**Leiden University**

*Faculty of Governance & Global Affairs*


# Uncovering Entrapment:
# The Artificial Construction of Terrorism Threat in the F.B.I's post-9/11 Sting Operations

## ~A case study~

## *Newburgh Four* & *Fort Dix Five*

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«-*Now what's going to happen to us without barbarians?*
*Those people were a kind of solution…».*

**Constantine P. Cavafy (1904)**

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# Abstract

In the wake of 9/11 terrorist attacks, sting operations converted into a prominent tool deployed by the FBI in the battle against terrorism. This reflected the post-9/11dominant demand for a new approach to be incorporated into counterterrorism, so as to strengthen its effectiveness and to prioritize security. However, the Bureau's post-9/11 undercover operations have been depicted as a *'*theatrical production*'* of homeland security and have been accused as a fake terrorism prosecution system. That is due to the various entrapment claims which have been aroused principally in cases involving Muslims, who, since 9/11, have been the mostly targeted in the FBI's stings.

This thesis is stimulated by two main issues. The first issue concerns the lack of a solid consensus of the entrapment doctrine within the USA. Consequently, each court within the country recognizes the entrapment defense with different criteria on the basis of objective and subjective test. The second issue regards the complete failure of the entrapment defense in cases of terrorism stings in the American courts. This failed applicability of the defense has been widely challenged on the grounds that this failure does not guarantee the nonexistence of entrapment in the FBI's terrorism pre-emptive prosecutions. With this in mind, the objective of this study is to uncover the extent that the entrapment element is present in the Bureau's post-9/11 terrorism undercover operations in an attempt to further investigate the implications of entrapment tactics on the concept of terrorist threat, as it emerged in the wake of 9/11.

For this reason, the research adopts a qualitative methodology and follows a case-study approach of two high-profile FBI terrorism stings involving Muslim targets. In order to signify entrapment elements within the two cases, the thesis applies twenty entrapment indicators. The indicators enable the research to penetrate into the government's behavior, named as *objective test* of entrapment, as well as into the defendants' behavior and state of mind, named as *subjective* test of entrapment. The prism of Orthodox and Critical Terrorism Studies is utilized as a tool to delve into a deeper understanding of the threat concept in the post-9/11 era.

The results identify potent entrapment elements within the cases and demonstrate that the Bureau has been aggressive and abusive within its counterterrorism campaigns. Based on the findings this research validates that the threat is not an objective but rather a constructed condition. Yet, the thesis concludes that that the terrorism threat is a concept not only emanated from various rhetorical constructions but also from the state's very activity, which has exaggerated, practically fabricated and eventually reinforced the threat of terrorist violence within the USA.

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## List of Abbreviations

| | |
|---|---|
| AK-47 | Automatic Kalashnikov-47 |
| BB | Ball Bearing |
| CHS | Confidential Human Sources |
| COINTELPRO | Counter Intelligence Program |
| CTS | Critical Terrorism Studies |
| DMV | Department of Motor Vehicles |
| DOJ | Department of Justice |
| DVD | Digital Versatile Disc |
| FBI | Federal Bureau of Investigation |
| HRW | Human Rights Watch |
| IED | Improvised Explosive Device |
| J-e-M | Jaish-e-Mohammed |
| JTTF | Joint Terrorism Task Force |
| NJ | New Jersey |
| NY | New York |
| OTS | Orthodox Terrorism Studies |
| PACER | Public Access to Court Electronic Records |
| PPD | Philadelphia Police Department |
| RPGs | Rocket-Propelled Grenades |
| SAM | Surface-to-Air Missile |
| U.K | United Kingdom |
| U.S.A | United States of America |
| WTC | World Trade Center |

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# Chapter 1: Introduction

The inauguration of the 21st century was stigmatized by four lethal terror attacks, which stimulated an unprecedented change in security norms within the USA. With the outbreak of the 9/11 attacks and the following paroxysm of absolute securitization, the attention of security apparatus shifted from traditional domestic crimes, to counterterrorism. The organizational structure and intelligence officers of the FBI became a subject of extensive criticism for failing to predict and prevent the attacks (Zegard, 2007). In return, the Bureau attempted to reorganize itself and made counterterrorism a cornerstone of its intelligence agenda (Bjelopera, 2013, CATO, 2015). This research paper will focus on the primary counterterrorism instrument that the FBI used after 9/11 in order to thwart a new wave of terrorist attacks: sting operations.

Sting operations belong to the category of preventive undercover policies in which law enforcement authorities influence a criminal activity that an individual is engaged into, by facilitating the commission of the offense (Hay, 2005). In most cases, this tactic takes place with the use of secret cooperative operatives, who offer opportunities and lures to the targeted individual, so as the latter to eventually resort to the criminal offense and a prosecution to be achieved (Ibid).

Yet, sting operations, as a proactive technique, was not only adopted by the FBI in the aftermath of 9/11 terror attacks. Instead, stings have been a timely important crime prevention tool and for many decades have constituted a *modus operandi* method of the Bureau. As early as 1919, the agency was using black informants with the aim to combat- from within- black radical movements, while in the following decades undercover operatives were primarily used to conduct domestic political surveillance (Garrow, 1988). Indicatively, in 1962, in a year when America's chief security concern was oriented by the rooting out of communist ideology, almost 17% of the Communist Party executives consisted of paid FBI secret agents (Ibid). Additionally, the use of informants was a strategic one within the context of COINTELPRO. The program's aim was to repress radical and activist groups such as labor union activists, the New Left and Ku Klux Klan, which the first general director of the Bureau, John Edgar Hoover, characterized as "*subversive"* and "*detrimental"* for the domestic security (as cited in Cunningham, 2003:211). Agent provocateurs have also been used for the prevention of white-collar crime and drug, prostitution and child pornography offenses (Bjelopera 2013, Norris, 2016).

Before 9/11, stings were used as a counterterrorism technique for different types of terrorism. For instance, the years following the Oklahoma City bombing the majority of undercover operations

involving informants or undercover agents were predominantly focusing on right-wing cases (Norris & Prokopczyk, 2018). However, with the advent of the 'war on terror' era, stings converted into the principal domestic counterterrorism tool in the US and a considerable amount of the government's budget was spent in favor of that purpose. (Ibid). Indicatively, from 2001-2004 more than 40% of the agency's budget was spent on the war on terror (US Department of Justice, 2004).

The rise of stings is the result of the increased interest that emerged in counterterrorism policies after the 9.11 attacks. The main idea was that terrorism was an existential threat for the state and a future attack should be prevented at any cost (Mueller & Stuart, 2016). It was the first time in history that the US counterterrorism authorities assumed such broad powers, in order to combat terrorism inside and outside the national borders. This practice was dictated by a desire to prevent possible future attacks and to take revenge too (Field, 2017). The strengthening of stings took place under the premise of "1% Doctrine", which was introduced by the Vice President Cheney and dictated that anything with 1% chance to occur, should be treated as a certainty (Iriye, 2007). In light of the axis *"preemption-prevention-disruption"* the Bureau developed the largest secret-agent network ever to have existed in the U.S (Aaronson, 2013:26).

Hence, since its establishment, the Bureau has used secret cooperative human sources in an effort to defend the state's law and to combat what at times was perceived as a threat to homeland security. In this vein, the rapid increase of stings after 9/11 reflected the demand of a more aggressive surveillance and absolute securitization.

Securitization posits that the constructed narratives of an existential threat are the ones that identify an issue as a security subject and lead to mobilization (Hughes, 2007). In other words, securitization designates that a threat needed to be securitized is the outcome of social constructed articulations rather than objectivity. The articulation of terror threat under the Bush Administration took unprecedented dimensions. The War on Terror was built on 'clash of civilizations' narratives (Hughes, 2017). Despite infrequent statements to the contrary, the post-9/11 speech acts identified Islam and Muslims as the primary subjects of threat that ought to be securitized both on a domestic and international level (Mustapha, 2011). On a domestic level this securitization order was reflected on intelligence and law enforcement agencies which assumed that the deterrence of future terrorist attacks would be guaranteed through surveillance of the spiritual and mental lives of Muslims (Kundnani, 2014).

In this line, the propensity of the Bureau to primarily target Arab and Muslim communities is a product of the new securitization demand as emerged by the War on Terror narratives. The Bureau

resorted to religious and racial profiling in the battle against terrorism and the general shift in the training of its officials has been accused of being oriented by an unprecedented Islamophobic narrative (Savage, 2011, Ackerman, 2011) Specifically, in the terrorism stings that took place from 2001 until 2019, 188 of the total number of 309 defendants were Muslims; a number which is translated into 60.8% of the prosecutions (Norris & Grol-Prokopczyk, 2019).

At the same time, the post-9/11 FBI stings have been regarded with skepticism for using techniques which lead to entrapment. On numerous occasions, the Bureau has been criticized for constructing rather than thwarting cases of domestic terrorism through the employment of entrapment tactics, especially at the expense of Muslim populations. In a general sense, entrapment takes place in those cases where the targeted individual would not have resorted to the unlawful action, in the absence of the government's involvement, influence or persuasion (Aziz, 2011). However, within the American legislation there is not a definite consensus on what constitutes as entrapment. That means that each jurisdiction within the US examines the entrapment defense with different criteria.

The problem is that the more vicious a crime is, the less successful the entrapment defense tends to be in courts (Laguardia, 2013). Particularly, in terrorism stings, no court after 9/11 has recognized the entrapment defense to its full extent, despite the vigorous entrapment allegations that have been aroused in many cases (Norris & Grol-Prokopczyk, 2018). Until the present day, none of the defendants involved in terrorism stings have been acquitted exclusively on entrapment grounds (Ibid).

On the other hand, the federal officials embrace the transparency of sting operations and dismiss any entrapment claims. In particular, they maintain that an individual approached during a sting is given many opportunities to back off before he/she infringes the law (Cummings, 2017). Thus, this paper will address the topic of entrapment in post-9/11 terrorism sting operations as well as the repercussions on the domestic terrorist threat. This will be conducted through a case study analysis of the following high-profile stings that involve Muslim targets: *"Fort Dix Five"* and *"Newburgh Four"*. Hence, the research question that guides this thesis is the following:

- *"To what extent is entrapment embedded in the FBI's counterterrorism sting operations and what does this mean for the post -9/11 domestic terrorist threat in the USA?"*

The reason why this thesis opted for this specific topic stems from its understudied character. While the Bureau's undercover operations have been an intriguing subject in films and documentaries, there is still a lack of substantial academic research on this field. Even though existing studies on the topic of FBI's pre-emptive terrorism operations have addressed the issue of entrapment, the majority limit themselves to vague observations of aspects of the phenomenon. There has not yet been a thorough examination of the entrapment concept and the elements that compose it within a detailed and empirical inspection of real cases. As Norris and Grol-Prokopczyk (2015:624) successfully put "*it is difficult to understand how such a phenomenon could exist without at least one court recognizing it"*.

Additionally, there is a lack of academic research to verify what entrapment means for the concept of terrorist threat. The study at hand will make an effort to bridge that gap in the academic literature by scrutinizing the conditions and facts that enable entrapment in-depth. For that purpose, this case study will build on existing research of Jesse Norris and Hanna Grol Prokopczyk (2015) and will use, as an analytical tool, the twenty entrapment indicators the two authors developed. In this manner, this thesis will attempt to uncover the issue of entrapment within its real-life context and subsequently to expand the understanding of the way the security regime within the US perceives and approaches the domestic terrorist threat.

The value of this research question lies on the fact that there is a lack of sufficient attention to the instruments that governments use to correspond and prevent terrorism. As Schuurman and Eijkan (2013:3) notice: *"(counter)-terrorism is simply a difficult subject to study*". Schmid (2013: 37) has concluded that one of the "*biggest failures of the literature on counterterrorism is that academics and researchers have been blind to see what the governments and authorities did and do at home and abroad…*" and that "…*radicalization is taking place among the defenders as well as the attackers*".

Thus, concerning counterterrorism stings, the concept of entrapment formulates the following paradox, whose discussion has been understated in the academic literature: on one hand the purpose of counterterrorism is to annihilate the terrorism threat, but on the other hand under no circumstances should proceed to its fabrication. In this vein, entrapment constitutes an anomaly in the security regime with wider implications to the concept of the security threat. Therefore, this thesis will contribute to the academic and societal relevance by putting under the microscope the state's activity in counterterrorism practices and by examining what are the implications of these practices for the terrorism threat.

The following chapter incorporates the theoretical umbrella which underpins this thesis. It provides a literature review of the existing scholars' narratives as well as the conceptualization of the basic

terms that underline this study. Additionally, the twenty entrapment indicators derived from Norris & Grol-Prokopczyk research (2015) are presented in detail, as they constitute the main conceptual model that this study operates upon.

Chapter 3 deals with the preferable research design. Chapter 4 provides a detailed description of the cases, while Chapter 5 analyzes the presence of entrapment indicators in the examined cases. Chapter 6 is separated into two sections. The first section includes an analytical commentary of the entrapment scores, while the second section delves into the correlation of the analysis results with the broader concept of domestic terrorist threat. In the last chapter, a conclusion is provided, followed by the strengths and limitations of this study along with recommendations for further academic research.

# Chapter 2: Literature Review & Theoretical Framework

## 2.1. Terrorism Studies & Threat Construction

Critical terrorism studies (CTS), which gained momentum in the wake of 9/11, provide an alternative insight to the security paradigm as perceived by orthodox terrorism studies (OTS). The latter has been criticized for underestimating many of the components of terrorism. OTS tends to be state-centric because it particularly connects the terrorist threat with non-state actors. It conceptualizes the state as a rational actor who strives for objectivity, defends liberal values and seeks to safeguard its citizens from terror threats (Al- Kassimi & Simons, 2019). In contrast, CTS integrates the behavior of the state into the terrorism debate and underlines the capacity of democratic states to suspend their liberal values, resort to illegitimate acts and perpetrate terrorist violence (Stump & Dixit, 2012, Heath-Kelly et al, 2014).

Because OTS is inclined to state-centric standpoints, its emphasis is given on problem-solving narratives. Rather than grasping the entire realm of the terrorism phenomenon, its focus tends to be monopolized by accounts concerning the causation, the control and the solutions to terrorism (Jarvis, 2004, Turk 2004, Stump & Dixit, 2012). In this manner, OTS fails to investigate the problem of state-terrorism in a systematic way, with the exception of those cases where the violence is produced by illiberal states or by states that support non-state terrorist groups (Franks 2009, Jackson et al, 2011). In the conventional agenda, the democratic states are principally the victims of terrorism, those who combat it but not the ones who resort to it (Blakeley, 2007). On the other hand, the critical discipline brings into the spotlight the role of the state and underscores that the state can be an actor of terrorism. For CTS, the democratic state can be a source of violence and oppression within the context of counterterrorism campaigns (Jackson et al, 2011).

The concept of threat construction is a cornerstone in the critical discipline. While the critical scholars do not underestimate the dangerousness of terrorism, they do not take the phenomenon for granted. They acknowledge that the danger is in the eye of the beholder and that the terror threat is a result of socially constructed narratives. David Campbell (1998) in *"Writing Security"* illustrates that the danger is not an objective and measurable condition. That means that the concept of danger is not an independent one but rather is highly connected with those it may become a menace. At the same time, its extent and shape cannot be measured like a physical phenomenon (e.g. an earthquake) (Ibid).

Stump and Dixit (2012: 207), among others, report that constructivism is the best analytical tool as: "*the focus is shifted away from what terrorism is, to a focus on how social actors use the category of 'terrorism' to make sense of and act during unfolding events*". For Campbell (1998), in the modern era there is such a plethora of risks that it is impossible to impartially know what poses a threat. This is what Campbell calls the "*cornucopia of danger*" (Ibid, pp: 2). Similarly, Rita Taureck (2016:55) defines the meaning of security as a "*social and intersubjective construction*" and supports that the concept of securitization is "*based on power and capability and therewith the means to socially and politically construct a threat*". The understanding of terrorism, therefore, is an intersubjective and constructed one; it is a discursive rather an objective condition (Hülsse & Spencer, 2008).

The critique of security advocates has used the threat construction as a focal point of analysis for the War on Terror. Richard Jackson (2005:2) argues that "*the language of the 'war on terror' is not simply an objective or neutral reflection of reality; nor is it merely accidental or incidental"*. Instead, it is a *"deliberately and meticulously composed set of words, assumptions, metaphors, grammatical forms, myths and forms of knowledge – it is a carefully constructed narrative*" (Ibid: 2). The construction of threat in the case of War on Terror, is what constitutes the incarnation of the security concept (Vultee, 2010).

