FEMINIZING TERROR:

EXAMINING GENDER BIAS IN U.S. FEDERAL SENTENCING FOR TERRORIST ACTIVITY

By

Sarah Bowman

Submitted to

Central European University

School of Public Policy

In partial fulfillment of the requirements for the degree of Master of Arts in Public Policy

Supervisor: Professor Nick Sitter

Budapest, Hungary

June 2018

Abstract

There has been scarce research examining the extent to which extralegal factors influence sentencing outcomes in terrorism-related cases. This lack of inquiry is particularly concerning for a country like the U.S. which uses its criminal justice system as the cornerstone of its counter-terrorism policy, when considering research pointing to a trend of unexplained sentencing disparities between male and female defendants convicted of the same criminal offenses. As such, this study considers two questions: First, does the general U.S. pattern of preferential (i.e., more lenient) treatment of females exist in terrorism cases. This study, the first to examine the question, concludes that there is a gender-based disparity in terrorism cases. Second, the study uses U.S. sentencing data to examine possible reasons for the observed disparity. In particular, the study considers the applicability of two hypotheses: The *liberation hypothesis* which suggests sentencing disparities decrease between demographic groups in terrorism cases, and the *paternalism hypothesis* which posit gender will have a significant influence on sentencing outcomes in terrorism-related to cases. This thesis seeks to test these two theories by analyzing criminal sentencing data from terrorism-related cases in the United States from the period 1999-2017.

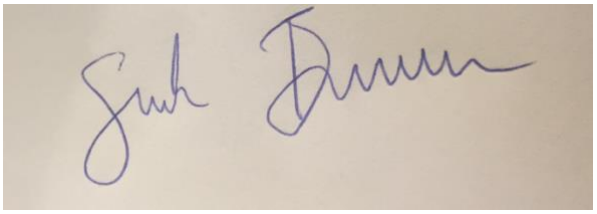
Declaration of Authorship

I, the undersigned **Sarah Bowman** hereby declare that I am the sole author of this thesis. To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. The thesis contains no material, which has been accepted as part of the requirements of any other academic degree or non-degree program, in English or in any other language.

This is a true copy of the thesis, including final revisions.

Date: June 15, 2018

Name (printed letters): Sarah Bowman

Signature: 

Acknowledgements

I would like to express special thanks to my thesis advisor, Nick Sitter, for his guidance and encouragement throughout the writing of this thesis. I would also like to thank my parents, Frank and Robin Bowman. My accomplishments would not have been possible without your constant love and support.

Table of Contents

List of Tables and Figures

Introduction

The past decade has proven to be immensely difficult for Western countries with respect to terrorism-related security threats. Indeed, the most commonly used counter-terrorism tool, the criminal justice system, has come under increased pressure as it has struggled in its attempts to adapt to the evolving motivations, profiles, strategies and tactics of today's violent extremists (Barrett, 2017). Of particular concern are recent reports indicating that female involvement in terrorist organizations has been increasing, and their roles expanding (Carolyn Hoyle, Alexandra Bradford, & Ross Frenett, 2015). Increased activity suggests the criminal justice system may soon face an increased percentage of female defendants. For the criminal justice system to act as an effective counter-terrorism tool, punishment for criminal acts of terrorism must be fairly comparable among similarly situated persons. It is widely accepted that criminal justice systems that impose inconsistent punishments severely undermine the effectiveness and legitimacy of the counter-terrorism strategy, thereby creating security vulnerabilities within states in which they are situated (Dandurand & Office on Drugs and Crime, 2009).

Despite this consensus, there has been scarce research examining the extent to which extralegal factors influence sentencing outcomes in terrorism-related cases. This lack of inquiry is particularly concerning for a country like the U.S. which uses its criminal justice system as the cornerstone of its domestic counter-terrorism policy. Prior research on the U.S. criminal justice system suggests a pattern of treating female offenders more leniently than similarly situated males. This study considers two questions: First, does the general U.S. pattern of preferential (i.e., more lenient) treatment of females exist in terrorism cases. This study, the first to examine the question, concludes that there is a gender-based disparity in terrorism cases. Second, the study uses U.S. sentencing data to examine possible reasons for the observed disparity. In particular, the study

considers the applicability of two hypotheses criminologists, legal practitioners, and feminist theorists have employed to explain gender disparity for other case types. The *liberation hypothesis* suggests sentencing disparities decrease between demographic groups in terrorism cases. Feminist theorists advance the *paternalism hypothesis* to posit that gender will have a significant influence on sentencing outcomes in terrorism-related to cases.

Central Thesis Questions:

(1) Is there a statistically significant difference between the severity of punishments imposed on men and women convicted of the same terrorism-related offenses when all relevant variables are controlled for?

(2) Do women continue to receive clemency due to a preconceived notion of paternalism resulting in sentencing disparities between men and women convicted of similarity situated crimes of similarity situated crimes, or, alternatively, are these disparities a result of documented legal adjustments which correlate with more lenient sentencing outcomes?

This thesis is split into seven chapters. Chapter one provides a brief overview of the methodological framework employed throughout this thesis. Chapter two provides a synopsis of the conceptualization and historical use of the criminal justice model of counter-terrorism. Chapter three provides an outline of the United States criminal justice system. Chapter four presents the theoretical framework used in the current study. Chapter five introduces the statistical models used to test the liberation and paternalism hypothesis which is followed by chapter six discussing the findings of these analyses. Finally, chapter seven provides the conclusions and implications.

Chapter 1: Thesis Methodology

This thesis asks two basic questions: First, is there a gender-based disparity in the sentencing of terrorism cases. Second, if so, why? More particularly, can any gender-based sentencing disparity be explained by either the liberation hypothesis or the paternalism hypothesis?

While it would be interesting to investigate these questions on an international level, several key limitations prohibit this thesis from conducting such an analysis. First, there is no uniform trans-national legal framework which defines and punishes criminal acts of terrorism. For example, even within Western Europe, each member state has developed distinct criminal justice systems which investigate, prosecute, and punish terrorism-related offenses differently. As such, between-state statistical analysis of gender-gap trends in terrorism-related sentences would have low validity and could potentially lead to spurious conclusions. Second, few states have publicly accessible case-specific sentencing databases with sufficient data points to enable explanatory analysis. Therefore, this thesis will examine the particular case of the prosecution of terrorism-related federal offenses within the United States from 1999-2017. Using a single jurisdiction will enable reliable cross-case comparison. In addition, the United States federal courts have a unique sentencing system that employs and captures data on more case-specific information than virtually any other system.

The United States is used as a case study for several additional reasons. First, the United States was one of the first advocates of using the criminal justice system as a primary approach to combat terrorism. While it is true that terrorist attacks such as those that took place on U.S. soil on September 11, 2001, inspired the U.S. to take on additional courses of action to combat terrorism, the criminal justice model of counter-terrorism continues to be a central element of U.S.

counter-terrorism policy. Second, previous research on U.S. sentencing outcomes have shown that principles central to an effective criminal justice response to terrorism, such as the equal and fair distribution of justice, are vulnerable to demographic variables which should not influence punishment in the context of general criminal cases. This elicits the question: will offenders convicted of terrorism-related offenses in U.S. courts be treated with similar biases as offenders convicted of general criminal activity? If yes, then the criminal justice system may be creating additional security risks within the United States. As such, the U.S. has a unique interest in research which tests the effectiveness of the criminal justice model.

The overall research design for this thesis is based on both quantitative (statistical modeling and empirical analysis of sentencing data) and qualitative (systematic literature review, semi-structured interviews, and expert consultations) methods. Both methods are vital in answering the questions posed by this thesis for two reasons: First, quantitative data will allow this study to examine the criminal justice model of terrorism through objective tools and measurements. Too often terrorism literature has relied upon theoretical assumptions to build spurious conclusions about the success or failures of counter-terrorism policies. Second, to this researcher's knowledge, there are no studies currently available to the public which examine the effect of gender on sentencing outcome in U.S. terrorism-related cases. This thesis creates three statistical model using federal sentencing data from criminal proceedings in the United States (1999 - 2017) to explore the relationship between gender and sentencing outcome in terrorism-related cases. To create accurate and reliable statistical models to test key assumptions in the counter-terrorism literature, experts familiar with both sentencing procedures and the sentencing process of terrorists in the United States must be consulted. Expert consultation is also helpful in providing explanations of the quantitative results.

With respect to the ***qualitative analysis***, this thesis first conducts a systematic literature review of the historical use of the criminal justice model of terrorism in the United States. In this way, key points of legislative and statutory sentencing mechanisms can be understood to appreciate how the criminal justice approach to terrorism has been influenced by the legal structure in which it is situated. This allows an initial list of potential variables for the statistical analysis to be generated and sent to experts (DOJ attorneys, defense attorneys, and Federal Sentencing Commission research associates). Such consultation lends the statistical model higher authority.

With respect to the ***quantitative analysis***, this thesis uses the most comprehensive publicly available U.S. dataset: the U.S. Federal Sentencing Commission database, which provides coded sentencing information for all defendants convicted and sentenced in U.S. federal courts. Drawing upon the models used in previous research to examine sentencing disparities in general criminal cases, along with the advice and direction provided by experts, the thesis creates three statistical models to investigate the question of whether there are gender-based disparities in the sentencing of U.S. terrorism cases. The models also assist in investigating two competing hypotheses about female offenders that might explain any observed gender-based disparity: (1) terrorism is an inherently different crime than general criminal activity and, as such, will not be vulnerable to the same inconsistencies in sentencing found between genders (as posited by the liberation hypothesis) and, (2) despite terrorism being a particularly heinous crime, female offenders (due to a perception of women being less blameworthy than males), will be treated with more leniency than similarly-situated male offenders, even when all legally relevant variables are controlled for (as posited by the paternalism hypothesis). The statistical figures produced by the models will then be discussed with the following experts who assisted in its creation to gain valuable insights about the findings.

Peter Smith: Former U.S. Sentencing Commission research director, responsible for creating, managing, and analyzing the Commission's annual datafiles, and current professor.

John Clay: Former DOJ prosecutor and defense attorney, past advisor to U.S. Sentencing Commission and law professor

Sam Williams: Former DOJ prosecutor with experience prosecuting terrorism cases and current DOJ employee

Due to expressed concerns over statements and opinions cited in this thesis being perceived as prejudicial or biased, *all* experts have been anonymized. Such concerns are understandable as all personnel cited in this study are currently still practicing in their respective fields. As such, the provided list of experts has been assigned aliases to protect identities. If subsequent contact is required for the purpose of material verification, the list of contacts is available upon request.

Chapter 2: The Criminal Justice Model as a Counter-Terrorism Strategy

2.1 Defining Terrorism

As is found in all projects studying terrorism, one of the most difficult challenges for researchers studying criminal justice-oriented counter-terrorism strategies is defining what constitutes terrorist activity (Martini & Njoku, 2017) (Dandurand & Office on Drugs and Crime, 2009) (Amirault & Bouchard, 2015b). The criminal justice model provides a definitional foundation by defining terrorism by the nature of the act (Shields, Smith, & Damphousse, 2017). As such, this thesis uses the definition provided by the RAND institute for an initial theoretical foundation for terrorism:

> "Terrorism is violence, or the threat of violence, committed with the purpose of the creation of an atmosphere of fear to coerce others into actions they would not otherwise undertake, or refrain from actions they desire to take. This violence or threat of violence is generally directed against civilian targets, but the motives of all terrorists are political" (Omelicheva, 2007, p. 388).

Support for this definition is provided by its usage in the majority of studies which examine the criminal justice models of counter-terrorism. Further, and perhaps more importantly, this definition is support by the historical use of the criminal justice system as a means for punishing terrorist activity (Michael Chertoff, 2011) (Amirault & Bouchard, 2015a) (Said, 2014).

