


EQUAL TREATMENT?

MEASURING THE LEGAL AND MEDIA RESPONSES TO IDEOLOGICALLY MOTIVATED VIOLENCE IN THE UNITED STATES



This empirical analysis compares media coverage, law enforcement tactics, charges, and eventual sentencing when the perpetrator of an alleged act of ideologically motivated violence is perceived to be Muslim and acting in the name of Islam vs. not perceived to be Muslim and motivated by another ideology, such as white supremacy.

WE WOULD LIKE TO ACKNOWLEDGE THE FOLLOWING FOR THEIR CONSULTATION

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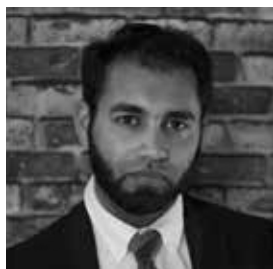
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A detailed sketch of a courtroom scene. In the foreground, several people are seen from behind, looking towards the front of the room. The sketch uses various colors like yellow, blue, and brown. In the background, a judge is seated at a bench, and an American flag is visible on the right side. The overall style is that of a charcoal or pencil drawing with some color washes.

EXECUTIVE SUMMARY

In 2010, Justin Carl Moose, a self-described “Christian counterpart to Osama bin-Laden,” planned to blow up an abortion clinic. He was in possession of means to make explosives, including potassium permanganate, fuse wires, and metal shavings to make the explosive TATP.

And in May 2013, officials arrested Buford “Bucky” Rogers, who reportedly held white supremacist views and who law enforcement officials say cheered the Boston marathon bombing. Rogers made homemade bombs with the military-grade explosive PETN, crafted Molotov cocktails filled with “homemade napalm,” and had a loaded SKS rifle. He discussed using the weapons locally.

Most people have likely never heard of these two men, possibly because their plans received relatively little media coverage. Combined, the *New York Times* and *Washington Post* ran just two articles on Rogers. They printed no stories about Moose. Ultimately for their alleged plotted crimes, Rogers was sentenced to 40 months (3.3 years) in federal prison, and Moose was sentenced to 30 months (2.5 years).

Compare their cases to Antonio Martinez, who was alleged to have acted in the name of Islam when he planned to bomb a military recruitment station outside Baltimore and shoot personnel as they fled the scene. Law enforcement provided Martinez a fake bomb. Together, the *New York Times* and *Washington Post* published ten articles about Martinez. Martinez was charged with planning to use a weapon of mass destruction and was sentenced to 300 months (25 years) in federal prison.

This report seeks to explore whether and why these cases, and those like them, have such different outcomes. More specifically, this report examines the extent to which the perceived identity of an alleged perpetrator as either Muslim or non-Muslim shapes both print media coverage and legal responses to ideologically motivated violence (IMV) in the United States.

This report defines violence as ideologically motivated when the perpetrator of violence is perceived by a) the media and/or b) law enforcement to be committing the violence to promote an ideology. This report does not attempt to *determine* perpetrator ideologies, nor does it endorse the accuracy of these assessments by media or law enforcement. Rather, it analyzes what happens to perpetrators based on the *perception* of their ideologies.

Our analysis of the examples examined in this report found that, **for similar plots, Muslim-perceived perpetrators received harsher legal charges and longer prison sentences than their non-Muslim counterparts. Perpetrators identified as Muslim also had qualitatively different media coverage than perpetrators not identified as Muslim.**

The differences were often stark:

- On average, prosecutors sought **three times** the sentence length for Muslim perpetrators as for perpetrators not identified as Muslim for similar plots of attempted ideologically driven violence (230 months vs. 76 months). Additionally, Muslim perpetrators received **four times** the average sentence as their non-Muslim counterparts for attempted plots of similar conduct (211 vs. 53).
- Moreover, undercover law enforcement or an informant provided the means of the crime (such as a firearm or inert bomb) in a majority (**two-thirds**) of convictions in plots involving a perceived Muslim perpetrator, but in a small fraction (**two out of twelve**) of those involving a non-Muslim perpetrator.
- In terms of print media coverage, Muslim-perceived perpetrators received **twice** the absolute quantity of media coverage as their non-Muslim counterparts in the cases of violent completed acts. For “foiled” plots, they received **seven and half times** the media coverage as their counterparts.
- Differences also extended to media references to a perceived Muslim perpetrator’s religion as compared to ideologies of perceived non-Muslims, mentions of specific phrases such as “terrorist” or “terrorism,” and coverage of the ultimate prison sentences.

SUMMARY OF METHODOLOGY

PERPETRATOR CATEGORY DEFINITION

We divided our incident analysis into two categories, defined below, based on media reports and publicly available legal documents and databases. We base our categories on the law enforcement assessment of identity and motivation, but do not endorse these assessments.



CATEGORY A :

Individuals committing or plotting violent acts who are perceived to be Muslim and allegedly acting in the name of Islam.



CATEGORY B :

Individuals committing or plotting violent ideologically motivated acts who are not perceived to be Muslim.



INCIDENT SELECTION

IMV incidents associated with perpetrators of both categories were selected from existing, published datasets of ideologically motivated violence.¹ Based on a combination of these existing datasets, United States-based IMV incidents from 2002 to 2015² resulting in two or more fatalities³ were included. We also included a set of violent ideological plots that were prevented or foiled prior to completion, either by law enforcement investigation or through a “sting” operation. The violent plots included bomb plots and firearms plots. As used in this report “violent plot” and “plot” are interchangeable. The goal of selecting this set of incidents was not to create a new or comprehensive database of IMV acts. Instead, the purpose was to facilitate as best as possible an “apples to apples” study, i.e., **to compare Category A and Category B perpetrators whose conduct and impact were similar in severity and quality.** Incident selection was done prior to any analysis and was not changed after analysis began.

INCIDENT ANALYSIS

The IMV incidents were then analyzed to determine media and legal outcomes.

Media metrics included:

- Quantity and quality of coverage,
- Whether articles discussed religion of alleged perpetrators, and
- The frequency of usage of specific terms such as “terror” or “hate.”

