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Entrapment allegations in right-wing terrorism cases: A mixed-methods analysis

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ABSTRACT

Entrapment allegations have been widespread in post-9/11 US terrorism prosecutions, but existing research focuses almost exclusively on neojihadi and left-wing prosecutions. It is thus unclear whether entrapment is also prevalent in right-wing terrorism cases. This article employs a mixed-method approach to analyze entrapment claims in right-wing terrorism cases. Quantitative analyses of a database of post-9/11 terrorism prosecutions show that right-wing cases have significantly fewer entrapment indicators than neojihadi and left-wing terrorism cases, and are far less likely to have particularly high entrapment scores. Detailed qualitative analyses of five right-wing terrorism investigations reveal that four cases feature potentially strong entrapment claims. However, a comparative analysis finds that these claims are significantly weaker than those in many neojihadi and left-wing cases. We theorize that micro-, meso- and macro-level mechanisms enabled the occasional emergence, but far lower prevalence and strength, of viable entrapment claims in right-wing terrorism investigations.

1. Introduction

Sting operations are a critical counterterrorism tool with the potential to detect and disrupt terrorist plots, particularly when directed against individuals already planning terrorist attacks. However, sting operations against those who would have never engaged in terrorism on their own waste counterterrorism resources, and could further violent radicalization by creating motives for revenge and perceptions of injustice (Kerodal et al., 2015). This has already proved true in at least one case: the alleged entrapment of Randy Weaver of Ruby Ridge, Idaho, and the deadly shootout which ensued, were among the primary catalysts of right-wing terrorism in the 1990s, including the Oklahoma City bombing (Michael, 2003). The study of entrapment in terrorism sting operations is thus of considerable importance for evaluating current counterterrorism efforts. Yet little is known about whether entrapment has emerged in post-9/11 right-wing terrorism investigations.

A growing body of research documents the serious threat posed by right-wing terrorism in the US (McGarrell et al., 2007). Right-wing terrorism encompasses all violence motivated by far-right (typically white supremacist or anti-government) ideologies, and intended to coerce or intimidate governments or civilians (Norris, 2017). The Government Accountability Office (2017) concluded that right-wing extremists were responsible for 73% of fatalities from terrorist or extremist violence since 9/11. Similarly, Perliger (2012) found that right-wing extremists killed several times as many people as neojihadis since 9/11.

Despite extensive documentation of the right-wing terrorist threat, previous research on entrapment in terrorism investigations has focused on neojihadi and left-wing cases. Studies have suggested a lower prevalence of entrapment in right-wing cases, without

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documenting this in detail or analyzing possible causes of such differences (Norris and Grol-Prokopczyk, 2015). This article directly assesses whether one of the most controversial and widely-used counterterrorism techniques—the sting operation—has been deployed against suspected right-wing terrorists since 9/11, and whether such cases involved viable entrapment claims. In doing so, we enable a clearer assessment of current counterterrorism practices in right-wing cases.

We distinguish between right-wing, left-wing and neojihadi terrorism due to the US government's history of treating these groups in substantially different ways (Cunningham, 2004; Norris, 2016). Left-wing terrorism is understood here as motivated by environmentalism or other ideologies associated with the left, while “neojihadi” refers to terrorism claiming inspiration from Islam. We follow Sageman (2016) in using the term “neojihadi” rather than “jihadi,” to highlight terrorists' historically and theologically novel use of the “jihadi” label.

Defining terrorism is a highly-contested and politicized process, and the term terrorism is applied in highly inconsistent ways. For example, left-wing activists contest their labeling as terrorists for minor crimes, while right-wing extremists who commit murder to advance ideology are rarely labeled as terrorists (Norris, 2016, 2017). For this study, we classify prosecutions as terrorism-related if they involve violence meant to express or advance a particular ideology. This approximates the US government's definition of terrorism as activities dangerous to human life intended to coerce or intimidate civilians or the government (18 U.S.C. § 2331).

This study uses a mixed-methods approach to comprehensively evaluate entrapment claims in post-9/11 right-wing terrorism investigations in the US. This includes quantitative analyses comparing the presence of entrapment indicators in right-wing versus neojihadi and left-wing terrorism cases, case studies of entrapment claims in five right-wing terrorism prosecutions, and a comparison of such claims to those in neojihadi and left-wing cases.