2.2 Historical Use of the Criminal Justice Model in Counter-Terrorism

The criminal justice model has commonly been used as an important component of western states' counter-terrorism strategy. However, it was rare for specific acts of terrorism to be criminalized in the penal code prior to the attacks in the United States on September 11, 20001. Instead, most countries used existing criminal statutes (such as murder) to punish terrorist activity (Said, 2014).[1] Nonetheless, many states believed the legislative measures that had been in place prior to the 9/11 attacks were insufficient to deal with the evolving threat of terrorism. As such, governments across the world began passing legislation which strengthened existing policies and created new legal mechanisms for punishing and deterring terrorist activity (Amirault & Bouchard, 2015b).

Increased employment of criminal justice approaches to terrorism permits punishment of past wrongdoing, incapacitation of persons proven to be dangerous, and deterrence of future terrorist behavior using methods that balance security concerns with rule of law principles. (Bradley-Engen, Damphousse, & Smith, 2009) (Dandurand & Office on Drugs and Crime, 2009). In this way, the criminal justice model offers a realistic, long-term strategy for dealing with terrorism as it recognizes that, despite present methods in place for punishment and deterrence, terrorist activity is likely to continue into the future and, as such, can be minimized but not fully eradicated (Dandurand & Office on Drugs and Crime, 2009).

[1] While the United States had narrowly criminalized specific conduct previously, most states had no legislation codifying the prohibition of terror activity into penal code.

2.3 Punishing Terrorism Through the Criminal Justice Model

A key component of criminalizing terrorism is prescribing appropriate punishment for offenders convicted of terrorism-related crimes. As such, countries all across the western world began passing legislation after 9/11 which prescribed a certain length of time in prison for those convicted of partaking in terrorist activity (Dandurand & Office on Drugs and Crime, 2009). This form of punishment was based on the principles of accountability and equality—that all processes and legislation used during the sentencing process should punish those who have been convicted of crimes in a fair and impartial way, without regard to extralegal factors like class, race, or gender (Shields et al., 2017). States understood if the mechanisms used to punish terrorist activity were not objective and fair, the effectiveness of the criminal justice approach to counter-terrorism would be compromised. Indeed, the core advantage of using the criminal justice system to combat such asymmetric and violent activity is to demonstrate the state's ability to punish offenders fairly, thereby reintroducing a principled order back into society (Dandurand & Office on Drugs and Crime, 2009). Understanding the value such an approach could bring to a counter-terrorism strategy, the criminalization of terrorism-specific activity is now one of the most commonly used tools by western states in combating terrorism. However, despite this unprecedented adoption, to date, the application of these sentences has scarcely been tested for uniformity and fairness. This absence is rather surprising, especially in the context of the United States when considering the vulnerability sentencing procedures have historically had to contextual factors such as race, gender, and age (Said, 2014). The present paper seeks to fill this research gap by investigating the sentencing outcomes of males and female offenders in terrorism-related cases to determine if a sentencing disparity exists between genders and why these disparities may exist. The following chapter will provide an overview of the U.S. criminal justice system to provide the reader with a

foundational understanding of U.S. sentencing procedures before examining its application to terrorism-related cases.

Chapter 3: The United States Criminal Justice System

3.1 Introduction

The U.S. criminal justice system currently treats terrorism-related activity as a crime that is fundamentally different than any other form of criminal conduct ("Statistics on Unsealed International Terrorism and Terrorism-Related Convictions," n.d.). Where general crime is seen to be driven by a variety of contextual factors and self-interest, terrorism is understood to be driven by an extremist ideology which poses a much larger danger to society (Dandurand & Office on Drugs and Crime, 2009). While later sections in this chapter will discuss how and why the U.S. has come categorize terrorism as a unique crime, this section will provide a brief review of the criminal sentencing procedure in the United States more generally. Because terrorism-related cases are situated within the broader structure of the U.S. criminal justice system, a basic understanding of criminal sentencing procedures must first be established. Without such a foundation, it will be difficult to understand how and why the sentencing processes and outcomes for terrorism-related offenses may be influenced by the institutional actors and mechanisms involved in the sentencing process.

3.2 Creation of the U.S. Sentencing Guidelines

The U.S. is the self-proclaimed leader and international role model for a criminal justice system grounded in the principle of the "rule of law." At the core of this principle are the notions of accountability and equality—that all processes and legislation used within the criminal justice system should punish those who have been convicted of crimes in a fair and impartial way, without regard to extralegal factors like class, race, or gender (Dandurand & Office on Drugs and Crime, 2009). Prior to the 1980s, this sentencing process was mostly up to each individual judge to decide

how harshly to sentence convicted offenders within the limits specified by statute for the offense or offenses of which a defendant was convicted. However, this practice was criticized for producing disparate sentences for similarly situated defendants. Among the types of disparity generated by highly discretionary judicial sentencing were inter-judge disparity, geographic disparity, and, it was often alleged, disparities based on gender, race, or socio-economic status (David B. Mustard, 2001).

The U.S. legal system is federal in character, with responsibility for criminal law enforcement divided between the states and the federal government. In the 1980s and 1990s, both state and federal authorities engaged in sentencing reform efforts to remedy concerns about unjustifiable sentencing disparities. However, because in the U.S., most criminal prosecutions of terrorism-related crimes occur at the federal level, this paper will focus on the federal sentencing system. The major federal sentencing reform initiative occurred in 1984 when Congress passed the Sentencing Reform Act of 1984 ("the Act"). The Act sought to bring about, "reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders" (Bradley-Engen et al., 2009, p. 483).

To achieve these goals, the Act established the U.S. Sentencing Commission (the Commission) and tasked it with developing a set of Sentencing Guidelines (the Guidelines) that "required uniformity and predictability in the imposition of sentences across the geographic spectrum" (Bradley-Engen et al., 2009, p. 483). Accordingly, the Commission created a set of federal sentencing guidelines which provided federal judges a set of rules to consider when sentencing offenders for a federal crime. These rules provide judges with sentencing ranges to consult when determining prison sentence length (Bradley-Engen et al., 2009). To achieve uniformity in sentencing, the Guidelines created a table of sentencing ranges and a complex set of

rules for determining each defendant's placement on that table (Geoffrey, 2013). The two factors that determine a defendant's placement on the table are: (1) severity of crime and (2) the criminal history of the defendant. A more detailed explanation of these factors is provided in the following section.

3.3 Calculating Sentence Severity

In calculating sentencing severity, the judge must assess two main categories: severity of the crime and the criminal history of the offender. To determine the severity of a crime, the judge must calculate what the Guidelines call a "final offense level." The Guidelines provide a total of 43 levels of offense seriousness—the higher the offense level, the more severe the crime is considered to be and the longer the prison sentence suggested by the guidelines is (Geoffrey, 2013). In other words, the final offense level represents a scale of numerical values which indicate the seriousness assigned to each offense, once adjusted for specific factors. To calculate this final offense level, judges take into consideration three basic factors: base offense level, specific offense characteristics, and adjustments (Bradley-Engen et al., 2009).

a) Base offense level: Each crime carries a base offense level—the more severe the crime, the higher the base offense level.
b) Specific offense characteristics: Some crimes have specific offense characteristics. These characteristics can either increase or decrease the base offense level of the crime. For example, the base offense level for robbery is 20. If a defendant wields a weapon during the robbery, the offense level increases to 25 and if the weapon was actually used during the robbery, the level increases to 27.

c) Adjustments: Adjustments are general aggravating or mitigating factors that apply across all offense types. For example, defendants can receive offense level adjustments for playing either an aggravating and mitigating role. An aggravating role is assigned if "(a) the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels; (b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels; (c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by 2 levels" ("Aggravating and Mitigating Role Adjustments Primer §§ 3B1.1 & 3B1.2," n.d., p. 1). Alternatively, the mitigating role is assigned when the offender is determined to have played either a "minimal" or "minor" participatory role in the criminal activity. If the defendant "(a) was a minimal participant in any criminal activity, decrease by 4 levels; (b)If the defendant was a minor participant in any criminal activity, decrease by 2 levels; (c) if the cases falling between (a) and (b), decrease by 3 levels" ("Aggravating and Mitigating Role Adjustments Primer §§ 3B1.1 & 3B1.2," n.d., pp. 8–9).

Once the final offense level has been calculated, the judge must assess the offender's criminal history. The Guidelines assign a certain number of points according to each offender's previous convictions. The basic rule in awarding these points is that offenders who have been convicted and sentenced previously will have a higher number of points assigned to their criminal history than someone with fewer previous convictions. Once all the criminal history points have been totaled, the offender is sorted into one of six criminal history categories (Category One having the lowest number of points and Category Six having the most points).

Once the final offense level and criminal history have been determined, judges consult the Sentencing Table provided by the guidelines to determine the sentencing range. The offense level scale is the vertical axis of the table. The criminal history category scale is the horizontal axis on the table. Once the judge determines a defendant's offense level and criminal history category, the intersection of those two values in the body of the chart is a sentencing range expressed in months.

3.4 Evolution of the U.S. Sentencing Guidelines

As originally enacted, the Guidelines were a mandatory scheme in which courts could not depart from the prescribed sentencing range except in cases which "fell outside the traditional heartland of a criminal offense" (Bradley-Engen et al., 2009, p. 483). However, in 2005, the U.S. Supreme Court held in United States v. Booker, that the mandatory guidelines system prescribed by the Sentencing Reform Act of 1984 was unconstitutional as a violation of the Sixth Amendment jury clause. The details of this holding are unimportant. The key point is that Booker transformed the guidelines from mandatory to advisory. Since Booker, courts must calculate the proper guideline range, but having done so, are at liberty to employ their discretion in setting the final sentence. Most legal scholars today agree that the Guidelines should be seen as a "starting point and the initial benchmark of the sentencing process" from which courts may reasonably depart with rational justification (Bradley-Engen et al., 2009, p. 489). Since the Booker decision, a decreasing percentage of federal criminal cases have been sentenced within the applicable guideline range. (Sourcebook of Federal Sentencing Statistics tbl. N (2018)). Nonetheless, even sentences imposed outside the range cluster around the range and the guidelines therefore remain of great importance to judges and litigants.

3.5 United States Sentencing Commission Data

Critically for the present paper, the Guidelines require judges to find a great many facts about each defendant and his or her crime to properly calculate the guideline range. These are facts over and above the legal elements of the crime of conviction. For example, setting the offense level for a robbery requires the judge to determine whether a weapon was used and if so what kind and how it was employed; whether a victim was injured, and if so, to what degree; and other facts. Likewise, the guidelines contain offense level adjustments for the defendant's role in the offense, as either a leader or minor participant. There are also rules for determining whether a defendant is entitled to a sentencing discount for cooperating with the government. Factors like these influence sentences imposed in virtually all criminal systems across the United States and around the world. However, in few other systems are judges required to make explicit findings about such factors and then required to report those findings to a central data collection repository. Under the Guidelines, judges must make on-the-record findings of guidelines-affecting facts and then fill out a detailed report for each case for submission to the U.S. Sentencing Commission. The database compiled from these reports provides a rich source of defendant-specific information for this researcher.

3.6 Prosecuting Terrorism Today: Legislation & the U.S. Sentencing Guidelines

Prior to the mid-1980s, the U.S. had limited experience with direct terrorist attacks on its own soil (Shields et al., 2017). While there were several instances of violent extremism within the homeland, like the bombing of the World Trade Center in 1993 and a handful of airline hijackings, the majority of these attacks had low lethality and were not seen as major threats to national security. However, by the late twentieth century, changing geopolitical prompted congress to pass

the Omnibus Diplomatic Security and Antiterrorism Act of 198, legislation which explicitly addressed terrorism as a distinct activity (Ward, 2008). Nonetheless, despite the law recognizing certain activity as terrorist in nature, the sentencing procedures for such activity did not change as the primary conduct being punished was violent at its core (Said, 2014). However, the U.S. approach to terrorism dramatically changed after two major acts of terrorism: the 1995 Timothy McVeigh truck bombing and the attacks perpetrated by the Islamic-extremist group, al-Qaeda, on September 11, 2001.