In this context, the Bush administration formulated the meanings of 9/11 attacks and manufactured a regime of existential threat (Jackson et al, 2011). The extensive media coverage of the President's statements that were made through myriad of public speeches, converted them into the dominant interpretation of threat (Ibid). The post 9/11 discourse was based on problematic and indistinct narratives of otherness and threat (Jarvis, 2009). The new enemy was seen to be located within and outside of homeland in the form of 'sleeper cells' that were planning to repeat attacks (Jackson et al, 2011). Even though the enemy that should be combatted was never specified within concrete contexts, the various articulations of threat identified Muslim populations as the primary root cause of terrorism (Jarvis, 2009, Kundnani, 2014). The FBI conceived the ideological construct of "Al-Qaedaism", which determined that Muslims who did not embrace violence but whose belief system was superficially identical to Al-Qaeda should be deemed as possible terrorists (Kundnani, 2014). The answer to this fabricated threat was discoursed as an imperative and legitimate duty (Jarvis, 2009).

The threat construction is designed to achieve several key political goals. For CTS, the assumption of threat normalizes the state's actions, which under other conditions would be deemed illegitimate. The presumption of threat and the moral condemnation of the terrorist 'other' justifies ethically the state's deployment of combat ready forces and the claim to legitimate use of violence

(Franks 2009, Al-Kassimi & Simons 2019). In this vein, Kundnani (2014:14) notices that the "*spectacle of the Muslim extremist renders the violence of the US empire invisible"*. Following a similar pattern, Noam Chomsky (2003) exemplifies the way that the American government manufactured the terror threat, in an effort to render the measures and the actions it took to combat it as imperative. The outcome of such methods was a vicious circle which further created terrorism (Ibid).

### 2.2. Sting Operations & the Entrapment Concept

Graeme R. Newman (2007) notes that it is a difficult task to define sting operations, since they cover a wide range of crimes and different methods are employed in each case. Despite that limitation, it is observed that four basic components are embedded in every sting operation. Firstly, targets are chosen due to an inclination they have shown to infringe the law (Ibid). Secondly, targets are offered an opportunity or a lure to commit such an offense (Ibid). The presence of an undercover agent or an informant or another form of deception, constitutes the third element (Ibid). The final component is the prevalence of a "gotcha" climax which is observed once the mission ends to the prosecution of the targets (Ibid). Norris & Prokopczyk (2017) focus on the centrality of the government's undercover employees and define the sting operations as law enforcement techniques, in which cover-human sources affect a defendant's commission of a crime. In other words, sting operations concern the involvement of one or more government agents or secret informants in the perpetration of a crime. By pretending to be civilians they provoke and facilitate a potential offender to commit an offence so a prosecution to be achieved. (Hay, 2005).

The employment of informants as key sources of intelligence has been a thorny issue. The main question to be raised from a practical as well as from a philosophical perspective, is whether the target of a sting would have resorted to the criminal activity but for the informant's actions (Said, 2015). Hence, the concept that raises the most questions concerning the legality of FBI's stings is the concept of entrapment. There has not been an ultimate consensus regarding the conditions under which the concept of entrapment operates. Nonetheless, according to the most prominent formulation of the entrapment defense, entrapment takes place when the defendant was offered inducements to commit the crime, despite not having an initial proclivity towards the commission of the offense (Norris & Prokopczyk, 2015). That means that the presence of entrapment is equivalent to the defendant's lack of predisposition.

It should be stressed that the lack of a solid definition of predisposition is problematic because it renders the issue of entrapment defense even more complicated. It is remarkable that many courts take as a proof of predisposition the defendant's latest statements or actions before the commission of the offence and undermine possible governmental influence that maybe have led to these statements (Norris, 2016). That is because the predisposition concept examines the nature, the beliefs and the background of the defendant rather than the crime itself (HRW, 2014). Hence, many human rights organizations condemn the American government and argue that through stings, many citizens, who under other circumstances would not have initiated to move forward with an attack, have been accused as terrorists (Goldman, 2014).

In contrast, there are those who oppose the entrapment concept. They assert that the entrapment claims are beyond reality with the notion that since the entrapment defense has failed in the court, then the entrapment never occurred (Goldman, 2014, Stevenson, 2008). Additionally, there are others who are more extreme by maintaining that entrapment in terrorism cases is something that practically cannot exist (Ibid). The justification for this is that nobody can support or provide material into a terrorist act or engage into terrorism, without the element of predisposition (Stevenson, 2008). As Stevenson (2008:125) states: "*terrorism is such a heinous crime that it is unlikely the government could induce someone to support such criminals unless the person was one of the few predisposed to do so"*.

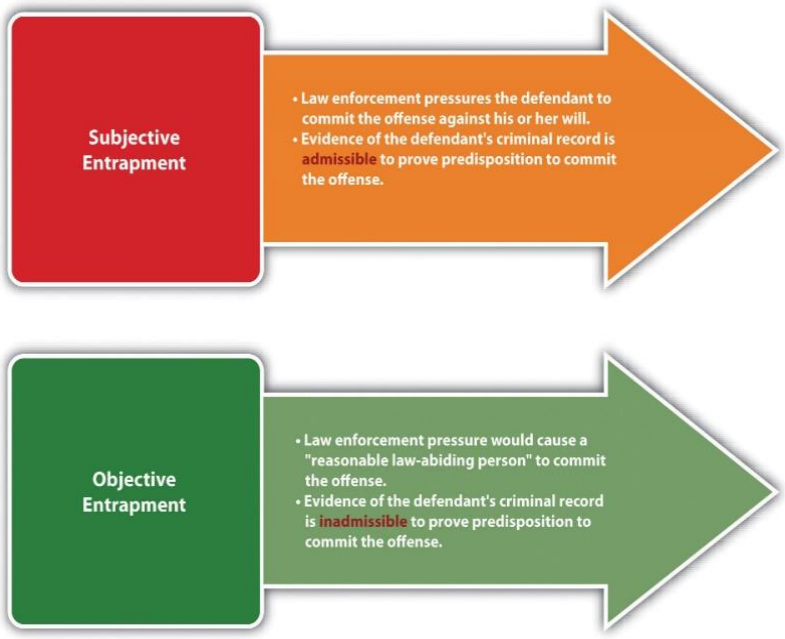
There are two approaches that shed light on the complexity of the entrapment defense. The first one is the *objective* approach, which focuses on the government's actions. The *objective test* as it is called, is driven by the actions of the aggressive agent provocateurs, who may have manipulated and oppressed the target of the undercover operation to such an extent, that the focus must be shifted from the target's culpability to the character of police tactics (Tunick, 2011). The 'objective' test detects the entrapment element where the government contributed to the criminal act so greatly and offered such inducements that a law-abiding individual would probably fail to resist (Laguardia, 2013). The term *objective* is employed precisely because the subject's actions and state of mind is not the central point of attention of the entrapment analysis.

On the other hand, the *subjective test* sets aside the government's actions from the entrapment analysis. The subjective approach focuses on the 'subjective state of mind' of the targeted individual, by examining the extent that this individual was inclined and predisposed to commit the offense (Tunick, 2011). That means that a personal investigation must be conducted, in order to prove beyond

any reasonable doubt, the presence or the absence of the defendant's propensity and ability to infringe the law (Laguardia, 2013).

Even though the majority of scholars seem to opt for the objective approach, there has been an intellectual debate concerning the effectiveness of these two approaches (Ibid). In return, some scholars recommend that the concept of *outrageous government* conduct could provide a more impartial determination and could terminate the debate because it examines whether the defendant was outrageously psychologically manipulated by the government to the commission of the act (Laguardia, 2013, Norris & Grol-Prokopczyk, 2015). Practically, the 'outrageous government conduct' was first used as a defense in United States v. Russell, where it was recognized that "*the conduct of law enforcement agents [were] so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction"* (As cited in Laguardia, 2013 pp: 180). However, this defense as a method of juridical review has failed.

**Figure 1:** Comparison of *Subjective* and *Objective* Entrapment




**Source:** OER Services-Criminal Law (2012)

## 2.3. The Twenty Patterns of the Entrapment Doctrine

The definition of entrapment is a contested one. Given that there is not a universal consensus on what are the features that can best describe its entity, jurisdictions within the US follow different criteria in order to determine the concept. Taking into account the blurred nature of the entrapment concept, this study utilizes the research of Jesse Norris and Hanna Grol Prokopczyk (2015) to best portray the entrapment defense. The two authors, through an extensive research, aggregated twenty entrapment indicators from the American case law. Given that the twenty indicators will constitute the main corpus of this paper, it is essential to analyze them thoroughly. Yet, an emphasis will be placed upon the first six *core* indicators as they are most commonly examined by American courts.

The first *core* indicator concerns the defendant's *non previous involvement in terrorism offenses,* before being approached by the informant. The majority of jurisdictions within the US recognize that the defendant's previous non-participation in a similar criminal activity weighs against the predisposition doctrine. The concept determines that someone who was engaged into similar criminal activity in the past is probably more inclined to repeat an offence of the same nature (Marcus, 1987). As the subjective test demonstrates, it is the prosecution's task to provide- beyond a reasonable doubt- evidence regarding the defendant's predisposition to commit the crime (Laguardia, 2013). Thus, the investigation is personalized into the defendant's (non)predisposed attitude and his/her criminal background constitutes one of the most common indicators able to signify a disposition to act in a similar way (Ibid).

The second *core* indicator, which has been a keystone of entrapment analysis by the majority of the American courts, investigates if *the proposal of the criminal activity was originated by the government.* This posits that the informant or the governmental agent first suggested the targets and the idea of the criminal act, as well as pushed the defendant to do the same. Even though the government is entitled to use decoys and methods in order to lure a person already engaged in a criminal activity, the criminal design must be emanated from the individual *per se* and not by the government (Levy, 1992). If the initial suggestion of the criminal offense is derived from the government, then the defendant's predisposition is undermined. It is, therefore, the government who bears the burden of proof that it was the defendant's initiative to conduct the terrorist offence (Sherman, 2009). This indicator belongs to the 'objective' entrapment sphere because advocates that the defense should focus on the behavior of the government and of its cooperating employees rather than the behavior of the defendant (Johnson, 1993).

The third *core* indicator examines whether the defendant was induced to the criminal act because of *the informant's excessive pressure or persuasion*. Therefore, if the confidential informant and agent employed pressure, persuasion or coercion, this weighs against the defendant's predisposition (Norris & Prokopczyk, 2015). Among others, as pressure and persuasion are regarded the informant's repetitive attempt to motivate the targets to engage in a terror act, on the ground that the engagement is justified (Ibid).

*The financial and material inducements* are incorporated as the fourth *core* entrapment indicator. This indicator has been a controversial one. By using inducements, officials take advantage of the financial indigence of the suspects, who in many cases are impoverished and unemployed (Field, 2019). The American Civil Liberty Union notices that there are cases where the suspects are so impoverished and the material incentives so appealing, that defendants end up being financially dependent on the informants (2013). Nonetheless, there are those critics who state that financial incentives are not enough to persuade law-abiding citizens to engage in terrorist acts and, therefore, such incentives do not have any probative value against predisposition. According to Stevenson's view "*few would agree to drive a truck bomb up to the city's federal building, or hijack a plane, for any sum of money*" (as cited in Field 2019 p.271).

From the subjective test's scope, *the defendant's reluctance* to engage in the criminal enterprise is the fifth *core* indicator, which illuminates the defendant's lack of predisposition. The defendant's reluctance to commit the offense is revealed either verbally or through his/her actions (Norris & Prokopczyk 2015). These actions may include a failure to implement what has been arranged and communicated with the informant and to proceed with the perpetration of the offense (Ibid). In many operations, lack of hesitation is frequently considered to be a satisfactory proof of the target's predisposition and *vice versa* (Johnson, 1993).

The sixth *core* indicator argues that it is the *government who has the greatest control* over the criminal activity. Hence, if the FBI supplies the vast majority of criminal design, means, targets, and ideological zeal, the crime should be deemed per se implanted. (Sherman, 2009).

Apart from the six aforementioned indicators the courts also examine other indicators, but with less frequency. The courts examine *if the government provided the means for the criminal activity*. If the defendants were incompetent and did not have access to the necessary means, resources and contacts for the performance of the criminal act and these means are provided by the government, then this is something that courts take into account when they examine entrapment (Norris & Prokopczyk, 2015). The means may range from resources, social connections, financial costs and travel expenses

to weapons and vehicles (Ibid). The provision of the means by the government weakens the defendant's' so-called '*positional predisposition*', which undermines his/her ability to resort to terrorism. The positional predisposition was first launched in *Jacobson vs United States* case (McAdams, 2007).The Supreme court recognized that, not only the mental element which prescribes the mental willingness of a defendant to participate in an illegal act, but also the positional element, which scrutinizes the practical ability of a defendant to perpetrate the act, is taken into account as crucial factor to indicate predisposition (Ibid).

It also examined if the law enforcement agent or informant gave the defendant detailed instructions on how to carry out the criminal action. This is the so-called '*spoon-feeding*' indicator (Norris & Prokopczyk, 2015). The rationale behind this, is a similar one to the cases where the government provides the necessary means for the commission of the offense. A defendant who was practically incompetent to design and execute an offence would have little chances to get involved in a plot, if it was not for the logistical support of the agent provocateur. Additionally, the entrapment element is boosted if the criminal performance was driven by the *defendant's financial motivation*. Yet, the defendant's predisposition is lessened if the original motivation to the commission of the offence is driven by a strong financial interest (Ibid).

In cases where the *informants are rewarded excessively* by the government in the form of enormous payments, bonuses, law's leniency, favored treatment or dismissal of previous offenses, this supports the entrapment defense (Norris & Prokopczyk, 2015). In most operations the financial rewards are inevitable (Rowland, 1999). According to the Bureau's CHS manual, remuneration for services offered by the cooperating individual must be provided only after the mission has been accomplished (Fitzgerald & Coffey, 2014). The problem arises when the informant is being offered a huge amount of money. Large sums of money are provided by the government so as to be insured that the cooperating informants will not abandon the mission (Aaronson, 2017). However, in cases where the financial rewards are large, the co-operating witness credibility must be questioned (Rowland, 1999). That is why immense financial benefits may motivate the cooperating informants to maneuver the plot in such a way, so as to achieve a conviction at any cost.

*The informant's characteristics* may increase the risk of entrapment. If an informant with a charismatic personality is able to manipulate others or has been involved in controversial stings in the past, then the risk of entrapment is increased (Norris & Grol-Prokopczyk, 2015). Moreover, the credibility of the operation is doubtful if the informant has an aggravated criminal record and ties with the criminal world (Ibid). The same counts in cases where the informant continued committing crimes

or has been caught lying to his/her government handlers and officials (Ibid). At any rate, an informant with serious mental illness renders the credibility of the mission questionable (Ibid). The authority which an informant- with a criminal record- is granted, creates major reliability issues. In some cases, the informants may resort to illegal or criminal acts during their mission with the notion that they are entitled to do so (Schreiber, 2001).

If *the informant provided employment, housing or covered housing expenses* to an impecunious or unemployed defendant, then this weights against the defendant's positional predisposition (Norris & Grol-Prokopczyk, 2015). The logic that underpins this indicator is that a homeless and destitute individual would not have the practical ability to perform terrorism. Additionally, Norris and Grol-Prokopczyk (2015) categorize as an entrapment indicator *the informant's use and provision of alcohol or drugs*. If the informant offered alcohol or drugs to the defendant this increases the chances that the latter was prompted into making statements, which could be used in favor of his/her predisposition.

*Suspect evidentiary practices* may not per se be considered as direct proofs of entrapment (Norris & Grol-Prokopczyk, 2015). However, when present, they raise suspicions of entrapment, with the notion that that the government would not have a reason to resort in such a practice if the target was a highly predisposed and decisive individual (Ibid). Suspect evidentiary practices can be defined as these techniques that the law enforcement officials employ, in order to rebut the entrapment defense. Such techniques may include attempts to extract statements, which in the trial could be used as evidence of the defendant's predisposition (Ibid). Another practice, which undermines the transparency of the prosecution is the omission to record conversations whose content provides crucial evidence of the defendant's predisposition (Ibid).

