DIOG guidelines delineate each of the duties of investigators as they relate to the investigations being conducted in a manner that ensures compliance with the Mukasey guidelines.

In 2011, the FBI released an updated version of the DIOG in response to feedback received regarding the original guidelines in an effort to improve upon the oversight process of cases and to broaden the FBI’s abilities to gain potential informants by allowing trash searches of individuals not currently under investigation by the Bureau. The purpose of this extension in FBI powers is to make it a simpler and more expedited matter to vet possible informants.

## **E. STATISTICAL DATA ON DEFENDANTS**

Quantifying terror sting operations is particularly challenging since they are typically only brought to light during criminal court proceedings and subsequent news reports. Unsuccessful operations, or operations that remain classified for various reasons, including protecting the identity or existence of undercover operatives, are difficult to account for. Some, however, have undertaken to collect data on these types of operations based upon the cases released by the U.S. DOJ, and other cases that fit the DOJ’s criteria.

“Mother Jones,” an online politically left-leaning magazine, assembled a useful online index of domestic terrorism incidents since 9/11. According to the compilation, a total of 508 defendants have been charged with terrorism-related activity since 9/11.<sup>71</sup> The cases are categorized as informant, agent provocateur, and/or sting operations. The

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<sup>70</sup> Federal Bureau of Investigation, *Federal Bureau of Investigation Briefing to the Senate Judiciary Committee: Domestic Investigations and Operations Guide Overview*, 5.

<sup>71</sup> Mother Jones, “Profiles in Terror,” (n.d.), <http://www.motherjones.com/fbi-terrorist>.

online searchable database is based upon the research of Trevor Aaronson, a particularly vocal opponent of terror sting operations, and author of the book, *The Terror Factory: Inside the FBI's Manufactured War on Terrorism*. During a CBS interview, former FBI Assistant Director of Public Affairs John Miller, characterizes Aaronson's book as "...an amazing piece of reporting," based on a, "...stunning amount of research." While ultimately disagreeing with Aaronson's criticisms and conclusions, Miller further characterizes Aaronson's approach to the research as, "...very objective about laying out the facts."<sup>72</sup> For the purposes of this research, therefore, it proved useful to refer to the data gathered by Aaronson and catalogued by MJ, since some consensus does exist as to the accuracy of the historical data.

Some interesting statistics regarding the defendants arrested include the following.

- 243, or 48%, were targeted by informants
- 158, or 31%, involved sting operations
- 49, or 10%, resulted from the use of an informant who led the plot
- 299, or 59%, of the defendants had a connection to some terrorist organization
- 107, or 21%, to Al Qaeda
- 146, or 29%, to other Islamist groups
- 46, or 9%, to other terrorist groups
- 208, or 41%, had no reported connection to any terrorist organization

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<sup>72</sup> CBSNews.com. "FBI Sting Operations: Fair or Entrapment?" January 11, 2013, <http://www.cbsnews.com/video/watch/?id=50138832n&tag=api>.

## ***Defendant Nexus to Terrorist Groups***

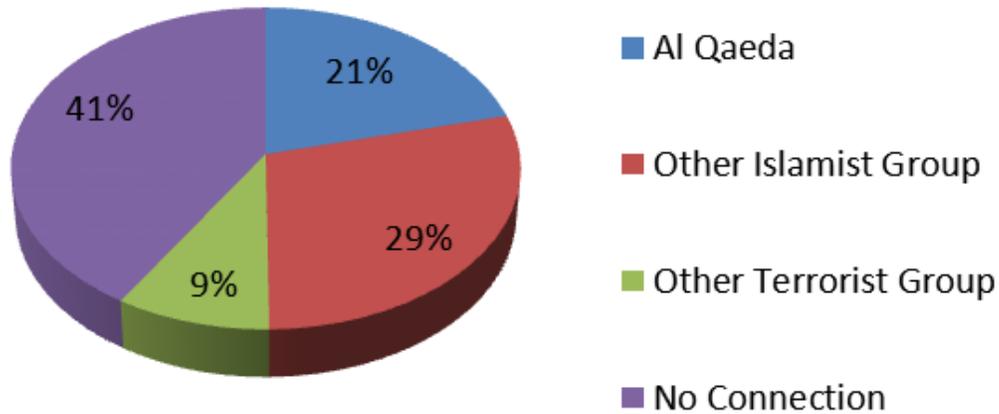


Figure 1. Defendant Nexus to Terrorist Groups

According to the MJ database, terrorism cases have been filed in 35 states and in Washington, DC. New York had the most prosecutions with 120, followed by Michigan and Florida with 45 each. The most common charge against the defendants was “Providing Material Support to Terrorists,” (18 U.S.C. §2339B of the U.S.A. Patriot Act) in 192, or 38%, of the cases; followed by “Plotting Violence Abroad” in 68, or 13%, of the cases. In addition, 121, or 24%, of the defendants were charged with immigration violations, while 36, or 7%, were charged with “Funding Terrorists.” Also, 25, or 5%, were charged with “Weapons of Mass Destruction,” and 51, or 10%, were charged with RICO laws.

### **F. COMMUNITY RELATIONS**

The FBI and NYPD have employed terror sting operations with consistent success in the years since 9/11. Initially, these arrests generate significant public interest and are met with relative approval by the media. Positive press conferences typically follow and details emerge regarding the length of the investigations, the use of confidential informants, and the fact patterns that illustrate the seriousness of the terrorist acts that could have potentially claimed numerous lives if they were real. The immediate

impression is that the American public by and large reacts positively to the news when the stories are originally released, and is not, however, representative of the Muslim community's perception regarding the operations.

### 1. Why Should We Care?

In the Muslim community, each case that comes to light, and all the details surrounding the infiltration of the government into their communities and mosques, highlight the reality that sympathizers, terrorists, and government agents are in their midst. Many in this community are embarrassed at the stigma that they have of being terrorists, and they describe the sense that they have been ostracized among other Americans because of 9/11 and the problem of Islamist radicalization.<sup>73</sup> Muslims are willing to assist law enforcement with weeding out this problem since they have found it difficult to do on their own and are generally embarrassed by the perception. Members of the Muslim community have helped law enforcement many times in the past and have been instrumental in providing valuable information that stopped terrorist attacks and resulted in key arrests being made.<sup>74</sup>

The balance between a cooperative and proactive Muslim community and one that has complete distrust for government is delicate. The infiltration necessary to facilitate terror sting operations has undoubtedly contributed to a sense of distrust towards law enforcement in the Muslim community, and radical groups in America have seized this opportunity by organizing protests and uniting some in the Muslim community against law enforcement.<sup>75</sup> This distrust has served to strengthen the voice of

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<sup>73</sup> See Stephan Salisbury, "U.S. Muslims Reeling from Ostracism After 9/11," *Philly.com*, September 10, 2011, [http://articles.philly.com/2011-09-10/news/30139497\\_1\\_islamic-school-american-muslims-bomb-threats](http://articles.philly.com/2011-09-10/news/30139497_1_islamic-school-american-muslims-bomb-threats); Halimah Abdullah and Barbara Barrett, "For U.S. Muslims, Bin Laden's Death May Not End Stigma," *McClatchy*, May 5, 2011, <http://www.mcclatchydc.com/2011/05/05/113762/for-us-muslims-bin-ladens-death.html#.UehPrqwpi68>; Sara Dinatale, "Muslim Students Feel the Stigma of 9/11," *The Spectrum*, September 8, 2011, Updated November 5, 2011, <http://www.ubspectrum.com/news/muslim-students-feel-the-stigma-of-9-11-1.2581383#.UehN9awpi68>, et al.

<sup>74</sup> Alejandro J. Beutel, "Data on Post-9/11 Terrorism in the United States," *Muslim Public Affairs Council* (2010): 11–12.

<sup>75</sup> Stephen Nessen, "Muslim Groups Protest NYPD Practices," *WNYC*, February 3, 2012, [http://www.wnyc.org/blogs/wnyc-news-blog/2012/feb/03/muslim-groups-protest-nypd-practices/?utm\\_source=sharedUrl&utm\\_media=metatag&utm\\_campaign=sharedUrl](http://www.wnyc.org/blogs/wnyc-news-blog/2012/feb/03/muslim-groups-protest-nypd-practices/?utm_source=sharedUrl&utm_media=metatag&utm_campaign=sharedUrl).

those who preach against the west and against the U.S. government; which may actually be increasing the rate of radicalization in this country since radical groups in the Muslim community are using the fact that government agents are infiltrating their communities as a springboard to launch their radical agenda that seeks to drive a wedge between the Muslim community and the American government. Law enforcement agencies may be giving radical Islamists a voice they would not otherwise have, which could in turn, strengthen their message.

To understand how this may be happening, it is important to understand what drives the process of radicalization from the outset. Many have undertaken to study the process of radicalization and the reasons that otherwise normal, educated persons become seduced by radical ideology. What has arisen out of these studies are indications that typical psychopathic or sociopathic theories of behavior seem inadequate to explain; instead, individuals who have committed themselves to the ideology do so for reasons that have much to do with the contexts of their lives, the influence of situational factors, and sentiments that arise out of in-group/out-group dynamics with strong influences from religious beliefs.<sup>76</sup>

The ideology behind this process has sway in the Muslim world. Research reveals that powerful ways of combating radicalization exist, and the methods are surprisingly inexpensive and effective. By analyzing the intricacies of radicalization and how and why it occurs, it is possible to begin to understand how to counter its effects. Commonalities emerge within populations particularly susceptible to radicalism. These commonalities include poverty, unemployment, alienation, lack of integration into society, and unresolved grievances and injustices against the government with no legitimate channels of political redress available.<sup>77</sup>

American Muslims in this country by and large begin their lives more prosperous and less exposed to some of the more negative conditions of their counterparts who live

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<sup>76</sup> Matthew K. Myers, "A Tale of Two Countries: Why Some British Muslims Turned to Terrorism and French Muslims Did Not" (master's thesis, Naval Postgraduate School, 2010), [http://edocs.nps.edu/npspubs/scholarly/theses/2010/mar/10Mar\\_Myers.pdf](http://edocs.nps.edu/npspubs/scholarly/theses/2010/mar/10Mar_Myers.pdf), 24.