Legal metrics examined included:

- What, if any, criminal charges were filed,
- What sentences were pursued and achieved, and
- What kind of media outreach was issued by law enforcement regarding the case.

This methodology is discussed in further detail in the full report, available at ispu.org/equaltreatment. The media analysis looked exclusively at coverage in the *New York Times* and *Washington Post*. These outlets were chosen for a number of reasons. First, we chose print media that enjoys comprehensive archives with content that can be easily analyzed to facilitate systematic analysis. Second, we chose the two most reputable and purportedly “liberal” national newspapers that would have the best chance of fairly portraying minority communities.

CHALLENGE: ARE WE COMPARING APPLES TO APPLES?

Some may suggest that differences in nature and scale of offenses may make it difficult to analyze or draw inferences from the legal and media treatment of the two categories of perpetrators. While we cannot rule out that such differences might partly explain some differences in outcome, we have taken a number of steps to ensure as close to an “apples to apples” comparison as possible.

Here are the factors that have been recorded and accounted for in analyzing incidents:



Fatalities

An incident resulting a greater number of fatalities is generally more severe than one with fewer.



Weapon used

The weapon used in a violent incident or planned for use in a violent plot indicates the intended scale of the violent act.



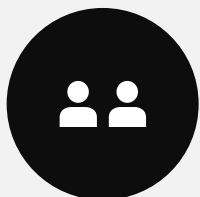
Intended outcome

This measures the level of harm the perpetrator aimed to cause, as alleged by law enforcement.



Target of incident

The type of target is recorded in incidents, such as whether it is a religious community, a racial or ethnic group, an LGBT individual or group, or the government.

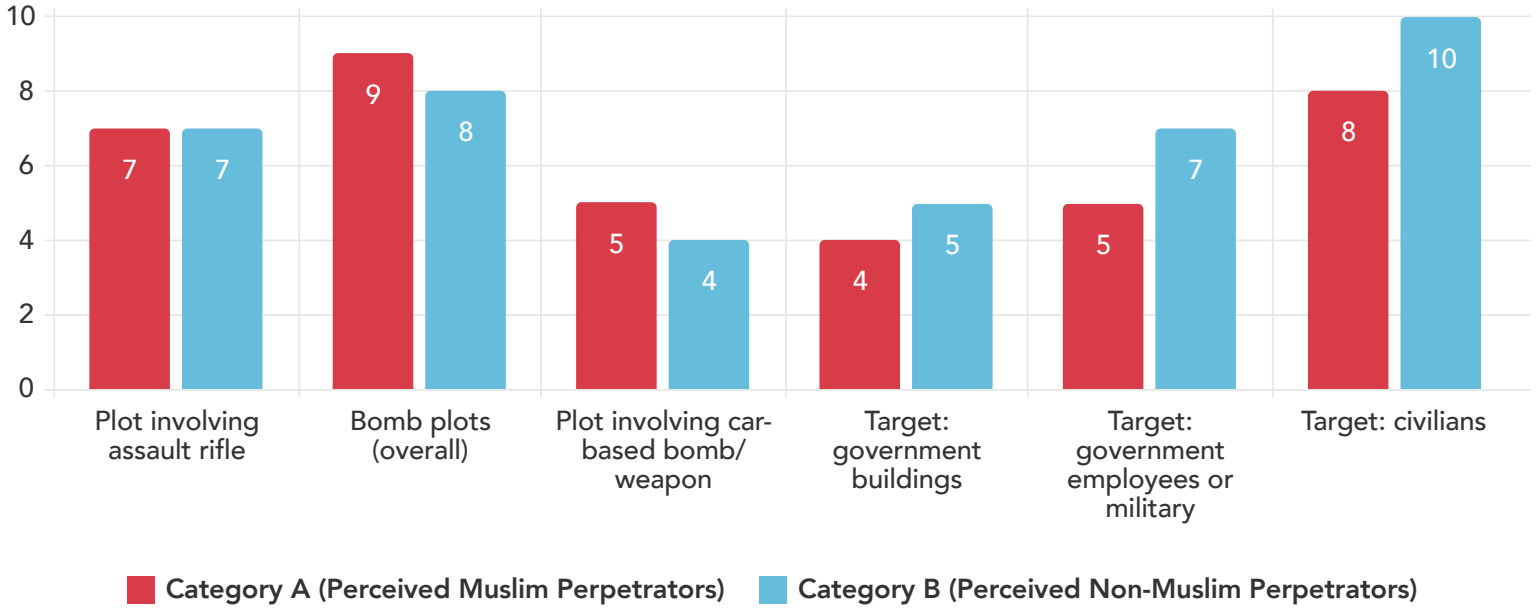


Existence of co-perpetrators

Where applicable, any accused co-perpetrators or co-conspirators are recorded.



CONSISTENT SEVERITY FACTORS ACROSS VIOLENT PLOTS



The severity analysis of violent plots across both Categories show the sets to be comparable across a range of metrics

Category A and Category B sets contain a range of incidents of varied targets and apparent motivations, from anti-government to racially- or religiously-motivated, as well as incidents of both small and large scale.