Timothy McVeigh (1995): On April 19, 1995, an anti-government extremist, Timothy McVeigh, drove a truck bomb into the Alfred P. Murrah Federal Building in Oklahoma City—killing 168 people and injuring 680 more (Bradley-Engen et al., 2009). As a consequence, congress enacted new legislation criminalizing specific acts of terrorism by passing the Antiterrorism and Effective Death Penalty Act (AEDPA). More importantly, congress also passed legislation instructing the Sentencing Commission to "amend its sentencing guidelines to provide an appropriate enhancement for any felony…that involves or is intended to promote…terrorism…" (Bradley-Engen et al., 2009, p. 499). Accordingly, the Commission developed a special sentencing enhancement, U.S. Sentencing Guidelines §3A1.4, which increased sentence severity for offenses falling within the definition of a "federal crime of terrorism" (Bradley-Engen et al., 2009, p. 499).[2] This enhancement represented a shift in the place of criminal law enforcement in U.S. counter-terrorism strategy. Instead of defining terrorism by its use of violence, this new guideline re-conceptualized terrorism as a uniquely heinous crime,

[2] The federal crime of terrorism is defined pursuant as "an offense that is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct," and " any one of a whole host of specifically enumerated statutes."

motivated by a distinctively dangerous ideology, deserving of especially harsh punishment and condemnation.

Al-Qaeda (2001): On September 11, 2001, nineteen men, trained by al-Qaeda, successfully hijacked three planes and crashed them into high-profile buildings in the U.S. causing the deaths of over 3,062 people (Chertoff, 2011). This traumatic event triggered an unparalleled period of policy changes designed to combat terrorism (Said, 2014). One of the most important legislative initiatives was the USA PATRIOT ACT (the Act) (Shields et al., 2017). The Act significantly amended U.S. Sentencing Guidelines §3A1.4, expanding the terrorism enhancement to additional activities such as harboring terrorists, obstructing an investigation into federal terrorism crimes, "crimes that involved terrorism, but do not fall within the federal crime of terrorism definition," and "crimes that were intended to influence a government's conduct by intimidation or coercion, retaliate against government conduct, or influence a civilian population by intimidation or coercion" (Said, 2014, p. 500). Additionally, the Act amended §3A1.4 so that any defendant to whom it applied would receive the maximum criminal history category of VI, regardless of the individual's previous criminal record.[3]

A handful of studies have investigated how these new laws have affected the sentencing outcomes of terrorist offenders. This research tends to focus on how this legislation impacts the sentencing outcomes of offenders convicted of domestic vs international terrorist activity, as well as how sentencing severity has changed since the passage of this legislation (Amirault & Bouchard, 2015a) (Shields et al., 2017). However, to date, no studies have tested how extralegal factors, such as gender, have influenced sentencing outcomes in terrorism cases. The present study investigates

[3] A criminal history of category VI is the most severe classification and is usually reserved for "career" offenders

whether sentencing disparities exist between males and females convicted under the same terrorism-related statutes, and if so, why.

Chapter 4: Theoretical Considerations

4.1 Theory Introduction

In constructing a theoretical framework to test the federal sentencing data for terrorism-related crimes, this study considers the applicability of two hypotheses: the liberation hypothesis and the paternalism hypothesis. The *liberation hypothesis* suggests sentencing disparities decrease between demographic groups in terrorism cases. The *paternalism hypothesis* posits that demographic variables such as gender will have statistically significant influences on sentencing outcomes, including those in terrorism-related cases. Both theories are situated in the broader context of bounded rationality, a basic theory which seeks to explain why there are unexplained sentencing disparities in criminal cases generally. The following section will first provide a basic explanation of bounded rationality and will be followed by an examination of how the liberation hypothesis and the paternalism hypothesis have built upon it to predict and explain sentencing outcomes in terrorism-related cases.

4.2 Theoretical Framework: Judicial Decision-Making

To understand the impact of judicial discretion on gender sentencing disparities, it is useful to begin with a brief discussion of the rational choice model. The rational choice model begins with the assumption that a fully rational choice cannot be made without the possession of all relevant knowledge and information (Albonetti, 1991). As such, the rational choice model presumes that the possession of complete knowledge eliminates uncertainty in decision making and subsequent inconsistencies in decision making outcomes (Albonetti, 1991). However, if actors are forced to make decisions based upon incomplete information, they experience "bounded rationality" which leads to decisions being made on the basis of "past experience, stereotypes,

prejudices, and highly particularized views of present stimuli" (Albonetti, 1991, p. 249). In contexts which require frequent and consistent decisions to be made on the basis of bounded rationality, a series of "patterned responses" emerge which are then used in the decision-making process. In the case of criminal sentencing proceedings, judges are rarely, if ever, in possession of all the information when calculating sentencing severity. This has always been a challenge and, as a result, patterned responses, mental cheat sheets formed on the basis of societal bias and past experience, have emerged in an effort to "minimize the level of uncertainty a judge has in his or her decision making" (Albonetti, 1991, p. 249). This bounded-rationality framework has been used to explain how disparities can still exist despite the existence of federal sentencing guidelines which prescribe standardized sentencing ranges for all criminal offenses. Despite there being a comprehensive structure in place from which judges may draw when there is uncertainty, there is still a level of individual discretion exercised which can allow bias to influence sentencing-outcome.

The relationship between sentencing severity and factors which exert inappropriate influence has been well-researched. Previous enquiry has found two categories of influencing factors: legal and extralegal variables. Extralegal factors are specific characteristics that should not be incorporated into calculating sentencing severity, but nonetheless, have been found to correlate with specific sentencing trends (Maddan & Spohn, 2007). The most common and consistent factors found to exert influence over sentencing severity are gender, ethnicity, age, and education level of the offender (Maddan & Spohn, 2007). More specifically, being female, white, elderly, and in possession of a higher degree of education tend to be associated with more lenient sentencing in criminal cases (Mustard, 2001). Legal factors are variables which have been identified by the Sentencing Guidelines as legitimate reasons to increase or decrease sentence

length. Many studies have looked at how factors like final offense level, role played in the criminal activity, method of conviction (trial vs plea), acceptance of responsibility, and criminal history have influenced sentencing outcomes (Mustard, 2001). For example, Diab (2011) found a particularly strong relationship between sentencing severity and final offense level. Of course, such relationships are not inherently unjust as they simply demonstrate that higher final offense levels tend to lead to more severe sentencing outcomes. However, legal factors, such as final offense level and the role played in the criminal activity, are not the products of a singular decision being made on the basis of objective facts. To the contrary, these outcomes are the result of a long process involving multiple actors, including prosecution and defense counsel, at the end of which judges must weigh a plethora of evidence to arrive at seemingly objective figures (Mustard, 2001). Accordingly, considerable hidden discretion may be exercised in calculating these legal variables.

While the bounded-rationality model has been used consistently to examine unexplained sentencing disparities in general criminal cases, no study has used it to examine gender disparities in terrorism-related cases. Therefore, some caution is warranted when using theoretical frameworks intended for general criminal cases to research terrorist activity. However, there also has been research suggesting that, for those variables still relevant to terrorism-related cases, a degree of influence may still remain (Amirault & Bouchard, 2015a) (Brown, 2014) (Bradley-Engen et al., 2009) (Murray, 2016). Such an assumption is reasonable given that the Guidelines provide the same sentencing framework to courts imposing sentences on offenders charged with terrorist activity as they do in general criminal cases. Therefore, bounded rationality provides a basic foundation for explaining why disparities may exist in sentencing outcomes. The liberation and paternalism hypotheses build upon this framework by further investigating how, and in what contexts, specific extralegal factors influence sentencing outcome.

4.3 Explaining Sentencing Disparities: The Liberation Hypothesis

The liberation hypothesis, based on the model of the U.S. federal criminal sentencing process, asserts that judges are "more likely to deviate from [a prescribed sentencing range], and therefore allow their decisions to be influenced by personal opinions or values" when the prescribed legal sanctions are less stringent (Hester & Hartman, 2017, p. 6). In other words, in cases that do not have facts imparting a legal obligation on judges to adjust sentence length upward, like a high final offense level or clear injury to a victim, judges are "liberated" from strict adherence to prescribed guidelines and therefore are more likely to be influenced by personal bias. Because penalties are "clearly defined for serious and violent offenses, but for lesser crimes, less consensus exists regarding appropriate level of punishment," there is an increased potential for judicial discretion "which may include consideration of…irrelevant factors" such as gender (Hester & Hartman, 2017, p. 6). To test the liberation hypothesis, both legal and extralegal factors are considered. The extralegal factors typically tested for varying degrees of influence over sentencing outcome are gender, ethnicity, age, and education level of the offender (Maddan & Spohn, 2007). For the legal factors, the final offense level, criminal history, and "role" of each offender in the crime are typically considered.

Thus, the liberation hypothesis predicts, as the severity of a crime increases, sentencing disparities between men and women will become less significant and, further, the remaining differential treatment between the two genders can be traced to specific legal adjustments that provide a legitimate, legal reason for an increased or decreased sentence length (Starr, 2015, p. 14). Consistent with the liberation hypothesis, studies have found that when the severity of an offense increases, the sentencing disparities between demographic groups become smaller. The liberation hypothesis suggests that because terrorism has been codified into law as one of the most

violent and monstrous types of criminal activity, judicial discretion will exert a minimal influence on sentencing outcomes in terrorism-related cases, and thus that there should be little, if any, disparity between the sentencing outcomes of similarly situated male and female terrorism defendants.

4.4 Explaining Sentencing Disparities: The Paternalism Hypothesis

The paternalism hypothesis asserts that, despite the fact that terrorism-related offenses are considered especially heinous, demographic variables which have historically influenced the perception of women in the criminal justice system will continue to serve as influential factors during the sentencing process (Franklin & Fearn, 2008). There has been a long history of relative female clemency as the result of women being perceived as too weak and easily manipulated to be truly responsible for particularly heinous criminal activity. Therefore, leniency is not the outcome of a rational calculation based upon legally relevant variables, but rather a pejorative gesture driven by an underlying assumption that women cannot make truly informed decisions and as such should not be punished as harshly for their misdeeds (Franklin & Fearn, 2008). However, this leniency is either not extended or diminishes in situations involving females who differ from the "prototypical female" such as female offenders who are non-white, socioeconomically disadvantaged, or not U.S. citizens (Slyke & Bales, 2013, p. 171). Therefore, the paternalism hypothesis sees the bounded rationality model as a framework which allows judges to link attributes such as blameworthiness, culpability and dangerousness to societal stereotypes (Koons-Witt, Sevigny, Burrow, & Hester, 2014). In turn, these "attributions" interact to influence sentencing outcome. The paternalism theory posits that even when controlled for the legal adjustments which could account for downward adjustments in sentencing guidelines offense

severity measurements, there will be a remaining unexplained influence wielded by gender over sentencing severity.

While, to this researcher's knowledge, there has been no research isolating the effect of gender on sentencing outcomes in terrorism-related cases, there are a handful of studies examining how gender interacts with sentencing severity in general violent crime. These studies have found gender to be one of the most consistent predictive extralegal factors for sentencing outcome. While the influence of other demographic factors tends to begin dissipating immediately as severity of offense increases, the influence of gender remains strong until factors pertaining to particularly heinous crimes of violence are introduced (David B. Mustard, 2001). Therefore, the paternalism theory posits that even in cases involving severe criminal conduct such terrorism, females will continue to receive more lenient sentences than men.