<sup>77</sup> Seth J. Schwartz, Curtis S. Dunkel, and Alan S. Waterman, "Terrorism: An Identity Theory Perspective," *Studies in Conflict & Terrorism* 32, no. 6 (May 28, 2009): 543.

in other countries where basic necessities are not met. Oppressive government corruption, poverty, and unemployment in the United States are not the widespread epidemics they are in other countries, which is evident in the American Muslim community, particularly when compared to its European counterparts. American Muslims typically have more money, are more skilled, have more of a say in their political future, and become citizens more easily.<sup>78</sup> Not surprisingly, American Muslims are less likely to radicalize than their counterparts in Europe.<sup>79</sup>

Local police departments in this country have had great success, therefore, in nurturing relationships with the Muslim community, and mutually beneficial advantages to these arrangements have arisen—advantages that impact positively on law enforcement’s counterterrorism efforts, and counter the power of the radical Islamists’ ideology.<sup>80</sup>

What needs to be clarified at this point, however, is that the political discontent of the Muslim community and its disapproval of the host country may always be present regardless of the attempts of the country to integrate and accommodate its interests. Muslims, by and large, may always feel that America is sympathetic to Israel, for example, or that America meddles in Arab affairs needlessly. They may disagree with American foreign policy, distrust the government, and even despise American customs in some cases. The focus, therefore, of law enforcement agencies should not be to win the hearts and minds of the Muslim community (although that would be desirable), but rather the more achievable goal of reducing the likelihood that radicalization will spread in U.S. Muslim communities—to strip the ideology of its power since many resort to the

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<sup>78</sup> Tamara M. Mayer, “Islam in America: Why U.S. Muslims Are Less Likely to Radicalize Than Their European Counterparts” (master’s thesis, Naval Postgraduate School, 2009), 55.

<sup>79</sup> *Ibid.*, 2.

<sup>80</sup> See the NYPD’s Vera partnership: Anita Khashu, “Building Strong Police-immigrant Community Relations: Lessons from a New York City Project,” *Vera Institute of Justice*, August 2005, [http://www.cops.usdoj.gov/files/ric/Publications/Building\\_PoliceImmigrant\\_Relations.pdf](http://www.cops.usdoj.gov/files/ric/Publications/Building_PoliceImmigrant_Relations.pdf); U.S. House of Representatives, “Al Shabaab: Recruitment and Radicalization Within the Muslim American Community and the Threat to the Homeland,” July 27, 2011, <http://homeland.house.gov/sites/homeland.house.gov/files/Investigative%20report.pdf>.

ideology when alternative means of redress are not available.<sup>81</sup> In other words, law enforcement must focus on removing the appeal of using the violent methods of radicalization and replace that appeal with one for the legal methods of this nation's system of government that are more than capable of providing Muslims with legal remedies. This very simple goal can begin to be accomplished by ensuring that U.S. Muslim communities have a system for addressing their grievances—that can be accomplished with the mere existence of a community liaison in the local police station, for example, who can act on their complaints and implement real solutions. The community affairs outreach program of the NYPD serves as a good example of an agency's efforts to maintain close liaison between law enforcement and community leaders.<sup>82</sup>

Local municipalities have long recognized the benefits of community policing and maintaining strong community ties in general. This approach has helped foster mutually beneficial relationships between local police departments and community members for the purposes of fighting crime, gathering intelligence, and gaining community support. Some police departments have gone to extraordinary lengths to achieve real, tangible partnerships with their Muslim communities. Among the most notable examples of this include the NYPD's extensive community outreach programs, including its joint operation with the Vera Institute of Justice that served to strengthen the bonds between the police department and the Arab community, and its ongoing community affairs liaison program in all of the city's precincts that contain Muslim populations.<sup>83</sup>

Although the NYPD's community outreach programs are extensive and renowned, the department has found itself at the receiving end of harsh criticism from the Muslim community, leading to the current dilemma that law enforcement agencies, such as the NYPD are encountering. Law enforcement has a profound responsibility to protect

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<sup>81</sup> Christopher Hewitt, *Understanding Terrorism in America: From the Klan to Al Qaeda* (Taylor & Francis, 2003), 50.

<sup>82</sup> NYPD, "Community Affairs, Special Outreach Program and Services," (n.d.), [http://www.nyc.gov/html/nypd/html/community\\_affairs/special\\_outreach\\_programs.shtml](http://www.nyc.gov/html/nypd/html/community_affairs/special_outreach_programs.shtml).

<sup>83</sup> Khashu, "Building Strong Police-immigrant Community Relations: Lessons from a New York City Project."

citizens from terrorism and must employ cutting edge tactics to accomplish this obligation. Terror sting operations are undoubtedly effective, since they not only catch willing would-be terrorists, but also create a lingering sense among radicals in the Muslim community; that FBI agents, local law enforcement, and informants are everywhere. Unfortunately, that same police omnipresence is reportedly felt by the average Muslim worshipping in a Mosque. It is clear from the available literature that many American Muslims believe that the U.S. government and local law enforcement agencies like the NYPD are present in their mosques and communities and are spying on them.<sup>84</sup> While this belief may have the positive effect of removing the pulpit from radicals in Muslim institutions, it has the negative side effect of creating an enormous sense of distrust towards law enforcement—particularly when informants engage in conduct considered to be ethically repulsive by Muslims.

Some of the actions of informants have united large Muslim communities in angry opposition to the government, particularly when the informant's actions seem to serve no legitimate purpose other than surveillance.<sup>85</sup> From a radical Islamist's point of view, an opportunity is created for him to validate his message—that the U.S. government and local law enforcement agencies are at war with Islam and that it is their duty to fight in this war. This unfortunate side effect of infiltrating Muslim locales has served to undo much community policing progress and has united the Muslim community in some instances with groups like Council on American-Islamic Relations (CAIR) against law enforcement.<sup>86</sup>

## 2. Summary

In summary, the practice of allowing investigators relative freedom in deploying confidential informants and undercover agents into Muslim communities without strict adherence to agency guidelines may be significantly reversing community policing

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<sup>84</sup>“Civil Rights Groups Sue NYPD over Muslim Spying,” *USA Today*, June 18, 2013, <http://www.usatoday.com/story/news/nation/2013/06/18/nypd-muslim-spying/2435493/>.

<sup>85</sup> ACLU of Southern California, “Fazaga V. FBI,” (n.d.), <http://www.aclu-sc.org/fazaga/>.

<sup>86</sup> CAIRTV, “CAIR-NY Calls for Oversight of NYPD Over Mosque Spying,” video clip, YouTube, February 14, 2012, [http://www.youtube.com/watch?v=D5a6SOd7xWY&feature=youtube\\_gdata\\_player](http://www.youtube.com/watch?v=D5a6SOd7xWY&feature=youtube_gdata_player).

progress. A *Wall Street Journal* article highlights some of the alleged damage done to the growing relationship between the Muslim community and the NYPD, which has been at the forefront of proactive counterterrorism operations along with the FBI.

Sheikh Reda Shata was among those singled out for surveillance because of his “threat potential” and what the NYPD considered links to organizations associated with terrorism, despite having never been charged with any crime [...] During his time at the Islamic Center of Bay Ridge since 2002, he welcomed FBI agents to his mosque to speak to Muslims, invited NYPD officers for breakfast and threw parties for officers who were leaving the precinct. As police secretly watched Shata in 2006, he had breakfast and dinner with Bloomberg at Gracie Mansion and was invited to meet with Police Commissioner Raymond Kelly, Shata recalls.[...] The dichotomy between simultaneously being partner and suspect is common among some of New York’s Muslims. Some of the same mosques that city leaders visited to hail their strong alliances with the Muslim community have also been placed under NYPD surveillance — in some cases infiltrated by undercover police officers and confidential informants. In April, more than 100 area imams publicly supported a rally to “oppose wars, condemn terrorism and fight Islamophobia.” Of those, more than 30 were either identified by name or work in mosques included in the NYPD’s listing of suspicious people and places in 2006.<sup>87</sup>

By and large, the response from the law enforcement community to these allegations has amounted to denial. The majority of the literature available on the topic of informants and infiltration into the Muslim community is highly critical of the practice, and little has been accomplished in so far as addressing the criticisms and restoring the credibility of law enforcement agencies within Muslim communities. It should be noted, however, that from a legal perspective, terror sting operations, which almost always begin with infiltration into the Muslim community, have been repeatedly upheld by U.S. courts. Another point worthy of serious consideration is that the proactive work of agencies like the NYPD and FBI has helped thwart numerous attacks and saved many lives, and it is therefore not the purpose of this research to impugn the reputation of the men and women who comprise these law enforcement agencies; or of the innovations in law enforcement that have granted law enforcement success in the fight against terrorism. Rather, the purpose of this research is to attempt to identify best practices based upon

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<sup>87</sup> Associated Press, “AP IMPACT: NYPD Spied on City’s Muslim Partners,” *Wall Street Journal*, October 5, 2011, <http://online.wsj.com/article/APb5d2d3f90310415c85cfab4b233a87b5.html>.

identified deficiencies that can be implemented to improve upon terrorist sting operations in a manner that helps garner more support from the Muslim community and less criticism.

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### III. CASE ANALYSIS

#### A. SELECTIONS

When considering which cases should be selected for analysis, it became immediately apparent that setting the criteria would be difficult and somewhat subjective. Law enforcement has employed terror sting operations in 158 cases and in 49 of those cases, the law enforcement informant led the plot.<sup>88</sup> Some cases have attracted significant negative media attention, and others have not. Some have attracted significant attention from civil rights circles but not from the media or academic circles. Others have gained momentum as a result of the families of the defendants embarking upon prolonged public campaigns to raise awareness for their cause. Many cases gained media attention when defendants arrested in terror sting operations raised the entrapment defense.

While the overall amount of literature critical of terror sting operations is abundant with similar themes of criticisms, the major issue that seems to connect them all is questionable informant conduct. It seemed appropriate, therefore, to select the cases that were informant driven, appeared to garner the most negative press attention, and whose criticisms have been codified in academic or professional publications as prime examples of problematic terror sting operations. Successfully measuring public discontent is difficult and most likely unachievable; however, for the purposes of understanding the most common of criticisms against terror sting operations, these cases, which seemed to generate a significant amount of critical reporting and were presented in professional or academic publications, were a good starting point.

NYU CHRGI's report entitled, *Targeted and Entrapped: Manufacturing the Homegrown Threat in the United States*, was useful in this regard since the cases it analyzes are presented in a comprehensive manner, with criticisms clearly outlined. Trevor Aaronson's book entitled, *The Terror Factory: Inside the FBI's Manufactured War on Terrorism*, also proved to be useful since the author conducted significant

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<sup>88</sup> Mother Jones, "Terror Trials by the Numbers," September/October 2011, <http://www.motherjones.com/politics/2011/08/terror-trials-numbers>.

research spanning years and clearly presents his case regarding what he believes are problematic operations. Other forms of literature reviewed were highly sensationalized opinion editorials, and seemed to offer less analytical value.