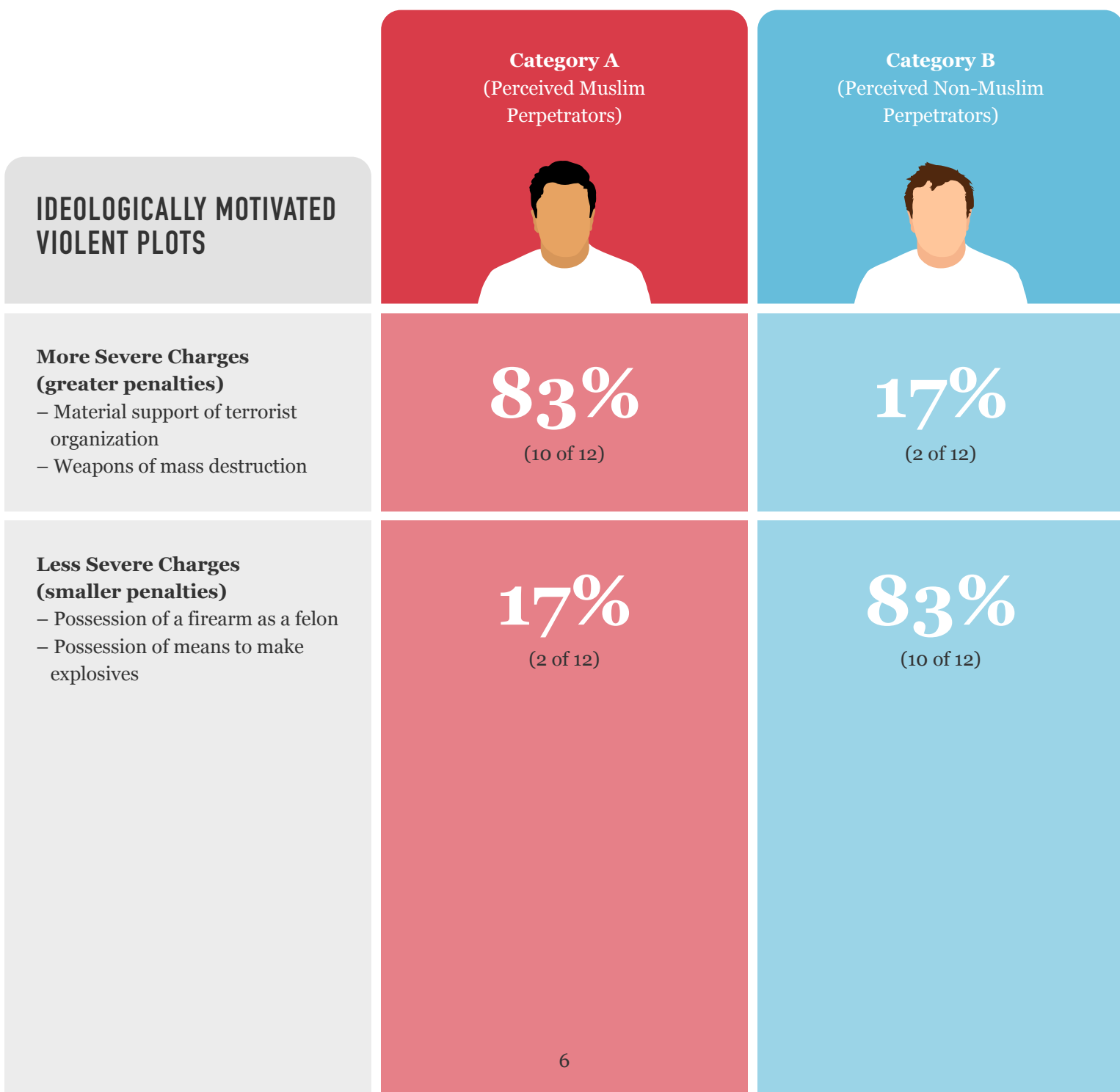
Examples of Category A violent plots include planned efforts to bomb and shoot military recruitment centers, to murder military employees with an AK-47, to bomb city buildings, to bring a car bomb to an airport tarmac, to bomb a Christmas tree-lighting ceremony, and to engage in mass shootings against civilians.

Examples of Category B violent plots include plans to take over a courthouse with an AK-47, to use assault rifles to murder civilians, to bomb federal buildings and public infrastructure, to deploy the biological weapon ricin against civilians, and to attack a Mexican consulate in St. Paul with a truck bomb.