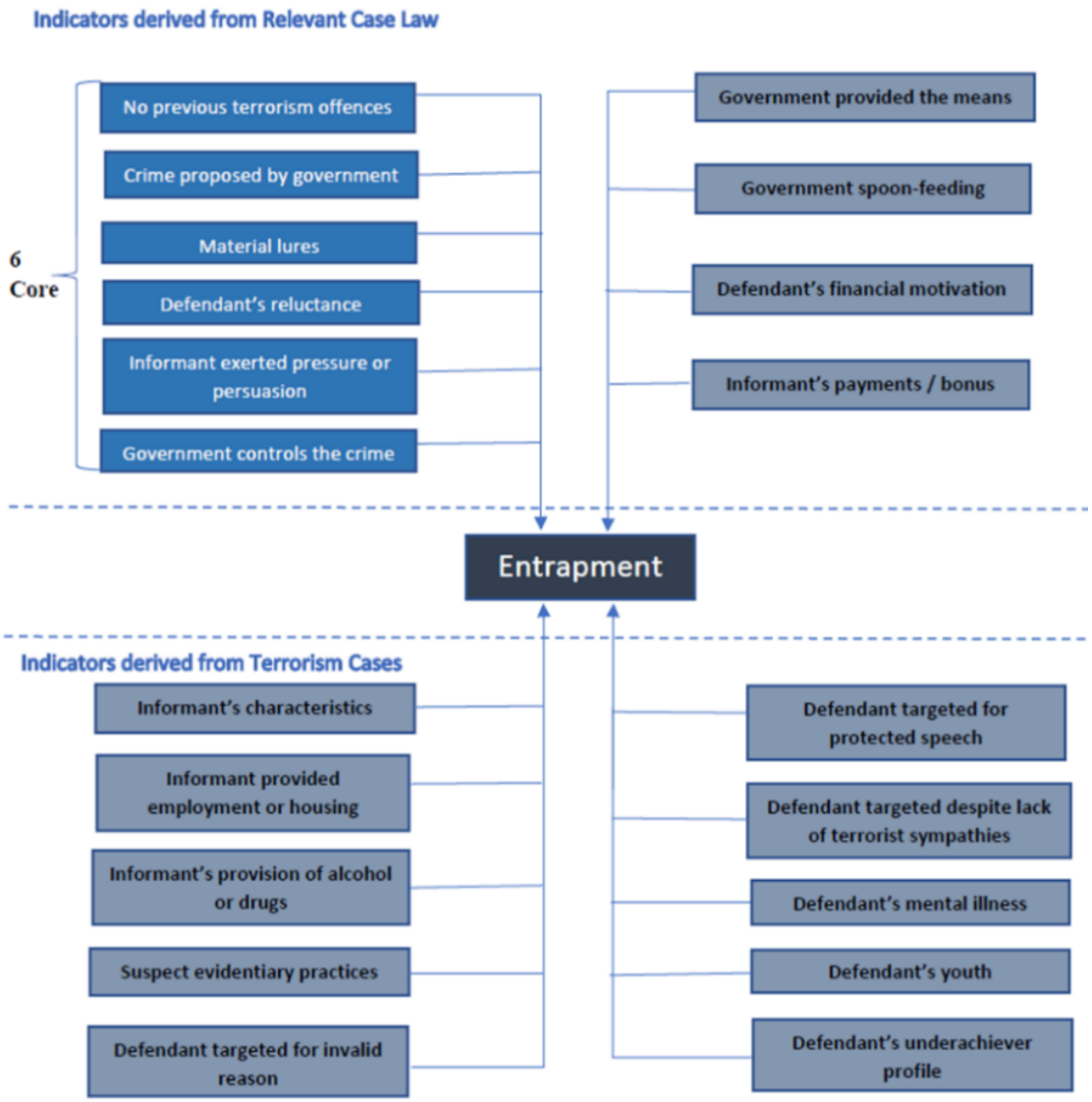
The *invalid targeting of a defendant* constitutes another entrapment indicator. If the target of an undercover operation is a law-abiding citizen and the government fails to offer valid justification for the targeting of the defendant then that raises the possibility of entrapment (Norris & Grol Prokopczyk, 2015). The same counts for the cases where the government created a plot based solely on the *defendant's protected speech* (Ibid). If the undercover operation was based exclusively on the defendant's worldview and political speech and was not accompanied by the defendant's venture to design and to materialize a terror attack, then concerns are raised whether the defendant was impelled to perpetrate a terrorist offence. (Ibid). No matter how detestable some assertions may be, when placed under the umbrella of protected speech, they should not be regarded as evidence of the defendant's predisposition (Sherman, 2009). Therefore, courts should not rule protected speech as equivalent to predisposition, when in the content of that speech is not indicated a planning of a terrorist act (Ibid).

Furthermore, another entrapment indicator is that the operation started while the *defendant lacked terrorism sympathies* (Norris & Prokopczyk, 2015). The chances an individual, who does not espouse terrorism views or is disinclined to extremist ideology, would design a terror attack on its own, are substantially small (Ibid). Therefore, that should raise entrapment suspicions.

Another indicator refers to *the defendant's mental ability.* An individual who faces mental problems or intellectual disabilities is considered more susceptible to manipulation and therefore more vulnerable to entrapment. Another indicator concerns *the defendant's young age.* The defendants who are 24 years old or younger are classified as young. Norris & Grol-Prokopczyk (2015) employed that classification based on the majority of responses in American opinion polls which perceived an individual as self-sufficient around the age of 24. It is essential to acknowledge that the defendant's youth can raise entrapment suspicions, since, in general terms, the younger a person is the more impressionable tends to be (Ibid). Especially, young individuals may be more vulnerable to manipulation by much elderly informants, who present themselves as more experienced, wealthy and successful (Ibid).

The last indicator is the *defendant's underachiever profile.* If the targeted person is unimpressionable, destitute, unemployed, has a low-paying job or still lives with parents or relatives, then these factors contribute to an underachiever profile (Norris & Grol-Prokopczyk, 2015). In general, as an underachiever can be considered a person that leads a passive lifestyle, who has little self-initiative and a small social circle (Ibid). This indicator raises concerns about the integrity of the governmental tactics, since underachievers who lack an intellectual capacity are normally more prone to manipulation (Ibid).

**Figure 2:** Entrapment Indicators based on *Norris & Grol-Prokopczyk* research (2015).



# Chapter3: Research Design

Among the plethora of methodologies, this study used a qualitative design based on a case-study approach. Robert Yin (1984, pp: 23) defines the case study "*as an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used*." The strength of the case study method lies in the fact that it allows the researcher to examine the given data on a micro-level (Zainal, 2007). In other words, case study methods rigorously put into the spotlight a single unit, with the aim to comprehend a larger category of similar units (Gerring, 2004). A unit is signified as a *spatially bounded phenomenon* which takes place in a given period of time (Ibid, pp: 342). Thus, in this study the patterns and evidence retrieved from the selected cases, were capable of shedding light into a wider phenomenon, which in the study at hand was the entrapment in post-9/11 FBI stings.

Generally, case studies are regarded as a vigorous research system when the researcher is in a need of a holistic and in-depth investigation (Zainal, 2007, pp: 1). Hence, the qualitative case study approach was deemed an effective way to study the complexity of undercover operations, because it enabled the research to delve into concrete patterns, key themes and to provide an overall in-depth analysis. Pamela Baxter and Suzan Jack (2008, pp: 554) prescribe that "*qualitative case study methodology provide tools for the researchers to study complex phenomena within their context*". The privilege that a qualitative case study approach offers is that it enables the researcher to investigate and delineate a phenomenon using a variety of data sources (Baxter & Jack, 2008).

However, before establishing the data sources it is important to justify the selection of cases and to illustrate the type of case study that this research adopted. This paper provided a multiple case study examination given that this type of study enabled the research to identify and compare the trends of the examined cases. This type of case-study was chosen because it enabled the research to describe a phenomenon and to explore the patterns within and between cases (Yin, 1984). The goal was to verify findings and patterns across the cases and formulate conclusions which are based on the comparisons of the cases. As already mentioned in the introduction, the selected cases are the following:

- **Case No1:** *Fort Dix Five* Terror Plot
- **Case No2:** *Newburgh Four* Terror Plot

The cases were picked from the database "*Trial and Terror*" which was created based on gathered data from thousands of pages of court records (Aaronson & Williams, 2020). The database, first designed by Trevor Aaronson, was funded by the Investigative Reporting Program of University of California- Berkeley and can be found on The Intercept website. In 2016, Trevor Aaronson with Margot Williams decided to upgrade the database and to enrich it with Bureau of Prisons data given that many post-9/11 terrorism defendants had already been released (Ibid). The cases which were incorporated in the database referred to any prosecutions after 9/11 that were categorized as international terrorism-related by the government of the US. The latest update in the database took place on March 16, 2020. The database indicates that since 9/11 until today, 337 out of 905 terrorism defendants, who were prosecuted by the US Department of Justice were caught up in FBI sting operations (Aaronson & Williams, 2020). From these 337 stings the vast majority (no: 290) involved informants (Ibid).

Even though the advocates of qualitative methods concur that an appropriate and non-random case selection is pivotal in a case study, there is no consensus, concerning which selection methods are the most valuable (Nielsen et al, 2016). This research attempts to conduct a typical case study as introduced by Seawright and Gerring (2008). As a typical case study is defined the study that *"exemplifies a stable, cross-case relationship*" and it can be taken into account as a *representative* one (Ibid). For the purpose of a typical case selection, therefore, this study made use of the database *Trial and Terror* (Aaronson & Williams, 2020). In the database, the most common and representative features of the FBI stings in the post-9/11 era are illustrated. Similarly, the selection of cases was grounded on these characteristics, which render them representative ones.

In particular, the chosen cases contained the most common charges met in sting operations after 9/11. These among others include material support, criminal conspiracy, firearms violations, threats, attempts or use of weapons of mass destruction and storage of explosive material (Aaronson & Williams, 2020). In the database it is indicated that a considerable number (n: 55) of individuals caught in FBI stings, were not affiliated with any terror organization (Ibid). The state with the greatest percentage of sting prosecutions is New York, which has gathered 31% of the total defendants of FBI stings, followed- with a substantial difference- by Florida with 12% (Ibid).

The cases were selected on the grounds of the aforementioned features, which render them typical ones. The cases that this research opted for, concentrated the most representative and common features of a post-9.11 FBI sting: apart from the fact that the cases gathered the most common charges met in sting prosecutions, they also involved informants with a mission to infiltrate individuals that

had zero previous connections with any organized terrorist group. Taking into account that the majority of stings in the aftermath of 9/11 have taken place in New York, this study opted for a close examination of the methods that the law enforcement deployed in the wider victim-area of the terror attacks of 9/11. The *Fort Dix Five* terror plot took place in New Jersey, which belongs to the wider metropolitan area of New York and the *Newburgh Four* in New York.

Apart from the place, the timing of the two terror plots played a pivotal role for the selection of these cases, given that they took place in the years when the Bureau cultivated the largest number of informants in its undercover operations since 9/11. Specifically, in the years 2006-2007, when the Case No1 took place, among the 63 stings of the Bureau only one did not involve informants, while from 2008-2009 when the Case No2 took place, from the 38 undercover operations 32 involved informants. Besides, all of the defendants involved in the cases were Muslim men, a target group which has been the mostly infiltrated in the Bureau's post-9/11 terrorism stings (Norris & Grol Prokopczyk, 2019).

Hence, the two cases were considered as typical ones because they delineated what is typical, normal or average in the post-9/11 stings and outlined the core trends that prevailed in them during the same period. The purpose of a typical case study is to signify a central propensity of a distribution, while its virtue lies on its capacity to represent characteristics which are common within a larger concept (Gerring, 2017). In other words, the value of this typical case study was embedded in the fact that though its "typicality", provided a reliable insight into a broader phenomenon which in the given study are the post-9/11 entrapment mechanisms of FBI.

Apart from their representative character, the selection of cases was based on a variety of other factors. The nature of the two cases is a controversial and contentious one, as both have been a subject of persistent criticism by the media, academic circles, social justice activists, human rights organizations and the wider civil society. These actors have raised doubts concerning the transparency and rectitude of government's prosecution as well as the integrity of the undercover operations' tactics. Specifically, among the themes that monopolized the dialogue regarding these stings was the issue of informants. In both cases, the attention of numerous media reports was attracted once the trials took place and more details about the informants' depravity were made public. Therefore, a significant factor that led to the decision to scrutinize the two cases is that both involve informants as key sources of intelligence, whose rectitude has been doubted.

Another selection criterion is that both cases belong to high-profile terrorism prosecutions that took place though counterterrorism stings after 9/11. The cases have been marked by government

officials as criminal prosecutions of great significance and have been depicted as a triumph of the domestic counterterrorism enterprise. In both cases, press conferences were held immediately after the arrests, where a propensity of officials and law enforcement agents to express a '*gotcha*' feeling prevailed. The government officials emphasized on the magnitude of the security threat that was reversed thanks to successful counterterrorism operations. Especially, the night when the arrests of the four men in '*Newburgh Four*' sting took place, there were media channels that were monitoring the arrests, apart from the roughly 100 FBI officials who were on the scene. Hence, together with other factors, the selection of cases was grounded on the significant attention that was given to them by the government and the media.

As previously mentioned in order to provide an answer to the extent that the cases constituted an example of entrapment, the case analysis was based on the conceptual model of entrapment as provided in the research of Norris and Grol-Prokopczyk (2015). Among other issues, the two authors remarked that in order to determine whether each case is indeed a case that the entrapment defense was designed to prevent, a thorough analysis of the presence of the twenty entrapment indicators together with the specific facts of each case should be conducted (Ibid). Taking into account that there is not a common consensus regarding the entrapment doctrine in the American legislation, the twenty indicators that were retrieved from the wider American case law, provided a credible model able to ascertain, the extent that the entrapment element is existing in the examined cases. Hence, in this study the 20 entrapment indicators constituted the cornerstone of the case-analysis. This study attempted to verify the presence (or not) of the 20 entrapment indicators in order to demonstrate the extent of the government's aggression in the domestic war on terror and its contribution to the terror threat.

Norris & Grol-Prokopczyk (2015) point out that not all of indicators are of an equal importance and they do not absolutely guarantee entrapment but rather they increase the likelihood of it. The indicators do not per se provide a certainty but instead a *rough estimation of the extent of facts and allegations that would support the entrapment defense* (Ibid, pp: 627). The first ten indicators were retrieved from relevant case law, whereas the rest were derived from terrorism-related cases. The first six indicators were classified as the '*core*' indicators, because they are most commonly used by American courts in order to determine the presence and applicability of the entrapment defense. Besides, the 20 indicators appeared optimal to conduct the case analysis, given that they incorporate both the objective and the subjective approach of the entrapment doctrine.

Concerning the data, the research was based on multiple data sources. Aiming to enhance its credibility, the analysis focused on first-hand accounts and at the same time incorporated indirect and

second hand information. The most valuable and reliable way to gain empirical insight into counterterrorism policies is through a direct observation and thus, primary sources constituted a useful tool for the achievement of the research goal. For this reason, primary sources such as trial transcripts, criminal complaints, indictments and affidavits were deeply scrutinized for the purposes of the analysis. Moreover, the recorded conversations between the informants and the defendants- a considerable number of which has become public- provided first-hand empirical insight into the cases.

Even though, a considerable number of these documents could be found on the Internet, not all of them were available. That is why a subscription to a PACER account was deemed necessary, given that the account enabled a complete access to the documents and to the court records of federal prosecution cases. However, it should be stressed one limitation: even though there is a lot of information available, the transcripts were not expected to cover the whole spectrum of the undercover plots. That is because in the case of sting operations the files were created with the aim to facilitate and to prove a criminal prosecution, rather than provide a more objective approach of the activities of the accused. While for instance, the government reports are to a great extent reliable, the objective character of them cannot be guaranteed. That is why advocacy papers, as conducted by the lawyers of the defendants were taken into account.

In order to cover the whole spectrum of analysis the role of the secondary sources was complementary and expected to give a valuable insight into the research question. Data was collected by media sources, governmental documents, academic articles, academic books as well as documentaries. Moreover, reports conducted by humanitarian organizations, significantly, assisted the analysis, since they gave in-depth information and provided valuable data on aggressive counterterrorism practices. For instance, the report "*Illusion of Justice",* conducted by HRW (2014), in addition to the plethora of primary information, offered a precious statistical analysis as well as an insight to original data. The report constituted a valuable tool for the research.

The following chapter presents a thorough examination of the evolution of the plot of the two examined cases.