## **B. THE CASES**

### **1. The Newburgh Four**

This case is discussed in detail by the CHRGJ publication. It is presented from the perspective of one of the four defendants, David Williams, whose story is told as a tragedy in which Williams, a convicted drug dealer who had recently been released from prison, is bent on finding a way to pay for his brother's medical treatments. Williams was approached by James Cromitie, one of the four defendants in the now infamous Bronx Synagogue plot, and was ultimately asked to participate in an attack on a Bronx synagogue; but, according to Williams, Cromitie had promised that no one would be hurt and that he actually planned to take the money without carrying out the plot.<sup>89</sup> Cromitie had been approached by a purportedly wealthy Pakistani businessman who called himself "Maqsood." Maqsood was actually a paid FBI informant named Shahed Hussain. Hussain had offered Cromitie \$250,000 dollars, luxury cars, and according to the report, financing for a barber shop.<sup>90</sup> This offer, which may be a substantial part of what motivated Cromitie to commit his crime, was actually an improvisation by the informant who later testified that he did not receive this from the FBI and instead meant it as some code word with Cromitie; during his testimony, he commented that Cromitie may have had the impression that he was going to receive that amount of currency.<sup>91</sup> Other literature has drawn attention to the over-zealousness of the informant in this case;

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<sup>89</sup> Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*, 22.

<sup>90</sup> *Ibid.*, 21.

<sup>91</sup> *United States of America, Appellee, -v.- James Cromitie, Aka Abdul Rehman, Aka Abdul Rahman, David Williams, Aka Daoud, Aka DI, Onta Williams, Aka Hamza, Laguerre Payen, Aka Amin, Aka Almondo*, Defendants-Appellants. 2012. United States Court of Appeals. Southern District of New York. 89.

pointing out that the offering of financial rewards to terror sting subjects potentially diminishes the operations' overall legitimacy.<sup>92</sup>

Maqsood allegedly insisted that Cromitie hire lookouts, who would also be paid, but had to be Muslim.<sup>93</sup> According to the CHRGI report, Maqsood was originally sent by the FBI into Newburgh to spy on a local mosque, but was quickly ostracized by mosque members because of his overly enthusiastic jihadist rhetoric. Ultimately, Maqsood drove four individuals, James Cromitie, David Williams, Onta Williams (no relation to David), and Laguerre Payen, to a Bronx synagogue on May 20, 2009, where they placed an FBI-supplied fake bomb in a vehicle parked outside of the location and attempted to detonate it. The four were arrested and were subsequently sentenced to 25 years in federal prison.

The CHRGI report also chronicles the devastating effect the arrest of David Williams had on his family. His mother, Alicia, lost her apartment, lost her friends, was unable to find work, and ultimately, blames all of it on their family being labeled as terrorists.<sup>94</sup> David's younger brother, Lord, blames himself for being responsible for David's lack of judgment since it was allegedly motivated by the costs of his brother's medical treatments; and Lord has been teased and harassed because of his brother being labeled a terrorist.<sup>95</sup> Ms. Williams clearly blames the government for her son's involvement in this act; and feels as though it is somewhat of an elaborate plot perpetrated against her family, and Muslims in general, by the FBI. The report summarizes this sentiment.

Alicia quickly realized that David's case was just one of dozens of cases where informants were inserted into Muslim communities to lure young Muslim men into participating in concocted plots. She became close with several other families and urged them to speak out.<sup>96</sup>

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<sup>92</sup> Joseph Bertini, "Stings, Stoolies, and Agents Provocateurs: Evaluating FBI Undercover Counterterrorism Operations" (master's thesis, Georgetown University, 2011).

<sup>93</sup> Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*, 22.

<sup>94</sup> *Ibid.*, 23.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*, 24.

a. *The Criticisms*

The CHRGI report on the Newburgh Four case zeroes in on the alleged exploitation of David Williams' financial situation and desperation regarding his brother's sickness as one of the main criticisms of the government's strategy in the operation. It also alleges that the FBI informant, Shahed Hussain, had been attempting to convince James Cromitie to plant bombs at a local synagogue for eight months.<sup>97</sup> The report further alleges that Hussain offered to take the Williams family on a trip to Disney World. Williams' mother, Alicia, characterizes the operation as an elaborate scheme, saying, "We got pulled into a political game. The case was directed, produced, and scripted by the FBI, and all they needed were puppets."<sup>98</sup> The judge presiding over the Newburgh Four case was quoted expressing similar sentiment.

Even Judge Colleen McMahon—who put the Newburgh Four behind bars—slammed the FBI. "Only the government could have made a terrorist out of Mr Cromitie, a man whose buffoonery is positively Shakespearean in its scope," she said in court. She added: "I believe beyond a shadow of a doubt that there would have been no crime here except the government instigated it, planned it and brought it to fruition."<sup>99</sup>

The defendants pled not guilty and petitioned the court for a dismissal based upon "outrageous government conduct" and entrapment; the petition was denied. Finally, the CHRGI report directly criticizes the expenditure of government funds for an unreal threat in their opinion, as stated by Ms. Williams.

Newburgh is an extremely impoverished town. How much money did they spend on this whole production? They need to be investing in our communities for the future, not spending millions of dollars on a fake case that makes nobody safer.<sup>100</sup>

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<sup>97</sup> Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*, 22

<sup>98</sup> *Ibid.*, 23.

<sup>99</sup> Paul Harris, "Newburgh Four: Poor, Black, and Jailed Under FBI 'Entrapment' Tactics," *The Guardian*, December 12, 2011, <http://www.theguardian.com/world/2011/dec/12/newburgh-four-fbi-entrapment-terror>.

<sup>100</sup> Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*, 24.

**b. Summary**

In summary, the literature analyzed levels five main criticisms against terror sting operations in the Newburgh Four case.

- The government exploited a subject in difficult circumstances (Williams and his sick brother)
- The informant was over-zealous and overly involved in convincing the subject to commit his act
- The informant resorted to offering large amounts of money and goods to convince the subjects
- The expenditure of large amounts of money on these operations were a misuse of government funds
- No real danger existed to anyone but for the government-contrived plot

**2. The Fort Dix Five**

The CHRGI report begins by detailing the family lives of Eljvir, Dritan, and Shain Duka—three brothers among the five men arrested in the Fort Dix plot. The other two men, Mohammed Shnewer and Sadar Tatar, were friends of the Duka brothers. The brothers first generated law enforcement interest when they brought a video to a local Circuit City to make copies. According to this report, in the video, the five men are seen with their friends, skiing, playing pranks, riding horses, playing paintball, and shooting at a Poconos shooting range. A clerk at the Circuit City store noticed that the men were saying, “Allahu Akbar” during the shooting scene and subsequently turned the video into local police. According to the report, the FBI were notified, began following the brothers, and sent two informants in to infiltrate the group. The two informants, Mahmoud Omar and Besnik Bakalli, became close to the group, and Bakalli became especially close with the brothers and was frequently invited to their home.<sup>101</sup>

Throughout the next year, the informants recorded hundreds of hours of conversations with the brothers, Shnewer, and Tatar. According to the CHRGI report, the two informants allegedly “bombarded” the brothers with talk of violence, attempting to

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<sup>101</sup> Narula, *Targeted and Entrapped: Manufacturing the “Homegrown Threat” in the United States*, 27.

get them to commit violent acts by questioning their manhood and encouraging the group to download radical Islamist videos. Omar drove Shnewer to the Fort Dix Army base in August 2006, and according to the report, the government classified that trip as reconnaissance. In addition, Omar also approached the brothers with a list of weapons and offered them more if they wanted. The report indicates that the brothers wanted to procure the weapons because they did not want to have to wait in line at the firing range on their next trip to the Poconos. The brothers ultimately ordered several weapons from Omar, and when they went to pick them up, were arrested by law enforcement agents and charged with conspiracy to attack the Fort Dix Army base and weapons possession. The brothers' defense attorney fought the conspiracy charges on the basis that the brothers had no knowledge of the plot against Fort Dix, citing the fact that Shnewer and Omar went on the reconnaissance trip alone, and the brothers were never recorded talking about the plot. The defense also pointed out that the brothers were recorded on tape making statements that opposed violence and Jihad, particularly in one instance when Eljvir was heard saying that an attack of U.S. soldiers is forbidden by Islam since they have not done anything wrong on U.S. soil.<sup>102</sup>

Despite the defense's arguments, all five of the defendants were convicted. The report points out that via an "extraordinary government request," the identity of the jurors was kept secret and that this particular practice added to the notion that the defendants were dangerous, and therefore, contributed to the suspicion of guilt.<sup>103</sup> Lastly, the report alleges a biased, partial jury in that juror #3 had a son who was a Marine and was wounded in Iraq; and the juror was quoted stating that the videos shown to her at trial, which the informants encouraged the defendants to download, reminded her of the attack on her son.<sup>104</sup> The brothers were subsequently sentenced to life in prison, with Dritan and

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<sup>102</sup> Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*, 28.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

Shain receiving a sentence of life plus 30 years; Mohammed Shnewer was sentenced to life plus 30 years, and Serdar Tatar was sentenced to 33 years.<sup>105</sup>

The CHRGI report continues to illustrate the damage that the arrests of the brothers had on the Duka family, and like the previous Newburgh case, places the blame squarely on the government for targeting their sons. It further states that Ferik Duka, the father of the brothers, was arrested the same night his sons were arrested, and was detained for one month because the status of his immigration was being questioned.<sup>106</sup> Similar to the Newburgh case, the report points out that the Duka family was no longer able to make money and that they were ostracized by friends and the community in which they resided. Like Ms. Williams in the Newburgh case, the Duka family has been engaged in demonstrations and efforts to bring awareness to their case. Lejla, Dritan Duka's daughter, is quoted as saying, "it's not just my father's case, there are thousands of cases just like this, and we need to step forward, so we can actually be a free country."<sup>107</sup>

*a. The Criticisms*

This publication claims that the introduction of the informants into the Duka circle was discrimination, and that the family was selected based upon their religion. It homes in on the government informants' behavior as the particular catalyst for the events that transpired. The informants are accused of goading the brothers into action by challenging their manhood; encouraging them to download jihadist videos; taking them on the reconnaissance trip to Fort Dix; encouraging them to buy weapons that they themselves provided; creating ties between the plot and the brothers; fabricating the entire plot that the brothers were convicted of conspiring; and basically engaging in entrapment. Finally, the report implies that the Duka family is still under government surveillance today.<sup>108</sup>

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<sup>105</sup> U.S. Department of Justice, "Two Additional Defendants Sentenced for Conspiring to Kill U.S. Soldiers," April 29, 2009, <http://www.justice.gov/opa/pr/2009/April/09-nsd-408.html>.