SUMMARY OF METHODOLOGY

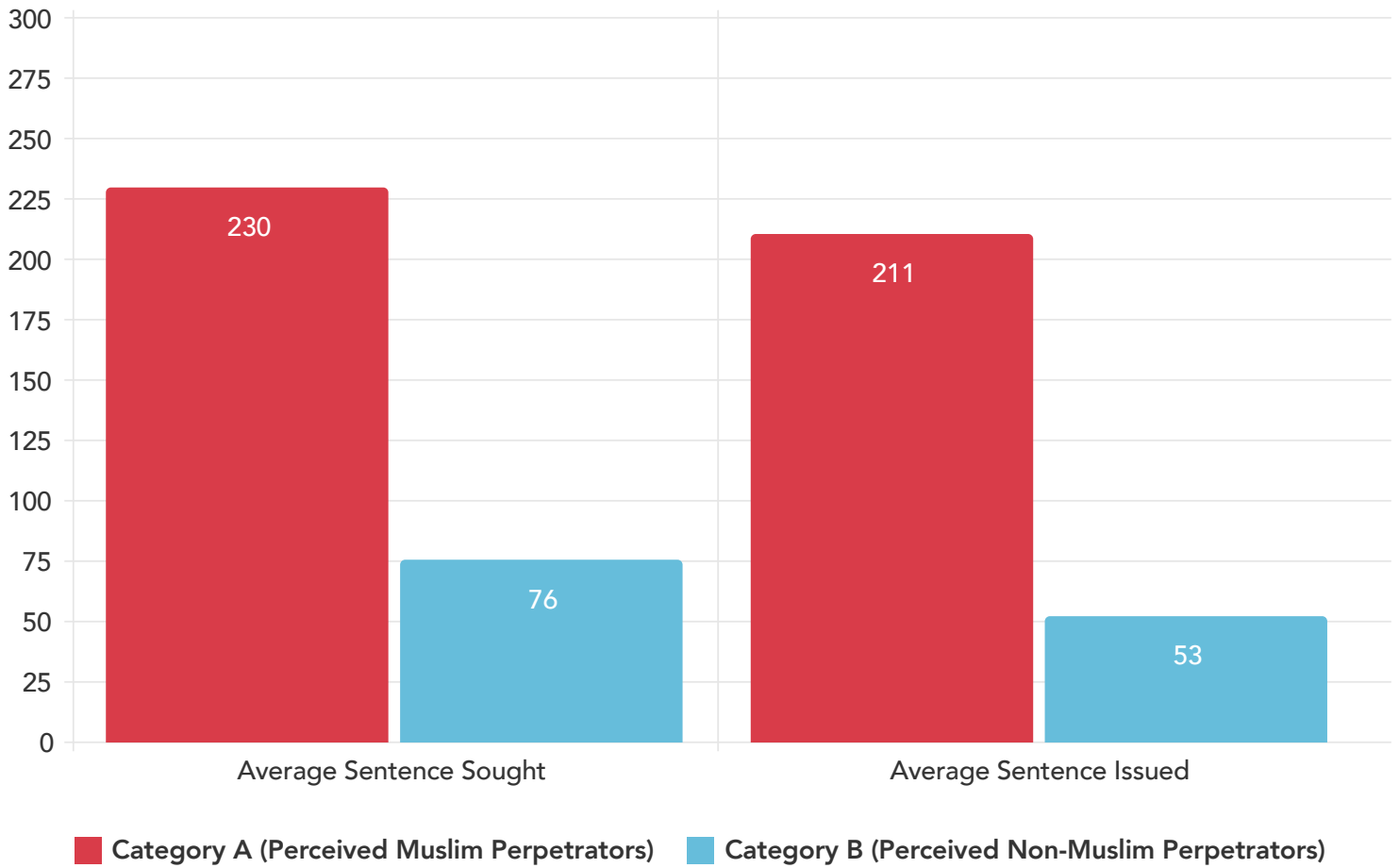
LEGAL OUTCOMES

- In relation to similar violent ideological plots, Category A perpetrators were prosecuted with significantly more severe legal charges than were Category B perpetrators. The differences in charging were a major factor in sentencing averages. For instance, sentences were an average of **211 months** for Category A perpetrators and **53 months** for Category B. The sentences sought by prosecutors were on average **230 months** for Category A and **76 months** for Category B.⁴





AVERAGE PRISON SENTENCES FOUR TIMES HIGHER FOR PERPETRATORS PERCEIVED TO BE MUSLIM (MONTHS)

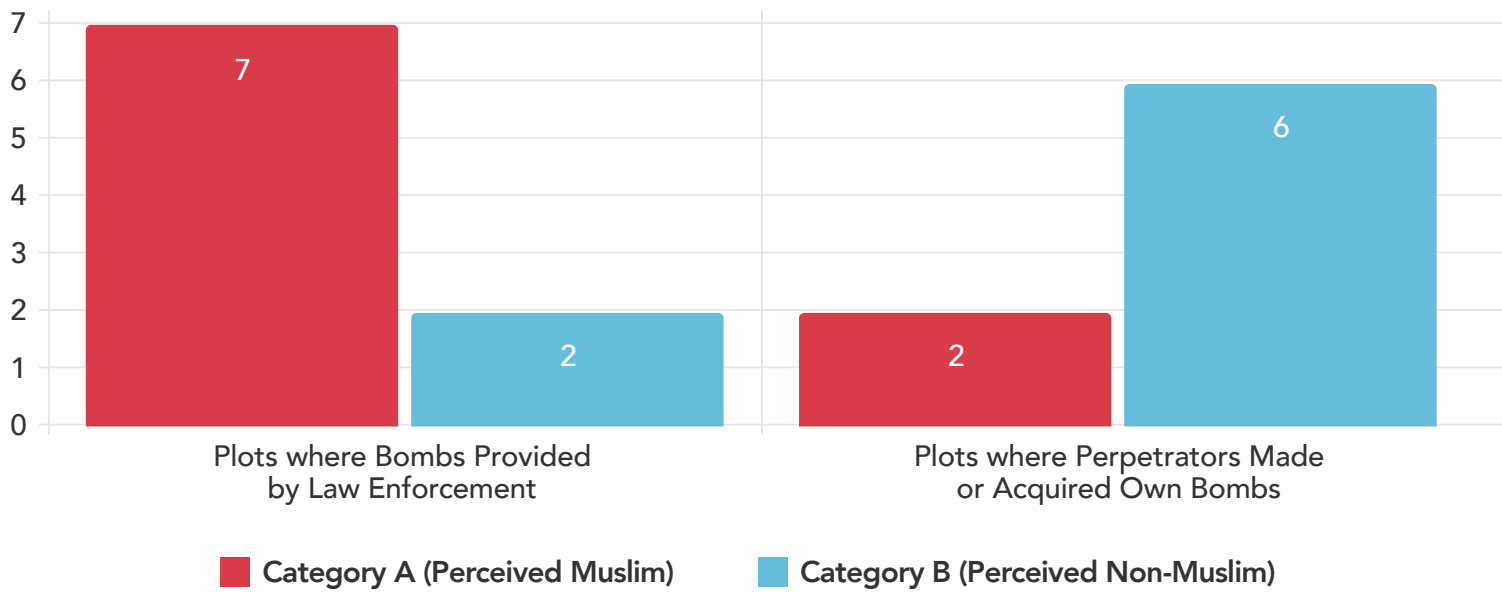


The sentences sought were an average three times the length for Category A as Category B perpetrators, with the sentences issued being on average four times the length for Category A compared to Category B.