# Chapter 4: Case Studies

## 4.1 Case No1: *Fort Dix Five Terror Plot*

| Defendants | Informants |
|---|---|
| Mohammed Shnewer | Mahmoud Omar |
| Serdar Tartar | Besnik Bakalli |
| Dritan Duka | |
| Eljivir Duka | |
| Shain Duka | |

The plot started on January 2006 in New Jersey and lasted for sixteen months. One of the defendants, Mohamad Shnewer, visited an electronic retail store in order to convert a video into DVD. The store's clerk, who detected suspicious content in the video, immediately called the federal police and characterized the content as "*disturbing"* (USA vs Agron Abdullahu, 2007). The video included ten Muslim men in their early 20's, among which the five defendants: Mohamad Shnewer, Serdar Tartar and three brothers Dritan, Eljivir and Shain Duka. The videotape depicted the men shooting with firearms in a firing-range in the Pocono Mountains in Pennsylvania. In the video was recorded a voice pronouncing the phrase *"Allahu Akbaar"/ "God is Great"* (Ghalayini, 2016). Immediately, the FBI together with the JTTF opened an investigation.

The FBI employed an Egyptian native, Mahmoud Omar, who knew personally Shnewer as he was a customer in his family halal grocery store (Hussain & Ghalayini, 2015). Omar's acquaintance with Shnewer offered a *security advantage* to the Bureau, since Omar's presence would not arouse Shnewer's suspicions concerning the undercover sting (Mobley, 2012). Omar started making frequent visits to the grocery store, where he befriended Shnewer. They primarily cultivated discussions about religion and the wars in Afghanistan and Iraq (Hussain & Ghalayini, 2015). The informant officially started recording the conversations with Shnewer on March 2006 (USA vs Mohamad Shnewer, 2007). Until the end of the plot, the number of conversations that Omar had recorded through meetings and telephone calls exceeded 200, while the hours of the conversations amounted to 300 (Berrigan & Knestrick, 2016).

The conversations reveal that Shnewer was receptive to violent ideas. At the end of April, he downloaded a DVD, where an extremist was inviting the viewers to join violent jihad and asked the informant to watch it privately (USA vs Shnewer, 2007). In May, the defendant gave Omar his laptop with two files that were saved in the hard drive. The informant provided the files to the Bureau and to JTTF (Ibid). The files named "19" and "VTS_01_1" respectively included the testament of one of the terrorists that took part in 9/11 attacks and speeches of Osama Bin Laden and of other extremists (Ibid).

Omar was not the only one who provided his services as an informant in the plot. The Bureau hired Besnik Bakalli, an Albanian immigrant, whose main task was to infiltrate the Duka brothers. Bakalli's first contact with the brothers took place on July 2006, in Dunkin Donuts in Cherry Hill, where the brothers used to spend time on Fridays after praying in the local mosque (Hussain & Ghalayini, 2015). By talking in Albanian loudly on the phone, Bakalli tried to approach the brothers, who in their turn introduced themselves to him (Ibid). Bakalli presented himself as someone in financial need and emotional deadlock who was seeking religious guidance. He soon cultivated a close bond with the brothers (Ibid). The same month Eljivir Duka told the informant that the brothers together with Shnewer possessed firearms which were not able to legally use in firing-ranges, because they were illegal residents (USA vs Shnewer, 2007).

Throughout the course of the plot, the brothers periodically expressed their outrage for the US military invasions and for the aggressive penetration of the law enforcement into the Muslim community after 9/11. The brothers' disapproval of the American policies is reflected on the statement Eljivir Duka made in a conversation regarding the US military invasion in Kosovo: *"Because when America comes in, it will leave you without religion, without honor, without anything"* (146-9 pp: 21). The Dukas were, also, present at times when Omar and Shnewer were watching radical videos, whose content they occasionally approved. Remarkably, the brothers together with Bakalli watched the radical speech *"Constants of the Path of Jihad"* of the radical cleric Anwar al-Awlaki, who advocated attacks against the American army (USA vs Eljivir Duka, 2011). A surveillance tape recorded Shain Duka embracing al-Awlaki's speech with the following statement: "*This is the real truth, straight up, no holds barred!"* (Shane, 2008).

On August, Omar asked Shnewer about a terrorist target and the latter indicated the Fort Dix army base in NJ (USA vs Shnewer et al, 2008). In their private conversations, Shnewer reported that the rest of the defendants were participants in a group aiming to execute a terror-attack with weapons, RPGs at least seven jihadists (Ibid). He also maintained that Serdar Tartar would provide the maps for the attack from the delivery pizza restaurant that his father owned. On August, Shnewer told Omar that

Tatar and the rest of the brothers were ready to proceed with the plan (Ibid). Nonetheless, throughout the range of the recorded conversations, nowhere do the brothers mention their involvement in the alleged attack.

At the end of August, Shnewer and Omar discussed about the guns that should be acquired for the alleged attack, while the defendant informed Omar that he had a connection with Agron Abdullahu, a Serbian sniper from Kosovo, who could provide further equipment (Ibid). The two men also drove to military bases of Fort Dix and Dover Air Force, with the aim to monitor spots (USA vs Shnewer 2007).

At the end of October, Omar started requesting Serdar Tatar to bring the map of Fort Dix army base (USA vs Dritan Duka, 2007). However, for a long period Tatar procrastinated in bringing the map to Omar, who was persistently asking for it. Instead, Tatar came in contact with an officer from the PPD and reported that he had reasonable suspicions that Omar was conspiring a terror attack (Ibid). The Department then alerted the FBI agents, who come in contact with Tatar after many weeks. On November 28th, Tatar provided the map to Omar and stated the following: "*I'm gonna do it. Whether you are FBI or not I'm gonna do it (...) I'm doing it in the name of Allah."* (USA vs Shnewer et al, 2008). When FBI agents interviewed Tatar on December 7th, he falsely reported that he had not given the map to Omar and that he knew none of the defendants (USA vs Shnewer et al, 2008).

On February 2007, the five defendants together with Agron Abdullahu and the informants arranged a holiday trip to the Pocono Mountains (USA vs Dritan Duka, 2007). During the trip, the Duka brothers shot with the firearms and semiautomatic rifles that Abdullahu had brought illegally. In the trial, these shootings were depicted as 'military-style training' (USA vs Mohamad Shnewer, 2011). The defendants engaged in other activities such as skiing, paintball and horse-riding. At the end of the same month, Dritan Duka invited Omar to play paintball with him and his brothers, a game that would also be characterized as a 'training exercise' by the government officials (USA vs Dritan Duka, 2007). That day, Dritan and Eljivir asked Omar if he knew someone who could provide them with AK-47 rifles and a handgun for their cousin (Ibid). Omar asserted that he had a friend who owned a gun store in Maryland and who could make good offers (Ibid). On March, Dritan asked Omar again for an AK-47 and a Kalashnikov. Some weeks later, Omar provided a list that in reality had been compiled by the Bureau. Dritan noticed that some of the enlisted weapons were heavy and strictly regulated in the US, but Omar reassured that his friend was a reliable source (Hussain & Ghalayini, 2015).

On May 7th, when the transaction of the weapons took place the police invaded at Omar's apartment and arrested Dritan and Shain. The same time the rest of the defendants got arrested in other

locations. The three brothers were sentenced to life imprisonment for conspiring to murder members of the U.S. military, for attempting to possess machine guns in furtherance of a crime of violence and for possessing firearms by an illegal alien (aka Abdullahu) (DOJ, 2008). Shnewer received a life imprisonment sentence for plotting to kill members of the American military personnel and for possessing AK-47 and semi-automatic assault weapons, while Tatar was sentenced to 33 years in prison for conspiring to murder members of the US army (Ibid).

### 4.2 Case No2: *Newburgh Four Terror Plot*

| Defendants | Informant |
|---|---|
| James Cromitie | Shahed Hussain |
| David Williams | |
| Onta Williams | |
| Laguerre Payen | |

The plot involved a Pakistani informant, named Shahed Hussain, who was recruited by the FBI with the task to penetrate into the Muslim community and to infiltrate possible 'would-be' terrorists. Under the auspices of the Bureau, Hussain was sent in one of the most unprivileged towns of NY, Newburgh. With the pseudonym "Maqsood" he portrayed himself as an affluent businessman from Pakistan. He was visiting the town with luxurious cars and particularly targeted the Masjid al-Ikhlas mosque (Aaronson, 2013). As his FBI handler Robert Fuller confirms, he visited the mosque twelve times during a nine-month period (United States vs Cromitie, 2013).

On June 3rd, 2008, the informant met with James Cromitie for the first time in the parking lot of the Masjid al-Ikhlas mosque. The men primarily discussed about the conflict in Afghanistan (USA vs James Cromitie et al, 2011). The defendant expressed multiple grievances regarding the inequality and injustice that the Muslims were suffering. He also stated that he wanted to revenge America and that he wanted to die like a *"shahid"* (martyr) (Ibid). The first five meetings which took place in the plot remained unrecorded (USA vs James Cromitie et al, 2011). In these meetings, the conversations of two men principally focused on Islam, while Cromitie systematically expressed his anti-American views (Ibid). In the third meeting, the informant allegedly confessed to the defendant that he had connections with J-e-M, a Pakistani terrorist organization, which belongs to the USA's watch list. The defendant's radical rhetoric gave the green light to the Bureau to officially open an investigation in

September 2008. The investigation took the code name "*IT-Sunni Extremists"* and eventually was denominated as "*Operation Redeye"* due to the unprecedented use of videotaping in the meetings (Ibid).

The recorded meetings reveal that Cromitie's world revolved around bigotry, anti-Semitic ideas and hatred against America. Indicatively, his prejudice and detestation against Jews reached its climax with the following phrase: "*… the worst brother in the whole Islamic world is better than ten billion Yahudi…I will kill ten Yahudis, and then I'll have to think twenty thousand times before I kill one Muslim. You understand?*" (102-E1-T:7).

Yet, the idea of a terror attack became prevalent five months after the first meeting. In November, Hussain revealed that J-e-M embraced violent jihad as the exclusive path to justice and peace-making (107-E1-T). Besides, he stated that he could provide Cromitie with guns, missiles and any other weapon of his preference, through containers he was supposedly importing to the U.S from China. (Ibid). At the end of the month, Hussain requested Cromitie to join him in "*Muslim Alliance in North America"* conference, which would be held in Philadelphia. The two men made a four hours trip to Philadelphia with a Hummer that the FBI provided (Aaronson, 2013). As the conversation unfolded, Hussain asked Cromitie if he could set up a team of recruiters (108-E2-T: 2). When Cromitie responded that he lacked money, the informant answered that he would support financially the plan (108-E2-T). Cromitie, thereupon, vaguely declared that he would put a plan together: "*I got this feeling… I'm gonna run into something real big'. I just feel it, I'm gonna try to put a plan together. What type of plan? I don't know yet. I'm gonna put a good plan together"* (108-E4-T:1,2).

In day of the conference, Cromitie rhetorically expressed his desire to engage in a terrorist act. He clarified that unlike his partners who would exclusively resort to terrorism for financial rewards, in his case the perpetration of the terror act would be exclusively driven by the cause (Ibid). Among other statements he declared that he was considering executing an attack since his childhood, that he wanted to marry a Pakistani wife, who would support violent jihad and he called Bin Laden his brother (109-E1-T, 109-E2-T 109-E5-T). Concerning the attacks, the informant promised that the financial support would be provided by J-e-M (Ibid). The two men arranged to employ recruiters and to attack two synagogues in NY (109-E3-T, 109-E4-T). On the way back from the conference, they discussed primarily about the weapons needed for the attack (110-E1-T).

Whilst in the next meeting Hussain enumerated the three issues that had been discussed (the targets, the equipment and the recruitment of perpetrators), it became apparent that Cromitie had done zero recruitment (112-E1-T: 2). Cromitie clarified that his so-called team would not participate in the

mission and that he would make another attempt to set the plan together before he would call it off (112-E2-T, 112-E4-T). After a week, the informant stressed the necessity more accomplices to get involved in the operation and when he asked Cromitie about the targets, the latter picked Stewart Airport and a synagogue (113-E1-T, 113-E5-T).

After December the two men did not meet for eight and a half weeks. Hussain told Cromitie that he would visit NY, in order to coordinate with J-e-M members (USA vs James Cromitie, 2013). Meanwhile, the defendant was supposed to recruit people and to monitor the Stewart Airport and the synagogue. When the two men eventually met, Cromitie once again had done zero progress concerning the weapons and the observations of the targets (Aaronson, 2013). However, in a rhetorical level he continued to make grandiose statements about his willingness to perpetrate an attack. At Hussain's urging the two men conducted surveillance at Stewart Air Force Base (USA vs James Cromitie, 2013). During the monitoring, Cromitie expressed particular enthusiasm with the idea that the airplanes would be exploded one after the other, but Hussain insisted more Muslims be recruited to act as watchdogs (115-E2-T, 115-E3-T).

After February, the plot passed into a second period of inaction, which lasted circa six weeks. During that period the defendant interrupted his contact with Hussain. Cromitie did not reply to the informants' phone-calls until April 5th, when he explained that he was in a financial need and he was unemployed. When Hussain offered him 250.000$, Cromitie agreed to meet him (116-E3-GX). Two days later, Cromitie visited Hussain's house in Newburgh, where he continued to express his hatred against America: "*You think the World Trade Center was something? That was nothing…Don't worry, the worst is yet to come"* (116-E3-T: 2). The two men talked about the equipment and the procedural state of the attack. (Ibid).

Following Hussain's multiple urgings for the recruitment of more plotters, in April Cromitie introduced David Williams, whose mission was to act as lookout in Stewart Airport attacks (Aaronson, 2013, 118-E2-T). The men came up with code words: planes were birds, rockets were beans, phones were eggs etc. (119-E2-T:2). By the end of the same month, two more persons had been recruited. The first one was Onta Williams and the other one was Languerre Payen. On April 28th, the four defendants met at the informant's house and designed the way the terror attacks would be launched (USA vs James Cromitie et al, 2009).

The final stage of the plot took place on May. The five men selected appropriate spots from where the stinger missiles would be launched against Stewart Airport. The informant drove the defendants in a storeroom in Connecticut, where the FBI had placed two fake stinger missiles and three

IEDs that would be used in the alleged attacks (USA vs James Cromitie, 2013). The night before the attacks the conspirators met at Hussain's house. They examined the final plan of the operation and afterwards, they dined in a restaurant which Hussain called as a "*last super"* (Aaronson 2013). That last meeting remained unrecorded. The next day the four defendants acted according to the plan. Cromitie placed one bomb in a Pontiac parked outside the Riverdale Temple and other two bombs in a Mazda outside Riverdale Jewish Center, while the rest defendants acted as lookouts. Some minutes later, the four defendants got arrested (USA vs James Cromitie 2013).

# Chapter 5: Analysis of Entrapment Indicators

- **No Previous Terrorism Offenses**

**Fort Dix Five:** The three of the defendants cannot, by all accounts, be considered as law-abiding citizens. The Duka brothers were illegal residents of the US. Apart from their illegal immigration status, the brothers, possessed minor criminal records, which principally involved drug charges and multiple road traffic offenses (Raston, 2007). Despite their minor criminal background, the brothers had no record of terrorism related offenses. Mohamed Shnewer and Serdar Tartar were in general law-abiding citizens before the two informants entered the scene. The five defendants indeed embraced the views of radical Islam. Particularly, Shnewer was a sympathizer of fundamentalism and was more receptive to idea of terrorism. Notwithstanding their radical sympathies, none of the five defendants had a past of terrorism-related charges nor were they affiliated to any extremist terror organization**.** Hence, the lack of previous participation in the same type of crime, lessens their predisposition towards the criminal act.

**Newburgh Four:** The Court of Appeals recognized that the four defendants had not engaged in an analogous offence prior to the government's inducement (USA vs Cromitie et al, 2013). The four defendants were not law-abiding citizens, since they had been previously imprisoned for law violations. Cromitie had a criminal record of 27 arrests, among which many involved drug offences (Baker, 2009). He served 12 years in prison for selling cocaine to an undercover officer (Baker 2009). Likewise, David Williams had been imprisoned on drug and weapon possession charges and was released just a year before taking part in the terror conspiracy. Onta Williams had been jailed for drug dealing, while Languerre Payen had been imprisoned for shooting with a BB gun two sixteen-year-olds (Ibid).

Despite the defendants' aggravated criminal historical past, none of them had participated into criminal activities related to terrorism. Nevertheless, the jury contended that the revengeful and extremist declarations Cromitie made through the course of the plot, proved his inclination to design a terror attack (Ibid). Statements such as the following: *"I want to do something to America", "I want to die like a shahid (martyr)"* "*I have been wanting to do that since I was 7*" "*I'm a soldier here, though, but not for America"* were perceived as indicators of pre-existing design of the terror offence (Ibid). In this study it is argued that such statements do not reflect a previous practical design but rather

they belong to the realm of grandiose statement's Cromitie occasionally made. The notion that the defendant's predisposition is proven though his/her historical background fails, since the defendants had zero practical involvement in terrorism-related offences.