<sup>106</sup> Narula, *Targeted and Entrapped: Manufacturing the "Homegrown Threat" in the United States*.

<sup>107</sup> *Ibid.*, 30.

<sup>108</sup> *Ibid.*

***b. Summary***

In summary, this report attempts to establish the following criticisms of terror sting operations in the Fort Dix Five case:

- The suspects were selected for surveillance on questionable evidence related to their religious beliefs (the video)
- The suspects, the Duka brothers, had no knowledge of the plot but were drawn in and convicted anyway due at least in part to the bias of the American public against jihadist rhetoric even when it constitutes free speech
- The informant was over-zealous and overly involved in creating the plot and convincing the suspects to commit to it
- There was no real danger to anyone apart from the government contrived plot
- The jury was biased by their own anonymity, and were biased against the defendants

**3. Shahawar Siraj Matin**

This case involves Shahawar Siraj Matin, a 22 year old Pakistani immigrant who worked in his uncle's bookstore in Bay Ridge, Brooklyn. According to the CHRGI report, in November of 2002, an undercover NYPD officer known as Kamil Pasha visited the bookstore and befriended Shahawar, often talking to him about 9/11, Bin Laden, and bombings in Pakistan. Shahawar's conversations with Pasha were later used against him in the trial. An NYPD informant named Osama Eldawoody was allegedly instructed to befriend Shahawar, presumably after he was identified as a potential extremist by Pasha. Eldawoody became close to Shahawar and his close friend, James Elshafay, who would later be arrested along with Shahawar. Elshafay is described in the report as a nineteen year old schizophrenic. As Eldawoody and Shahawar grew closer, Shahawar apparently regarded Eldawoody as a father figure referring to himself as his son, and allegedly becoming very susceptible to Eldawoody's jihadist rhetoric. The CHRGI report alleges that Eldawoody was extremely vocal about his anti-American political views, ultimately influencing Shahawar by showing him graphic photographs of Abu Ghraib prison abuse, Guantanamo, and, most importantly, pictures of young Iraqi girls being raped and

tortured, which infuriated Shahawar.<sup>109</sup> According to the report Eldawoody told his handlers that he now believed it was time to begin recording conversations with Shahawar and Elshafay. Elshafay and Shahawar discussed blowing up the Verrazano Narrows bridge, and Eldawoody told them that he would relay this plan to a supposed terrorist group called “The Brotherhood” located in upstate New York.

Several months later, Shahawar told Eldawoody that they should plant a bomb in the 34th Street subway station in Manhattan late at night so that they could cause financial damage without human casualties. Eldawoody recommended nuclear materials and informed Shahawar that he could obtain some from the Russian mafia. The report indicates that Shahawar grew uneasy but that Eldawoody persisted, prodding him for information regarding the existence of video surveillance cameras at the subway station. On August 21, 2004, Eldawoody drove Shahawar and Elshafay to the subway station where they conducted reconnaissance. Afterwards, they drew up maps, and those maps were used against the defendants in the trial. Two days after the surveillance, Eldawoody informed Shahawar that *The Brotherhood* was very happy with the plan and seemed eager to get it started. According to the report, Shahawar asked Eldawoody if this brotherhood understood that the bombing would be conducted without killing anyone, but Eldawoody kept changing the topic of conversation.

Ultimately, Shahawar refused to be the one to actually place the bomb but agreed to act as a lookout. The following describes the exchange that followed between Eldawoody and Shahawar as detailed in the report:

However, he insisted that he would first need his mother’s permission. Unsatisfied with this stipulation, Eldawoody threatened to tell “the Brotherhood” and said, “If you tell me you don’t feel comfortable, if you don’t want to do it, let me tell him straight. . . . You don’t want to do it?” Shahawar’s response was, “No, I don’t want to do it.” Eldawoody then ratcheted up the pressure: “Okay. Okay. That’s what I’m going to call him to let him know, okay? Why didn’t you tell me before?” Shahawar: replied “I don’t know I have to do it. I know that I am making a plan. But, you know, I don’t know that I’m going to go and do it. And so that fast? No,

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<sup>109</sup> Narula, *Targeted and Entrapped: Manufacturing the “Homegrown Threat” in the United States*, 35.

impossible.” Nonetheless Eldawoody persisted and Shahawar finally agreed to be a lookout. This seemed to appease Eldawoody. Before getting out of the car, Shahawar apologized.<sup>110</sup>

Elshafay apparently corroborated this account as he later testifies that Shahawar attempted to back out of the plan. The report then indicates that, following this exchange in which Shahawar demonstrated a reluctance to commit, he was asked to come to the local police precinct for an unrelated charge, and was placed under arrest for conspiracy charges. His defense argued that he was entrapped, but the prosecution focused on Shahawar’s predisposition to commit the act which ultimately resulted in a conviction. Shahawar’s predisposition was proven largely by the initial conversations he had with Pasha, the undercover NYPD officer who had spoken with him in the bookstore. Shahawar was subsequently sentenced to 30 years in prison.

The CHRGI report details the arrests of Shahawar’s parents, Shahina and Siraj, and his sister, Saniya, all of whom were arrested the day after Shahawar’s sentencing on immigration related charges. Siraj spent six months in immigration detention, and Shanina and Siraj had to rely on others for money; and Shahina had to work at the bookstore for income. Similar to the previous two cases, the report describes how the family became labeled as terrorists, were ostracized by their community and family, and were scared that they were being watched by the government. Like the matrons in the previous two cases, Shahina became involved politically:

Over time, however—and faced with the growing awareness that Shahawar’s case is actually part of a larger pattern—Shahina and Saniya began to combat their sense of isolation. Through a community organization called Desis Rising Up and Moving (DRUM), both Shahina and Saniya have become vocal advocates, both for Shahawar and against the government’s use of informants to target Muslims and concoct fake terrorist plots.<sup>111</sup>

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<sup>110</sup> Narula, *Targeted and Entrapped: Manufacturing the “Homegrown Threat” in the United States*, 36.

<sup>111</sup> *Ibid.*, 37.

*a. The Criticisms*

The CHRGG report's criticisms center substantially on what it presents as the overly aggressive role of the informants, particularly Eldawoody, in having to persistently induce Shahawar into action. The report characterizes Elshafay as an emotionally unstable schizophrenic, and the overall critical claim is that the NYPD intentionally targeted weak-minded or mentally susceptible persons for entrapment.

*b. Summary*

In summary, this report attempts to establish the following criticisms of terror sting operations in the Shahawar Siraj Matin case.

- The suspect was selected as a target because of statements induced by a police operative in the bookstore
- Law enforcement targeted gullible and weak-minded individuals for the operation
- The informant was over-zealous and overly involved in creating the plot and pressuring the suspect into committing to it
- The subject was pressured into committing to the plot despite repeatedly attempting to back out, and was exploited for his sympathy for the photos of the rape victims he was shown
- No real danger existed to anyone apart from the law enforcement-contrived plot

**4. Ahmadullah Sais Niazi and Craig Monteilh**

Craig Monteilh, code named "Oracle," generated considerable controversy when he embarked upon a public campaign in 2009 alleging that the FBI paid him hundreds of thousands of dollars to spy on the Islamic Center of Irvine in California, as well as Muslim homes and businesses in 2006. These allegations followed the arrest of Ahmadullah Sais Niazi, a member of the Islamic Center of Irvine. Niazi was accused of being a Taliban sympathizer and of attempting to provide material support to Al Qaeda. These statements were supported by the existence of a recording that Monteilh claims he provided to the FBI.<sup>112</sup> According to Monteilh, who was known as Farouk Al-Aziz, a

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<sup>112</sup> Nick Schou, "The FBI, the Islamic Center of Irvine and Craig Monteilh: Who Was Conning Whom?" April 30, 2009, <http://www.ocweekly.com/2009-04-30/news/craig-monteilh/>.

Syrian-French individual to those with whom he interacted, and “Oracle” to his FBI handler, he was instructed to pretend to be a convert to Islam and a jihadist.

In his role, Monteilh spent a significant amount of time in Southern California mosques, speaking out against the American government frequently, and engaging many in jihadist rhetoric. According to Monteilh, he took his instructions seriously, speaking out so often and so aggressively that the leadership of the mosque became alarmed by his jihadist rhetoric and ultimately filed a restraining order against him and also reported him to the FBI.<sup>113</sup> Monteilh further claimed that his FBI handler told him that Islam constituted a threat to national security and that he was ordered to randomly surveil Muslims to draw out potential terrorists.<sup>114</sup> He further claimed he was instructed to sleep with Muslim women and to collect personal identifying information, such as e-mail addresses and cellular telephone numbers for inclusion into an FBI database for monitoring mosque attendees.<sup>115</sup> Monteilh recorded conversations with a hidden microphone in his vehicle key fob, and mosque members reported that he frequently seemed to forget his keys everywhere.<sup>116</sup> Monteilh went on to file a lawsuit against the FBI in January 2007 after he was arrested on a grand larceny charge. In his suit, he claimed, among other things, that the FBI allowed his status as an informant to leak, and that he was stabbed in prison as a result.<sup>117</sup> Testimony and court records confirmed that Monteilh was a paid informant for the FBI and that he earned \$177,000 in 15 months.<sup>118</sup>

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<sup>113</sup> Jerry Markon, “Tension Grows Between Calif. Muslims, FBI After Informant Infiltrates Mosque,” *The Washington Post*, December 5, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/04/AR2010120403710.html>.

<sup>114</sup> *Ibid.*

<sup>115</sup> Matthew Heller, “Mr. Inconspicuous,” *Orange Coast*, February 2012, <http://www.orangecoast.com/inconspicuous/Index.aspx>.

<sup>116</sup> *Ibid.*

<sup>117</sup> Salvador Hernandez, “Informant Files \$10 Million Suit Against FBI,” *The Orange County Register*, January 22, 2010, Updated August 23, 2013, <http://www.ocregister.com/articles/monteilh-230643-fbi-suit.html>.

<sup>118</sup> Markon, “Tension Grows Between Calif. Muslims, FBI After Informant Infiltrates Mosque.”