Chapter 5: Current Study

5.1 Introduction to the Current Study

This thesis builds upon existing counter-terrorism research by comparing the treatment of male and female terrorist offenders the by the U.S. criminal justice system between 1999 and 2017. This study considers two questions: First, does the general U.S. pattern of preferential (i.e., more lenient) treatment of females exist in terrorism cases? Second, if such disparities are present, why do they exist? In addressing the second question, the study considers the applicability of the *liberation hypothesis* and the *paternalism hypothesis*, which are described in the two preceding sections.

These theories hypothesize conflicting outcomes for the sentencing outcomes of terrorist offenders and consequently present contrary implications for states currently employing the criminal justice model as a cornerstone of their counter-terrorism policies. If evidence leans more towards supporting the liberation hypothesis, the assumption that states currently employing the criminal justice model of counter-terrorism are well situated to deal with demographically diverse defendants is supported. If evidence supports the paternalism hypothesis, states must reconsider institutional weaknesses which allow discretion and subsequent bias to influence sentencing outcomes for offenders convicted of terrorist activity.

5.1.1 Hypothesis 1: The Liberation Hypothesis

> In accordance with the *liberation hypothesis*, there will be little-to-no sentencing disparity between genders in terrorism cases as a result of judges feeling more obliged to sentence offenders within prescribed guidelines as there are more legally relevant variables which define punishment for particularly heinous offenses such as terrorism. Moreover, the liberation hypothesis predicts that observable sentencing disparities between genders will be attributable to control variables such as final offense level, criminal history, and the type of role played by the offender.

5.1.2 Hypothesis 2: The Paternalism Hypothesis

> In accordance with the *paternalism hypothesis*, gender, mitigated by other demographic variables which have been associated with negative societal bias, will continue to influence sentencing outcomes in terrorism-related cases. Despite the heinous nature of the crime, the punishments prescribed in the criminal justice system were created under inherently biased assumptions about women. As a consequence, women will continue to be perceived as victims, rather than perpetrators of violence, thereby leading to more lenient sentencing. Therefore, once all legally-relevant variables are controlled for, gender will still serve as a predictive value for sentencing outcome.

5.2 Methodological Strategy

To test the liberation and paternalism hypotheses, three separate statistical tests are performed on U.S. federal sentencing data for the period 1999-2017. Each statistical model examines different points in the sentencing process in which gender disparities may occur. The first model measures whether females received more lenient prison sentences than males convicted under the same terrorism-related statutes. This direct comparison of sentencing outcome between genders provides evidence to answer the first question presented in this thesis. The second model uses descriptive statistics to comparatively measure the reception of aggravating and mitigating role adjustments between male and females. This will provide insight into how key actors perceive male and female participation in terrorist activity and, as such, provides information about why males and females may receive differential sentencing. The last model, a multivariate OLS regression, is employed to measure the influence of gender on the frequency and degree of judicial departure from prescribed minimum sentencing ranges, once controlled for all relevant legal and extralegal variables. This test measures the influence of gender on the discretion of judges during the sentencing process.

5.3 Data Collection

Previous research on the impact of gender on federal sentencing disparities has typically focused on one stage in the prosecutorial process: the judge's final sentencing decision (Starr, 2015, p. 3). A literature review finds the most common approach is to aggregate sentence outcomes after controlling for legal factors such as Guidelines final offense level, role adjustments, criminal history, acceptance of responsibility, and method of conviction, and extra-legal characteristics such as citizenship, number of dependents, education level, age, and ethnicity (Starr, 2015). Therefore, this thesis uses the data provided by the most comprehensive dataset publicly available in the U.S. to conduct its analysis: the U.S. Federal Sentencing Commission database. As mentioned previously, under the U.S. Sentencing Guidelines, judges must make on-the-record findings of guidelines-affecting facts and then fill out a detailed report for each case for submission to the U.S. Sentencing Commission (the Commission) ("Commission Datafiles," 2013). The Commission then organizes and codes defendant-specific information into three datasets—individual offenders, organizational offenders, and special reports—which are published annually and made available to the public. This thesis uses the Commission's individual datafiles which provide coded sentencing information in cases involving individual defendants ("Commission Datafiles," 2013).

To identify individual cases involving terrorist activity, cases related to terrorism needed to be extracted from the Commission's database. The following statutory and Guideline provisions specifically criminalizing terrorism were identified: (1) the Omnibus Diplomatic Security and Antiterrorism Act, (2) the Antiterrorism and Effective Death Penalty Act (AEDPA), and (3) the PATRIOT Act. A review of the Federal Sentencing Guidelines also identified a provision applied

only in sentencing terrorism cases, U.S. Sentencing Guideline, §3A1.4.[4] These statutory and Guideline provisions were then compiled and sent to Peter Smith who played a key role in creating, managing, and analyzing the Commission's annual datafiles. Upon request, Mr. Smith reviewed the list of statutes and Guidelines provisions and added additional laws categorizing conduct as criminal activity which served to expand the number of cases captured in this study's analysis.

Expert Peter Smith procured a total of 517 cases (517 offenders) from the years 1999 to 2017 from the Federal Sentencing Commission's database. Of these cases, 439 offenders were male, and 50 were female. Female offenders were extracted from the original dataset and sorted by statute(s) of conviction. The statutes under which females were convicted were identified and cross-referenced with the statutes under which male offenders have been convicted. Then, all male and female offenders who have been convicted of the same statutes for terrorism-related offenses were matched and sorted into specific conviction groups.[5] All cases that are directly comparable (i.e. have been convicted under the same statutes) were organized into a total of 16 conviction groups coded as groups A-P. Accordingly, 422 male offenders and 17 female offenders were excluded from the analysis as a result of not having directly comparable statutes of conviction. A total of 113 cases (n=113)

Table 1: *Conviction Group Descriptive Statistics*

Conviction Group	Observation Frequency	%	Female Frequency	Male Frequency
A	4	3.54	2	2
B	2	1.77	1	1
C	4	3.54	3	1
D	2	1.77	1	1
E	4	3.54	3	1
F	5	4.43	4	1
G	2	1.77	1	1
H	2	1.77	1	1
I	10	8.85	7	3
J	9	7.96	8	1
K	3	2.67	1	2
L	17	15.04	15	2
M	6	5.31	2	4
N	2	1.77	1	1
O	39	34.51	29	10
P	2	1.77	1	1
Total	113	100	80	33

Source: Table generated by author

[4] A review of the passage and development of this legislation is provided in previous sections.

[5] See appendix for list of conviction groups and statute definitions

remained and were used in all three statistical tests (33 female cases and 80 male cases). See ***Table 1*** for conviction group descriptive statistics and ***Table 2*** for the conviction group code key.

Table 2: *Conviction Group Code Key*

Conviction Group	Conv 1	Conv 2	Conv 3	Conv 4
GROUP A	**18 U.S. Code §2** (aiding and abeding)	**18 U.S. Code §2339B** (providing material support or resources to a terrorist)		
GROUP B	**18 U.S. Code §2** (aiding and abeding)	**18 U.S. Code §1361** (Government property or contracts)		
GROUP C	**18 U.S. Code §2** (aiding and abeding)	**18 U.S. Code §371** (Conspiracy to commit offense or to defraud United States)	**18 U.S. Code §844I** (maliciously damages or destroys with fire or an explosive any structure used for the purpose of interstate or foreign commerce)	
GROUP D	**21 U.S. Code §2** (aiding and abeding)	**18 U.S. Code §371** (Conspiracy to commit offense or to defraud United States)	**18 U.S. Code §844I** (maliciously damages or destroys with fire or an explosive any structure used for the purpose of interstate or foreign commerce)	**18 U.S. Code §1366a** (Destruction of an energy facility)
GROUP E	**18 U.S. Code §4** (Misprision of felony)			
GROUP F	**18 U.S. Code §1001A2** (False Statements)			
GROUP G	**18 U.S. Code §1001A2** (False Statements)	**18 U.S. Code §2339BA1** (Providing material support or resources to designated foreign terrorist organizations)		
GROUP H	**18 U.S. Code §1623A** (False declarations before grand jury or court)			
GROUP I	**18 U.S. Code §371** (Conspiracy to commit offense or to defraud United States)			
GROUP J	**18 U.S. Code §2332AA2** (Use of weapons of mass destruction)			
GROUP K	**18 U.S. Code §2332AA3** (Use of weapons of mass destruction)			
GROUP L	**18 U.S. Code §2339A** (Providing material support to terrorists)			
GROUP M	**18 U.S. Code §2339B** (Providing material support or resources to designated foreign terrorist organizations)			
GROUP N	**18 U.S. Code §2339B** (Providing material support or resources to designated foreign terrorist organizations)	**21 U.S. Code §841A1** (distribution or manifacturing of controlled substance)	**18 U.S. Code §2339BA1** (Providing material support or resources to designated foreign terrorist organizations)	**21 U.S. Code §846** (attempt and conspiracy)
GROUP O	**18 U.S. Code §2339BA1** (Providing material support or resources to designated foreign terrorist organizations)			
GROUP P	**50 U.S. Code §1705B** (violating sanctions on terrorist state)			

Source: Table generated by author

5.4 Test 1: Male vs. Female Imprisonment Comparison

To test the first question posed in this thesis—*(1) Do females receive more lenient sentences for terrorism-related convictions when compared to similarly situated males?* —the first statistical test compared the average male and female imprisonment length (in months) by sorting the

offenders into conviction groups and calculating average sentence length between genders accordingly. *Gender is used as an independent variable. The dependent variable is the average prison sentence received by males and females within each conviction group*.

5.4.1 Test 1 Results

This analysis demonstrates a clear trend of females, on average, receiving more lenient prison sentences than males when controlled for offense of conviction. Out of sixteen conviction groups, there are only three groups (Groups A, C, and M) in which females receive average higher sentences than men. ***See Table 3.*** Notably, conviction groups A, C, and M contain only 8% (14 cases) of the offenders considered in this study, a clear minority of the sample.

Table 3: *Male vs. Female Avg. Imprisonment (Months), by Conviction Group*

Conviction Group	Female Avg Imprisonment	Male Avg Imprisonment
A	138	92
B	24	36
C	92	75.66666667
D	108	156
E	0	10.67666667
F	18	57.5
G	120	252
H	0	24
I	28.19666667	41.14285714
J	0.029999999	96.5075
K	24.015	30
L	78	133.2
M	94.25	43
N	120	120
O	75	143.53
P	0	24

Source: Table generated by author

While it should be noted that these results have not been controlled for legal and extralegal variables, such findings do provide preliminary evidence suggesting there are, in fact, sentencing disparities between male and female offenders convicted of terrorism-related offenses. Therefore, *the answer to the first question in this thesis is a tentative yes*—females convicted under the same statutes as males tend to be given more lenient sentences than male offenders.

5.5 Test 2: Male vs. Female Role Adjustment

To asses how key actors perceive male vs female participation in terrorist activity, a second analysis was carried out through generating a set of descriptive statistics from the 113 case observations examining the reception of role adjustments. Sentencing disparities between genders have generally been explained by attributing disparities to legally relevant factors such as differential adjustments to sentencing guidelines levels (Maddan & Spohn, 2007). Indeed, in preliminary discussions with expert Sam Williams, previous prosecutor of terrorism cases and current DOJ employee, he hypothesized that most of the disparities would correlate with role adjustments (aggravating or mitigating role adjustments). In discussing this hypothesis with expert John Clay, he agreed and elaborated by explaining the reception of role adjustments is particularly important in the context of sentencing outcomes because, in practice, an offender only receives a mitigating role adjustment when the defense requests this adjustment and provides enough evidence to convince the court *and* prosecution that its reception is warranted. Similarly, aggravating role adjustments are only imposed when the prosecution specifically requests the adjustment and provides enough evidence to the court that its imposition is warranted. Accordingly, the presence or absence of a role adjustment is a key point of analysis as it demonstrates how the offender is perceived by the court and may, in turn, influence the degree to which judges depart from the bottomof the applicable sentencing range. Therefore, *gender is used as an independent variable* and *the reception of an aggravating or a mitigating role is the dependent variable*.