- **Government proposed the crime**

**Fort Dix Five:** Despite the fact that Shnewer is the one who suggested the Fort Dix army base as a potential target, the idea of the criminal activity is emanated by the informant. The initial conversations between the two men revolved around politics and religion. Gradually the informant attempted to take advantage of these topics by prompting Shnewer to resort to violence. In a videotaped conversation on August 1st, where the focal point was the conflict in Chechnya, Omar attempted to induce Shnewer to take an active action through violent jihad (HRW, 2014) Particularly, when Omar asked Shnewer in which way they should react to the conflict the latter answered that the best way was to pray to Allah (Ibid). Then the informant tried to stimulate him: *"Should we pray only, Mohamed?"*. Shnewer gave different answers and the informant kept urged him to opt for a violent reaction. (Ibid). Only after Omar's repetitive promptings, did the defendant suggested Fort Dix army base: "*If you want to do something there is Fort Dix and I assure you we can hit that easily"* (Ibid).

**Newburgh Four:** Nowhere in the recorded conversations Cromitie appears to propose first the criminal design. Instead, Hussain was the one, who indirectly pushed the defendant to get involved in an attack. In the first recorded meeting where Cromitie expressed his hostility towards Jews, Hussain seized the opportunity to prompt him to go a step further (101-E2-T). Hussain first suggested violent jihad as an answer to his interlocutor grievances: "*Insha 'Allah, if you, brother, if you really have to do something, you have to do something in jihad, and try to do something"* (101-E2-T: 2).

In the meeting on October 19th, 2008, Hussain indirectly proposed the option of a more aggressive reaction, with a narrative, which reflects an endeavor to stimulate emotionally the defendant and to sanctify the idea of violence. Specifically, Hussain openly asked Cromitie if he would, ever, go more aggressively for the sake of Islam by stating: "*And when I, when I see these, these Mushriks, these Yahud, killing the Palestines, of killing Muslims, of killing people in, in Iraq or in Afghanistan, one of our brothers, I always think about going for a cause, you know? For a cause of Islam. Have you ever thought about that, brother*?" (102-E1-T: 9). Ten days later, Hussain again asked the defendant if he would ever opt for violent jihad by saying *"Allahu Akbar"* (103-E1-T).

Through the passage of time, Hussain's dynamic attempt to induce Cromitie to participate in the conspiracy is observed. On November 12th, 2008, when Cromitie confessed that he was planning to quit his work, Hussain divulged that he needed him for something else (106-E2-T). Remarkably, in order to make his suggestion more appealing, Hussain invoked the will of God: *Oh, brother, Allah subhana wa tala* (the most high), n*eeds you I don't need you."* (106-E2-T:2). Moreover, on the 14th of November 2008, it became obvious that Hussain tried to put the criminal design into action when openly asked Cromitie to join J-e-M (107-E2-T).

In the same manner, Hussain was the first to ask Cromitie to pick targets for the alleged attack: "*what do you think you could do, the best targets, you will have in your mind? If you were to send a message?"* (109-E3-T:2). The phrase reveals that the question was asked in a hypothetical way. When Cromitie stated that he was considering the Washington Bridge as the best target, Hussain tried to change his mind, by stating that such a target was not feasible. Hussain's endeavor to activate the conspiracy is reflected by the fact that he proposed another target similar to the target of the Mumbai terror attacks and particularly emphasized the Jew Center (Ibid).

- **Government pressure or persuasion**

**Fort Dix Five:** The informants exerted substantial pressure to the defendants in an effort to implicate them into the conspiracy. Omar's persistence to create a conspiracy is indicated by the pressure he put on the defendants to participate in the plot. Shnewer referred to Serdar Tatar and to the names of Duka brothers, only after Omar pushed him substantially to bring more co-conspirators to the plot. During the course of the plot, Shnewer was constantly reassuring the informant in their private meetings that the three brothers were 'ready and on alert' to participate in the mission. Nonetheless, the brothers' active involvement was never becoming apparent. Omar, then, started pushing Shnewer to bring the brothers in the plot. In one videotaped conversation, he openly stressed that Shnewer and himself were not enough for the alleged conspiracy: *"I was thinking you and I are not enough. Are you sure of the Dukas?"* (Ghalayini, 2016, 5:05). Indicative of his compelling effort is that between August and September 2006, the informant asked Shnewer about Eljvir Duka's involvement almost 197 times (Hussain & Ghalayini, 2015). Similarly, Omar was seeking tangible evidence of Serdar Tatar's involvement, since he was repetitively asking him to provide the map of the army base. The pressure Omar exerted on Tatar was so repetitive, that the latter reported the informant to the police as a "could-be" terrorist.

At the same time, the second informant, Besnik Bakalli systematically attempted to persuade the Duka brothers that the violent jihad was a sacred duty. In a video, Bakalli is recorded condemning the brothers' apathy: "*You learn the Koran, you going by the Koran and you not fighting for Muslims. You still questioning yourself why you are not fighting for Muslims?"*. (Ghalayini, 2016, 3:29). When the defendants stated openly that they had nothing to do with violent jihad, Bakalli in a loud tone, kept pressuring them: "*Don't say that because when our elders, have gone to fight how can we just sit and watch?*" (Ibid, 3:49). Despite that pressure nowhere in the recorded conversations did the brothers consented to participate in a terrorism scheme.

**Newburgh Four:** Throughout the whole spectrum of the plot, Hussain exerted sustained pressure to Cromitie and employed several coercion techniques. It is remarkable that in his testimony, Hussain admitted that under the guidance of the FBI he put pressure on Cromitie to launch an attack: *"The FBI told me to go a little bit harder on him, and put some pressure on him, see where he comes out given the opportunity."* (USA vs James Cromitie et al, 2013). Cromitie's statements during a conversation in the middle of November, revealed his disinclination to violent jihad. Among other things, he stated that that Allah did not bring him in the world to fight a war (107-E1-T). Hussain then, made a distinct effort to coax him by stating: "-*Allah did not bring you here to work for Walmart too"* (107-E1-T:2). Hussain's pressure to persuade Cromitie reached its peak when the latter abandoned the mission for over a month at the end of February 2008. The informant tried to reconnect with him, by persistently calling him and asking for him in the Masjid al- Ikhlas mosque (Heilbroner, 2014).

Hussain systematically employed the will of God as a supreme cause for the perpetration of the attack. That repetitive pattern can be considered as the primary persuasion technique in this plot. Hussain systematically was mentioning that the attack was dedicated to Allah and that the nature of the mission was a sacred one. Some of the phrases he used are the following: "*Allah, has more work for you to do."/ "You have to follow the cause of Allah." / Oh, brother, Allah, Allah subhana wa tala needs you I don't need you"/I am not recruiting you I am not giving you anything except Allah"* (107-E1-T, 102-E5-T, 106-E2-T, 129-E2-T:2). In these phrases, Hussain's attempt to justify and purify the nature of the offense is mirrored.

- **Material Incentives**

**Newburgh Four:** Cromitie had been offered not only money but also a business and a Mercedes Benz in "*a year-long campaign of nagging, pursuit, and temptation"* as the Chief Judge, Dennis Jacobs noticed (USA vs James Cromitie et al, 2013). Additionally, Hussain offered 250.000 $ to Cromitie, a barber shop, a BMW and also a two weeks holidays in Puerto Rico, the expenses of which would be covered by J-e-M (Ibid). It is important to mention that Hussain testified that he did not offer money and the word "250.000 $" was a code word for the mission. However, afterwards he admitted that neither Cromitie was aware of such a code word nor the FBI officials, since that word was never included in his list of code words (USA vs Cromitie, 2013). The Judge McMahon confirmed that there is no doubt that the informant offered Cromitie a quarter million dollars as an incentive for his participation in the mission (USA vs Cromitie, 2013). Moreover, the financial rewards were decisive for the recruitment of the rest defendants. In a recorded conversation, Cromitie confirmed that the participation of the rest of the defendants in the plot would be driven by the promise of a monetary reward: *"They would do it for the money. They're not even thinking about the cause"* (109-E2-T: 4). It is remarkable that David Williams got involved in the plot only after Cromitie promised him a financial gain (Rayman, 2011).

- **Defendant's Reluctance**

**Fort Dix Five**: As mentioned in the previous chapter, nowhere in recorded conversations did the Duka brothers express a willingness to participate in an alleged attack. Yet, there are indications that they were remarkably reluctant to the idea of violent jihad. In a videotape, Dritan reacted to Bakalli's inducements for violent action by stating: "*we have nothing to do with that"* (Ghalayini, 2016, 3:29). At the same time, Eljivir directly answered: *"I will tell you straight up, we don't have the b***s to do that. /We are not gonna do nothing"* (Ibid). It is also crucial that less than a month before their arrest, the brothers made statements which indicate that they were not eager to engage in violent actions. Particularly, on April 2007, Dritan Duka made comments that suggested his disinclination to execute a terror attack: *"If you try and help the Muslims, they call you a terrorist… You are afraid to even give money, brother. To help children and the ones that, that are suffering. (...)`Be careful what you say'. . .. Because they put you in jail for no reason, man... for no reason. You say something. In jail"* (Dritan Duka vs USA, 2015). In the same conversation, Dritan further explained to Bakalli, that the meaning of jihad was non-violent and maintained: "*the biggest Jihad for us here in America is to spread*

*Islam…That is war, believe me. Jihad is not just, like we say, to go fight. No. People misunderstand it"* (Ibid).

Indeed, on many occasions, the brothers together with the rest of the defendants, engaged in discussions concerning weapons. In a conversation on February 6th, 2007, Abdallahu was describing to the defendants and to the two informants, different ways to make homemade bombs. Then one of the informants, Bakalli, asked him how he knew so many things about bombs. The latter answered that he wanted to have a *"fighting chance"* in case someone would turn against him and that he did not intend to hurt anyone, not even animals (146-11 pp: 4). These conversations, therefore, cannot prove the brothers' genuine involvement in the conspiracy because such conversations never took place on the grounds of a concrete terrorist scheme.

More importantly, the defendants' unwillingness to launch a terror attack became more apparent when Omar gave the list of weapons to the brothers. When Dritan Duka noticed that among other weapons, there were some heavy military ones, such as RPGs he questioned the reliability of Omar's source and stated: "*I got five kids, so I don't wanna go down. People catch me like they think I'm a terrorist"* (USA vs Shnewer, 2007, p.g: 24). In that phrase, it is indicated that the brothers were disinclined to conduct any terror offense, but instead they wanted the weapons for personal use. Additionally, when Omar delivered the weapons in the night of the arrest, Dritan Duka commented: "*Now we don't have to wait in line to shoot in Poconos."* (Hussain & Ghalayini, 2015). That statement reveals that the weapons had not been ordered for the purpose of a terror attack but instead for a personal use.

Even though, Shnewer ostensibly seemed the most decisive to go ahead with the scheme, many times he failed to implement what had been arranged and communicated with Omar. Shnewer, systematically disregarded Omar's instructions to monitor Fort Dix base or to train himself in making bombs (Harris, 2011). He had also been deprecated by Omar, for not doing enough for the evolution of the mission. The recordings that were played on the trial, prove that Omar blamed Shnewer for his procrastination: "*Mohammed you keep prolonging it"/ "We've been talking about this matter for three months" "Start taking some steps. That's it!"* (as cited in Martin, 2008:1). Serdar Tartar was constantly objecting Omar's repeated attempts to give the map and was also expressing a fear that he would get deported. (USA vs Shnewer, 2007). The fact that he even alerted the police undermines his decisiveness to participate in the crime.

**Newburgh Four:** The grandiose statements that Cromitie made throughout the course of the operation were interpreted by federal officials as irrefutable evidence of his inclination and predisposition to engage in violent jihad. On multiple occasions Cromitie made vindictive and bloodthirsty comments like the following: *"I have to make some type of noise to let them know"/Oh, you don't want to calm down, America? Okay. Maybe we need to give you something else. This time a little bigger."* (109-E3-T: 9, 11). However, his decisiveness to execute a terror attack belong to the rhetorical sphere rather than to the practical one.

When zooming into the plot, it is revealed that Cromitie systematically expressed his unwillingness to proceed with the operation. Once Hussain asked him if we would ever go for jihad, his response was that *jihad* should not be held because of anger but in favor of God (*"alhamdulillah"*) (101-E2-T). He as well added: *"if you kill one human being is like you kill the whole human kind"* (101-E2-T: 3). Cromitie clarified that he did not want to be misinterpreted as a terrorist: *"I think we need peace…Sometime we got to go answer the enemy in a different way. It's, like that, you know. Don't look at it like I wanna be a terrorist or something"* (102-E1-T: 9). Another time when Hussain employed the will of God as a supreme cause for the perpetration of the act, Cromitie answered clearly that Allah did not bring him in the world to fight a war (102-E1-T).

When Cromitie agreed to engage in the criminal enterprise, his decisiveness gradually declined and was replaced by a state of reluctance and procrastination. In December, Cromitie's inclination to step back became mostly apparent when he failed to make recruitments and clearly stated that the plan was not easy and that his mission had not come yet (112-E2-T). During the plot, Cromitie was constantly failing to perform the tasks he had coordinated with the informant. Indicative of his inaction are the statements he made on February 23rd, 2009: "*I am thinking about it. I have to think about it… I guess everything is down the drain now/We'll see/ I just dropped everything"* (114-E1-T:3).

Cromitie's reluctance to proceed with the plan, reached its peak during March 2009, when he cut off any contact with Hussain. For a six-week period Cromitie refused to respond to the informant's phone calls. The defendant, also, deleted Hussain's phone messages (Spuznar, 2017). When Cromitie eventually answered to Hussain's call on April 5th, 2009, he agreed to arrange a meeting only after Hussain offered him 250.000 dollars (Heilbroner, 2014).

- **Governmental Control of the Crime**

**Fort Dix Five:** The case is in its entirety a government driven prosecution, given that nowhere in the recordings, did the Duka brothers appear to design plans for an alleged attack. The recorded conversations reveal that discussions about the execution of the offense took place exclusively between Omar and Shnewer. Indeed, the Duka brothers engaged in discussions about the alleged plot as well as about weapons. They also watched bloodthirsty jihadist videos and were recorded speaking with zeal about radical Islam. However, nowhere in the 300 hours of recordings did they consent that they would participate in the conspiracy.

Nevertheless, the court convicted them based on their *"state of mind"*. That means that their conviction was based on their general attitude and the surrounding circumstances that could prove the Dukas intentions. In multiple recorded meetings, the brothers engaged in conversations where they were discussing about how different types of guns operated and how they could obtain them illegally, as they were non-legal US residents. At many points the brothers made vindictive statements concerning how weapons could operate in a hypothetical terrorist attack. For example: – *"Do you think I can be like Chuba the sniper?"/ – "Do you think I can stand far enough from the White House?"- "I really want to train with a sniper rifle"* (146-10 pp. 12). However, these statements belong to a hypothetical sphere given that they never specified their participation in a concrete terrorist scheme. However, many of these statements were used in the court as proof of the brothers' predisposed mindset to participate in the conspiracy and their convictions were based upon such statements.

Moreover, during the trial the informant acknowledged that he led the plot and that the Dukas did not know anything about the offense (HRW, 2014). Remarkably, in an interview with the Intercept, Omar stated that during the operation, he had conveyed to his agents that the Duka brothers had given him zero signs that they would participate in the offense (Hussain & Ghalayini, 2015). Despite that, the Bureau's agents told him that it was not his business and that he should continue working on the operation (Ibid). Additionally, from the federal detention center Shnewer, wrote a letter to the judge Robert Kugler, where he confessed that throughout the plot, he made false allegations about his co-defendants and he fabricated lies in a manner he could never imagine he could do (Shnewer, 2009). He also stated that Omar was aware about the brother's ignorance on the matter and that is why he never approached them directly (Ibid).

**Newburgh Four:** The plot was to its greatest extent driven by the informant. In general, throughout the range of the recorded conversations, Hussain is the one to maneuver the conversations so as the plot to pass into its practical phase. In contrast, it is observed that even though Cromitie's discourse revolved around extreme statements, never did he initiate a conversation regarding the practical aspect of the criminal activity. The informant was constantly asking the defendant to go more aggressively and was initiating conversations about violent jihad. It is remarkable, that Hussain admitted his tactic during his cross examination: "*And isn't it true that you were the one who initiated conversations many times about jihad; isn't it true?"* Hussain: *"Yes, ma'am.*" (as cited in Spuznar, 2017: 374).