Shakeel Syed, director of the Islamic Shura Council of Southern California, which is described as an umbrella group for 75 mosques, stated during an interview that the Islamic community felt betrayed by the FBI's infiltration in the Montielh case.<sup>119</sup> CAIR, in conjunction with the California chapter of the American Civil Liberties Union (ACLU), filed suit against the FBI on February 22, 2011, following the Montielh case, and described the Bureau's actions as "indiscriminate surveillance" based upon the religion of the subjects.<sup>120</sup> Both CAIR and a group called The American Muslim Task Force on Civil Rights and Elections called on the American Muslim population to cease community relations with the American government in response to the Montielh case.<sup>121</sup> As of this writing, the lawsuit brought against the FBI by CAIR and the Islamic Shura Council of Southern California was dismissed by a federal judge who cited national security concerns in exposing the amount of federal records necessary to properly conduct the trial. The ACLU and CAIR announced that they would appeal the decision.

*a. The Criticisms*

The problems associated with the Montielh case are exacerbated by the fact that Niazi was subsequently cleared on all charges, and all the potential benefits of investing informants and agency resources in a counter-terrorism operation were lost due in no small part to the poorly handled deployment of an FBI informant. The damage to Muslim community and law enforcement relations resultant from this case is immeasurable, and this case potentially represents the most problematic of cases reviewed.

*b. Summary*

In summary, the criticisms of this operation are as follows.

- The target of the operation was perceived to be the entire Muslim community

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<sup>119</sup> Markon, "Tension Grows Between Calif. Muslims, FBI After Informant Infiltrates Mosque."

<sup>120</sup> Jennifer Medina, "Suit Accuses FBI of Spying at California Mosques," *The New York Times*, February 24, 2011, <http://www.nytimes.com/2011/02/25/us/25mosque.html>.

<sup>121</sup> Markon, "Tension Grows Between Calif. Muslims, FBI After Informant Infiltrates Mosque."

- The conduct of the informant in this case lends credibility to the notion that the investigations are not directed at specific individuals, lack leads, and targets seem to be selected because of their religion
- Informant conduct is largely unregulated and informants are either allowed to improvise substantially or are allegedly acting on disturbing instructions from their handlers
- The case ultimately may not have served any purpose since all charges on Niazi were dropped, and no other arrests were made despite the length and great cost of the investigation

### C. THE PROBLEMS

The authors of literature reviewed for this chapter persistently repeat certain criticisms in each of the cases presented as examples of problematic cases. While legally defensible, these particular aspects of each of the cases reviewed seemed to generate the most amount of criticism. The following bullets represent some of the core criticisms extracted and synthesized from the cases reviewed.

- Targets Without Leads: Law enforcement agencies are allegedly monitoring Muslim locations without evidence, leads, or legal justification in some instances. The tactics utilized may lend credence to the perception that Muslim places of worship are being indiscriminately targeted by law enforcement. The informants represented themselves as Muslims and allegedly exclusively focused on Muslims.
- Informants are Overly Instrumental or Aggressive: Informants are described as unscrupulous individuals who cross the line from merely affording suspects opportunities to commit a crime to encouraging them actively to commit the acts despite their objections. Ideas about Jihad and violent ideology are frequently introduced by informants, and the suspects are overly encouraged by informants. Government informants themselves picked the targets of the plots or encouraged them in certain cases. Informant conduct is widely perceived as amounting to entrapment and as being part of an intentional campaign by law enforcement to target the Muslim community. In certain cases, informants themselves provided all the material evidence that would serve as fuel for the conviction of the subjects.
- Suspects are Exploited: Young adults who allegedly have no common sense, or are mentally deficient individuals who have no capability or intention of committing terrorist acts on their own, are allegedly targeted and convinced because of their gullibility or vulnerability. Law enforcement allegedly exploited the vulnerabilities of the subjects—

poverty, naivety, desperation, etc. In much of the cases, no previous evidence suggested that the subjects of the operations were dangerous prior to the involvement of informants.

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## IV. CONCLUSION

### A. SYNOPSIS

Persistent themes of criticism remain, which have not varied much since this research began. Allegations of indiscriminate targeting, profiling, entrapping, inciting, exploiting, and otherwise focusing on the Muslim community, abound throughout the literature; and this clash between law enforcement and the Muslim culture is obviously the byproduct of what American law enforcement has been tasked with in the post-9/11 era. Radical Islamists attacked America on 9/11, and although 15 of the 19 hijackers were Saudi, significant support for terrorism against Americans and western culture in general does occur in certain areas of the Muslim world. It bears repeating, however, that the vast majority of Muslims in the United States and abroad do not support terrorism.<sup>122</sup> While the roots of anti-American sentiment and terrorism in general are complex and related in varying degrees to international relationships, foreign policy, and situational dynamics, American law enforcement agencies can certainly improve upon some areas if the goal is to uphold the dignity of the Muslim community while addressing the presence of violent radical ideologues in its midst.

Informant conduct is at the center of the debate concerning terror sting operations, and it is obvious from the literature that in many instances, informants are given significant freedom to improvise, as are law enforcement informant handlers, independent of the agencies' directives. It is also clear from the literature that an enormous amount of money is invested in these operations that sometimes span several years. It is therefore in the best interests of law enforcement agencies to ensure that the operations are conducted legally, efficiently, in complete accordance with agency regulations, and ultimately, in a manner that will not eventually result in a determination by a legislative body that the operations were unconstitutional. Currently, some terror sting cases may not meet this standard, and working towards perfecting these operations so as to avoid alienating the entire Muslim community is a goal that will serve to improve

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<sup>122</sup> PewResearch Religion & Public Life Project, *The World's Muslims: Religion, Politics and Society*, "Executive Summary."

law enforcement efforts and not undermine them. Negative press and increasing political momentum may eventually undo or, at minimum, undermine much of the excellent work done by law enforcement agencies in each of these cases; therefore, legitimate criticisms must be taken seriously and addressed where possible.

## **B. THE PROBLEMS**

Most of the criticisms of terror sting operations are centered on the intelligence gathering stage and the behavior of civilian informants in these investigations. Critics allege that law enforcement agents are indiscriminately spying on Muslim houses of worship and institutions to the point that Muslims in mosques everywhere feel as if everything they are doing is being monitored by law enforcement, and some have stopped attending as a result.<sup>123</sup> Informants are accused of overly aggressive recruiting and deception, and of ultimately targeting the young or naïve, the despondent, and impressionable individuals who would not, according to critics, have committed the acts they are accused of without aggressive coercing by the government.

Informant use throughout the country is not standardized, and varies even from field office to field office and agent to agent despite the fact that organizations like the FBI do have general guidelines governing their use. Informant participation varies greatly with some offering up information merely because they want to help and others having to be paid hundreds of thousands of dollars for their roles.<sup>124</sup>

Effectively, to change the perception that the Muslim community has of terror sting operations, it is necessary to attempt to address the problems as identified in Chapter III, subdivision C.

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<sup>123</sup> Example of op-ed delineating the sentiment: Diala Shamas, “Muslim Spying Has Real Victims,” *NY Daily News*, April 1, 2013, <http://www.nydailynews.com/opinion/muslim-spying-real-victims-article-1.1302952>.

<sup>124</sup> Craig Monteilh was paid \$11,000 a month during a 16-month investigation totaling over \$100,000 according to his statements. World Observer Online, “The ex-FBI Informant with a Change of Heart: ‘There Is No Real Hunt. It’s Fixed,’” April 29, 2013, <http://worldobserveronline.com/2013/04/29/the-ex-fbi-informant-change-heart-there-real-hunt-its-fixed/>.

- Targets Without Leads: Law enforcement agencies are allegedly monitoring Muslim institutions without evidence, leads, or legal justification in some instances. The tactics utilized may lend credence to the perception that Muslim places of worship are being indiscriminately targeted by law enforcement. The informants represented themselves as Muslims and allegedly exclusively focused on Muslims.
- Informants are Overly Instrumental or Aggressive: Informants are described as unscrupulous individuals who cross the line from merely affording suspects opportunities to commit a crime to actively encouraging them to commit the acts despite their objections. Ideas about Jihad and violent ideology are frequently introduced by informants, and the suspects are overly encouraged by informants. Government informants themselves picked the targets of the plots or encouraged them in certain cases. Informant conduct is widely perceived as amounting to entrapment and as being part of an intentional campaign by law enforcement to target the Muslim community. In certain cases, informants themselves provided all the material evidence that would serve as fuel for the conviction of the subjects.
- Suspects are Exploited: Young adults who allegedly have no common sense, or are mentally deficient individuals who have no capability or intention of committing terrorist acts on their own, are allegedly targeted and convinced because of their gullibility or vulnerability. Law enforcement allegedly exploited the vulnerabilities of the subjects—poverty, naivety, desperation, etc. In much of the cases, no previous evidence suggested that the subjects of the operations were dangerous prior to the involvement of informants.

## C. THE RECOMMENDATIONS

### 1. Recommendation #1—Stringent Pre-Operational Review Process

In addressing the first problem, law enforcement agencies including the NYPD have reaffirmed that in each of the cases, it always had legitimate reasons, and met all legal requirements to investigate individuals at targeted locations. However, as delineated early on in this thesis, some contend that lists of locations and individuals were eventually deemed to be unfounded in some circumstances; thereby, diminishing the justifications for police monitoring at the locations.

What would help to prevent this situation in the future would be training and/or alterations in agency policy that would introduce a more stringent review process before undercover officers or informants are sent into the locations to ensure that target locations

have met agency-defined criteria. Of course, agencies like the FBI and NYPD are very good at what they do and are undoubtedly already very methodical in target selection, etc.; however, an additional level of review at the executive-level to ensure that the target locations meet the requirements would further increase the quality of active cases.

Another important component of countering this perception is community outreach. During meetings with Muslim communities, they should be reassured that their houses of worship and places of business are not randomly selected and are not indiscriminately monitored. A persistent, targeted public campaign is crucial to establishing and maintaining the credibility and sincerity of law enforcement's efforts to work with the Muslim community. The Muslim community must be consistently reassured of the fact that it is not being watched or spied upon because of its religion, which is best achieved by empowering the Muslim community to cooperate with law enforcement agencies by establishing and maintaining a relationship beneficial to both parties. The Muslim community has repeatedly established that its members are both willing and able to assist law enforcement in the apprehension of terrorists. It is therefore crucial to law enforcement's counter-terrorism mission to facilitate this level of cooperation by keeping channels of communication and cooperation open.

For the first part of this recommendation to be effective, it must be implemented and monitored by decision makers who must be actively involved in target selection. The case must be thought through from beginning to end with one of the goals being to provide a clear picture of why the location, individuals, or organizations were selected and exactly how complicit they were in creating the standard of proof necessary for the agency to commit to the operation. This level of quality control requires significant forethought and planning and must be a core component of the overall operation if the intention of the law enforcement agency is truly to win the cooperation of the Muslim community, to dispel the notion that it is being monitored and watched because of its religion or race, and ultimately, to protect the investment that agencies have made in terms of resources and time since, as seen in the Craig Monteilh case, failures are expensive, embarrassing, and harmful to community relations.