The secrecy of counterterrorism makes it impossible to definitively identify reasons for specific patterns in counterterrorism practices. However, drawing on various data sources, including news reports, previous research, and interviews with 34 individuals with knowledge of these cases, we present a preliminary conceptualization of the mechanisms driving our findings at the micro-, meso- and macro-levels. Our results are broadly consistent with Black's theory of law and critical socio-legal theories, but we develop additional theoretical explanations to more precisely account for our findings. This theorization offers insight into the individual, institutional, political and cultural mechanisms driving differences in how different types of terrorism are investigated.

2. Entrapment allegations in US counterterrorism policy

Entrapment appears to have been relatively rare in pre-9/11 US counterterrorism. The FBI engaged in the widespread repression of various movements (particularly minority and left-wing activists) as part of COINTELPRO in the 1960s, but few potential entrapment cases from this period have been identified (Marx, 1974). Prior to 9/11, the only well-known entrapment claim among right-wing extremists involved Randy Weaver of Ruby Ridge, Idaho. Federal agents allegedly persuaded Weaver, despite his reluctance and only after multiple attempts, to sell illegal sawed-off shotguns (Dobratz et al., 2003). A standoff between Weaver and authorities led to the deaths of his wife, son, and an FBI agent. The jury acquitted him at trial, apparently on entrapment grounds. A subsequent lawsuit yielded a three million-dollar settlement for Weaver and his family.

After 9/11, determined to prevent further terrorism, the FBI developed a preemptive strategy in which thousands of informants infiltrated Muslim communities, intending to identify “ sleeper cells ” planning additional attacks (Aaronson, 2014). However, unable to detect genuine plots, certain enterprising informants expecting payments or leniency in pending cases managed to persuade law-abiding Muslims, often with vague radical sympathies, to commit terrorism offenses. In many cases the informants employed extraordinary inducements, such as offering hundreds of thousands of dollars, attempting to radicalize suspects over long periods, or repeatedly coaxing them despite their reluctance (Norris and Grol-Prokopczyk, 2015). Many of these defendants had severe mental illnesses and were so dysfunctional or impoverished that they were incapable of independently committing attacks (Human Rights Watch, 2014).

Under the most common version of the US entrapment defense, a case must be dismissed if the government induced the defendant to commit the crime, and the government cannot prove the defendant's predisposition to commit such a crime (Marcus, 2009). The less common “ objective ” entrapment defense instead focuses on whether government actions in inducing the offense entailed unreasonable risk of ensnaring someone not already likely to commit such offenses.

The FBI claims that all terrorism-related entrapment claims have failed, but this is not exactly true. In fact, Bradley Kahle, a militia member, was acquitted at trial in response to entrapment arguments, as explained in section 5.4 below. In addition, the acquittal of two defendants in the Liberty City Seven case was likely influenced by entrapment claims. In 2016, a Canadian provincial court found two terrorism suspects to have been entrapped, in a sting operation similar to many US cases (Austen, 2016).

The frequent failure of the entrapment defense may result from the weakness of the defense in practice, which is rarely successful even in non-terrorism cases (Norris and Grol-Prokopczyk, 2015). Moreover, entrapment claims in some terrorism cases might have been successful were it not for prosecutorial misconduct (Norris, 2016). Entrapment researchers note that entrapment may be undetected by courts because defendants plead guilty to avoid longer sentences (Colquitt, 2004). This may have happened in several terrorism cases (such as the Tarik Shah case). In short, despite entrapment claims' frequent failure, there is good reason to believe that entrapment has occurred in some terrorism cases. Nevertheless, as explained further in section 3, in an abundance of caution, this article discusses the strength of “ entrapment claims ” rather than identifying cases as definite examples of entrapment.

Previous research on entrapment and terrorism has analyzed a number of individual neojihadi and left-wing cases, typically concluding that entrapment occurred (Laguardia, 2013; Said, 2015; Kapoor et al., 2016; Kumar, 2010; Szpunar, 2017; Loadenthal, 2014; Norris, 2016). Prominent terrorism researcher Marc Sageman (2016) sharply criticizes FBI sting operations, arguing that they fail to prevent terrorism because the defendants would have been extremely unlikely to commit terrorism offenses without

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