5.5.1 Test 2 Results

Out of 113 cases, a total of 25 offenders received either mitigating or aggravating role adjustments. ***See Table 4.*** Women are four times more likely than men to receive mitigating role adjustments.

Table 4: *Role Adjustment Descriptive Statistics*

	Received Mitigating Role Adjustment	Received Aggrevating Role Adjustment
Male	5 (6%)	8 (10%)
Female	8 (24%)	4 (12%)

Source: Figure generated by author

5.6 Test 3: Judicial Discretion

The last statistical test uses a multivariate OLS regression to measure how gender influences the frequency and degree of judicial departure from the prescribed minimum sentencing range. This study identifies and controls for all relevant legal and extralegal variables to isolate the effect of gender on judicial discretion during the sentencing process. The following section describes the structure of the analysis.

5.6.1 Dependent variable

The dependent variable in this test is the degree to which judges exercise their discretion to impose sentences outside of (and particularly below) the range prescribed by the U.S. Sentencing Guidelines in terrorism cases. Due to the complexity of Guidelines, one could easily construct a variable with low validity. To avoid this problem, the advice of two experts with particular familiarly with the Guidelines was obtained: John Clay, former DOJ prosecutor and

Commission advisee and current law professor, and Peter Smith, former research director at the Federal Sentencing Commission, were consulted. They advised creating a variable which measures two values: (1) imprisonment in months and (2) the degree of departure from the prescribed federal sentencing guidelines. As such, these two values are combined to create a single variable: the "ratio" variable.

"Ratio" as the dependent variable: As discussed previously, the Federal Sentencing Guidelines provide judges with a set of instructions which set out facts to consider when sentencing offenders. Judges must calculate an "offense level," which is a numerical measurement of the seriousness of the current offense, and a criminal history category, a numerical measurement of the seriousness of the defendant's prior criminal record. The combination of those two values produce an intersection on a "sentencing table" corresponding to a recommended sentencing range consisting of a maximum sentence length and minimum sentence length. While all judges must consider this suggested range, the range is not binding. If the judge decides that the suggested range of punishment is too harsh or too lenient, the judge may depart from the guidelines and sentence the offender outside of the suggested sentencing range. Accordingly, two values provide quantifiable evidence of discretionary decision-making during the sentencing process: (1) the frequency with which judges impose sentences below or above the recommended guidelines, and (2) the degree of deviation from the range. To create a single variable that can measure these two values and be standardized across all observations, a new variable was generated: the "ratio" variable. To find the ratio variable, for each offender, the actual sentence imposed in months is divided by his or her minimum guidelines range.[6] For example, if an offender is convicted

[6] A preliminary review of the data shows that there is only one imposed sentence within this dataset which is above the prescribed sentencing range. For the sake of simplicity, no additional variable was created to measure the degree to which judge's sentence defendants above the prescribed sentencing range.

sentenced to 10 months in prison and the minimum recommended guideline is 8 months, the ratio is 0.8. Thus, the "ratio" indicates the degree to which the imposed sentence is below the recommended minimum.

5.6.2 Independent variable

Gender is used as independent variable to asses its influence on the dependent variable, sentencing outcome as measured by the ratio variable, when males and females are convicted of the same terrorism-related offenses. Accordingly, gender is coded as a dichotomous variable (a type of nominal variable which has only two categories). Females were assigned a coded value of zero (female=0). Males were assigned a coded value of one (male=1) ("Dichotomous Variables," 2004).

5.6.3 Control Variables

Extralegal variables which have historically influenced sentencing outcomes in both violent criminal cases and terrorism-related cases are also included in this study to assess how they interact with independent and dependent variables. An initial list of legal and extralegal variables was compiled to include in this analysis (Koons-Witt et al., 2014) (Amirault & Bouchard, 2015b) (Said, 2014) (Diab, 2011). This list was sent to experts Clay and Smith to confirm all relevant variables were included that have traditionally explained sentencing adjustments and disparities. As a result, the following control variables were included in the analysis: acceptance of responsibility, aggravating role, mitigating role, final offense level, total points for criminal

history, method of conviction, age, citizenship, ethnicity, education level, and number of dependents.[7] See ***Table 1*** for the complete list of variables included in the present study.

Table 5*: Study Variables*

Variable Type	Variable Name	Reason for Inclusion
Independent (IV)	Gender	Assesses predictive value of gender on the DV ("ratio")
Dependent (DV)	Ratio	Measures judicial discretion by combining two values: (1) length of imprisonment imposed, (2) significance departure from minimum prescribed sentencing range.
Control (legal)	Aggravating Role	Defendants generally receive upward adjustments when assigned an aggravating role (Starr, 2015)
Control (legal)	Mitigating Role	Defendants generally receive downward adjustments when assigned an aggravating role (Starr, 2015)
Control (legal)	Acceptance of Responsibility	Offenders receive an upward or downward sentencing adjustment for acceptance (Starr, 2015)
Control (legal)	Final Offense Level	Considered during sentencing range calculation—Indicates severity, or "heinousness" of offense (Starr, 2015)
Control (legal)	Total Points for Criminal History	Considered during sentencing range calculation—quantifies past criminal activity (Starr, 2015)
Control (legal)	method of conviction	Indicates whether the offender went to trial or plead guilty. Offenders who plead generally receive adjustments for cooperation (Starr, 2015).
Control (Extralegal)	Age	Previous studies have found age to be negatively correlated with sentencing severity (Starr, 2015).
Control (Extralegal)	Education	Previous studies have found education level to be negatively correlated with sentencing severity (Starr, 2015).
Control (Extralegal)	Ethnicity	Previous research has found non-white citizens tend to receive harsher sentences (Starr, 2015).
Control (Extralegal)	Citizenship	Previous research has found non-U.S. citizens tend to receive harsher sentences than U.S. citizens (Starr, 2015).
Control (Extralegal)	Number of dependents	Previous research has found a negative correlation between number of dependents and sentence severity (Starr, 2015).

Source: Table generated by author

For each case, a total of ten variables are coded and used as controls pertaining to key legal and extralegal factors. See ***Table 3*** for the current study's variable descriptive statistics.

[7] See appendix for explanation of coding.

Table 6: *Variable Descriptive Statistics*

Descriptive Statistics														
	Conviction Group	**Gender**	**Ratio**	**Acceptance of Responsibility**	**Aggravating Role**	**Mitigating Role**	**Method of Conviction**	**Final Offense Level**	**Ttl Pnts for Crim Hist**	**Age**	**Citizenship**	**Education**	**Ethnicity**	**No. Dependents**
Valid	113	113	113	113	113	113	113	113	113	113	113	113	113	113
Missing	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mean		0.71	0.35	0.89	0.33	-0.29	0.92	33.32	1.17	33.07	0.81	2.60	0.50	1.02
Std. Deviation		0.46	0.35	0.31	0.99	0.82	0.27	8.56	4.19	10.98	0.71	0.93	0.50	1.72
Minimum		0.00	0.00	0.00	0.00	-4.00	0.00	6.00	0.00	19.00	0.00	1.00	0.00	0.00
Maximum		1.00	2.00	1.00	4.00	0.00	1.00	43.00	35.00	66.00	5.00	4.00	1.00	8.00
Note. Not all values are available for *Nominal Text* variables														

Source: Table generated by author

5.6.4 Test 3: Analytic Strategy

A regression is used to obtain valuable information about comparative degrees of influence, as well as direction of influence, of variables included in the study. A total of four regressions were performed to test the influence of each group of variables:

(1) A simple regression testing the explanatory power of the *independent variable*, gender, on the *dependent*, "ratio," variable's variance.

(2) A multivariate regression testing the explanatory power of the *legal control variables*, on the *dependent*, "ratio," variable's variance.

(3) A multivariate regression testing the explanatory power of the *extralegal control variables*, on the *dependent*, "ratio," variable's variance.

(4) A multivariate regression testing the explanatory power of the *all variables*, on the *dependent*, "ratio," variable's variance.

The regression test is the horizontal axis on the table and the variable being tested is the vertical axis. The intersection of those two values in the body of the chart displays the coefficient[8] and standard error (placed in brackets). The standard error is "an estimate of the standard deviation of the coefficient, [or] the amount it varies across cases. It can be thought of as a measure of the precision with which the regression coefficient is measured" (Princeton University, 2007). The smaller the standard error, the more precise the coefficient. This leads to the calculation of the p-value. If the p-value is less than .10, the variable being measured has a particularly high level of explanatory power over the dependent variable which leads to a star being placed next to the coefficient. The more significant the relationship, the more stars assigned next to each coefficient. The final important table characteristic is the "R-sq" which indicates how much, overall, the variables within each regression explain the variance seen in the dependent variable. The larger the number, the more explanatory power the set of variables tested have over explaining the variance found in the dependent variable. ***See Figure 1.***

5.6.5 Test 3 Results

The OLS regression model, the "Ratio" Regression, consists of four separate regressions. As seen in the "R-sq" value, the fourth regression which controls for all variables while testing the influence of gender on the dependent variable, "ratio," has the most explanatory power when compared with the three previous regressions. The first regression, "(1) ratio," explains a fairly low amount of variance with a R-sq value of .015—indicating when testing only for gender's

[8] A coefficient shows the strength and direction of association between the independent (explanatory) and dependent variable.

influence over the dependent variable's outcome, only a very small percentage of variance can be explained. The second regression, "(2) ratio," has an R-sq value of .083—indicating the legal variables have a significantly higher degree of explanatory power over the dependent variables, when compared to gender alone. The third regression, "(3) ratio," has an R-sq value of .110—indicating, when all demographic variables are tested, they explain more of the variance seen in the ratio variable than gender alone, as well as the legal factors. The fourth regression, "(4) ratio," has an R-sq value of .198—indicating the variables included in this test explain a far more significant percentage of the variance in the ratio variable.