## **2. Recommendation #2—Informant Training and Monitoring**

Out of all of the criticisms, the second may be the most valid, at least as far as the relative freedom that informants enjoy to improvise. Informants typically receive minimal training and are handled by investigators who may hold relatively low rank within law enforcement agencies. When informants are to be utilized in sensitive locations including houses of worship, they should be made to understand a core set of guidelines. This education should be imparted upon them through training sessions in which prohibited behaviors are clearly explained. Violations of the training could result in the credibility of the operation suffering, and therefore, such behavior must result in real consequences against the informant, such as loss of pay when applicable. It is of utmost importance that the informant clearly understand prohibited behaviors and that the strategy the informant is instructed to adopt is as clearly defined as possible. This particular recommendation requires that executives tasked with overseeing the field offices and units handling the investigation implement measures and follow up procedures that leave no room for error.

Independent quality assurance divisions must also audit and review informant behavior and investigator compliance in each case to keep investigators accountable to agency guidelines.

Again, this policy should be widely adopted by the law enforcement agency and should be part of a clearly communicated strategy to the Muslim community in a manner that assures it that the efforts of law enforcement to root out extremists from its midst are legitimate, legal, and ethical. This assurance should be self-evident in the quality of work produced by well-trained informants, as well as the general reduction in the incidence of informant misconduct.

Some have stressed the benefits of using undercover officers instead of civilian informants since the officers possess extensive training and are familiar with agency guidelines. Undercover officers are less likely to over-incentivize or engage in behavior

that could be construed as entrapment.<sup>125</sup> While this argument holds merit, the use of undercover officers in place of civilian informants would greatly limit the intelligence flow in certain investigations, particularly in instances when a civilian informant possesses connections crucial to the success of the operations. Therefore, it may follow that when infiltrating a religiously, politically, or otherwise sensitive location, the use of an undercover officer instead of a civilian informant may be prudent if it can be achieved without detriment to the investigation.

### **3. Recommendation #3—Executive Review of Defendant Profiles**

The third criticism that posits that subjects of terror sting operations have been exploited because of their level of intelligence, etc., may be the weakest since any of the most deadly of terrorists, including several of the 19 hijackers in the 9/11 attack, could have been accurately characterized as dim-witted. However, means of ensuring that cases do not unnecessarily give the impression to the public that individuals were selected because of their mental capacity, naivety, or youth are in existence. In cases in which suspects fit that description, extra care should be taken to ensure that the cases contain abundant and clear evidence so that even the harshest critics would have a difficult time questioning the operation. This process should be facilitated by an executive review process in which cases are closely scrutinized for potential weaknesses before the final execution of the plot, and would benefit law enforcement agencies as well since considerable resources and time are invested into these operations. Such safeguards would serve as quality control measures that would ultimately facilitate a successful prosecution of the defendant(s). Again, this policy would be clearly delineated to the Muslim communities as further evidence of a department's good faith effort to ensure that abuses do not happen.

The purpose of this research is not to criticize the current work of law enforcement agencies in terror sting operations that have undoubtedly weakened terrorist groups' recruitment efforts and saved lives; but rather to increase further the effectiveness

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<sup>125</sup> Bertini, "Stings, Stoolies, and Agents Provocateurs: Evaluating FBI Undercover Counterterrorism Operations."

of the tools available to law enforcement by adding to them a valuable ally in the fight against terrorism. The Muslim community has helped stop terrorist attacks nearly two dozen times since 9/11 according to one source,<sup>126</sup> and at least one in five of all terrorism investigations begin with a tip from the Muslim community.<sup>127</sup> The law enforcement community has a responsibility to use all available resources in this endeavor. The next recommendation flows naturally from this sentiment.

#### **4. Recommendation #4 –Local Community Outreach**

Actively enlisting the participation and assistance of the Muslim community in fighting terrorism will help foster an atmosphere of mutual trust and progress. This recommendation is one that has already been implemented in Muslim communities throughout the nation but bears mentioning due to its importance. Law enforcement agencies must have serious community outreach programs, particularly in communities the most difficult or the most likely to be influenced by radical ideologies.

A good example of one agency that polices such a community is the St. Paul Police Department (SPPD) in Minnesota. Saint Paul has a significant Somali population, approximately 25,000 Somalis or one-third of the nation's Somali population according to one estimate.<sup>128</sup> Al Shabaab, a Somali youth terrorist organization with ties to Al Qaeda, has successfully recruited young Muslim men in Saint Paul in the past who have gone on to commit acts of terrorism abroad.<sup>129</sup> The Saint Paul Police Department has a significant interest in taking proactive actions to prevent radicalization, and it has done so with its federally funded African Immigrant Muslim Community Outreach Program

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<sup>126</sup> Beutel, "Data on Post-9/11 Terrorism in the United States, 4–5.

<sup>127</sup> Peter Bergen and Andrew Lebovich, "Analysis: 1 In 5 Terror Cases Started with Tips from Muslims," *CNN*, March 10, 2011, <http://www.cnn.com/2011/POLITICS/03/09/bergen.king.hearing/index.html>.

<sup>128</sup> Elizabeth Dunbar, "Survey: Nearly 1 in 3 U.S. Somalis Live in Minnesota," *MPR News*, December 14, 2011, <http://minnesota.publicradio.org/display/web/2010/12/14/american-community-survey-initial-findings/>.

<sup>129</sup> Committee on Homeland Security, "Hearing on Al Shabaab: Recruitment and Radicalization Within the Muslim American Community and the Threat to the Homeland," July 27, 2011, <http://homeland.house.gov/hearing/al-shabaab-recruitment-and-radicalization-within-muslim-american-community-and-threat>.

(AIMCOP) program. In his testimony before the U.S. House of Representatives Committee on Homeland Security in July of 2011, SPPD Chief of Police Thomas E. Smith briefly described its history.

In 2009, the Saint Paul Police Department applied for a Bureau of Justice Assistance grant to fund AIMCOP. The grant sought to capitalize on existing department outreach efforts with the local Somali American community, and cited a specific need - the need to prevent further radicalization of our youth by al-Shabaab. It further cited specific strategies to combat this trend—targeted and ongoing outreach with our Somali American community, and coordinated work with partners such as the FBI Minneapolis Field Office, the U.S. Attorney’s Office for the District of Minnesota, the Ramsey County Sheriff’s Office and several service providers including the local YWCA, the Saint Paul Intervention Project and the Muslim American Society. We were awarded the grant in 2009 and AIMCOP was launched.<sup>130</sup>

Chief Smith continued to describe the enormous successes of the program that included the active population of over 300 Somali youth in the police department’s athletic league program, which was run by SPPD officers, and the invaluable relationships that have been forged with Somali elders and clergy. The chief also delineated several examples of the Somali community volunteering information and working closely with the SPPD in key counterterrorism cases. He closed by describing in detail the significant advantages to officers on patrol who know Somali elders and youth and are able to resolve problems quickly because of their relationships with community members who they know.<sup>131</sup>

The New York City Police Department’s Community Affairs program reinforces community-police relations with each precinct nominating up to five different clergy liaisons from the community.<sup>132</sup> Every NYPD police precinct has a community affairs office with officers dedicated to act as liaisons with community members to maintain effective partnerships with the community. The 2003 partnership with the NYPD and the Vera Institute of Justice served to strengthen the bond between the police department and

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<sup>130</sup> Committee on Homeland Security, “Hearing on Al Shabaab: Recruitment and Radicalization Within the Muslim American Community and the Threat to the Homeland.”

<sup>131</sup> Ibid.

<sup>132</sup> NYPD, “Community Affairs, Special Outreach Program and Services.”

the members of the Muslim community. During this initiative, Arab-American, Muslim, and South Asian community leaders met with police department representatives during separate forums in which different topics of interest to the communities were discussed. Detailed records of concerns and responses were kept, follow-up sessions were held, and the results were analyzed. What emerged out of the analysis was a realization that mutually beneficial relationships had formed during the process that helped to create strong bonds, and ultimately, helped the department to make significant inroads into the Muslim community.<sup>133</sup>

The NYPD Community Affairs Bureau also created the “NYPD UNITED” soccer league for Muslim youth and the NYPD Cricket league. Over 400 Muslim and South Asian youth participate, and the games have been covered by major news networks and continue to grow in popularity.<sup>134</sup> In addition, the NYPD’s Clergy Liaison program appoints a Muslim Imam as a department chaplain, where he serves as a strong bind between the Muslim community and the NYPD. The NYPD also holds an annual Pre-Ramadan conference at which department executives from all over the city interact with Muslim clergy and local leaders. During these meetings, the Muslim community is kept abreast of information of importance to them during its sacred holiday, and they can express its concerns to department executives.

An undeniable value in obtaining the assistance of Muslim community members is present, in that, not only do law enforcement agencies reap the rewards of intelligence and cooperation, but they are also reducing the appeal of the ideology of radical Islamists who seek to capitalize on the mistrust that many in the Muslim community may have towards American government agencies. When Muslim children are playing on local police cricket teams, it may become less appealing to listen to someone insisting on fighting against the officers that are having a positive influence on their loved ones.

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<sup>133</sup> Khashu, “Building Strong Police-immigrant Community Relations: Lessons from a New York City Project,” 8.

<sup>134</sup> Amin Kosseim, “Counter-Radicalization: Best Practices in the United States and Lessons Learned from Abroad” (master’s thesis, Naval Postgraduate School, 2011).

**5. Recommendation# 5—Community Affairs Executive Review**

Since the goal of these recommendations is to ensure that counter-terrorism operations do not unnecessarily damage the relationship between the Muslim community and law enforcement, the community affairs component of the law enforcement agency must have some involvement in the overall enforcement strategy. Obviously, these operations are clandestine in nature, and it is therefore counterintuitive to allow any outside departments or units to be privy to the details of ongoing operations; however, an upper level decision maker should be included as part of the review team prior to the execution of the critical phases of these operations. This executive should have thorough knowledge of the intricacies of the community involved, and may be able to inform on second- and third-order effects of the operation and subsequent press attention. Involving an executive from the community outreach portion of the agency in the operation could help make the difference between the incident being viewed as an attack on the community or as the result of collaboration between the community and law enforcement. The agency could even decide to prepare key community members in advance of an impending public announcement, and afford that member some sort of role in the rehabilitation of the delicate relationship between the community and law enforcement once the details of the infiltration are made public. Obviously, the recommendation is not to allow community leaders to gain access to restricted information, but rather to utilize them to assist with any potential community unrest or concerns. This is offered merely as a crude example of one possible way that a community relations executive might be able to help the agency maintain its goal of improving Muslim support for counter-terrorism operations.