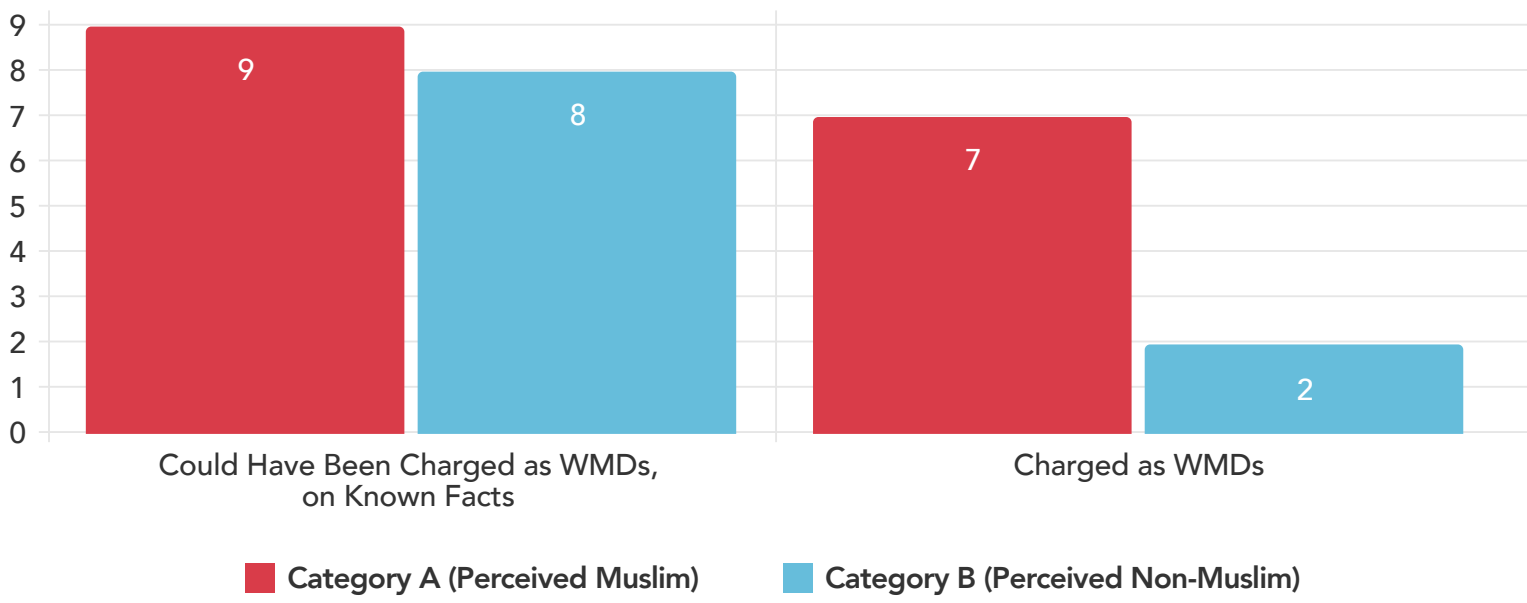
- Category A bomb plots that were not carried out were almost exclusively charged as “weapons of mass destruction” (WMDs). (Legally, the term “WMD” is different from the common meaning of nuclear, chemical, or biological weapons, as it applies to conventional explosives like bombs or grenades). On the other hand, most of the Category B bomb plots that appear to have qualified as WMDs, based on alleged facts, were not. The distinction is important because the non-WMD defendants typically received less than five years in prison, whereas charging a bomb plot as WMD usually led to over a twenty-year sentence.



LAW ENFORCEMENT PROVIDED BOMBS TO THREE IN FOUR PERCEIVED MUSLIM PERPETRATORS



PERCEIVED MUSLIM PERPETRATORS RECEIVED “WEAPONS OF MASS DESTRUCTION” CHARGES MORE THAN THREE TIMES AS OFTEN DESPITE SIMILAR FACTS



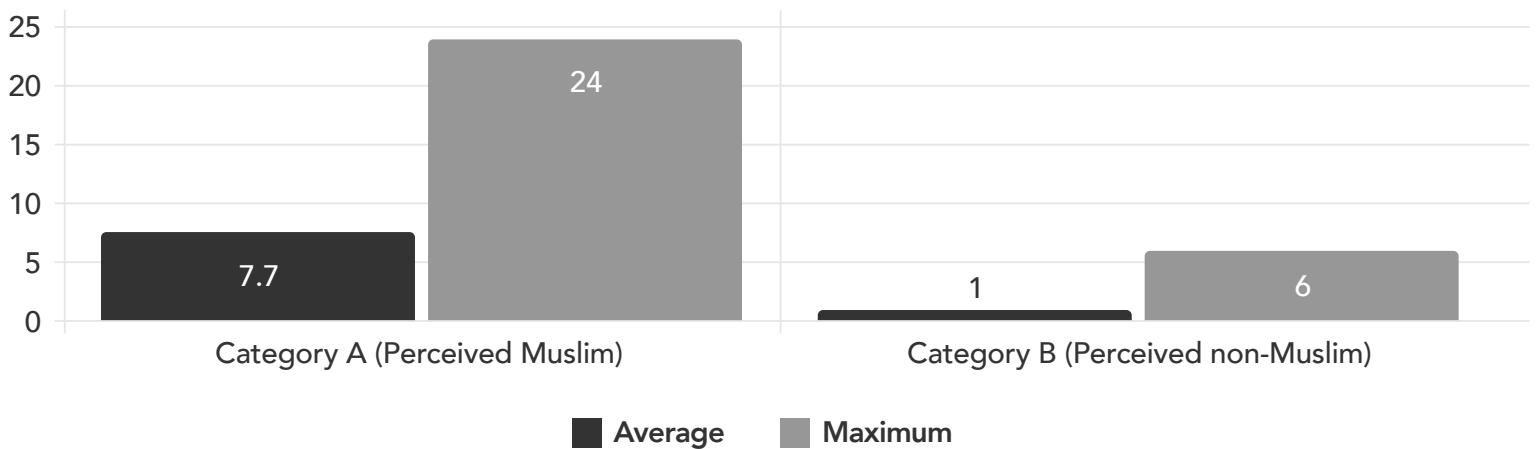


- Undercover law enforcement or an informant provided the means of the crime (such as a firearm or inert bomb) in a majority of Category A plots, but in very few (**two**) of the Category B cases. In another Category B case, undercover law enforcement offered assistance in developing or modifying weapons that the perpetrators were already acquiring or developing.⁵
- Category B perpetrators were often charged with a lesser charge even when they obtained or made their own military-grade explosives.