The informant designed the commission of the attack, whilst Cromitie passed through long phases of reluctance and abstinence from the plot. Besides, Cromitie was completely unaware of basic aspects of the criminal design. While Hussain had previously confessed that he allegedly was a J-e-M member, in a later point it became apparent that Cromitie did not know anything about J-e-M and what kind of ideology the organization stood for: "*What are they? What are, what are your people? What are they, Muslims*?" (109-E3-T). In addition, when he met with Hussain after the first period of inaction on February 23rd, Cromitie had done zero progress concerning the mission and seemed to ignore which were the goals and the objects of it. Specifically, when Hussain declared that it was time to teach "*Mushriks"* (atheists) a lesson, Cromitie asked him to specify who were exactly those that they would teach a lesson (114-E1-T: 2).

On his own initiative, Hussain offered to cover the financial costs of the attack, offered the necessary weapons as well as alleged connections with Jaish-e-Mohammed members with whom he was supposed to coordinate (108-E3-T, 107-E2-T, 109-E3-T). Moreover, Hussain was the one who encouraged the defendant to choose specific targets. When Cromitie chose a steel bridge, Hussain tried to motivate him to select more feasible targets (109-E3-T). Besides, the informant repeatedly induced Cromitie to invite more plotters into the conspiracy: *"It would be really nice brother! We can have more bodies with us. Real, good Muslim brothers would be nice!"* (113-E2-T). Moreover, Hussain took initiatives concerning the practical aspects of the conspiracy. He converted into the leader of the plot and provided practical guidance to Cromitie: "*We should sit down tomorrow or tonight, and we should write down everything, each and everything down and plan everything out (…) We have the photograph, we have everything, so we put everything in the plan (…) We should sit down with a piece of paper and plan everything out!"* (118-E3-T: 3).

- **Government Provided the Means**

**Fort Dix Five:** The perpetration of the terror act was never officially designed, since the five defendants were arrested without having arranged a day, a place and the means for an alleged attack. Nevertheless, in an attempt to lure the defendants to go ahead with the plot, the informant was the one who provided the means. Omar provided material, which would reinforce the radicalized worldview of the defendants. Apart from asking Shnewer to download jihadist material on his laptop, the informant bought a DVD writer, where Shnewer could store and copy this material (HRW, 2014). Additionally, Omar promised that he would financially support the scheme with 10,000 dollars and that he could provide automatic weapons (Martin, 2008). Since the Duka brothers were illegal residents of the US, they would not have been able to obtain the equipment in a legal way. Hence, in their case the physical means for the alleged attack would be hard to come by. However, the informant offered the weapons. It is, thus, indicated the government's attempt to enable a prosecution, by giving access to weapons that would enable the defendants' culpability.

**Newburgh Four:** Every mean that was deemed necessary for the terrorist mission, was provided by the government. Hussain guaranteed that he would be the one to support financially the attacks, when Cromitie mentioned that he lacked the financial resources to proceed with (108-E2-T). The informant provided alleged social connections with J-e-M that was supposed to financially support all the aspects of the mission with no limits. (129-E3-T). None of the costs for the alleged mission was covered by the four defendants, but instead all the finances were provided by the government. The stinger missiles and the three IEDs, which would be used on the day of the attacks, as well as the two storage facilities where the weapons had been stored, were all provided by the Bureau. Even the camera that the surveillance at Stewart Air Force Base was conducted, was provided by the informant. In addition, all travel costs and cars necessary for the transfers belonged to the Bureau.

- **Government Spoon Feeding**

**Newburgh Four:** The four conspirators were clueless concerning the way the weapons operated and Hussain had to give them specific instructions on how to use them. In one conversation, Cromitie asked Hussain how far a rocket launcher can go (111-E4-T). Then Hussain explained how SAMs operate and which their strike force is (Ibid). Approximately one month before the arrests, Hussain gave specific instructions to Cromitie on how to use the weapons for the planned attack and how the

attacks should be launched (118-E2-T). A few days before the attacks, Hussain gave concrete instructions to the four conspirators how to use the stinger missiles and the three IEDs (USA vs James Cromitie, 2013).

- **Defendants Financial Motivation**

**Newburgh Four:** Even though Cromitie in a declaratory level maintained that he would resort to jihad exclusively for the sake of God, many of his actions reveal that his interest was to a great extent driven by a strong financial interest. On April 5th, 2009, Cromitie accepted to become re-attached to the plot only after Hussain offered him 250.000 dollars (Heilbroner, 2014). Moreover, while Hussain gave Cromitie a camera in order to conduct surveillance in Stewart Airport, Cromitie sold the camera for 60 dollars (HRW, 2014). It is unknown how much money the rest of the defendants believed they would earn through their involvement in the mission (Aaronson, 2013). Nevertheless, in an official level, Hussain had been entitled by the Bureau to offer 5.000 dollars to each of them (Ibid). David Williams agreed to participate in the plot after the promise the financial gain with which he could cover the medical costs of his younger brother's liver transplant (Rayman, 2011). It is notable that when the FBI investigated the 4.000 personal phone calls that Cromitie made away from the informant, none of them contained any anti-Semitic or violent discourse (Spuznar, 2017). Yet, the focal point of a phone conversations between Cromitie and David Williams few days before the attacks was the money rather than jihad (Spuznar, 2017).

- **Informant payments/ bonus**

**Fort Dix Five:** The two confidential witnesses were promised to be recipients of vast sums of money, whereas the issues they were facing with the law would be erased once prosecutions would be achieved. The Bureau paid each informant on a weekly basis 1,500$, whereas covered all their expenses during the course of the operation (Galevski, 2011). The total payment of Mahmoud Omar amounted to 240,000$, while Bakalli received 150,000$ (Ibid). Additionally, Omar was able to move into an apartment in Cherry Hill with much better facilities than his previous one, whose monthly rent was paid totally by the Bureau (Ibid). At the same time, the government cancelled the deportation that both the defendants faced, while their criminal records in the US and abroad were abolished (Ibid). Additionally, the two informants together with their families would be rewarded with a US citizenship.

Besides, the Bureau arranged to bring Bakalli's parents from Albania to the United States (Graham, 2008).

**Newburgh Four:** Hussain gained large sums of money and alluring benefits. His financial reimbursement in the case reached roughly 100.000 $. He was also offered a favorable treatment in criminal and administrative matters. It is possible that in Hussain's case the financial gain may not have been the principal motivating factor. Before becoming informant, Hussain had an aggravated criminal record. Such criminal record could be redeemed as long as he would provide his services to the Bureau. Hussain started a career in the secret services of FBI in order to avoid deportation to Pakistan (Churchill & Rulison, 2018). Hence, on a promise of a dual reward, Hussain had a strong interest to deliver tangible results.

- **Informant's characteristics**

**Fort Dix Five:** When approached by the Bureau, both informants already had an aggravated criminal record. Mahmoud Omar, who was an Egyptian immigrant, illegally entered the USA in the 80's, but eventually obtained a green-card after marrying a US citizen (Steele, 2008). He had created a criminal record for illegally selling his Social Security card (Nark, 2008). Besides, he had been involved in a bank fraud and had served a six-month prison sentence for depositing bogus checks from bank accounts (Galevski, 2019). Additionally, two months before his deployment as an FBI informant, Omar had misled an investigation that authorities conducted in order to protect a friend, something that the Bureau was aware of (Kocieniewski, 2007).

Similarly, to Omar, the second confidential informant had a criminal background too. In 1999, Bakalli was caught by customs authorities in the airport, when attempted to enter the US with a fake passport (Graham, 2008). After serving time in prison for this offense he applied for asylum (Ibid) However, he cancelled the asylum request, when his sister faced some interpersonal problems with a man who threatened her back in Albania (Ibid). Bakalli returned to his native country and shot the man. Then for a second time he attempted to enter the USA illegally and got arrested by authorities (Ibid). His consequent deportation could only be reversed as long as he would cooperate with the Bureau.

**Newburgh Four:** Hussain had an extensive criminal background and can be considered a serial fraudster. In 2002, through an FBI undercover operation he was prosecuted as a mastermind of a fraud, where he was helping immigrants to illegally obtain driver licensees from the DMV in Albany, where he was working as a translator. Thereafter, he convicted for "*producing in and affecting interstate and foreign commerce an identification document, namely an Interim New York State driving license"* (U.S.A vs Shahed Hussain, 2002). Thus, in order to gain court's leniency and to avoid deportation, he agreed to provide his services to the FBI (USA vs Cromitie, 2013).

It is remarkable, that Hussain continued to engage in illegal acts during his years as an informant. In 2006 together with his wife, took part in an illegal real estate transaction (Rulison, 2018). Additionally, in 2018 he was accused of embezzling thousands of dollars from a famous boxer, Amir Khan (Ibid). Besides, Hussain owned a limousine company with a record of failed inspections (McKinley, 2019). In 2018, his company was accused of being responsible for one of the deadliest transportation tragedies in the history of the US, when a limousine with fake brake repairs crashed and killed 20 people in Albany- NY (Ibid).

In one trial Hussain testified that he had provided his services to the FBI twenty-one times in cases included money laundering, human and drug trafficking (Newman et al, 2018). Notably, Hussain had been involved in another controversial sting, where he faced charges of using deceptive tactics at the expense of other two Muslims (HRW, 2014). In the examined case, Hussain perjured concerning his immigration statues and a previous prosecution he was involved regarding tax violations (Fahim, 2010). At the same time, Hussain did not provide reliable information to his FBI handlers, as indicated from the substantial difference in the content between the FBI documents which were based on Hussain's first-hand testimony and the recorded conversations (Laguardia, 2013).

- **Informant provided employment or housing**

**Newburgh Four:** Apart from providing financial aid, Hussain promised a dream-job to Cromitie and covered some of his housing-related expenses. Besides, Hussain offered to buy Cromitie a barbershop:*"…what it will cost? Sixty, seventy thousand dollar to build it? We will build it!"* (118-E1-T: 1,2). According to his testimony in the federal court, Hussain admitted that he had bought groceries for Cromitie and had paid his rent with money provided by the Bureau (Thier, 2010). It should be stressed that all of these favors were provided to the defendant after a period that he was very close to abandon the mission. Especially, in April 2009, Cromitie completely backed off from the plot. The same month he became unemployed. He agreed to re-connect with the terrorist scheme only after

Hussain offered to him 250.000 $ (Heilbroner, 2014). Therefore, such coaxes can be interpreted as strong incentives aimed to act as counterweights to Cromitie's tendency to back off with the plot.

- **Suspect evidentiary practices**

**Fort Dix Five:** The first informant, Mahmoud Omar distributed jihadi material and instructed the defendants to download jihadist videos, whose content mainly involved terrorist training images. These videos were later used in the prosecution process against defendants as proof of their predisposition (Harris, 2011). In addition, Omar repetitively disregarded the recordings of particular crucial conversations during the plot, while during specific discussions he selectively turning off the recording devices (Galevski, 2019). One of the conversations that Omar omitted to record was the key discussion where the gun deal was arranged (Harris, 2012).

Moreover, the prosecution used a statement that Eljivir Duka made in order to describe the journey that the defendants made in the Pocono Mountains in February 2007. The defendant described the journey as a 'training mission', which ostensibly indicates that the journey was not a holiday trip. However, the words that proceeded and followed this phrase were not displayed in the trial nor did they ever become public (Galevski, 2019). Moreover, in some recordings, the precise period that the conversations took place is excluded (Ibid).

**Newburgh Four:** If the recorded conversations are scrutinized carefully, it is revealed that on a regular basis Hussain attempted to extract statements that could later prove that the government did not exert pressure, but instead gave freedom of choices and attempted to discourage the defendants from the commission of the crime. Even though Hussain was the one who constantly initiated conversations about jihad, on many occasions he insisted on statements, which would exonerate the government form accuses of manipulation and compulsion. For instance, during a conversation on November 29th, 2008, when Hussain was insisting on specific questions about the alleged attack, Cromitie attempted to praise the informant's manipulation skills by stating: *"I know my brother Maqsood has a good brain…Because if you didn't have a brain how are you telling me what to do… that means you can manipulate"* (109-E3-T: 13). Hussain, then, immediately repeated three times that he did not want to manipulate anyone and that he did not want Cromitie to perpetrate the attack if it was against his will (109-E3-T).

Another example is that Hussain repetitively attempted to clarify that the mission was not driven by financial but by ideological motives. While Cromitie had clarified that his partners would get involved in the mission exclusively for financial reasons ("*They would do it for the money, they don't even think about the cause*") (109-E2-T: 4), Hussain attempted to dispel doubts that the introduction of money would trigger the plot and motivate the defendants' participation. When Cromitie eventually introduced more accomplices to the plot, Hussain repeated on multiple occasions that the money would be provided by J-e-M, was 'jihad money' and that the cause for the attacks stemmed from the glory of Allah (119-E4-T). Hussain attempted to elicit a narrative in order to minimize the viability of an entrapment defense and also provoked the defendants to say specific statements loudly so they could be heard in the recording devices (Szpunar, 2017).

Besides, crucial conversations were left unrecorded. It is notable that the FBI recorded the conversations between Hussain and Cromitie only after their fifth meeting and thus all the discussions that took place from June 3rd to October 10th, 2008, are based on Hussain's testimony as reported to his FBI handler, Robert Fuller (USA vs James Cromitie et al, 2011). Furthermore, Hussain's handler did not give him a recording device in the meeting that took place the night before the attacks (Aaronson, 2013). In this way, if the defendants expressed reservations concerning the attack or if the informant offered stronger financial or other incentives, remains a mystery.

- **Defendant targeted for protected speech**

**Newburgh Four:** Cromitie was targeted exclusively because of his vitriolic views. In the first five unrecorded meetings, Cromitie developed a rhetoric which demonstrated his social and political grievances as well as his hatred towards Jews and Americans (USA vs James Cromitie et al, 2011). Additionally, his statements revealed his approval of violence. According to Hussain's handler debriefing notes, Cromitie, among other assertions, stated that he would like to die like a martyr, he would shoot President Bush hundred times and that if Allah didn't do, then a 'brother' would kill him (Ibid). Nevertheless, no matter how callous these statements may be, they did not indicate the defendant's practical intention to design and execute a terror attack.

- **Defendant targeted despite lack of terrorist sympathies**

**Newburgh Four:** When approached by Hussain, James Cromitie already embraced certain radical and totalitarian viewpoints as it is indicated from the statements he made in the first unrecorded meetings. However, the same does not apply for the rest of the defendants, who had zero pro-terror sympathies. It is notable that when authorities conducted investigations in the defendant's apartments no jihadist-sympathy evidence was found (Szpunar, 2017). Moreover, the judge in the case, District Judge Colleen McMahon recognized that the three of the defendants had zero terrorism sympathies when stating: "*that in structuring the crime, the government saw fit to create roles for persons other than Cromitie – who at least had uttered malicious and threatening statements about Jews and the United States – and to offer those roles to individuals who had no history of terrorist leanings."* (USA vs James Cromitie et al 2011, p.9).

- **Defendant's Mental Illness**

**Newburgh Four:** Two out of the four defendants faced mental health issues. James Cromitie, who was a chronic drug user, had reported to his psychiatrist that he was experiencing hallucinations, as he was hearing and watching things that were not existent (HRW, 2014). Moreover, Laguerre Payen had been diagnosed with schizophrenia. In Payen's past psychiatric history, it is reported that was facing cognitive limitations since his childhood, he was hearing voices since his adolescence and also one time he attempted to commit suicide (Heilbroner, 2014). Additionally, when the authorities made an investigation in his apartment, they found bottles of his own urine as he faced a fear to go to the bathroom, while he thought that Florida was a foreign country (Harris, 2011).

- **Defendant's Youth**

**Fort Dix Five:** Apart from Dritan Duka who was 27, the rest of the defendants were in their early twenties when the FBI activated the plot (USA vs Duka et al, 2011). According to the DOJ's criminal conviction announcement, it is calculated that Mohammed Shnewer was 19, Shain Duka was 25 while Serdar Tatar and Eljivir Duka were 22 at the time of their first contact with the two informants (2009). In contrast, the confidential informants were much older something that can arouse suspicions about the guidance they provided in the conspiracy. Shain Duka, reported to the Guardian that Shnewer has become a victim of psychological manipulation by the 38 years old Mahmoud Omar, who exploited his young and impressionable nature (Harris, 2012).

- **Defendant's Underachiever Profile**

**Newburgh Four:** The targeted individuals belonged to the category of underachievers. James Cromitie, David Williams and Onta Willliams were all low paid workers, faced financial issues and had been imprisoned with drug offences. (Baker, 2009). Laguerre Payen was unemployed, impoverished, had very few friends and almost no connection with society (Baker 2009, Heilbroner, 2014).