**6. Recommendation# 6—Simpler Guidelines and Effective Quality Control**

Observed earlier was that FBI investigators were not, by and large, following agency guidelines regarding the proper handling and processing of confidential

informants.<sup>135</sup> These guidelines need to be reviewed, improved where necessary, and the key components of informant handling must be simplified. Previously seen was the fact that many agents were cheating on the DIOG exam, and while they are responsible for their misconduct, it is also an agency failure. It is an indication that the DIOG is difficult to understand, that the Bureau has failed to prepare investigators properly for the exam, and that it has failed to conduct effective oversight in the certification process. Therefore, a clearer and simpler set of informant guidelines that investigators can follow and an effective system of oversight to ensure that the quality controls of the exam are not being circumvented must be implemented. Ultimately, informant guidelines must be followed if the FBI is to succeed in having full control over the manner in which informants are handled. If simplifying the guidelines is not possible, flow charts or other simplifications should be produced for investigators to ensure that all handlers are following agency guidelines. An agency as large and as capable as the FBI is undoubtedly able to institute effective measures to ensure that guidelines are followed. The problem is therefore not the capability of the Bureau, but rather the lack of importance it has placed on this particular issue—an issue increasingly gaining significant political momentum and could arguably result in the hampering of law enforcement’s ability to remain proactive in fighting terrorism.

A regular introspective review process must be instituted at the field office level to establish the means by which to judge the level of compliance with confidential informant guidelines. This self-inspection must be regularly reviewed by the overhead internal affairs division or another unit that must also conduct its own inspection of confidential informant guideline compliance. The fact that these guidelines exist and were largely not being followed is indicative of the disconnect between what the FBI should be doing with these cases and what it is doing. Again, the FBI is an elite law enforcement agency whose agents regularly save American lives through dedication, professionalism, and hard work. This research paper in no way seeks to diminish the quality of work that the FBI does every day; however, every agency must seek to

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<sup>135</sup> U.S. Department of Justice, “The Federal Bureau of Investigation’s Compliance with the Attorney General’s Investigative Guidelines, Chapter Two: Historical Background of the Attorney General’s Investigative Guidelines.”

constantly improve upon the level of service it provides, and is an area that needs improvement and should be a priority if the Bureau is sincerely seeking to have more control over the outcome of these cases when informants are involved. Other agencies conducting counter-terrorism operations and utilizing informants must also take similar action to ensure that the handling of informants is always done in accordance with agency guidelines.

## **7. Synopsis**

Common throughout each of the preceding recommendations was a substantial focus on executive-level decision-making involvement, quality assurance auditing, and community outreach. The success of any agency in implementing change will ultimately hinge on the agency's commitment to seeing the change through to completion and consistently evaluating its effectiveness. The issues dividing the Muslim and law enforcement communities are substantial—as are the consequences. Agency leaders must ensure that the mission of the organization persists throughout all levels, and that the effects of the procedures translate into a quantifiable reduction in the incidence of less-than-optimal operations. While the ultimate goal of counterterrorism operations is to save lives, law enforcement agencies should realize the benefits of maintaining a close relationship with the communities affected by ensuring that good-faith efforts are being made to facilitate the strengthening of community relations through an effective campaign designed to address the problems identified.

## **D. IMPLEMENTATION**

### **1. What Is at Stake**

The ideology behind radicalization and terrorism in general has undeniable sway in the Muslim world. It is tied directly to Islam because terrorists use the religion to pit Muslims against the western world through loosely interpreted but rigidly applied tenets in the religion. By tapping into their allegiance to God, terrorists know that they have a way to influence otherwise peaceful people into sympathizing with their aims and goals.

Some posit, however, that terrorists' success in fully tapping into that allegiance has been seriously hampered in the United States by the general prosperity, happiness, and legitimacy that Muslims enjoy in this country.<sup>136</sup>

The research in this thesis reveals that powerful ways of combating radicalization exist, and the methods are surprisingly inexpensive and effective. By analyzing the intricacies of radicalization and how and why it occurs, it is possible to understand fully how to counter its effects and hopefully defeat terrorism by winning the war of ideologies. Patterns emerge within populations that are particularly susceptible to radicalism that include poverty, unemployment, alienation, lack of integration into society, distrust of government, and unresolved grievances and injustices with legitimate channels of political redress absent. The continued degradation of Muslim-police relations detracts from these political options, which give the ideology of terror a greater chance of success in the Muslim world. By choosing not to address the growing complaints in the Muslim community in America directly, it may actually be possible to facilitate the growth and sway of radical anti-American ideology among American Muslims. Law enforcement, therefore, has a lot to gain by implementing sincere policies designed to ensure that a wedge is driven between the Muslim community and terrorists, and not between the Muslim community and the local or federal government. This struggle of ideologies is important and is recognized as such throughout most of the research documents reviewed on the subject of Muslim community relations.

Muslims, by and large, begin their lives in America more prosperous and less exposed to some of the more negative aspects of living in other countries. Government corruption, poverty, and unemployment are generally not the widespread epidemics they are in other countries, which is evident in the American Muslim community, particularly when compared to its European counterparts. American Muslims typically have more

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<sup>136</sup> Mayer, "Islam in America: Why U.S. Muslims Are Less Likely to Radicalize Than Their European Counterparts," 55-75.

money, are more skilled, have more of a say in their political future, and become citizens more easily.<sup>137</sup> Not surprisingly, American Muslims are less likely to radicalize than their counterparts in Europe.<sup>138</sup>

In terms of understanding the radicalization process, certain conclusions can be drawn based upon this nation's overall understanding of social dynamics and upon careful consideration of commonalities that emerge out of the research. An example of a common theme of considerable importance is the increased tendency of Muslim communities to be more susceptible to radicalization as a result of their inability to integrate fully into the countries in which they reside.<sup>139</sup> Some place considerable importance on this phenomenon, as one writer in particular refers to the failure of Muslims to integrate as, "... a main cause of homegrown radicalization..."<sup>140</sup> This inability to integrate into the host society combines with other factors that may give legitimacy and power to those advocating a radical, violent ideology, particularly when the problems with integration combine with discrimination, abuse, or other forms of neglect by the dominant group in the host country. Those forms of neglect may simply consist of the lack of a system of redress for concerns or grievances that the community has. Schwartz, Dunkel, and Waterman describe the phenomenon as follows.

Adding to the tensions between groups is the fact that members of a persecuted group are likely to be alienated from those societal institutions seen as controlled by the larger and/or more powerful group. Such alienation may be actively imposed by the larger and/or more powerful group in the form of exclusionary practices, but may exist even in the absence of such practices. [...] In the absence of dialogic opportunities to reduce threats and redress grievances, aggressive alternatives, including terrorism, may become perceived as the only alternatives available.<sup>141</sup>

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<sup>137</sup> Mayer, "Islam in America: Why U.S. Muslims Are Less Likely to Radicalize Than Their European Counterparts," 55–75.

<sup>138</sup> *Ibid.*, 2.

<sup>139</sup> Mitchell D. Silber Arvin Bhatt, "Radicalization in the West: The Homegrown Threat," *New York City Police Department*, 2007, <http://www.a-ipi.net/IMG/pdf/NYPD-2.pdf>. 8.

<sup>140</sup> Kosseim, "Counter-Radicalization: Best Practices in the United States and Lessons Learned from Abroad."

<sup>141</sup> Schwartz, Dunkel, and Waterman, "Terrorism: An Identity Theory Perspective," 543.

According to social identity theory, individuals who have established a life for themselves and their families in this country, and have personal assets or wealth, feel as though they have a stake in the country's future and will generally not want to jeopardize what they have by committing illegal acts of violence.<sup>142</sup> In this environment of relative prosperity, the radical Islamist's message loses much of its power. Conversely, Muslims who feel isolated, disconnected from society, hopeless, angry, and believe that their problems stem from the country they inhabit, will generally find the radical Islamist's message more appealing. This belief is true particularly for Muslim youth who are more susceptible to the radical message, and are intentionally targeted for indoctrination by terrorist groups for that very reason.<sup>143</sup>

What is lacking in this nation, therefore, is a systematic, standardized counter radicalization policy. Admittedly, such a policy is extremely difficult to implement as many in the U.K. have learned since the implementation of their PREVENT strategy, which is a component of their CONTEST strategy established in 2006 in response the July 7, 2005 bombings of London transportation systems. The strategy was aimed at countering the effects of radicalization, but has been viewed as a dismal failure due to what is perceived to be an insincere approach by the Muslim community that views the strategy as a means of facilitating government spying into its institutions. The Minister of State for Security, Baroness Pauline Neville Jones, conceded in her 2011 keynote address at a Washington, DC counter-radicalization conference, that PREVENT has alienated many in the Muslim community and has become too broadly utilized by the British government, which reversed progress and contributed to a general distrust of the government by the Muslim community.<sup>144</sup> Interestingly enough, during the same conference, the Baroness acknowledged that the U.S.'s American dream concept creates a shared sense of identity between Muslims and others living in the United States. This sense of shared identity, she continues, is what the U.K. must aspire to achieve. In

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<sup>142</sup> Schwartz, Dunkel, and Waterman, "Terrorism: An Identity Theory Perspective," 553.

<sup>143</sup> Gendron, "Militant Jihadism: Radicalization, Conversion, Recruitment," 9.

<sup>144</sup> GOV.UK, "UK and U.S. Approaches to Countering Radicalization," (n.d.), <http://ukinusa.fco.gov.uk/en/news/?view=Speech&id=578194782>.

recognition of the shortcomings of the current PREVENT program, the Baroness proposes a revised version in which the three I's of Ideology, Institutions, and Individuals are added. The three I's focus on those individuals and institutions who espouse the ideology of Islamist extremism, and the individuals vulnerable to radicalization because of it.

While the merits of a national counter radicalization policy are debatable, the benefits of implementing simple checks and balances into law enforcement's counter-terrorism efforts in Muslim circles are undeniable. Much of U.S. counter-terrorism efforts are directed specifically at the Muslim community in the United States. Therefore, it is necessary to acknowledge that there will be sociological effects that must be directly addressed.

Simple executive-level oversight into the use and training of informants, the avoidance of entrapment or the perception of such, the quality control of criminal cases involving terror sting operations, and a general good-faith public campaign involving the Muslim community, may prove to be powerful methods of combating radicalization and terrorist sympathizing in the United States. Measuring the success of these methods could prove problematic as it is difficult to quantify the general discontent of a specific community. However, what was plainly obvious in 2012 was that, throughout the nation, Muslim communities were speaking out and demonstrating against law enforcement tactics including the use of informants and terror sting operations. Many valuable ties with the Muslim community were negatively affected. A *Wall Street Journal* article highlights some of the accusations of the Muslim community against the NYPD, which has been at the forefront of the use of terror sting operations along with the FBI.