MEDIA OUTCOMES

- The report found that Category A perpetrators on average received more than **twice** the media coverage in the *New York Times* and *Washington Post*. In cases of violent ideological plots that were not carried out, coverage was **7.75 times** greater for Category A perpetrators as Category B.⁶

PERCEIVED MUSLIMS ACCUSED OF A PLOT RECEIVED AVERAGE 770% MORE MEDIA THAN OTHERS ACCUSED OF PLOTS OF SIMILAR MAGNITUDE (ARTICLES)

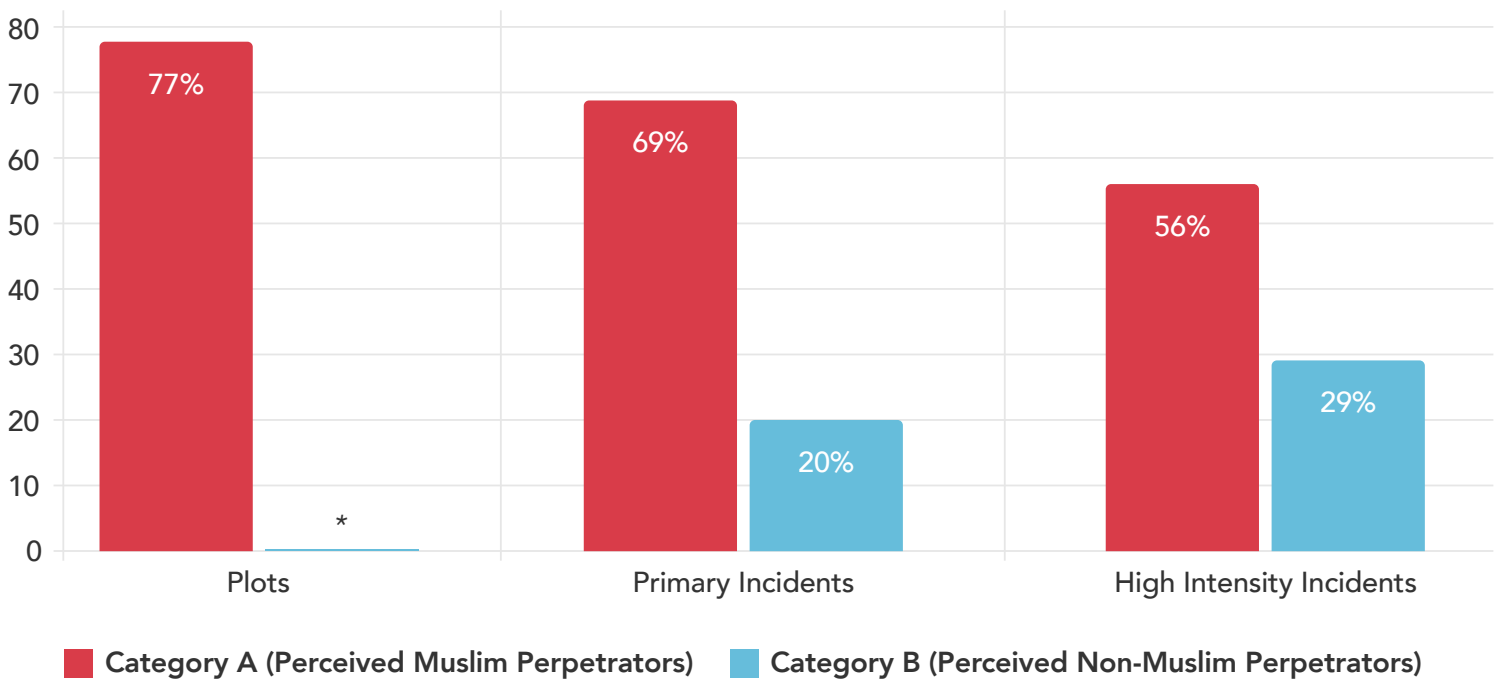


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- The Category B violent plot receiving the most media coverage (**six articles**) involved four members of a north Georgia militia planning to bomb federal buildings and attack cities with deadly ricin. They were charged with conspiracy to produce biological weapons. Yet, this media coverage was still lower than the average number of articles written about a Category A incident (**7.5 articles**).



- A large majority of articles referencing Category A offenders contained the terror-focused terms “terror,” “terrorism,” and/or “terrorist” across all subsets (ranging from **54%** to **68%**), compared to just roughly a **quarter** of articles referencing Category B offenders, despite both categories of offenders being alleged to have been ideologically motivated and mostly targeting civilians.

MEDIA USES "TERROR" IN REFERENCE TO PERCEIVED MUSLIM PERPETRATORS SIGNIFICANTLY MORE OFTEN THAN OTHER PERPETRATORS OF IDEOLOGICALLY MOTIVATED VIOLENCE (PERCENTAGE)



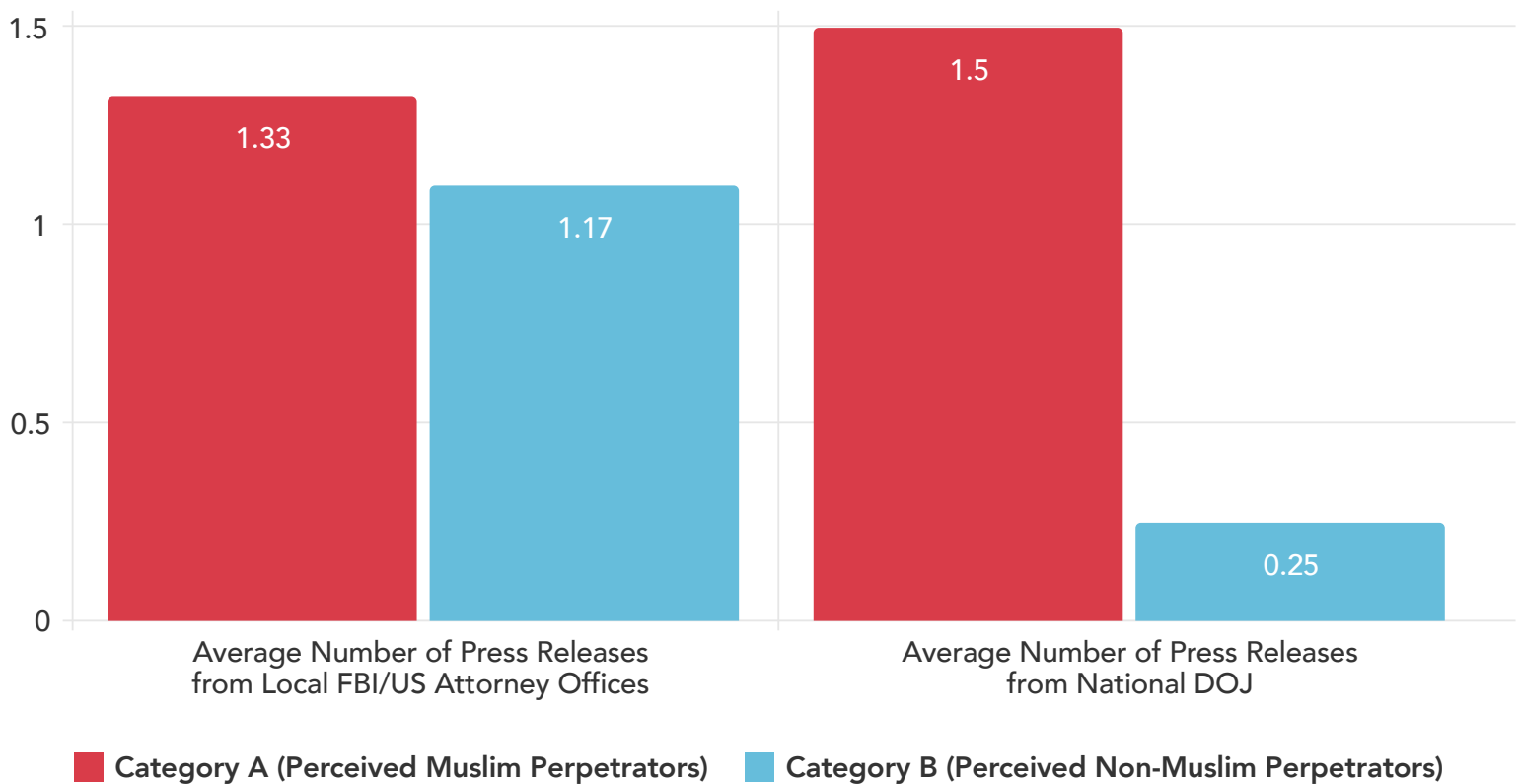
* Phrase searches for Category B plots were not analyzed due to low number of available articles.