Taking a closer look at the coefficients, it can also be observed which variables exert the most influence over ratio's variance when compared with the other factors being tested, as well as the direct of that influence. For example, "(1) ratio," contains coefficients indicating that males are more likely to receive sentences with smaller departures from the minimum sentencing

Figure 1: *"Ratio" Regression*

	(1) Ratio	(2) Ratio	(3) Ratio	(4) Ratio
Gender	0.0957		0.129*	0.150**
	(0.0675)		(0.0657)	(0.0737)
aggravating		-0.0317		-0.0453*
		(0.0271)		(0.0259)
Mitigating		0.00852		0.0126
		(0.0356)		(0.0342)
TtlPntsfor~t		0.0173		0.0102
		(0.0111)		(0.0106)
FinalOffen~l		-0.00563		-0.00771
		(0.00666)		(0.00681)
Acceptance~y		-0.0366		-0.221
		(0.282)		(0.304)
MethodofCo~n		-0.0181		0.148
		(0.332)		(0.328)
whitedummy			-0.0882	-0.125**
			(0.0593)	(0.0608)
EducationD~y			-0.196***	-0.169***
			(0.0721)	(0.0606)
NoDependants			-0.0148	-0.00428
			(0.0192)	(0.0193)
Citizenship			-0.0544	-0.104
			(0.0829)	(0.0814)
Age			0.000275	-0.0000607
			(0.00313)	(0.00271)
_cons	0.285***	0.582*	0.468***	0.817**
	(0.0535)	(0.310)	(0.162)	(0.356)
N	113	113	113	113
R-sq	0.015	0.083	0.110	0.198
adj. R-sq	0.006	0.031	0.060	0.102

Standard errors in parentheses
* p<0.10, ** p<0.05, *** p<0.01

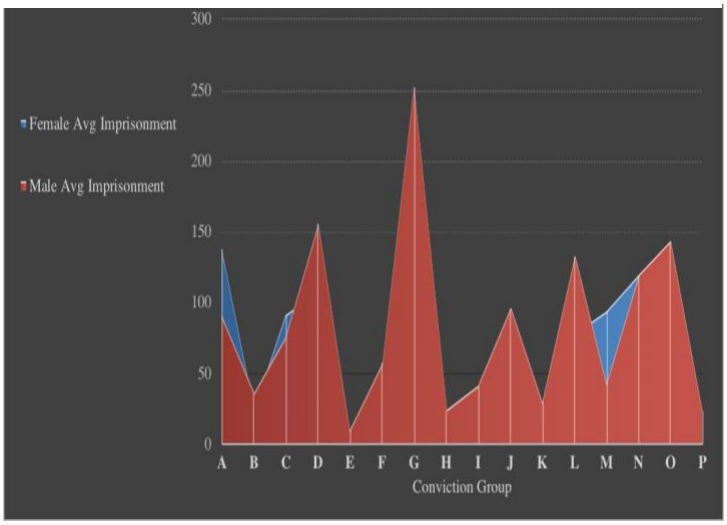
Source: Figure generated by author

range. The most noteworthy coefficient values are found in the third and fourth regression. The third regression, "(3) ratio," indicates that, within this regression test, gender and education level exert the most influence over explaining variance in the ratio variable. This is important because it investigates the R-sq value to find being female and well-educated is associated with receiving a prison sentence which departs significantly from the minimum sentencing range. The fourth regression, "(4) ratio," is the most important regression test in this model. This regression test has the highest R-sq value and, as such, the variables tested therein have the highest level of explanatory power compared to the previous three regressions. This regression indicates that, for legal variables, aggravating role has the most significant level of influence; receiving an aggravating role adjustment correlates with receiving a smaller departure from the minimum federal sentencing range. Receiving a mitigating role adjustment correlates with receiving a larger downward adjustment from the minimum of the guideline range, albeit the degree of the effect does not have a high significance level in this sample. For extralegal variables, gender, ethnicity, and education level exert the most influence with education level having the most influence, gender having the second most influence, and ethnicity having the third most influence. Thus, being female, white, and possessing a higher level of education make it more likely for a judge to prescribe a sentence significantly below the prescribed minimum sentencing range. These coefficients suggest that possessing certain extra-legal characteristics may lead to the exercise of judicial discretion in the direction of more lenient sentences.

Chapter 6: Analysis and Implications

Three statistical models are employed in this thesis to answer two basic questions: (1) are there sentencing disparities between male and females in terrorism-related cases, and, if yes, (2) why do these disparities exist. The first statistical model strongly suggests that females receive more lenient sentencing than similarly-situated males. ***See Figure 2.***

Figure 2*: Female vs. Male Avg. Imprisonment (months), by Conviction Group*



Source: Figure generated by author

The second and third statistical models were used to test the second question: Why do these disparities exist? These models provide results which can be used to test the liberation and paternalism hypotheses.

6.1 Testing the Liberation and Paternalism Hypotheses

Hypothesis 1: The Liberation Hypothesis assumes that, when legal factors are controlled, gender will not exert an explanatory value over the "ratio" variable. As noted above, past research suggests that demographic variables tend to exert less influence over sentencing outcomes in cases

involving crimes considered to be particularly heinous by society (Maddan & Spohn, 2007). Terrorism cases plainly fall into this category.

Congress has passed numerous laws explicitly criminalizing terrorist activity and created specific sentencing "enhancements" for certain types of terrorist activity. As a consequence, U.S. judges must consider more legal adjustments while sentencing offenders convicted of terrorist activity. If the legal processes that take place whilst sentencing terrorism-related cases are indeed similar to those involving violent criminal acts, then the data should demonstrate that extralegal factors such as gender exert little-to-no statistically significant influence over sentencing outcome. Instead, specific legal adjustments cited by judges which increase or decrease sentencing severity should demonstrate explanatory power over degree of departure from the minimum sentencing range.

Hypothesis 2: the paternalism hypothesis, postulates that females will receive more lenient sentences than similarly situated males as a result of traditional gender stereotypes influencing the perceptions of culpability and blameworthiness of women during the sentencing process (Franklin & Fearn, 2008). However, the paternalism theory also inserts a caveat in this prediction by stating this type of perception and subsequent lenient sentencing is mitigated by other demographic factors such as race and socioeconomic status (Franklin & Fearn, 2008). As such, non-white women from socioeconomic disadvantaged backgrounds may receive less leniency than white, socioeconomic advantaged women.

In considering these two theories, the liberation hypothesis is not supported by the results of the first statistical analysis which found women terrorism defendants, on average, receive more lenient sentences than men convicted under the same statutes. However, the liberation hypothesis does posit that certain legal adjustments must be controlled for to measure sentencing disparities.

Accordingly, a second test was run to compare how many males vs females received adjustments for roles in the offense. This test found that women are four times more likely than men to receive mitigating role adjustments.

There are at least two explanations for such a differentiation. First, these role adjustments may reflect the true nature of female vs male participation in terrorist activity. Females in this sample may have played minor roles in the terrorist activity four time more often than males and, as such, the adjustments may simply reflect the reality of female participation in terrorism. If this is the case, the data neither supports nor disproves the liberation hypothesis. Alternatively, as the paternalism hypothesis would assert, such a large number of mitigating adjustments for females may be a reflection of prosecutors and judges having an unconscious bias in which women are automatically perceived to have played a smaller role than male offenders. Expert John Clay expressed minimal surprise at findings, stating:

> "Sometimes you will find in these cases that the codefendants are boyfriends, brothers, fathers, etc. In such contexts, males sometimes try to be chivalrous and take plea bargains that take all of the blame, thereby protecting the women and giving them an opportunity to receive mitigating role adjustments. In such cases, as a prosecutor, its really hard to tell who is lying and who is telling the truth, or why a specific set of admissions are being made while others are not. The women could be just as culpable as the men but, as lawyer or judge, you don't always know what the truth is…so, if you don't have enough evidence indicating a female played a significant role but the guy is willing to take the blame, it makes more sense to roll with it and take the pleas."

The evidence presented in this test neither directly supports nor refutes the liberation hypothesis but provides some support for the paternalism hypothesis.

The final test uses an OLS regression model to examine how gender influences degree of departure from minimum sentences ranges, while controlling for the influence of legal and

extralegal variables. Here, too, results seem to support the paternalism hypothesis and weaken the liberation hypothesis. Most notable is the evidence provided in the fourth regression, "(4) ratio," —demonstrating gender, ethnicity, and education level influence the sentencing process more than any other factor in the analysis. Women who are white and well-educated receive larger departures from the minimum sentencing range than females who are non-white and possess less education. As education is often an indicator of socioeconomic status, this also supports the conclusion that leniency correlates with other demographic variables linked to social stereotypes (Galobardes, Shaw, Lawlor, & Lynch, 2006). These findings show that after federal judges calculate the legally recommended sentencing range for each terrorism-related offense, they consistently demonstrate a pattern of sentencing females farther below that range than males. Collectively, the evidence provides tentative evidence supporting the paternalism hypothesis.

6.1.1 Statistical Analysis Conclusion

The data presented here strongly suggests that female terrorism defendants receive favorable sentencing treatment relative to similarly situated males. However, neither explanatory hypothesis can be entirely supported or rejected. However, the evidence tends to support the paternalism hypothesis and refute the liberation hypothesis. Women do indeed receive more lenient sentencing than men and are beneficiaries of judicial discretion more often than men. This effect is correlated with other characteristics, such as ethnicity and education level. Moreover, the reception of specific legal adjustments also provides women with lower sentencing ranges than men. At a minimum, this study provides preliminary evidence which would allow researchers to move towards constructing a more nuanced and accurate picture of sentencing trends in terrorism-related cases.

6.2 Data Limitations

This study is not without limitations. Numerous offenders were excluded from the sample due to missing information, thereby reducing an already small sample size. Thus, the sample used in this thesis is characterized by selection bias as only those offenders with complete sentencing information were included in the study. Also, terrorist ideology, a key element which has been identified to influence sentencing outcomes in previous terrorism-related studies (Damphousse and Shields, 2007; Smith and Damphousse, 1998, 1996), was also not included in the statistical model because ideology could not be consistently discerned for each case observation. Nor did this thesis attempt to capture how sentencing outcomes may have changed after the passage of key legislation criminalizing terrorism. Future research would do well to include these variables alongside the variables used in this study to examine their influence on the ratio variable.

With regard to the statistical models used to test the liberation and paternalism hypothesis, while they are able to test the influence of identified variables within the present sample, they cannot directly test the assumptions presented within these theories. For example, the models can point to a trend in which judges give more mitigating roles to women than men, but they cannot provide a definitive explanation of why these disparities exist. Moreover, because this study examines only one stage of the criminal justice process, it may miss key variables causing bias in earlier stages of the court proceedings. While this problem was mitigated in part by seeking the insights of legal experts with experience in the field, the opinions expressed within this paper may not represent wider opinions. It is advised that future research incorporate a larger number of expert perspectives to gain more comprehensive and representative interpretations.

Chapter 7: Conclusion

States that impose inconsistent punishments when using the criminal justice model to counter terrorism undermine the effectiveness and legitimacy of the counter-terrorism strategy, thereby creating security vulnerabilities (Dandurand & Office on Drugs and Crime, 2009). Nonetheless there has been scarce research examining the extent to which unjustifiable extralegal factors influence sentencing outcomes in terrorism-related cases. This lack of inquiry is particularly concerning for a country like the U.S. which uses its criminal justice system as the cornerstone of its domestic counter-terrorism policy.

This study adds to existing research by combining statistical methods with expert knowledge and analysis to answer two questions: First, does the general U.S. pattern of preferential (i.e., more lenient) treatment of females exist in terrorism cases. This study, the first to examine the question, concludes that there is a gender-based disparity in terrorism cases. Second, the study uses U.S. sentencing data to examine possible reasons for the observed disparity. In particular, the study tests the assumptions posited by the liberation and paternalism hypotheses to answer the question of why these disparities exist.

The results indicate that the paternalism hypothesis is supported more by the evidence than the liberation hypothesis as all three tests demonstrate a pattern of legal processes favoring female leniency. However, the data also shows that the paternalism hypothesis may be too simplistic of a model to explain sentencing outcomes in terrorism-related cases. While it is true that white, well-educated females are more likely to receive sentences with higher degrees of discretion than similarly situated males, it is also true that lower sentences may be a result of females actually playing more mitigating roles, rather than the result of bias. Some legal experts contend that the reception of such adjustments may reflect the judges' opinion of offenders and, as such, downward

role adjustments are likely to correspond with more lenient sentencing. But, it would be far too simplistic to assert *all* of role adjustments are the result of biased decision-making.

Despite this nuance, this paper does provide evidence supporting the paternalism hypothesis, thereby indicating states should reconsider institutional weaknesses which allow discretion and subsequent bias to influence sentencing outcomes for female offenders convicted of terrorist activity. While there are doubtlessly cases in which women are less culpable than males due to external coercion or minimal participatory roles, it should never be assumed females cannot commit dangerous acts simply because they are women. The United States (and for that matter all states using the criminal justice system to combat terrorism) cannot afford to treat women with less accountability than men. Such treatment creates blind spots in all stages of the criminal justice system which ultimately undermines the very principles of equality and justice upon which the criminal justice model of counter-terrorism is based.