Sheikh Reda Shata was among those singled out for surveillance because of his "threat potential" and what the NYPD considered links to organizations associated with terrorism, despite having never been charged with any crime [...] During his time at the Islamic Center of Bay Ridge since 2002, he welcomed FBI agents to his mosque to speak to Muslims, invited NYPD officers for breakfast and threw parties for officers who were leaving the precinct. As police secretly watched Shata in 2006, he had breakfast and dinner with Bloomberg at Gracie Mansion and was invited to meet with Police Commissioner Raymond Kelly, Shata recalls.[...] The dichotomy between simultaneously being partner and

suspect is common among some of New York's Muslims. Some of the same mosques that city leaders visited to hail their strong alliances with the Muslim community have also been placed under NYPD surveillance — in some cases infiltrated by undercover police officers and confidential informants. In April, more than 100 area imams publicly supported a rally to “oppose wars, condemn terrorism and fight Islamophobia.” Of those, more than 30 were either identified by name or work in mosques included in the NYPD's listing of suspicious people and places in 2006.<sup>145</sup>

Therefore, while quantifying the level of trust in the Muslim community or the strength of police/Muslim relations in general in cities like New York is difficult, the existence of these accusations should be justification enough to provoke a police response, and it has. Law enforcement agencies have released public statements attempting to assure the Muslim community that it is not being indiscriminately spied upon or unfairly entrapped. However, a real change in policy, particularly within the FBI, which seems to operate inconsistently throughout its field offices and has not been successful at following its own informant regulations,<sup>146</sup> would serve to improve the quality and consistency of terror sting cases, and help to elicit the support of the Muslim community.

## **2. Risks/Payoffs**

The greatest danger in altering the manner in which terror sting operations or informant operations in general are conducted is that overly limiting the investigator may hinder the ability to conduct them successfully in some instances. This situation must be avoided as the aim of restructuring these operations is not to limit investigators, but rather to limit the incidence of embarrassing or damaging informant misconduct and/or weak criminal cases. A responsible and comprehensive overview of the process of conducting terror sting operations, and the general use of informants in general, must be conducted in a manner that identifies real shortcomings that can be addressed without overly impacting the effectiveness of the operation itself.

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<sup>145</sup> Associated Press, “AP IMPACT: NYPD Spied on City's Muslim Partners.”

<sup>146</sup> See U.S. Department of Justice, “The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines, Chapter Two: Historical Background of the Attorney General's Investigative Guidelines.”

For instance, in one of the most controversial cases, a government informant, Craig Monteilh, testified that he was instructed to produce results at all costs and admitted to utilizing unethical methods, to ultimately unsuccessfully, infiltrate a California Mosque and target extremists present. Although the FBI ultimately triumphed by convincing the judge that continued exposure of government documents would compromise national security, community relations with law enforcement throughout that region of California were potentially irreparably damaged. Unfortunately, and somewhat predictably, the Mosque and others in the area aligned with a group that has been accused of having ties to terrorism (CAIR) and have begun a public campaign to discredit the FBI and its counter-terrorism programs. In this instance, perhaps carefully controlled handling of the informant including training on what behavior to avoid and perhaps the recording of all sessions with the informant, for example, would have served to dispel quickly the allegations against the FBI if they were in fact unfounded. Perhaps increased upper level oversight of the operation would have resulted in the more effective use of the informant and would have reduced the possibility of the FBI indirectly engaging in behavior that, at minimum, was a waste of financial resources, and at most, was an embarrassingly inept attempt at apprehending jihadists. This particular informant was paid over \$140,000 dollars, and this instance certainly merits the careful oversight by bureau executives.

The ultimate payoff of a successful implementation of these quality control measures is the creation of an atmosphere of mutual trust with the Muslim community, and the overall improvement of law enforcement's effectiveness and proficiency in conducting successful counter-terrorism campaigns based upon airtight criminal court cases. Additionally, as trust and cooperation build between law enforcement and the Muslim community, the influence of radicals, and ultimately, their ability to recruit within Muslim circles will diminish over time. As Muslim communities are empowered to fight this destructive ideology that affects their communities everywhere, law enforcement will benefit by having increased cooperation in the form of intelligence or in the use of the communities facilities or human resources. Ultimately, the Islamist extremist needs an audience. That audience is potentially reduced since as seen, Muslim populations that are well-integrated, prosperous, invested in the community, and have

trust in their government are less likely to experience incidences of violent radicalization within, which is particularly true of Muslim populations in the United States.<sup>147</sup>

### **3. Costs**

The recommendations outlined in this thesis have minimal additional costs associated with their implementation since they are fundamental recommendations that could be implemented with current staffing and should require minimal additional resources. The recommendations laid forth in this thesis amount to a more stringent review by agency executives, standardized training for informants, a public information campaign, and an overall highly interactive community policing relationship with the Muslim community to strengthen cooperation and trust.

Agency executives are already in place and what is required is an overall adherence to current FBI informant regulations where present, and the addition of stricter regulations regarding targeting of sensitive locations and quality control in criminal cases where necessary. Law enforcement agencies can increase their overall community outreach in Muslim communities, and little to no additional costs should be incurred.

### **4. Timeliness of Implementation**

Changes to agency policy should be drafted by departments tasked with developing such policies, and, if made a priority, should be implementable relatively quickly. Agency policy should be based upon careful reviews of current policy and shortcomings with legal experts and decision-making executives present in focus groups, as well as field commanders who can all contribute to maximizing the benefit of such changes while minimizing any detrimental effects to investigations. The implementation of policy changes should be consistently monitored and amended as necessary by agency executives and legal experts; therefore, a successful product could take several months to emerge. Training for informants could result in precious time lost in crucial investigations; therefore, such training should occur at the beginning of the development of law enforcement relationships with informants, typically when informants are

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<sup>147</sup> Mayer, "Islam in America: Why U.S. Muslims Are Less Likely to Radicalize Than Their European Counterparts," 2.

registered. Informant training should be based upon shortcomings identified in past cases and areas that informants displayed gross negligence. Again, the success of informant training should be closely monitored and improved upon where necessary. If taken seriously, this theoretically should take no longer than a few weeks or months. Some of the behavior informants exhibited could be quickly addressed by fundamental orientation into the informant program. Lastly, the community policing portion of the recommendations can begin immediately. Muslim leaders must be met with, channels of communication should be immediately established where necessary, and good faith public relations campaigns should begin immediately.

The recommendations laid forth in this thesis are fundamental in nature and are not expensive or time consuming. They are comprised of training and minor changes in policy, with the bulk of the changes concentrating on executive level and agency-wide changes in focus.

## **5. Evaluating Success**

No agency policy changes can succeed without careful and methodical oversight and evaluation by executive-level decision makers. Since the bulk of the problems associated with terror sting operations and informants in general concern the perception within the Muslim community that it is being targeted, a large part of evaluating the success of this effort is a persistent gauging of community relations within the agency. Maintaining a bonafide relationship with the Muslim community must be a core priority of law enforcement agencies actively engaged in serious investigations within those communities. Muslim community leaders must be included in counter-terrorism efforts, and agency executives must meet with them regularly to be kept abreast of their concerns, as well as their contributions.

Informant training must be regularly improved upon and evaluated, particularly when informants engage in conduct detrimental to the effort, and therefore, represents a breakdown in the training process. Allegations of informant misconduct must be taken seriously by the agency, and therefore, the incidence of these types of negative indicators

can serve as an evaluative tool. If all complaints are logged and investigated, the success of the overall campaign within a law enforcement agency can be better gauged because useful data will emerge.

## **6. Possible Opposition**

It is admittedly idealistic to conclude that the outreach efforts, training, changes in agency guidelines, and follow-up would completely eliminate the criticisms against terror sting operations. However, the training and outreach described in this thesis are currently not being employed and, if utilized, would help to provide redress to the Muslim community's grievances while not negatively impacting upon law enforcement's counter-terrorism efforts. Even if conducting these operations becomes more difficult as a result of narrowing the manner in which they are conducted, the benefits of a Muslim community more actively assisting law enforcement will outweigh the limiting effect of these changes on terror sting operations.

Institutional culture, specifically that of law enforcement, is resistant to change, particularly when that change is perceived as a restriction on the tools available to law enforcement. Therefore, an essential part of this recommendation involves the careful presentation of the problem to law enforcement agents at the receiving end of the new policy. They must be made aware of the benefits of having the Muslim community act in a supportive capacity, to include all the examples in which tips from its community helped stop terrorist attacks in America.<sup>148</sup> They must also be made aware of to what extent this perception of spying, etc., has damaged the relationship between law enforcement and the Muslim community, and how that damage has served to reduce the likeliness of encouraging cooperation from the community and may have actually strengthened the radical Islamists' influence in the Muslim community.

These recommendations are an admittedly broad description of what needs to be a complex solution to a complex problem. Lives, court cases, and the welfare of entire communities hang in the balance when law enforcement agencies conduct these operations that ultimately result in the removal of dangerous radicals from within Muslim

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<sup>148</sup> Beutel, "Data on Post-9/11 Terrorism in the United States," 11–12.

communities. Therefore, any perceived restriction on the freedoms or tools of investigators can be expected to be met with some opposition. It is crucial, therefore, that investigators are formally included in the agency's policy of community involvement, as well as the benefits of enlisting the cooperation of the Muslim community and having a more professional informant base. Convictions and guilty pleas will be easier to obtain when informants are acting according to their improved training and cases have been systematically assembled with clear benchmarks and executive oversight and approval. Investigators should expect to see an increased quality in their operations, increased participation and intelligence contributions of the Muslim community, an increasingly simpler judicial process, and the increasingly positive press as a result of more fine-tuned operations.

## **7. Agendas**

One final point that needs to be made regarding these recommendations is that the incidence of perceived public outrage at these operations may not decline immediately. Political groups and social groups that thrive on conflict, and controversies, contrived or otherwise, will always be present. What needs to be at the forefront of any law enforcement agency dealing with Muslim populations and embarking upon counter-terrorism efforts is a legitimate strategy to include the Muslim community in helping to fight terrorism. Therefore, while negative press may always be part of policing, law enforcement must press forward in the knowledge that their methods and motivations are rooted in a bonafide effort to protect the innocent from acts of terror and to uphold the dignity of all the populations they serve.

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