Given below is a table that summarizes the entrapment indicators present in each of the two cases. The indicators as derived from Norris & Grol Prokopczyk (2015) research.

## Table 1: Results of Entrapment Indicators

| **Entrapment indicators** | **Criteria** | Case No1: ***Fort Dix Five*** | Case No2: ***Newburgh Four*** |
|---|---|---|---|
| **1) No previous offences** | The defendant had not been charged with a terrorism related offence and had not committed or was not planning to commit one. | **Yes** | **Yes** |
| **2) Government proposed the crime** | The idea for the commission of the terror attack stemmed from the government agent or the confidential informant and not from the defendant | **Yes** | **Yes** |
| **3) Government pressure or persuasion** | The confidential informant or agent employed pressure, persuasion or coercion to the defendant, in order to participate in the plot or convinced him that the act is justified | **Yes** | **Yes** |
| **4) Material Incentives** | The informant or agent provocateur offered financial or other material rewards to the target in order to participate in the plot. | **No** | **Yes** |
| **5) Defendant's reluctance** | The person targeted showed reluctance or hesitation to conduct the offence expressed his reservations to follow up with the plans of the plot. | **Yes** | **Yes** |
| **6) Government controls the crime** | The contribution of the government to the criminal design, to a large extent outweighs the contribution of the defendant. The agent or informant were the ones to primarily control the conduct of the offence. | **Yes** | **Yes** |

| | | | |
|---|---|---|---|
| **7) Government provided the means** | The informant provided the defendant with the necessary means for the perpetration of the criminal act such as resources, connections funds, weapons, vehicles etc. | **Yes** | **Yes** |
| **8) Government spoon feeding** | The law enforcement agent or informant gave the defendant, who otherwise was practically incompetent to design and execute the offence, detailed instructions on how to carry out the criminal action. | **No** | **Yes** |
| **9) Defendant's financial motivation** | The defendant was to a great extent lured to participate in the criminal act by financial or other material incentives. | **No** | **Yes** |
| **10) Informant's payment, bonus or favorable treatment** | The informant was offered a financial reward for his services or a favorable treatment in criminal or administrative matters | **Yes** | **Yes** |
| **11) Informant's characteristics** | The informant was a charismatic personality known for manipulating others or has a criminal background which have involved fraud and dishonesty. He, also, used questionable tactics in other stings while he was not considered trustworthy by government agents. | **Yes** | **Yes** |
| **12) Informant provided employment or housing** | The informant provided the defendant with a job and a housing or has covered some of his housing related expenses such as rent | **No** | **Yes** |

| | | | |
|---|---|---|---|
| **13) Informant provision of alcohol or drugs** | The informant or agent encouraged, provided or used alcohol or drugs with the defendant especially during conversations regarding the criminal offence. | **No** | **No** |
| **14) Suspect evidentiary practices** | The informant or agent attempted to elicit statements or prompted actions which in the future would be used as proofs of the defendant's predisposition. The informant also failed to record conversations. | **Yes** | **Yes** |
| **15) The defendant targeted for invalid reason** | The reason why the defendant was targeted was invalid, e.g. false information | **No** | **No** |
| **16) Defendant targeted for protected speech** | The defendant was targeted because of he expressed views which belong to protected speech e.g. expressing terrorism sympathies | **No** | **Yes** |
| **17) Defendant targeted despite lack of terrorist sympathies** | The defendant did not have any pro-terrorist views when approached by the informant or agent | **No** | **Yes** |
| **18) Defendant's Mental Illness** | Defendant was diagnosed with mental disorders or symptoms of them | **No** | **Yes** |
| **19) Defendant's Youth** | The defendant was 24 years old or younger | **Yes** | **No** |
| **20) Underachiever Profile** | The defendant had a passive attitude towards life, had few social contacts, lives with his parents, have no job or low paid job | **No** | **Yes** |

# Chapter 6: Discussion

This chapter concisely analyzes and assesses the results in light of the 'objective' and 'subjective' test of entrapment. In the same chapter, information from the data is extrapolated and discussed through the prism of Critical Terrorism Studies.

## 6.1 Entrapment Results

The first case, *Fort Dix Five,* gathered half of the total number of entrapment indicators. Concerning *Newburgh Four*, it is observed that there is preponderance of the entrapment element, since the vast majority of the indicators are present. The given data confirms that *Newburg Four* featured the highest number of entrapment scores; amounting to seventeen out of the total number of twenty. Despite the difference in the number of indicators they collect, the two cases share a common ground concerning the prevalence of the first six '*core*'. *Fort Dix Five* concentrated five out of six *core* indicators, while *Newburgh Four* gathered the total number the *core* indicators. As was shown, the six *core* indicators are deemed the most robust ones in their ability to signify entrapment, given that they have been drawn by the most prominent considerations that the majority of the American courts take into account when examine the applicability of the entrapment defense. Therefore, along with the rest of indicators the almost total presence of the *core* indicators in both cases dynamically boosts their problematic character.

### 6.1.1 '*Objective Approach'*

If the actions, the past and the predisposition of the defendants get excluded from the entrapment analysis, it is observed that in both cases the involvement of the government in the criminal enterprise crossed the line of the due process conduct. From an objective approach, the four out of the six core indicators suggested that the offenses were to the greatest part a product of the Bureau's encouragement. As illustrated in the literature review, the government to a certain extent is entitled to use decoys and other strategies in order to lure a targeted individual during an operation. It is essential, though, that the targeted individual to already be engaged in a criminal enterprise and to be the one to initiate the criminal activity. Nonetheless, the research showed that the Bureau *a priory* identified the

targeted individuals as threats to homeland security, since none of them had an original intention to engage in a terrorist activity prior to the informants' presence.

In both cases the idea for the perpetration of the terrorism offence originated exclusively from the government. By taking advantage of the defendants' radical sympathies, the informants deliberately initiated conversations about radical Islam and systematically impelled the defendants to participate actively in violent jihad. By stimulating the radical worldview of the defendants, they used Islam as a vehicle and depicted the completion of the attacks as a sacred mission. The will of God was a common pattern that the informants employed in both cases, so as the defendants to be convinced that the performance of violent jihad was a supreme duty. Especially in *Newburgh Four*, the informant systematically exploited Cromitie's vitriolic views and social discontent by cultivating conversations that depicted violent jihad as an answer to his social grievances. Notably, one of the judges in the trial of the case, Colleen McMahon, recognized to the full extent the aggressiveness of the Bureau's operation: "*The essence of what occurred here is that a government, understandably zealous to protect its citizens from terrorism, came upon a man both bigoted and suggestible, one who was incapable of committing an act of terrorism on his own, created acts of terrorism out of his fantasies of bravado and bigotry, and made those fantasies come true"* (USA vs Cromitie et al, 2012:57).

The substantial pressure that the government exceeded once the accused got involved in the plot, is the core indicator that more dynamically strengthens the entrapment element. It became apparent that the informants did not let the criminal act to happen on its own. Instead, on multiple occasions they condemned the defendants' apathy and repetitively pushed them to participate in the conspiracy. Especially, in *Newburgh Four* the government's pressure reached its peak with the informant's numerous attempts to come in contact with Cromitie, when the latter abandoned the plot for a six-week period and deleted the informant's phone calls from his cell phone. Despite the fact that the Bureau's agents were aware of it, given that they were constantly monitoring the defendants' phones during the plot, they did not terminate the operation. The Bureau's persistence *per se* reveals that the 'making case' was its prime goal instead of genuinely prevent a plausible security threat.

More significantly, in both cases the informants' endeavor to create a conspiracy became apparent through the pressure they respectively put on defendants to introduce more perpetrators in the conspiracy. According to the federal criminal law, a conspiracy takes place when: "*two or more persons agree to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States*" (FBI, n.d). In that definition it becomes evident that a

pivotal element of a conspiracy is the presence of two or more individuals, who make an agreement to violate the law. Given that element it becomes apprehensible that in both cases a conspiracy could not have taken place between one defendant and the government. Convictions could not have taken place in the absence of the conspiracy element. The government deliberately attempted to create a conspiracy, which, in the absence of involvement of more plotters, could not have practically been achieved. Despite the obvious reluctance of the defendants to create a conspiracy by recruiting more perpetrators, the federal officials once again did not close the cases. This reinforces the dubious character of the Bureau's covert tactics.

Additionally, the government controlled to a considerable extent the circumstances of the two plots. The informants were major actors of the criminal enterprise, as they undertook the control of the criminal design to a substantially larger degree than the accused. One unexpected indicator in *Fort Dix Five,* is that the prosecution took place with the informant not having discussed the alleged plot with the three out of the five defendants. As demonstrated, there was no tangible proof that the Duka brothers were aware of the conspiracy, rather there was evidence that they bought the weapons for personal use. It is notable that even the informant believed that the brothers were unaware of the conspiracy, according to his trial testimony. The fact that the brothers got arrested the moment they purchased the firearms, without solid evidence that this purchase was driven by the intention to carry out a terrorist attack, is the most vigorous entrapment element in this case.

In addition, other indicators that are derived from the relative case-law illustrate that the plots were to a substantial extent orchestrated by the government. In both cases, the defendants were practically incompetent to execute the attacks as they did not have access to the necessary means and resources, while lacked logistical knowledge. On this basis, the defendants' positional predisposition is lessened with the notion that they lacked a pragmatic capability to engage in terrorism independently of the government's involvement. Remarkably, in *Newburg Four* the four defendants were so impecunious that the government covered not only the total necessary costs for the alleged attacks but also all the other costs throughout the plot, such as travel expenses.

There is a strong correlation between the two cases concerning the centrality of the undercover operatives. The favorable treatment as well as the colossal financial rewards that the informants were recipients of, can explain their centrality in the cases, with the notion that they had a strong personal interest to obtain incriminating evidence and bring a conviction at all costs. Additionally, their engagement in provocative behavior as well as their excessive criminal past discredit their reliability and integrity of first-hand testimonies.

Major reliability issues arise out of the suspect evidentiary practices that the informants employed in the two cases. Crucial conversations of the plot remained unrecorded. In *Fort Dix Five*, Omar provided the defendants with videotapes of extremist indoctrination, while in *Newburgh Four*, the informant systematically attempted to elicit statements which would prove the defendant's decisiveness to perform the offense. In both prosecutions, such evidence was used to battle allegations against the Bureau's aggressiveness and to prove the defendant's predisposition. Similarly, the Bureau selected for targeting particularly vulnerable individuals that could easily be manipulated due to their underachieving profile, young age and mental health conditions. As demonstrated in the literature review, even though such indicators do not *per se* prove the presence of entrapment, they give rise to reasonable doubts regarding the integrity and transparency of the government's conduct.

### 6.1.2. '*Subjective Approach*'

From the subjective test's scope, the indicators revealed that the predisposition of the lawbreakers in both cases is a weakened one. Before the informants entered the scene, the defendants had not previously been involved in any terrorism-related offenses, nor did they plan to get involved in one. None of them had terrorist ties. A matter of clarification concerns that the defendants indeed were receptive to totalitarian ideas and on numerous occasions embraced the doctrines of radical Islam. The evidence holds there were occasions where Cromitie and Shnewer sympathized with terrorists such as Osama Bin Laden. Their discourse was dominated by grandiose statements and radical declarations. Yet, the question which is being raised concerns whether the statements of the defendants would be translated into real action had it not been for the Bureau's participation. The data proves that the answer to this question is a rather negative, given that nowhere in the two plots the accused expressed a genuine intention to materialize their plans. Instead, they did not take affirmative steps towards the planning and accomplishment of the offense, while they systematically failed to complete what had been coordinated with the informants. The evidence supports that their radical statements belonged to the rhetorical sphere.

Hence, this study holds that the defendants are deemed passive sympathizers of fundamentalism rather than extremists. It should be underlined that an individual's belief system, radical as it may be, is far from causing the individual to resort to violent actions. In fact, the number of individuals who sympathize with terrorists far exceeds the number of those who actually resort to terrorism (McCauley & Moskalenko, 2014). Radicalism should be distinguished from extremism, with the notion that the former is not per se violent. The findings of many years of research indicate that

regardless of their belief system, radicals do not necessarily resort to violence, contrary to extremists who tend to disregard the rule of law (Schmid, 2013). In both operations, the defendants were not extremists when the informants approached them. Despite their radical beliefs they showed remarkable hesitation to undertake the terrorist plots.

The defendants' apparent reluctance to engage in the criminal enterprise proves their non-criminal mindset and the lack of predisposition element. Many of their statements and actions reveal that they were not the die-hard jihadists the prosecution portrayed them to be. At the beginning of *Newburgh Four* plot, Cromitie's statements opposed violent jihad. He was also unaware of basic aspects of the criminal enterprise such as the existence of Jaish-e-Mohammed, which is one of the most well-known Islamic terrorist organizations worldwide. Cromitie's reluctance was demonstrated by his avoidance to actively carry out the mission and his practical failure to perform the tasks Hussain instructed him to. The two large periods that he backed out from the plot, collapse the myth that depicts him as a bloodthirsty terrorist.

In a similar vein, in *Fort Dix Five,* Shnewer was constantly failing to follow up with the informant's instructions. The Duka brothers were videotaped plainly stating that they had nothing to do with violent jihad and that they did not have the courage to engage in it, while nowhere in the recorded conversations there is evidence of their willingness to participate in the mission. It is of a great significance that Serdar Tatar, even reported the informant to the police, something that reveals that he was anything but a decisive terrorist. All of these elements substantiate that the accused in both cases did not have a genuine propensity towards terrorism.

In the literature review was indicated that there is no consensus on whether the financial and material inducements should strengthen entrapment allegations. As was demonstrated, some critics advocate that terrorism is such an atrocious act, that it is unlikely that any reasonable person would resort to it driven by financial motivations. The proponents of this view argue that the natural aversion to terrorism, which is inherent to any law-abiding individual, is not possible to be reversed by financial remunerations (Field, 2019).

Nonetheless, the results of this study contradict the aforementioned arguments. The material gains in *Newburgh Four* were so excessive that it rendered the impoverished defendants financially and psychologically depended on the informant. Cromitie was offered so enormous material rewards that were capable of changing his life. As demonstrated, Cromitie agreed to continue with the plot only after he became unemployed and Hussain promised him 250.000$. On multiple occasions, Cromitie confirmed to the informant, the participation of the rest of the plotters in the conspiracy was motivated

solely by material rewards. Given that the financial inducements played a pivotal role in the defendants' engagement in the conspiracy, the data in the given cases confirms that an individual can resort to terrorism driven by financial interests.

Both from an *'objective'* and a *'subjective'* approach, the vigorous entrapment scores contradict the claims that entrapment in terrorism prosecutions is something that practically cannot exist. As shown in the literature review, the logic behind these claims is that succumbing to an informant's decoys automatically constitutes proof of dangerousness and that the predisposition to terrorism is something that 'you have it or you don't'. The '*subjective'* test of entrapment revealed that the targeted individuals were considerably undisposed, and they did not pose credible threats to the homeland security. Instead, the '*objective'* test showed that the government representatives acted beyond the limits of their mission and were those who cultivated the defendants' initiation and initiative to execute the terrorist enterprises. The results verify that the Bureau crossed the line of the due process and to a great extent orchestrated the conspiracies, in which the role of the secret cooperative informants proved instrumental. Even though not all indicators are of the same importance in their ability to signify entrapment and do not offer a certainty of entrapment, their excessive presence increases the likelihood that both cases constitute entrapment cases.

Now that the extent of entrapment in both cases has been identified, it is essential to attribute a broader dimension to the findings. For this purpose, the following section will critically evaluate the meanings, the relevance and the value of these findings through the prism of the threat construction as this has been introduced by the CTS

### 6.2. Critical Terrorism Studies & Construction of Threat

It is important to discuss the specific implications of entrapment for academia. The findings debate the agenda of OTS, as articulated in the literature review. This is connected to the fact that conventional scholars overlook the fact that the state is an actor, who contributes to the construction of terror threat and produces violence too. The data provided put into the spotlight the untouched topic of the state's misconduct in counterterrorism practices. The extensive prevalence of entrapment indicators challenges the existing dominant orthodox knowledge of terrorism, regarding the sanctity of the state. The findings of this study confirm the suitability of CTS, because similarly to critical scholars they open the 'Pandora's box' of the state's illiberal activities in counterterrorism campaigns. Given that the Bureau in its official capacity constitutes a representative agency of the state, in the

macro-level the two examined cases demonstrate that the US has been a source of violence in the battle against terrorism.