Reference List

Aggravating and Mitigating Role Adjustments Primer §§ 3B1.1 & 3B1.2. (n.d.), 15.

Albonetti, C. (1991). Integration of Theories to Explain Judicial Discretion. *Oxford University Press on Behalf of the Society for the Study of Social Problems*, *38*(2), 247–266. Retrieved from https://academic.oup.com/socpro/article-abstract/38/2/247/1651986

Amirault, J., & Bouchard, M. (2015a). A group-based recidivist sentencing premium? The role of context and cohort effects in the sentencing of terrorist offenders. *International Journal of Law, Crime and Justice*, *43*(4), 512–534. https://doi.org/10.1016/j.ijlcj.2014.12.002

Amirault, J., & Bouchard, M. (2015b). Timing is Everything The role of contextual and terrorism-specific factors in the sentencing outcomes of terrorist offenders. *European Journal of Criminology*. Retrieved from http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1031.2064&rep=rep1&type=pdf

Barrett, R. (2017). *Beyond the Caliphate: Foreign Fighters and the Threat of Returnees* (pp. 1–41). Retrieved from http://thesoufancenter.org/research/beyond-caliphate/

Bewick, V., Cheek, L., & Ball, J. (2003). Statistics review 7: Correlation and regression. *Critical Care*, *7*(6), 451–459. Retrieved from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC374386/

Bradley-Engen, M. S., Damphousse, K. R., & Smith, B. L. (2009). Punishing Terrorists: A Re-Examination of U.S. Federal Sentencing in the Postguidelines Era. *International Criminal Justice Review*, *19*(4), 433–455. Retrieved from http://journals.sagepub.com/doi/pdf/10.1177/1057567709348357

Brown, G. D. (2014). Punishing Terrorists: Congress, the Sentencing Commission, the Guidelines, and the Courts. *Cornell Journal of Law And Public Policy*, *23*(517–551), 36. Retrieved from http://www.lawschool.cornell.edu/research/JLPP/upload/Brown-final.pdf

Carolyn Hoyle, Alexandra Bradford, & Ross Frenett. (2015). *Becoming Mulan? Female Western Migrants to ISIS* (p. 48). London: Institute for Strategic Dialogue. Retrieved from https://www.isdglobal.org/wp-content/uploads/2016/02/ISDJ2969_Becoming_Mulan_01.15_WEB.pdf

Commission Datafiles. (2013, October 28). Retrieved June 8, 2018, from https://www.ussc.gov/research/datafiles/commission-datafiles

Dandurand, Y., & Office on Drugs and Crime. (2009). *Handbook on Criminal Justice Responses to Terrorism*. New York: United Nations.

David B. Mustard. (2001). Racial, Ethnic,and Gender Disparities in Sentencing: Evidence From the U.S. Federal Courts. *Journal of Law & Economics*, *44*(1), 285–314. Retrieved from https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/15-year-study/chap4.pdf

Diab, R. (2011). Sentencing of Terrorism Offences after 9/11. In *Terrorism, Law and Democracy: 10 Years After 9/11*. Retrieved from https://arcabc.ca/islandora/object/tru:1246

Dichotomous Variables. (2004). In M. Lewis-Beck, A. Bryman, & T. Futing Liao, *The SAGE Encyclopedia of Social Science Research Methods*. 2455 Teller Road, Thousand Oaks California 91320 United States of America: Sage Publications, Inc. https://doi.org/10.4135/9781412950589.n239

Franklin, C. A., & Fearn, N. E. (2008). Gender, race, and formal court decision-making outcomes: Chivalry/paternalism, conflict theory or gender conflict? *Journal of Criminal Justice*, *36*(3), 279–290. https://doi.org/10.1016/j.jcrimjus.2008.04.009

Galobardes, B., Shaw, M., Lawlor, D. A., & Lynch, J. W. (2006). Indicators of socioeconomic position (part 1). *Journal of Epidemiology and Community Health*, *60*(1), 7–12. https://doi.org/10.1136/jech.2004.023531

Geoffrey, N. L. (2013). What Are the Federal Sentencing Guidelines + Chart 2018. Retrieved June 4, 2018, from https://www.federalcharges.com/what-are-federal-sentencing-guidelines/

Hester, R., & Hartman, T. K. (2017). Conditional Race Disparities in Criminal Sentencing: A Test of the Liberation Hypothesis From a Non-Guidelines State. *Journal of Quantitative Criminology*, *33*(1), 77–100. https://doi.org/10.1007/s10940-016-9283-z

Koons-Witt, B. A., Sevigny, E. L., Burrow, J. D., & Hester, R. (2014). Gender and Sentencing Outcomes in South Carolina: Examining the Interactions With Race, Age, and Offense Type. *Criminal Justice Policy Review*, *25*(3), 299–324. https://doi.org/10.1177/0887403412468884

Maddan, S., & Spohn, C. C. (2007). Concerning Conceptualization and Operationalization: Sentencing Data and the Focal Concerns Perspective. *The Southwest Journal of Criminal Justice*, *4*(1), 58–78. https://doi.org/10.4135/9781412974615.n8

Martini, A., & Njoku, E. T. (2017). The Challenges of Defining Terrorism for Counter-Terrorism Policy. In *The Palgrave Handbook of Global Counterterrorism Policy* (pp. 73–89). Palgrave Macmillan, London. https://doi.org/10.1057/978-1-137-55769-8_3

Michael Chertoff. (2011, September 2). 9/11: Before and After. Retrieved May 7, 2018, from https://www.hsaj.org/articles/584

Murray, K. (2016). A comparative analysis of conviction outcomes of American domestic terrorists. *International Journal of Comparative and Applied Criminal Justice*, *42*(1), 75–88. https://doi.org/10.1080/01924036.2016.1251952

Omelicheva, M. Y. (2007). Combating Terrorism in Central Asia: Explaining Differences in States' Responses to Terror. *Terrorism and Political Violence*, *19*(3), 369–393. https://doi.org/10.1080/09546550701424075

Princeton University. (2007). Data and Statistics Service: Interpreting Regression Output. Retrieved June 10, 2018, from https://dss.princeton.edu/online_help/analysis/interpreting_regression.htm#ptse

Said, W. E. (2014). Sentencing Terrorist Crimes. *Ohio State Law Journal*, *75*(3), 477–528. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2448361

Shields, C., Smith, B. L., & Damphousse, K. R. (2017). Prosecuting Terrorism Post-9/11: Impact of Policy Changes on Case Outcomes. In *The Handbook of the Criminology of Terrorism* (1st ed., pp. 495–507). John Wiley & Sons, inc.

Slyke, S. R. V., & Bales, W. D. (2013). Gender dynamics in the sentencing of white-collar offenders. *Criminal Justice Studies*, *26*(2), 168–196. https://doi.org/10.1080/1478601X.2012.729707

Sonja Starr. (2015). Estimating Gender Disparities in Federal Criminal Cases. *American Law and Economics Review*, (1), 127.

Statistics on Unsealed International Terrorism and Terrorism-Related Convictions. (n.d.), 32.

Ward, J. J. (2008). The Root of all Evil: Expanding Criminal Liability for Providing Material Support to Terror. *NOTRE DAME LAW REVIEW*, *84*(1), 41. Retrieved from

http://scholarship.law.nd.edu/ndlr/vol84/iss1/8?utm_source=scholarship.law.nd.edu%2Fndlr%2Fvol84%2Fiss1%2F8&utm_medium=PDF&utm_campaign=PDFCoverPages

APPENDICES

Appendix A: *Sentencing Data Code Book*

Sentencing Data Code Book		
Variable Code	**Desciption**	**Value**
Conviction Group	Statuts underwhich both males and females have been convicted	A-P
Gender	gender of offender	1 = male 0 = female
Aggravating Role	number of levels added due to the defendant's aggravating role in the offense pursuant to Aggravated Role Adjustment (§3B1.1).	0 = No Adjustment Applied 1 = Applied (Not In Guidelines) 2 = Adjustment Applied (mgr, organizer, supervisor, leader) 3 = Adjustment Applied (mgr or supervisor of 5+ participants) 4 = Adjustment Applied (leader or organizer of 5+ participants) . = Missing, Indeterminable, or Inapplicable
Mitigating Role	Mitigating Role Adjustment (§3B1.2). This field is the number of levels subtracted due to the defendant's mitigating role in the offense.	0 = No Adjustment -1 = Adjustment (Not in USSG Manual) -2 = Minor Participation -3 = Between Minor and Minimal Participation -4 = Minimal Participation -6 = Adjustment (Not in USSG Manual) . =Missing, Indeterminable, or Inapplicable
Method of Conviction	mode of conviction	1 = plea bargain 0 = trial
Final Offense Level	Final offense level	Range: 0-43
Title Pnts for Crim Hist	The total number of criminal history points applied. This variable includes one-point offenses (POINT1), two point offenses (POINT2), three point offenses (POINT3), Points for being sentenced under the criminal justice system (SENTPTS), and otherwise uncounted violence points (VIOL1PTS).	Range: 0 thru 99 0 = None . = Missing, Indeterminable, or Inapplicable
Imprisonment (months)	Actual months of imprisonment sentenced to	0 - xx (months)
Ratio	Measures judicial discretion by combining two values: (1) length of imprisonment imposed, (2) significance departure from minimum prescribed sentencing range.	actual imprisonment sentence divided by minimum guideline range (months)
Age	age of offender	xx-xx (years)
Citizenship	Identifies the nature of defendant's citizenship with respect to the United States. Value 5 (Extradited Alien) added in September of 2007.	1 = U.S. Citizen 2 = Resident/Legal Alien 3 = Illegal Alien 4 = Not a U.S. Citizen/Alien Status Unknown 5 = Extradited Alien . = Missing or Indeterminable
Education	highest level of education attained by offender	1 = less than H.S. 2 = H.S. Grad 3 = some college 4 = college grad
Ethnicity	ethnicity of offender	0 = white 1 = non-white
No. Dependents	Number of dependents whom the offender supports (excluding self).	Range: 1 thru 96 0 = No Dependents 97 = Some Dependents, Exact Number Unknown . = Missing, Indeterminable, or Inapplicable

Appendix B: *Male vs. Female Sentencing Data for Terrorism Related Cases, 1999-2017*