- In contrast, only an extremely small percent (just **4%** to **7%**) of articles referencing Category A offenders contained the term “hate,” while **24%** to **35%** of articles referencing Category B offenders contained the term “hate.”



- The U.S. Department of Justice issued press releases from its national office in the Category A violent plots examined **six times** more often than in the Category B violent plots. Many factors may go into the publication of press releases and the frequency of those releases may not necessarily be a metric of prosecution priorities. The research team recorded the data and encourages further investigation and discussion around this point. The difference might be explained by the fact that Category A prosecutions, more often than Category B, involved charges that require establishing a connection to or ideology of a Foreign Terrorist Organization,⁷ which some Justice Department officials say is a more straightforward case to make under existing laws than prosecuting domestic terrorism.⁸

DEPARTMENT OF JUSTICE ISSUED PRESS RELEASES IN VIOLENT PLOT CASES SIX TIMES MORE OFTEN ON AVERAGE WHEN PERPETRATOR WAS MUSLIM





CONCLUSION

This report seeks to raise awareness about the possible bias with which ideologically motivated violent incidents and plots are covered in the media and handled by government and legal institutions depending on the identity and ideology of the perpetrator. Increasing standardization and reducing biases will improve the justice system and therefore the wellbeing and civil rights of all Americans. The research presented in this report is meant to build capacity and understanding among critical stakeholders to address disparities in labeling and identifying incidents of ideologically motivated violence, while also promoting the continued prevention and investigation of all types of violence.

LOOKING FORWARD

PERCEPTION OF RACE AND NATIONAL ORIGIN

A noteworthy case that did not ultimately become part of the analysis was that of Sami Samir Hassoun. On a Saturday night in Chicago in September 2010, he allegedly placed an inert bomb provided by the FBI in a trash can located near both a Wrigley Field entertainment area and a crowded bar. Hassoun’s ideology and motivation seem to be implied by media reports as being related to his Arab/Lebanese background. Nearly every article referred to his immigrant status or ethnic background, and the opening paragraph in a News Roundup in the *Washington Post* on April 24, 2012, referred to him as “a man of Lebanese descent.” However, law enforcement did not allege that he had an Islamic-associated ideology. Instead, law enforcement alleged that he acted for monetary gain and to cause political instability.

He was charged with a WMD-related charge and received a 23-year prison sentence. The Justice Department issued three national press releases about his case that highlighted his national origin. The case is significant because the outcome more closely resembles a Category A case than a Category B case. Because of the emphasis on national origin, the case raises important questions as to the conflation of religion, race, and national origin.⁹ While this research study looked solely to the perceived religion of the perpetrator, future research might factor in perceptions of race as well.



CHARGES IN FEDERAL PROSECUTIONS OF IDEOLOGICALLY MOTIVATED VIOLENT PLOTS

The federal legal framework is weighted to prosecuting cases as terrorism when there is an international component.¹⁰ For example the crime of “providing material support for terrorism” (under which many of our dataset Category A perpetrators were charged), is linked to a designation that is made by the U.S. State Department of a group that is a Foreign Terrorist Organization.¹¹

The Justice Department appears to recognize the disparity in legal tools available; Reuters reported in February 2016 that the Justice Department was considering ways to more even-handedly address domestic IMV.¹² The Assistant Attorney General for National Security, John Carlin, said that his office was taking a “thoughtful look at the nature and scope of the domestic terrorism threat” and planned to analyze “potential legal improvements and enhancements to better combat those threats.”¹³ However, civil liberties groups have expressed concern about both the potential reach of efforts to address domestic terrorism and the potential misuse of tools to criminalize activist organizations engaged in First Amendment activities.¹⁴ The answer is not necessarily to prosecute Category B offenders more.

This report does not seek to answer how to address disparities in treating Category A or B cases, but cautions that any responses should promote civil liberties.

LEGAL CHALLENGE: STATE COURT TERRORISM CASES

Many states—over two-thirds, in fact¹⁵—have terrorism statutes. Thus, state-level terrorism prosecutions are possible, but they continue to be uncommon. As an analysis in the legal blog *Lawfare* highlights, many state-level ideological violence prosecutions, such as the Colorado Springs shooting, would seem to fit the state definition of terrorism.¹⁶ The primary incidents in this report’s dataset that were prosecuted in state court all occurred in jurisdictions that had terrorism statutes on the books. Of those, only one, the case of Ali Muhammad Brown, was prosecuted as terrorism in New Jersey. It is an open question whether we will see more state-level prosecutions for terrorism in the future. In New York City, recently, prosecutors made the decision to indict James Jackson for murder as an act of terrorism for traveling to New York City to scout a random Black victim and ultimately using a sword to kill a Black man on the street.¹⁷

While the FBI investigates domestic organizations promoting ideological violence, when it comes time to bring criminal charges, fewer legal options are available for incidents without international links than for when an alleged connection to a foreign organization is involved. The U.S. terrorism prosecutions leading to the most convictions have been against suspects with alleged support from or actions for overseas groups.¹⁸



LEGAL CHALLENGE: LAW ENFORCEMENT “STING” OPERATIONS

In sting operations, law enforcement efforts use undercover assets to pretend to participate in or encourage a criminal act, and arrest the suspect before the act is fully committed. The data showed that, in the violent plots examined, Muslim-perceived perpetrators were provided the means to commit a crime two-thirds of the time (often being unable to afford them or acquire them on their own), while non-Muslim-perceived perpetrators of violent plots already had or were stockpiling weapons or explosives.

Prior to September 11, 2001, sting operations were primarily conducted in cases of organized crime, white collar crime, and drug offenses.¹⁹ After September 11, there was an increase in sting operations in terrorism cases involving perceived-Muslim perpetrators. The *Washington Post* reported in October 2010 that the use of sting operations in Muslim communities had an effect of straining relationships between Muslim communities and law enforcement.²⁰ In June 2016, the *New York Times* reported that the FBI stepped up its use of stings in ISIS cases.²¹ Because investigations of terrorist offenses, like providing material support, are tied to designations of Foreign Terror Organizations as well as military operations abroad, there are often increased surveillance tools available to law enforcement via tips from intelligence agencies. This means that where Foreign Terror Organizations are specifically Muslim, there is a greater nexus to alleged foreign terrorism just by nature of a perpetrator being perceived as Muslim.²²

In theory, defendants in U.S. criminal proceedings should be able to raise a defense of entrapment, which means that they were induced by law enforcement to commit a crime. However, these defenses are rarely if ever successful in cases of ideological violence. An element of that defense is showing that the person was not “predisposed” to commit the crime. The predisposition question looks at the defendant’s background, which places the ideology of the defendant under a microscope. While the defense is generally difficult to mount for all defendants of ideological violence, regardless of identity, the stakes of terrorism-related cases are significantly higher because greater punishments are on the table. This fact has enormous negative implications for the civil rights of Muslim communities, which are primarily affected by nonviolent terrorism laws such as material support, because it prevents them from mounting the most effective defense or legally exonerating themselves.²³ It is also inconsistent with international fair trial standards under the European Convention on Human Rights.²⁴



REFERENCES

1. START Global Terrorism Database, Southern Poverty Law Center (SPLC) Lone Wolf database, and The Intercept Terror Trials Database, further outlined in the Methodology section in the full report at ispu.org/equaltreatment.
2. Incidents beyond 2015 were not included in the dataset as the START Global Terrorism Database did not yet contain 2016 data at the start of this research project. Thus, significant incidents or plots perceived to be ideologically driven such as the Orlando Pulse Nightclub shooting or Kansas anti-Muslim “Crusaders” plot were not part of this study.
3. Incidents coded as one fatality in the existing databases were not included as it often reflected a circumstance in which the perpetrator alone was killed during the act.
4. This excludes cases where life sentences were sought or obtained. There were more life sentences sought and obtained for Category A perpetrators (two sought and two obtained for Category A, and one sought and not obtained for Category B). Sentencing relies on a number of factors, including the criminal history of the defendant, the jurisdiction, the judge, and others. The report points out the correlation between heightened charges and higher sentences but does not make any conclusions regarding sentencing procedures.
5. This report does not claim that law enforcement *never* engages in sting operations of Category B perpetrators, but that these results were found in the underlying data.
6. An instance of “media coverage” is defined as an article that references an incident, using identifying metrics regarding the incident.
7. FTOs are non-U.S. organizations that are designated by the U.S. State Department pursuant to section 219 of the Immigration and Nationality Act (INA).
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11. 18 U.S.C. § 2339B (Providing material support or resources to designated foreign terrorist organizations); U.S. Department of State, Bureau of Counterterrorism and Countering Violent Extremism, *Terrorism Designations FAQs*, July 10, 2012, available at <https://www.state.gov/j/ct/rls/other/des/266614.htm>.
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14. See, e.g., Karen J. Greenberg, “A Domestic Terrorism Statute Is Federal Overreach, Not Justice,” *NBC News*, October 28, 2017, available at <https://www.nbcnews.com/think/opinion/domestic-terrorism-statute-federal-overreach-not-justice-ncna814826>; American Civil Liberties Union (ACLU), “How the USA PATRIOT Act Redefines ‘Domestic Terrorism,’” available at <https://www.aclu.org/other/how-usa-patriot-act-redefines-domestic-terrorism>.
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21. Eric Lichtblau, “F.B.I. Steps Up Use of Stings in ISIS Cases,” *New York Times*, June 7, 2016.
22. Federal litigation is currently ongoing on the use of sting operations in drug cases and biased targeting of Black defendants. See Jason Meisner and Annie Sweeney, “Was Racial Profiling behind ATF Stash House Stings? Chicago Judges to Take up Landmark Case Today,” *Chicago Tribune*, December 13, 2017, available at <http://www.chicagotribune.com/news/local/breaking/ct-met-atf-stash-house-hearing-20171211-story.html>.
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24. *Ibid.*

ISPU conducts objective, solution-seeking research that empowers American Muslims to develop their community and fully contribute to democracy and pluralism in the United States. Since 2002, ISPU has been at the forefront of discovering trends and opportunities that impact the American Muslim community. Our research aims to educate the general public and enable community change agents, the media, and policymakers to make evidence-based decisions. In addition to building in-house capacity, ISPU has assembled leading experts across multiple disciplines, building a solid reputation as a trusted source for information for and about American Muslims.

For more information about the study, please visit: www.ispu.org/equaltreatment

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