The data showed that from the s*ubjective* test's scope the accused did not act independently and their participation in the criminal enterprise was low in action. Instead, their interest in criminality was primarily driven by the Bureau. Through the prism of *objective* test, the results manifested that the two pre-emptive operations were originated, strongly guided and orchestrated by the law enforcement agency. State-actors employed aggressive and illiberal practices and neglected the democratic values that terrorism itself threatens to destroy. In this manner, entrapment must be addressed as synonym to state violence. That is because the unjustified targeting, manipulation and prosecution of non-criminally minded citizens that the state as a rule has an obligation to protect, results to arbitrary state abuses. In this context, the prosecutions as products of entrapment reflect that within the counterterrorism campaign, the US 'law in action' has violated the fundamental principles, which by nature a liberal democracy has a duty to preserve, such as civil liberty and protection from state's abuses.

Aside from the notion that the state is an agent who can become a perpetrator of violence, one established point of reference among CT scholars, is the concept of threat construction. As indicated in the literature review, the concept designates that the threat is not an objective reality but instead, is a constructed one with the notion that its dangerousness stems from the various interpretations and intensities that are given to it. In the dawn of the war on terror era, the vigorous rhetorical tactics of American officials cultivated a threat of colossal proportions and constructed a world of danger where the inhumane terrorist "other" menaced the very existence of the community. As Richard Jackson (2005) noticed, in a speech exactly one month after the WTC attacks president George Bush referred to the word "threat" fourteen times additionally to the word "danger" and "weapons of mass destruction".

The framework of threat construction designates the predominance of the entrapment element as well as the logic of arbitrary targeting in the two examined cases. The federal law enforcement targeted individuals from the Muslim community, which with the advent of 9/11 era, was rhetorically recognized as the main body of insecurity. When zooming into the cases, it is noticed that the targeted individuals fit the constructed "resilient" stereotype of domestic security threat: in *Fort Dix Five* the defendants were all Muslim immigrants, while in *Newburgh Four* all the four defendants were African-American Muslims.

The defendants' targeting was more a result of the constructed narrative of 'otherness' and threat, rather of a reasonable suspicion of danger in homeland security. That is revealed through the large periods that the Bureau infiltrated the accused, despite their apparent lack of desire to commit the crime. In *Newburgh Four*, Cromitie agreed to wage violent jihad only half a year after his first contact with the informant. Similarly, in *Fort Dix Five* Shnewer selected targets at the informant's instigation five months after the start of the investigation. In both operations, the targets were sympathizers of a radical philosophy but were passive ones, since none of them conceived of perpetrating a terrorist offense before the informants entered the scene. Therefore, the U.S security apparatus -a priori- identified citizens of a specific cultural background as threats. The overzealous response that was given to these 'threats' by the FBI operatives was not a response to an objective danger but rather a response to a discursive construction.

More importantly, the data provided contributes to a new insight in the concept of threat construction of terrorism as this is introduced by CTS. This stems from the fact that the potent entrapment scores in the examined cases, establish that aspects of the terror threat in the domestic war on terror were not only discursively constructed by specific rhetorical strategies. At the same time, an aspect of the threat is practically fabricated by the very activity of the state.

While the task of the confidential informants is to encourage and facilitate the commission of an already existed crime, in both cases it became apparent that the government operatives acted beyond the limits of this mission. The prevalence of entrapment revealed that the Bureau embraced aggressive covert tactics and orchestrated terrorist plots, where the undercover government operatives proved to be the principal actors. The defendants consented to the criminal enterprise after the substantial pressure that was applied upon them. The accused in both cases did not pose credible security threats. However, they only did so when entrapment was a factor.

In the wider picture, the aforementioned results mirror the presence of the widespread police misconduct and the way these tactics contributed to the generation of domestic terrorist threat. The law enforcement ostensibly attributed culpability to undisposed citizens and in this way converted them into direct producers of terror threat. The entrapment of non-criminally minded citizens was masqueraded into the 'law in action', which in the language of the state's operatives was labelled as a precautionary counterterrorism force.

The data revealed that the state not only created the discourse of terror threat but also practically instigated and manufactured the civilians' terrorist activity. As a result, these counterterrorism tactics lead to the expulsion of citizens from the collective community and to their projection as subjects of

danger. The targeting of these individuals is therefore instrumental because it generates a sense of insecurity in the state's civilians, which is a group beyond the direct victims of the targeting. In this way, the construction of the security threat as mirrored in the entrapment results of this case-study, confirms the position of the critical scholar Noam Chomsky (2003) that the measures the American government took to combat terrorism created a vicious circle which further created terrorism and insecurity. Hence, in a broader context the study at hand illustrates that in the aftermath of 9/11 the domestic counterterrorism system of the US employed measures that actually conserved and perpetuated the terrorist threat instead of eliminating it.

CTS argue that the presumption of threat and the establishment of citizens as subjects of insecurity normalizes a situation of emergency and legitimizes counterterrorism strategies which under other circumstances would be deemed illegitimate (Al-Kassimi & Simons, 2019, Chomsky 2003). The provided data verifies the conception of the critical literature that the climate of 'supreme emergency' after 9/11 gave the authorities of the state permission to suspend constitutional rights, the due process of the law and to take exceptional actions deemed imperative for the state's existential survival (Jackson, 2005).

Critical scholars give several interpretations able to explicate the construction of the national peril. Through the prevalent rhetoric of fear the American government attempted to "*delegitimize domestic dissent"* to *"mute criticism",* to control the domestic sphere by strengthening the collective identity as well as to boost the prestige of security agencies (Jackson, 2005: 116). For CTS the presumption of threat is utilized to maneuver certain perceptions and to serve concrete interests, with governmental entities to be benefited by labelling a person or event as terrorist (Turk, 2004). Indeed, Chris Christie, who was the US attorney for New Jersey the time the *Fort Dix Five* sting was unfolding, used the operation as an advantage in his 2016 presidential pre-election campaign, by depicting the operation as a signature accomplishment of his tenet as a federal prosecutor (Ye He Lee, 2015).

However, it is beyond the scope of this study to discuss the various ways that the state officials benefited from the aggressive counterterrorism tactics. Instead, in a wider perspective it is important to highlight the destructive implications of entrapment for the wider society. The entrapment concept not only affects in an ethical sense the individuals that are the direct victims of it. The presumption of citizens -who are the direct subjects of entrapment- as sources of threat, stigmatizes their cultural community and puts at risk the inter-communal relations as well as the community cohesion within the state. At the same time, such practices deteriorate the relations of the police with the communities that are mostly the victims of entrapment methods. There is also a chance, individuals from these

communities to resort to extremism in an effort to answer back to the state's unfair treatment. This can create a new wave of violence and new threats will *a novo* emerge for the domestic security.

The employment of entrapment tactics transforms the democratic state into a state of exception and a perpetrator of violence. That gives rise to erosion of trust in the transparency of the state's tactics and in the ability of law enforcement to genuinely combat terrorism. More importantly, the entrapment techniques reveal the state's structural weakness to conduct effective surveillance and to prevent credible threats.

As noted earlier, even though one of the judges in *Newburgh Four* case recognized the corrupted character of the operation, she sentenced the defendants to 25 years each, due to the brutal nature of the offense they succumbed. With this in mind, it can be asserted that it is more likely that the justice system in the US will continue to marginalize the entrapment defense and refuse to recognize it to the full extent, even in cases- such as *Newburgh Four-*, where its presence is a dynamic one. The eventual action of terrorism that an entrapped defendant resorts to is *per se* heinous and that gives little chances to a complete acquittal in the court.

For this reason, it is essential the law enforcement abstains from aggressive interventions which give space to employment of entrapment tactics. This is not to say that the efficacy of undercover operations as method of crime deterrence should be undermined. Stings are a strategy that as in other types of crimes, from 'within' can interrupt terrorist ambitions. However, cases with entrapment scores put at stake the police's image and the effectivity of terrorism deterrence. It is required that the security apparatus should abandon the fabrication of threats, because the domestic safety can only be enhanced through the focus of resources on realistically imminent security perils.

# Chapter 7: Conclusion

## 7.1 Objectives, Method & Outcome of the Study

The research objective was to discover the extent that entrapment is present in two of the most prominent post-9/11 FBI undercover operations, with the aim to discover what the entrapment tactics in a broader context reveal for the domestic security threat as established during the war on terror. Given that there is not a standard pattern that signifies the concrete conditions under which the entrapment defense operates, this thesis utilized the twenty entrapment indicators, which were gathered through the whole spectrum of the American-case law in the research conducted by Norris & Grol-Prokopczyk (2015).

The indicators were applied into a case study of two of the most notorious terrorism prosecutions resulted from FBI stings in the aftermath of 9/11. The study penetrated into qualitative data and elaborated on empirical evidence in an effort to verify the existence of entrapment elements in a micro-level. In this way, the research thoroughly investigated the patterns that enabled and encouraged entrapment in the post-9/11 terrorism prosecutions and investigated how far the government's prosecutorial practices are willing to go in order to achieve convictions in the battle against terrorism.

The fact that the existence of one or more indicators does not necessarily provide a certainty of entrapment, deprives this research of adopting absolute language regarding the applicability of the entrapment defense. In any case, it was beyond the scope of this study to provide a legal argument willing to prove that the cases are *de jure* entrapment cases. Rather, as the primary research question reveals the goal was to decrypt the extent that the entrapment element is present in FBI's post-9/11 sting operations.

Collectively, the results matched the assertion that the failure of entrapment defense in courts does not guarantee the nonexistence of the entrapment element in the government's undercover operations. The qualitative data in both cases provided plausible evidence of entrapment claims. The overall scores manifested that from the 'subjective' approach, the defendants' predisposition and positional capability to engage in the criminal enterprise was substantially weak. The accused were malcontent individuals from the Muslim community that espoused a radical belief system of Islamic religiosity, rather than persons with authentic terrorist ambitions. Instead, the 'objective' test proved

that the criminality in both cases was disproportionally emanated from the secret cooperative informants. That leads to the outcome that it is widely unlikely that the accused would have been tempted into the terrorist activity independently of the government's excessive involvement.

Despite the difference in their number, this typical case study identified potent entrapment indicators, something that along with the overall facts lead to the conclusion that the entrapment tactics are a well-founded strategy within the Bureau's post-9/11 terrorism stings. Therefore, taking into account the synthesis of the results in the two typical cases the answer to the primary research question: (*to what extent is entrapment embedded in FBI's post 9/11 sting operations?)* is that the entrapment element is embedded to a substantial large degree within the Bureau's undercover tactics.

The purpose of this study was not to solely communicate the extent of entrapment tactics as deployed by the Bureau in the war on terrorism. Rather this thesis investigated the magnitude of entrapment with the aim to shed light on the second part of the research question: "…*what does it mean for the post-9/11 domestic security threat?*". To put it simply the aim was to exemplify in a broader context the way that the security apparatus within the US perceives the nature of threat and how this should be prevented. The reported findings of this thesis warrant the conclusion that the domestic terrorist threat in the years following 9/11 has been an exaggerated and constructed concept. That conclusion, thus, reinforces the narratives of critical scholars who reject that the threat is an objective condition. The employment of entrapment mechanisms reflect that the federal law enforcement attempted to securitize threats of its own fabrication. Through entrapment non-real threats have been ascribed and transmitted in the collective memory as genuine, further creating a vicious circle of insecurity.

Overall, this thesis challenged the state-centric knowledge of terrorism as it is received by OTS, whilst contributed to the sub-discipline of CTS. The findings enriched the academic knowledge of CTS in two ways. Firstly, the research re-integrated the role of the state into the security debate. In a broader context, it was manifested that the liberal democratic state is not a rational actor who strives for objectivity in the battle against terrorism nor is the exclusive victim of terrorist threat as the OTS perceive. Instead, the entrapment techniques revealed a widespread state's misconduct against individuals that a democracy by nature has a duty to protect. In this way, the findings advance the critical agenda because they demonstrate that in the name of security, the state can suspend its liberal values and convert into a source of violence.

Secondly, the thesis advances the concept of threat construction which has been a keystone in the critical agenda. It was illustrated that the critical scholars conceptualize the threat construction as

phenomenon which stems from discursive articulations, which verbally demonize individuals and situations as sources of threat. Yet, this thesis gave another dimension to the concept because it showed that the construction of threat is not solely a result of specific rhetorical strategies. The US complicity in the construction of terrorism threat is not only rooted into the various discourses that the state representatives adopted in the aftermath of 9/11. By investigating the extent of entrapment this research showed that individuals have been in practice projected as subjects of insecurity. The US security apparatus, in the guise of preventative counterterrorism, practically fabricated the terrorism threat by converting citizens; who did not have an initial proclivity towards terrorism into lawbreakers. That expanded the concept of threat construction because it evidenced that the terrorist threat has not only been verbally but also practically constructed and generated by the very activity of the security regime.

### 7.2 The Strengths, Constraints & Limitations the Study

The strongest point of this thesis work is highly related to the chosen methodology. Rather than providing a vague discourse about the FBI's counterterrorism stings, the method of the case-study enabled the research to penetrate into real and concrete events. By exploring cases on the micro-level, the research had the chance to demonstrate not only what is relevant but also what is super-relevant regarding the law enforcement techniques in post-9/11 counterterrorism stings.

The entrapment results reinforced the validity of this study, because they were examined on the basis of the legal conception of entrapment as provided by the American courts. Besides, the indicators managed to bridge the gap between the 'subjective' and 'objective' interpretation of the entrapment doctrine. That minimized prejudice towards the defendants' culpability or the government's misconduct in the examined cases. In this way, the research achieved a more balanced understanding of the defendants' mindset and predisposition as well as of the prosecution tactics deployed by the government.

Another strength of the research stems from the data collection which overall was accessible, insightful and valid. Especially, the fact that the online access to the recorded conversations between the informants and the defendants was feasible, enabled the research to be based on first-hand information and enhanced its credibility. Concerning the *Newburgh Four,* for its most part the analysis was based on the recorded conversations that took place during the operation. However, the same was not attainable for the entirety of the analysis of *Fort Dix Five*. For this reason, the research used additional insightful sources, which provided primary data.

Additionally, there were constrains in obtaining court documents. Once the PACER account was activated, there was a degree of difficulty in extracting information from the court files due the complexity of the online platform and of the court documents. Yet, it should not be disregarded that a lot of data could not be obtained due to the secrecy of information that characterizes the undercover operations. As the analysis showed, the informants failed to record particular parts of the plot, which are still deemed confidential within the Bureau.

The most principal limitation of this research, however, regards the number of the selected cases. It is essential to stress that the examination of two cases considerably limits the generalizability of the results. While the typical character of the cases provided a valuable insight into the government's maneuvers in the battle against terrorism, their limited number deprived the study of drawing more general and verified conclusions regarding the extent and type of entrapment abuses in the entirety of the Bureau's post-9/11 counterterrorism undercover operations.

### 7.3 Recommendations for Further Research

There are three recommendations for additional research that arise out of this conducted study:

1. It is recommended a similar case study to be conducted for the rest of the post-9/11 FBI's terrorism undercover operations, which involve informants. For this purpose, it is required a detailed investigation of the presence of the twenty entrapment indicators. Such a research is expected to be large in scope, given that the number of post-9/11 stings involving undercover operatives has until the present time reached 290. However, through this research it can be possible to credibly and in public report the full array of aggressive mechanisms in the investigative repertoire of the Bureau after 9/11.

2. To further understand the implications of the results provided in this thesis, future research is needed to establish the potential ways that the federal officials benefited by undercover operations with high entrapment scores. Such a research could address whether the way the media portray these operations immediately after the prosecutions, enhances the reputation of the Bureau's efficacy or not. It would also be prudent to review if such operations influence the career of the agents who handle them by, for instance, promoting them into higher positions within the state's apparatus. Such a research could provide a valuable insight into the rationale behind the Bureau's unlawful entrapment tactics.

3. To expand the current research, it is recommended to determine whether, apart from the US, security agencies in other liberal democratic countries cultivated undercover operatives who instigated entrapment after 9/11. Even though, a considerable number of democratic countries by law forbid the use of stings, it is required to demonstrate if and in what extent entrapment techniques take place in countries -such as U.K - that support stings as a pre-emptive method. While, the entrapment indicators have been exclusively retrieved from the American case-law, they could be applied as a valuable pattern able to signify similar entrapment trends in other countries. This study could be focused on a case-study based on one country or could be carried out through a comparative case-study of different countries. This will allow a more intuitive understanding of the way other countries -apart from the U.S- perceive the terror threat and the means to combat it.

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