Conviction Group	Gender	Aggravating Role	Mitigating Role	Method of Conviction	Final Offense Level	Ttl Pnts for Crim Hist	Imprisonment (months)	Ratio	Age	Citizenship	Education	Ethnicity	No. Dependants
A	0	3	0	0	43	0	144	0.01440576	37	1	2	0	7
A	0	3	0	0	43	0	132	0.01320528	47	1	2	0	6
A	1	0	0	1	37	0	88	0.24444444	57	0	1	1	3
A	1	0	0	1	31	2	96	0.5106383	25	1	2	1	1
B	0	0	0	1	29	0	24	0.1589404	27	1	3	1	0
B	1	0	0	1	29	0	36	0.23841059	31	1	2	0	0
C	0	0	0	1	32	0	92	0.43809524	29	1	2	1	0
C	1	0	0	1	32	0	92	0.43809524	26	1	3	1	0
C	1	0	-2	1	28	0	51	0.36428571	29	1	4	1	0
C	1	0	0	1	30	0	84	0.5	33	1	3	1	0
D	0	0	0	1	34	0	108	0.41221374	30	1	3	1	0
D	1	2	0	1	35	0	156	0.53424656	29	1	3	1	0
E	0	0	0	1	16	0	0	0	28	1	3	1	3
E	1	0	0	1	16	0	14	0.30434781	28	1	2	1	0
E	1	0	0	1	29	1	12.02999973	0.07966887	37	1	3	1	0
E	1	0	0	1	29	0	6	0.0397351	31	1	3	1	0
F	0	0	0	1	29	0	18	0.1192053	24	1	4	0	0
F	1	0	0	1	29	1	96	0.63576162	35	1	2	1	2
F	1	0	0	1	29	1	38	0.25165564	23	1	3	1	1
F	1	0	0	0	32	0	60	0.2857143	30	1	1	1	8
F	1	0	0	0	42	0	36	0.1	21	1	3	0	0
G	0	0	-2	0	40	0	120	0.33333334	66	1	3	0	0
G	1	0	0	1	42	3	252	0.69999999	30	1	3	0	1
H	0	0	0	1	36	0	0	0	24	0	3	0	1
H	1	0	0	1	36	0	24	0.07407407	29	1	3	0	4
I	0	0	0	1	30	0	0.589999974	0.0035119	23	1	4	1	0
I	0	0	0	1	37	0	48	0.13333334	19	1	3	1	0
I	0	0	-4	1	38	0	36	0.1	43	1	2	1	2
I	1	4	0	1	38	0	60	0.16666667	48	1	1	1	4
I	1	4	0	1	37	2	60	0.16666667	32	1	2	1	1
I	1	0	0	1	35	2	54	0.1849315	34	0	1	1	0
I	1	0	0	1	37	0	60	0.16666667	40	1	3	1	3
I	1	0	0	1	30	0	0	0	23	1	3	1	0
I	1	0	0	1	35	0	54	0.1849315	36	1	3	0	1
I	1	0	-4	1	25	0	0	0	32	1	3	1	0
J	0	0	0	1	6	0	0.029999999	0	32	1	4	1	0
J	1	0	0	1	19	17	30	0.47619048	26	1	2	0	5
J	1	0	0	1	19	0	35	1.16666663	23	1	3	0	0
J	1	0	0	1	34	35	120	0.45801526	41	1	2	0	0
J	1	0	0	1	21	14	77	1	26	1	1	0	0
J	1	0	0	1	40	0	360	1	22	0	3	0	0
J	1	0	0	1	6	0	0.029999999	0	22	1	3	1	0
J	1	0	0	1	6	0	0.029999999	0	21	1	2	1	0
J	1	0	0	1	27	12	150	1.25	50	1	3	1	0

Note: Red values represent female data; black values represent male data

K	0	0	0	1	6	0	0.029999999	0	23	1	2	0	0
K	0	0	0	1	32	1	48	0.22857143	48	1	3	1	0
K	1	0	0	1	10	8	30	2	31	1	2	1	0
L	0	0	0	1	36	0	60	0.18518518	40	0	2	1	0
L	0	0	0	1	37	0	96	0.26666668	35	1	3	1	1
L	1	0	0	1	42	0	180	0.5	27	0	3	1	0
L	1	2	0	1	37	0	120	0.33333334	31	1	4	0	0
L	1	0	0	1	35	0	100	0.34246576	29	1	3	0	0
L	1	0	0	1	37	0	120	0.33333334	46	1	4	0	5
L	1	0	0	1	43	0	108	0.01080432	22	1	3	1	0
L	1	0	0	1	42	0	180	0.5	26	1	1	0	3
L	1	0	0	1	42	0	180	0.5	26	1	2	1	0
L	1	0	0	1	37	0	60	0.16666667	20	0	2	1	0
L	1	4	0	1	41	0	150	0.41666666	40	0	4	0	0
L	1	2	0	1	43	3	240	0.0240096	21	1	2	1	0
L	1	0	-2	1	40	1	60	0.16666667	24	1	1	0	0
L	1	0	0	1	42	0	120	0.33333334	24	1	3	0	0
L	1	0	0	1	43	0	92	0.00920368	23	1	3	0	0
L	1	0	0	1	43	0	108	0.01080432	24	1	3	0	0
L	1	0	0	0	43	6	180	0.0180072	24	1	3	1	0
M	0	0	0	1	37	0	61	0.16944444	52	0	3	0	0
M	0	0	-2	1	21	0	40	1.08108103	38	1	2	1	3
M	0	0	0	1	37	0	180	0.5	27	0	1	0	0
M	0	0	0	1	35	0	96	0.32876712	33	1	1	0	0
M	1	0	0	1	26	0	69	1.09523809	45	0	1	1	5
M	1	0	-2	1	22	0	17	0.41463414	56	0	2	1	0
N	0	0	-3	1	36	0	120	0.37037036	39	1	4	0	2
N	1	4	0	1	43	0	120	0.0120048	50	0	4	0	4
O	0	2	0	1	27	0	70	1	38	0	2	0	2
O	0	3	0	1	40	0	138	0.38333333	37	0	1	0	1
O	0	0	-2	1	21	0	31	0.83783782	47	0	1	0	1
O	0	0	-2	1	21	0	31	0.83783782	33	5	2	0	0
O	0	0	-2	1	35	0	0	0	46	0	1	0	0
O	0	0	0	1	35	0	96	0.32876712	26	0	3	0	0
O	0	0	0	1	35	0	144	0.49315068	21	1	3	0	0
O	0	0	-2	1	35	0	0	0	43	0	3	0	3
O	0	0	0	0	40	0	240	0.66666669	36	1	2	0	0
O	0	0	0	1	19	0	0	0	51	0	3	1	0
O	1	0	0	1	38	0	180	0.5	27	0	2	0	2
O	1	0	0	0	40	0	540	1.5	31	0	1	0	3
O	1	4	0	0	43	0	180	0.0180072	55	0	4	1	3
O	1	0	0	1	33	1	120	0.5106383	49	1	4	1	0
O	1	0	-2	1	35	3	100	0.34246576	44	0	4	1	5
O	1	0	0	1	40	0	56.25999832	0.15627778	62	0	4	1	0
O	1	0	-2	1	35	0	130	0.44520548	33	0	1	0	0
O	1	0	0	1	37	0	90	0.25	58	1	2	1	3
O	1	0	0	1	37	0	55	0.15277778	25	0	4	1	0
O	1	0	0	1	37	0	118	0.32777777	29	1	3	1	0
O	1	0	0	1	37	0	36	0.1	28	1	3	0	4
O	1	0	0	1	37	0	120	0.33333334	53	0	2	1	3
O	1	0	0	1	37	0	180	0.5	31	1	4	0	1
O	1	0	0	1	35	0	264	0.9041096	35	5	3	0	3
O	1	0	0	1	37	0	270	0.75	32	1	1	0	0
O	1	0	0	1	37	0	144	0.40000001	22	1	3	1	1
O	1	0	0	1	35	0	96	0.32876712	23	1	4	1	0
O	1	0	0	1	40	0	360	1	23	1	3	0	0
O	1	0	0	1	39	0	40	0.11111111	21	1	2	1	0
O	1	0	0	1	35	0	120	0.41095892	21	1	3	0	0
O	1	0	0	1	35	0	30	0.10273973	21	1	3	0	0
O	1	0	0	1	37	0	120	0.33333334	20	1	2	0	0
O	1	0	0	1	35	0	120	0.41095892	21	1	3	0	0
O	1	0	0	1	35	2	21	0.07191781	20	1	3	0	0
O	1	0	0	1	37	0	60	0.16666667	21	1	3	1	0
O	1	0	0	1	37	9	240	0.66666669	26	1	1	0	1
O	1	0	0	1	37	0	132	0.36666667	27	1	3	0	0
O	1	0	0	1	35	5	120	0.41095892	36	1	2	1	1
O	1	0	0	1	43	0	120	0.0120048	50	0	4	0	0
P	0	0	0	1	37	0	0	0	54	1	4	1	0
P	1	0	0	1	29	3	24	0.1589404	38	1	3	0	2

Appendix D: *Statute Code book*

Statute Code Book		
Statute	**Title**	**Description**
18 U.S. Code §2	aiding and abeding	2476. 18 U.S.C. 2 Is Not An Independent Offense--While aiding and abetting might commonly be thought of as an offense in itself, it is not an independent crime under 18 U.S.C. § 2. That statute provides no penalty, and only abolishes the distinction between common law notions of "principal" and "accessory." United States v. Kegler, 724 F.2d 190, 200 (D.C. Cir. 1983). Under it, the acts of the perpetrator become the acts of the aider and abettor and the latter can be charged with having done the acts himself. Id. at 200-01. An individual may be indicted as a principal for commission of a substantive crime and convicted by proof showing him to be an aider and abettor. Id. The indictment need not specifically charge a violation of 18 U.S.C. § 2. Id. An aiding and abetting instruction may be given in a case where the indictment does not allege violation of the aiding and abetting statute. Id. An aider and abettor of a crime may be tried and convicted even though the principal is not tried, convicted or identified.
18 U.S. Code § 4	Misprision of felony	Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.
18 U.S. Code § 371	Conspiracy to commit offense or to defraud United States	If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.
21 U.S. Code § 846	Attempt and conspiracy	Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.
18 U.S. Code § 1361	Government property or contracts	Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, or attempts to commit any of the foregoing offenses, shall be punished as follows:
18 U.S. Code § 1001A2	False Statements	(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—(2) makes any materially false, fictitious, or fraudulent statement or representation
18 U.S. Code § 1366a	Destruction of an energy facility	(a) Whoever knowingly and willfully damages or attempts or conspires to damage the property of an energy facility in an amount that in fact exceeds or would if the attempted offense had been completed, or if the object of the conspiracy had been achieved, have exceeded $100,000, or damages or attempts or conspires to damage the property of an energy facility in any amount and causes or attempts or conspires to cause a significant interruption or impairment of a function of an energy facility, shall be punishable by a fine under this title or imprisonment for not more than 20 years, or both
18 U.S. Code § 1623a	False declarations before grand jury or court	(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.
18 U.S. Code § 2332AA2	Use of weapons of mass destruction	A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction—(2) against any person or property within the United States
18 U.S. Code § 2332AA3	Use of weapons of mass destruction	(a)Offense Against a National of the United States or Within the United States.—A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction—(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States
18 U.S. Code § 2339A	Providing material support to terrorists	Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1091, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a , 2332b, 2332f, 2340A, or 2442 of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), section 46502 or 60123(b) of title 49, or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. A violation of this section may be prosecuted in any Federal judicial district in which the underlying offense was committed, or in any other Federal judicial district as provided by law.
18 U.S. Code § 2339B	Providing material support or resources to designated foreign terrorist organizations	Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality
18 U.S. Code § 2339BA1	Providing material support or resources to designated foreign terrorist organizations	Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989)
18 U.S. Code § 2339BA1	Providing material support or resources to designated foreign terrorist organizations	(1)Unlawful conduct.—Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)

18 U.S. Code § 844	Penalties	(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment
21 U.S. Code § 841A1	Prohibited Acts - Penalties	(a) Unlawful actsExcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally— (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;
21 U.S. Code § 841B1A	Prohibited Acts - Penalties	PenaltiesExcept as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows: (1) (A) In the case of a violation of subsection (a) of this section involving— (i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin; (ii) 5 kilograms or more of a mixture or substance containing a detectable amount of— (I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; (II) cocaine, its salts, optical and geometric isomers, and salts of isomers; (III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or (IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III); (iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base; (iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP); (v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD); (vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; (vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or (viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers; such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $10,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug
21 U.S. Code §846	Attempt and conspiracy	Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy
50 U.S. Code § 1705B	Penalties - civil penalty	(violating sanctions on terrorist state)(b) Civil penaltyA civil penalty may be imposed on any person who commits an unlawful act described in subsection (a) in an amount not to exceed the greater of— (1) $250,000; or (2) an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed