



## Premediating predisposition: informants, entrapment, and connectivity in counterterrorism

Piotr M. Szpunar

To cite this article: Piotr M. Szpunar (2017): Premediating predisposition: informants, entrapment, and connectivity in counterterrorism, Critical Studies in Media Communication, DOI: [10.1080/15295036.2017.1319966](https://doi.org/10.1080/15295036.2017.1319966)

To link to this article: <http://dx.doi.org/10.1080/15295036.2017.1319966>



Published online: 08 May 2017.



Submit your article to this journal [↗](#)



View related articles [↗](#)



View Crossmark data [↗](#)



## Premediating predisposition: informants, entrapment, and connectivity in counterterrorism

Piotr M. Szpunar

Department of Communication, University at Albany, Albany, U.S.A.

### ABSTRACT

The sting operation is a mainstay of FBI counterterrorism strategy. Critics charge that this practice, in which an informant lures vulnerable individuals into a plot by promising money and more, amounts to entrapment. Detailing contemporary terrorism discourse and the mediation of the war on terror, legal and media scholars contend that the racial formations marking Muslims as predisposed to “radicalization” therein effectively preclude a successful entrapment defense. Building on these critiques, this paper addresses the function of mediation in counterterrorism beyond and in relation to representation. Utilizing the trial transcripts and available government surveillance evidence in the Newburgh Four case, this paper reconstructs the sting operation, remapping the medial work of the informant: how he established, cultivated and elicited the links that constituted the “cell” and its tie to global jihad. I argue that the induced linkages are the stuff of premediation; they constitute not actual ties to terrorism, but those that might have materialized had the informant been a real recruiter. Nevertheless, they act as proxies in lieu of conventional markers of predisposition and help secure conviction. Ultimately, this paper illustrates the function of (pre)mediation in counterterrorism and its relation to mediated representations of terror.

### ARTICLE HISTORY

Received 8 December 2016  
Accepted 11 April 2017

### KEYWORDS

Informant; premediation;  
connectivity; entrapment;  
counterterrorism;  
surveillance

On May 20, 2009, five men set out to plant car bombs outside of two Riverdale, New York synagogues and shoot down military planes at the Stewart Air National Guard Base with missiles. Four African Americans, James Cromitie, David Williams IV, Onta Williams, and Laguerre Payen (known as the Newburgh Four), were accompanied by a man who went by the name Maqsood. As soon as the bombs were placed, “a slew of plainclothes officers descended on the suspects, guns drawn, breaking their SUV’s windows and pulling the men out” (Conover, 2010). The bombs and missiles were duds, and a police helicopter filmed the entire incident. In fact, Maqsood, who repeatedly paid for meals, groceries, rent, and a trip (and promised more), had been recording conversations between the men for months. He was a government informant named Shahed Hussain. Caught in an elaborate sting operation, each man received a 25-year sentence for conspiring to

use weapons of mass destruction. A subsequent appeal was denied, and the Supreme Court has refused to hear the case.

The use of informants in counterterrorism operations is not uncommon (Aaronson, 2013). Persistent, motivated, and often the mastermind of the plot into which they lure their targets, informant-led operations have been met with charges of entrapment. Widely seen as the most egregious example of government conduct in this regard, the Newburgh case has been the subject of legal analysis (Laguardia, 2013; Norris, 2015; Said, 2010), advocacy group reports (CHRGJ, 2011; Human Rights Watch, 2014), and an HBO documentary (Davis & Heilbroner, 2014). The *New York Times* wrote that the case was poised to “establish a line for entrapment” (Glaberson, 2010). It did not. For Cromitie and company, as in every post-9/11 terrorism-related case in which it has been argued, the entrapment defense failed. Critics of the Newburgh sting claim the men’s guilt was predetermined by a racialized discourse of terrorism that marks Muslims as more prone to “radicalization.” Indeed, media and communication scholars have repeatedly demonstrated how mediated racial formations are central to the war on terror; representations abound in television (Alsultany, 2012; Said, 1997), film (Wilkins & Downing, 2002), and videogames (Stahl, 2006). Building on these insights, I seek to broaden our understanding of mediation in counterterrorism beyond representation. Utilizing the archival media of the Newburgh case—the trial transcripts and available surveillance videos—I examine how notions of connectivity figure into establishing a target’s guilt and the medial work of the informant therein. Reconstructing the sting through these archival media reveals how the targets’ links to global jihad are (pre)mediated in and through the informant. While playing off modes of representation, the informant’s work illustrates a more intricate communicative practice within the war on terror, one that depends on “old” media as much as it does on the “new.”

This paper proceeds in three parts. First, I outline ideologies and fears of connectivity and how they structure both threat and remedy in the context of homegrown terrorism. Here, the informant deployed against a homegrown threat that blends into the populace is best understood as a medium that shapes the very network into which it is ostensibly placed. Second, I provide an overview of the entrapment doctrine and how predisposition is conventionally established therein. I shift the point of inquiry away from an exclusive focus on how the men were represented and to questions concerning the media deployed in counterterrorism and what these media do to the legibility of predisposition. In this effort, the third section remaps how the informant-medium established, exploited, cultivated, and elicited technological, social and ideological links that constituted the “Newburgh Four” as a cell tied to global jihad. The paper concludes by arguing that in lieu of conventional markers, predisposition is established not only through racial predeterminants but also through a process of premediation, “the remediation of future events and affects” (Grusin, 2010, p. 6). If predisposition is the likelihood that one will act in a particular way in the future, the premediation of connectivity to global jihad in and through the informant produces/induces an example of how the fear integral to the fantasy of connectivity *might* materialize. The counterterror sting remains necessarily subjunctive—there will be no explosion.

## Homegrown terrorists and informants: the doubles of dispersed war

Contemporary social and political relations are largely made sense of through what critical theorists (Chun, 2006; Hu, 2015; van Dijck, 2013) alternatively refer to as the fantasy or ideology of (universal) connectivity, perhaps most simply espoused in the cosmopolitan mantra, “we are all connected.” Here, relationality is characterized through neoliberal notions of freedom (Chun, 2006) and by technological connection onto which human connectedness is grafted (van Dijck, 2013); acts of uploading, downloading, logging in, viewing, or accessing—of linking—are imbued with a sense of unimpeded agency and sociality. The diagram through which this connectivity is visualized, its “extramedial representation” (Chun, 2006, p. 23), is the distributed network consisting of innumerable nodes and shifting edges of variable strength. The network connects that which is on- and offline and is made up of old, new, digital, and/or social media. Hardly egalitarian or democratic, this fantasy produces and perpetuates racialized inequalities, which are, in turn, deployed in articulating the anxieties integral to it: the “fantasy of the universal network has, at its core, the principle of deviance: of having a break or a rot somewhere in the network, of having circuits—or people—that are unreliable and untrustworthy” (Hu, 2015, p. 18). Containing untold and potentially dangerous (sub)networks (e.g. al-Qaeda), within the fantasy of connectivity lies the inverse of cosmopolitan hopes: the network is also a weapons system (Galloway & Thacker, 2007).

In their influential *Networks and Netwars*, RAND analysts Arquilla and Ronfeldt (1996) outline the networked forms of organization and strategy that took shape in the 1990s. Netwar’s defining characteristics include: dispersed actors who do not operate on designated battlefields; the lack of a clear indication of when conflict ends and peace resumes; and actions, tactics, and strategies that are not organized in hierarchies of control. Dispersed netwar materializes most poignantly in the phenomenon of “homegrown terrorism,” a term that gained traction in the U.S. in 2009. The Department of Homeland Security (DHS) defines a homegrown terrorist as an American (citizen or resident) who is

engaged in, or is preparing to engage in ideologically-motivated terrorist activities (including providing support to terrorism) in furtherance of political or social objectives promoted by a foreign terrorist organization, but is acting independently of direction by a foreign terrorist organization. (DHS, 2011)

This definition is simultaneously predicated on notions of otherness and distributed networks: a foreign seed is planted in familiar ground and later materializes in the people and places one would least expect (i.e. Americans at home working “independently of direction”).

The image of the homegrown terrorist is distinct from the neatly stereotyped jihadist of the immediate post-9/11 American popular imagination but is no less problematic. The adversaries that populate a networked milieu, aligned by neither nation nor language, blend into the crowd (Hardt & Negri, 2000). These insights are mirrored and instrumentalized in official narratives about an adversary with no “typical profile” (Napolitano, 2010). In effect, the enemy image shifts from an identifiable other to a Double, a figure that blurs the line between the familiar and unfamiliar, while maintaining racialized notions of otherness (Szpunar, 2016). While materializing in figures like the Boston Marathon bomber, the Double is not necessarily a look-alike, but a wolf in sheep’s clothing who might look, talk and/or act “like us.” The Double is simultaneously an expression of

anxieties surrounding connectivity and networked threats, as well as a strategic discourse that fractures the collective in the service of underwriting preemptive policing.

In this context, Arquilla and Ronfeldt's (1996) dictum "whoever masters the network gains an advantage" (p. 1)—which includes imagining the network in an appropriate way (Stohl & Stohl, 2007)—takes on increased significance as it (however erroneously) promises the ability to anticipate and preempt the materialization of the homegrown Double. The If You See Something, Say Something campaign, for example, illustrates well the networked approach taken to counterterrorism. Yet, in this effort, much popular and critical attention has been placed on the deployment of digital surveillance technologies. However useful a focus on "new" media, it contains several shortcomings. First, while rightly illustrating how citizens in general are positioned as simultaneously suspects and spies (e.g. Andrejevic, 2007), it tends to overstate the generality of that phenomenon. That is, some remain more suspect than others. Second, and connectedly, digital surveillance does not fully capture the logic and practices of preemptive counterterrorism (Massumi, 2007). As David Edgerton (2007) argues, by exclusively focusing on "new" technologies of conflict, we miss the continued significance of the horse, that is, old technologies that continue to play a significant, if revamped, role. In contemporary counterterrorism, that horse is the informant, a figure as old as political power and its accompanying anxieties of subversion.

The informant is the enemy-Double's inverse. Rather than a wolf in sheep's clothing, the informant is, given the predatory nature of counterterrorism, a wolf in wolf's clothing. Ostensibly, the informant blends in and acts as other in efforts to flush out the Double. Robert Bloom (2005) traces the informant as a surveillance technology to ancient Greece and illustrates how the eventual widespread use of the paid informant coincided with the professionalization of police forces in 19th-century Europe. From ancient Greece to present-day America, the informant has predominantly been deployed to maintain state power, thwart subversion, and limit the effect of progressive groups, as in Cold War America (see: Marx, 1974). In the contemporary moment, a focus on the paid informant addresses the uneven effects of surveillance. While informants are regularly utilized against left-wing groups (Norris, 2015) and have also been used to thwart the efforts of those plotting violence against America's Muslims (e.g. Smith, 2016), informants are most widely deployed in the nation's mosques; the NYPD aimed to have an informant in each of the city's mosques (Apuzzo & Goldman, 2013).

The paid informant's role has historically oscillated between supplying information and acting as an agent provocateur. In counterterrorism, this distinction collapses. On the stand, the informant in the Newburgh case initially described the nature of his work as that of a "listener" (*US v Cromitie et al.*, 2010, p. 669). However, the prosecution admitted that he was "no wallflower" (p. 28), something Hussain eventually confirmed when pushed on cross-examination:

Q. And you were supposed to be passive, correct?

A. Sometimes, yes ma'am, not always.

Q. Not always. And isn't it true that you were the one who initiated conversations many times about jihad; isn't it true?

A. Yes, ma'am. (p. 1397)

Thus, rather than a passive "listening post," pace the NYPD's characterization (Apuzzo & Goldman, 2013), the informant is better thought of as a Latourian "mediator" (cited in

Grusin, 2010) that intervenes in and shapes information, relations, and networks (Thacker, 2005). The informant is a preemptive medium, an “incitatory” figure (Massumi, 2007) that goes beyond the biopolitics of “letting things happen” (Foucault, 2007) and makes things happen—the character of this “making” I explore in the conclusion. Critics and rights advocacy groups have characterized the intervening actions of the informant as entrapment.

### Terrorism, race, and entrapment

The entrapment defense is a judicially created doctrine first recognized in *Woo Wai v US*, a 1915 case in which the government spent 16 months inducing the defendant to smuggle Chinese immigrants across the Mexican border. Entrapment, however, was not successfully argued until the 1932 prohibition case *Sorrels v US*, exonerating a veteran who procured alcohol for a government agent. There are two competing tests for adjudicating entrapment. The “objective test” focuses on government conduct and urges the court to dismiss charges when that conduct is deemed to “shock the conscious” (Roth, 2014). However, the “subjective test” which emerged out of *Sorrels* is definitive and focuses instead on the predisposition of the defendant (Sherman, 2008). To illustrate: once the defense raises entrapment and shows that the government induced its defendant to act—a relatively easy feat in informant-led sting operations—the prosecution must then illustrate that the defendant would have committed the crime if given the chance (by anybody). The establishment of predisposition typically depends on one or more of three arguments: that the target has committed a similar crime in the past; that the target has planned a similar crime in the past; that the target jumped at the opportunity provided by the informant.<sup>1</sup>

In the war on terror, the establishment of predisposition has become particularly troubling. Unlike in the “victimless” crimes associated with sting operations (e.g. prostitution, drug-dealing, etc.) the targets in the Newburgh case had never committed or planned terrorist attacks. Cromitie’s claims of a violent past—all fabrications—were intended to win favors from his wealthy friend-informant. Nor had they enthusiastically accepted the opportunity to participate in Hussain’s plot; Hussain worked on Cromitie for well over a year. David Williams of the Newburgh Four wrote from prison, “We got convicted on feelings ... Once you put ‘terrorist’ in front of anything ... you’re already guilty” (quoted in Rayman, 2011). His critique surely finds a target in the work of one legal scholar, Dru Stevenson (2008), who states, “Perhaps only people with a certain psychological makeup, or certain entrenched attitudes, could be potential recruits ... for a terror cell” (p. 143). In short, only terrorists would conspire to commit terrorism, a tautology that precludes the possibility of entrapment. Stevenson’s claim is particularly problematic given what both media and legal scholars have meticulously unpacked as the always-already racialized nature of terrorism discourse, which effectively marks Muslims and Arabs as more prone to “radicalization” (e.g. Human Rights Watch, 2014; Said, 2010; Volpp, 2002).<sup>2</sup>

The pre- or overdetermination of predisposition is further compounded in the Newburgh case by the way in which the racial formations of the war on terror intersect with those of mass incarceration. All four African American men were stuck in the machinations of mass incarceration, cycling between the economically depressed city of

Newburgh, New York and prison (Wacquant, 2009). Cromitie, for example, was in and out of prison since his early teens with a total of 12 years served; all four men lived below the poverty line, and two (Cromitie and Payen) had untreated psychological illnesses. The men were clearly vilified through the connection of Blackness and criminality on which mass incarceration operates. The prosecution described the men as having a “thirst for violence,” even though all four had been to prison for nonviolent drug offences (*US v Cromitie et al.*, 2010, p. 18). At the men’s sentencing, Judge Colleen McMahon called the men “thugs for hire,” invoking a well-worn trope used to criminalize Black men (quoted in Weiser, 2011).

Muslim, Black, terrorist, ex-con, poor: In intersecting ways, these constructs predetermine the men’s supposed predisposition to terror. However important these predeterminants are for understanding why the men were targeted and convicted, there is something else at play. The essential part of the sting operation and the trial proceedings involved networking the defendants to each other and to global jihad. The process of networking reflects and operates on the fantasy/fear of connectivity; this shapes the informant’s work as much as the racialized discourse of terrorism (the two are, in fact, intimately linked). This process relies not only on the extramedial representations of connectivity but on its operationalization. The medium through which this occurs is the informant.

### Networking the Newburgh Four

Shahed Hussain first adopted the identity of Maqsood—a wealthy recruiter for Jaish-e-Mohammed, a Pakistani terrorist organization—in a 2003 sting that led to the arrest of an Albany, New York imam. His path to employment with the FBI began when he left Pakistan. Held on murder and kidnapping charges—what he called politically motivated charges—Hussain fled Pakistan when he was temporarily released from custody after his father bribed officials. He entered the United States in 1994 on a fake British passport and settled in Albany. As an employee of the Department of Motor Vehicles, he ran a scam in which he fed answers to license test-takers for whom he was supposed to be translating. Caught in an FBI sting operation, he agreed to become an informant. For his work in Albany, he received a sentence of time served and a letter of support to avoid deportation; for the Newburgh job, he was paid.

Hussain pulled up to the mosque in Newburgh in 2008 posing as Maqsood. In a poor town that regularly ranks as one of New York State’s most violent, Hussain stood out, arriving at service in a fleet of expensive cars and sporting designer clothes. He would sit in the parking lot for hours afterward trying to lure congregants into discussions about jihad. Pegged as an informant by regular attendees, most avoided him. Hussain met James Cromitie, who was clearly attracted to Hussain’s ostensible wealth, on his twelfth trip in June 2008 and began relentlessly pursuing him. Whether indicative of a con artist/manipulator or a reasonable portrayal of a terrorist recruiter, what is of interest here is the ways that the informant, as a mediator or vector, constituted and connected the Newburgh Four. In this effort, I repurpose Arquilla and Ronfeldt’s (1996) taxonomy of links that make up a network—technological, social and narrative/ideological—as a heuristic through which to examine the informant’s work as a medium in establishing the Newburgh Four and their links to global jihad, effectively rendering the men’s predisposition legible to juries, the news media, and publics.



*“I just bought two Arabic channels ...”*

Dispersed low-intensity conflict is, as Arquilla and Ronfeldt (1996) comment, afforded its capacity “by the latest information and communication technologies—cellular telephones, fax machines, electronic mail (email), web sites, and computer conferencing” (p. 10). However, the Newburgh case illustrates well their point that advanced technology is not required for netwar. Indeed, what is remarkable about the Newburgh case is its complete lack of technological sophistication. For example, the chance meeting between informant and target was not facilitated by an Internet search or a chatroom discussion, scenarios so often invoked vis-à-vis radicalization. Hussain was the only one to use digital media in the entire episode (to produce documents with the Jaish-e-Mohammed logo; *US v Cromitie et al.*, 2010, p. 689). It is unclear whether his targets had regular computer access, and the smallest digital tasks seemed to amaze Cromitie. In response to a printed map of their targets produced by Hussain via Google Maps, Cromitie remarks, “I’m surprised you even got that. That’s what’s up. You did that on the computer?!” (Government Exhibit, 119-E1).

Sophisticated or not, the “Newburgh Four” were certainly constituted in and through technology. Hussain—himself part of a multimedia surveillance assemblage that included wiretapped/bugged phones, cars, and an FBI-rented home—was indispensable in this regard. He purchased and meted out the devices that linked the men to one another (burner phones) and to their involvement in a plot (digital cameras and fake weapons) (*US v Cromitie et al.*, 2010, pp. 830, 983). Hussain was also active in constituting the cell in his interaction with other surveillance technologies and media writ broadly.

Most telling, he had the authority to decide when the wiretaps and surveillance cameras would be activated and when they would lay dormant. Granting him the ability to actively shape the way authorities made sense of the targets resulted in peculiar consequences. For instance, “the critical [initial] conversations in which Mr. Cromitie ostensibly came up with the idea to do jihad [the impetus for the intensification of the operation] are conveniently not on any tape or video recording” (Judge McMahon, quoted on p. 2011). Nor is the final preoperation meeting—a selective technological ear habitual to FBI sting operations (Apuzzo & Goldman, 2013, p. 151). Thus, an important marker of predisposition (a prior desire/plan to commit an act of terrorism) becomes evidentiary, not through forensic evidence but through the medium of the informant.

Throughout the operation and on the stand, Hussain was also active in both facilitating and interpreting Cromitie’s media consumption. In one recorded conversation (Government Exhibit, 101-E2), Cromitie claims to have purchased “two Arabic channels” because he did not trust U.S. news outlets. Cromitie never named the channels explicitly; nor could Hussain confirm Cromitie’s purchase. It was likely another of Cromitie’s many fabrications. Nevertheless, prompted by prosecutors, Hussain interpreted Cromitie’s preoccupation with “news coming from the war zone, the Middle East and Afghanistan, Iraq and Pakistan” as an indication that “he vied to be in a terrorist organization ...” (*US v Cromitie et al.*, 2010, p. 740). The preoccupation Hussain claimed to have witnessed—tantamount to illustrating predisposition—was belied time and again by Cromitie’s complete ignorance of highly publicized terrorist attacks. For example, he had no knowledge of the 2008 Mumbai terror attacks, which were front-page news at the time. To correct this,



Hussain bought a newspaper and gave it to Cromitie; that paper was ultimately entered into evidence.

Switches are flipped (or not), burner phones are activated, images are shot, and media consumption is facilitated and interpreted. Hussain curates—and is a key part of—the technological infrastructure through which the Newburgh Four were constituted. In the sting operation, the salience of the terrorism discourse depends on its mediation in the acts of linkage and exchange. Hussain's work here reveals how, in counterterrorism operations that lack a digital footprint, contemporary notions of connectivity are grafted onto nondigital technologies; here, news consumption links the men in much the same way that accessing jihadist propaganda online does in other cases (e.g. *US v Shnewer et al.*, 2008). Any given newspaper or a hypothetical “Arabic channel” signals the type of sociality that van Dijck (2013) identifies as grafted onto technical connection. Hussain also worked hard to establish a more explicit and legible sociality through which to incriminate his targets.

*“Brothers don’t talk money”*

For Arquilla and Ronfeldt (1996), the strength of social ties is directly related to a network's effectiveness, the strongest being “clan ties” found in “ethnically based” groups. The four targets certainly lacked such ties. The men did not know each other well. In fact, Cromitie was the only “member” for most of the sting. A good chunk of Hussain's work consisted of badgering Cromitie to assemble a group of “good Muslims,” preferably “guys from the [Newburgh] mosque” (Government Exhibit 119-E1), which would retroactively justify the presence of an informant. This never materialized, so Hussain resorted to building up a sense of kinship with Cromitie by repeatedly calling him brother while securing a relationship based on Cromitie's financial dependency.

When Cromitie first spotted Hussain in the parking lot of the Newburgh mosque, he was immediately attracted to the latter's wealth. On the witness stand, Hussain asserted that his ostensible display was necessary because no one at the mosque would talk to someone they perceive to be poor (*US v Cromitie et al.*, 2010, p. 1545). Instantly, Hussain began to cultivate a relationship, buying Cromitie a drink. In the following months, as Hussain paid for every meal they shared, his target's dependence grew. Cromitie requested and received money for groceries and his \$180 per month rent (pp. 901, 1016). Hussain was not shy about his ability to disperse funds: “If you need money, you come to me. If you need money, I can give you money, you know” (quoted on p. 46). Nor was he merely a source of petty cash. For Cromitie, and eventually the others, Hussain presented a path to a better life. He offered Cromitie a car, a barbershop—playing on the one skill Cromitie had picked up in prison—and \$250,000.<sup>3</sup> To David Williams, he promised enough money to pay for his brother's liver transplant—a fact the prosecution objected to as “irrelevant and prejudicial” and sought to keep it out of the trial (pp. 79–81). To Onta Williams and Laguerre Payen, he pledged \$10,000.

Under the guise of brotherhood, Hussain maintained this relationship as a one-way exchange (necessary for conspiracy charges to stick). When Cromitie once offered to get a gun for Hussain free of charge, Hussain protested, “You're my brother, ok? You're my brother. You're my brother from my heart, so don't talk about money with brothers ok? Brothers don't talk about money. So whatever it costs, just tell me brother” (Government Exhibit, 108-E2). As much as Cromitie lied to ingratiate himself with his wealthy

friend, Hussain equally tried to build a sense of brotherhood by expressing concern for Cromitie's ability to support himself.

Money was unsurprisingly a key issue at trial. *The Guardian* wrote that, far from terrorists, the Newburgh Four "fit the profile of desperate men who would do anything for money" (Harris, 2011). At an appeal hearing the prosecution stated, "Money didn't matter to these guys" to which Judge McMahon quickly replied, "Really? It was painfully obvious that the reason they did it was for the money" (quoted in Moynihan, 2011). The dependent and exploitative character of their relationship was evident, the defense argued, in Cromitie's hesitance, obfuscation, and excuses. He regularly failed to perform the tasks set out by Hussain or put together the team he had promised. Cromitie often baulked, telling Hussain, "Well maybe it's not my mission then, maybe my mission hasn't come yet" (Government Exhibit 112-E3). He did just enough to keep Hussain's wallet open. And when he was not in need, he "drop[ped] out of sight completely [on February, 25, 2009]" (*US v Cromitie et al.*, 2010, pp. 54–55). For weeks, Cromitie lied about his whereabouts and deleted Hussain's phone messages (having tapped his phone, the FBI knew all this). Most importantly, Cromitie's stalling tactics ran counter to the argument that he was predisposed, that is, that he had been preparing himself for jihad prior to Hussain's arrival on the scene and that he enthusiastically accepted Hussain's proposition. In fact, Hussain offered money only after working on Cromitie for four months with no results (p. 1622).

Cromitie reestablished communication only after he lost his job in April 2009. His words from an earlier February 2009 conversation about doing reconnaissance acquire a tragic new meaning: "Okay, fuck it, I don't care. [Big sigh] Oh man, Maqsood, you got me" (quoted on p. 52). Hussain then began to exploit any sense of brotherhood the two might have shared. Upset about being abandoned—which he openly reiterated on the witness stand—Hussain told Cromitie that due to all the delays his "life is on the line" (Government Exhibit, 116-E1). He went so far as to insinuate that Jaish-e-Mohammed was threatening to behead him (*US v Cromitie et al.*, 2010, pp. 1827–1831). It was only then that the plot really began to develop.

Certainly the only line between Cromitie and the terrorist organization, Hussain went from being an acquaintance to developing a strong connection. He then exploited it. Cromitie's very real precarious situation and Hussain's fictional one forced Cromitie to complete the triad and escalate his activities beyond talking big. No longer able to obfuscate, he assembled a team. The strength of this tie—and, subsequently, the Newburgh Four's tie to global jihad—is articulated in two ways. First, Hussain's invocation of brotherhood allowed him to frame their link as something beyond mere exchange, which then suggests a connectedness to the organization he was thought to represent. Second, the fact that Cromitie was driven by a desire to keep Hussain's wallet open is ultimately made irrelevant. For the prosecution, the acceptance of Hussain's money was itself already an indication of this conflated connectivity (*US v Cromitie et al.*, 2010, p. 29). As Chun (2006) argues, the freedom internal to notions of connectivity is based on buying and selling (p. 11). Here, exchange is divorced from sociopolitical realities (e.g. mass incarceration and its accompanying poverty) and instead signals a "free choice" to link oneself to terror. Cromitie may have not quickly plotted, but he swiftly took Hussain's money. A link operationalized in and through Hussain, he went to great lengths to make it explicit. The night before their mission, Hussain took the men to dinner, paid for, he claimed, by Jaish-e-Mohammed (*US v Cromitie et al.*, 2010, p. 2079).

*“It is jihad money.”*

Arquilla and Ronfeldt (1996) assert that narrative, which they interchangeably refer to as a common story, doctrine, or ideology, is vital to maintaining networked terrorist groups who lack ethnic or clan ties; it is what ties the homegrown terrorist to international networks. Perhaps the most decisive work of the informant is that of showing the perpetrators to be “true believers,” that their motive can be articulated in and through an anti-American or jihadist narrative. In the absence of clear digital lines to global jihad, the shared narrative suggests a connectedness that makes direct technological links unnecessary—the homegrown terrorist works, after all, without directive. The Newburgh case illustrates the informant’s role in eliciting and curating these ties, and how they overlap and intertwine with technological and social links.

At first glance, it was not difficult to tie Cromitie to the narrative. Despite his initial statements about jihad being conspicuously absent from recorded evidence, he frequently repeated anti-Semitic and anti-American diatribes. For instance, he said he would kill 10 Jews before even considering killing a Muslim (Government Exhibit 102-E1). In another conversation recorded November 7, 2008, he tells Hussain:

Listen, I am American soldier. Do you hear what I’m saying? Just listen closely. I am an American soldier. I am a soldier right here in America, that the President don’t even know about. Do you understand what I’m saying? I’m an American soldier, I am here in America, I am a soldier here, but not for America. (Government Exhibit 105A-E3)

He also often reiterated a phrase Hussain first introduced. For violence to be permissible in the eyes of god one must act “for the cause, not just because.” Perhaps most damning, and the prosecution made a point to mention this early and often, was that the men “prayed for success” (*US v Cromitie et al.*, 2010, p. 13).

The above statements, however, were not offered spontaneously. As mentioned above, Hussain admitted to leading conversations in a “particular fashion” (p. 1411), often with statements equally as vile as Cromitie’s: “To eat under the shadow of a Jew, is like eating your own mother’s meat” (p. 1610). Cromitie’s hateful speech is also equally inseparable from the social relationship that Hussain cultivated through financial dependence: he was “singing for [his] supper” (p. 45). David Williams claimed the four men had a plan to swindle Hussain without ever carrying out the plot, which required them to articulate the narrative, “Cromitie knew what the informant wanted to hear and gave it to him so he could get that money” (David Williams quoted in Rayman, 2011). In fact, away from Hussain, in the 4,000 or so of Cromitie’s phone calls that the FBI screened, he never once uttered anything anti-Semitic, anti-American or violent (*US v Cromitie et al.*, 2010, p. 45). In a call between Cromitie and David Williams days before the plot, neither mentions jihad, only money. Moreover, in Onta Williams’s apartment, authorities found no jihadist literature, just a small amount of marijuana (p. 100) and in Laguerre Payen’s room, jars of urine (p. 116; a schizophrenic, Payen was afraid to use the common bathroom in this building). Moreover, in surveillance videos, the men repeatedly confirm with Hussain that the plot will involve only property damage, countering claims of their “bloodthirsty” predisposition.

Hussain also needed to elicit the narrative to curb the potential effects that the introduction of money would have for the viability of an entrapment defense. In this effort, he told the men *ad nauseum* that the mission was “not about the money” (pp. 1693,

1900). It was money, as he liked to say, “for the cause, not just because”; he dubbed it “jihad money” (p. 1867). His turn of phrase imbued money with the narrative. Working in conjunction with the buying and selling freedom of connectivity, accepting money was not just a free exchange but an indication of one’s adherence to an ideology (one that requires action, tantamount to predisposition). Hussain communicated as much while being cross-examined:

Q. Now again, jihad money is the same as like regular money in terms of how you might be able to spend it, correct?

A. On the spending purposes, the *meaning purpose* is very different (p. 1869, *emphasis added*).

Hussain’s prompts and provocations for the narrative were themselves conditioned by his technological surroundings. He would tell the men to say things loudly and clearly for the hidden microphones. The presence of video also allowed Hussain to interpret the men’s actions in lieu of vocalization. He was asked about the prayer for success that was undertaken at his own behest and during which Cromitie remained largely silent:

Q. And did Mr. Cromitie say anything about the success of the mission during the Dua, or was it you?

A. The Dua, I—you just do it in your heart you just don’t say it loudly. And this—so Mr. Cromitie did do a Dua in his heart, and so did I. There are no words said in Dua, loudly sir ...

Q. Do you remember there was a tape that was played on direct where you told Mr. Cromitie to say a Dua, right?

A. Yes, sir.

Q. And you told him, say it loud, so everybody could hear, right? (p. 1908).

Cromitie did not have to verbally express the narrative because Hussain was able to translate the meanings of the motions captured on video, with a legitimacy based on the social ties he had cultivated. However clumsy, Hussain exploited the lack of technological sophistication to shape the network and its binding narrative.

The interconnectedness of ideological, technological and social links is most evident in the weapons chosen for the “mission”: improvised explosive devices (IEDs) including the use of cell phone triggers and surface-to-air missiles (Government Exhibit, 110-E1). This choice was prompted by Hussain’s repeated, detailed, and explicit suggestions as well as his promises to obtain them and cover the cost. The weapons effectively linked the men to the technological arms trade of global terrorism. Moreover, these are the weapons of choice for America’s enemies (perhaps second only to the AK-47). Thus, their procurement signals a common *modus operandi*—a techno-ideological link implying a connectedness (atop technical connectivity) that utilizes the racialized dedifferentiation of enemy-others in discourses of terrorism but also requires that these be (p)remediated. Defense counsel stated in her opening remarks that “the government ... is going to open with the big bang. They’re going to bring in those IEDs ... [and] the missiles ... . They are frightening” (*US v Cromitie et al.*, 2010, p. 100). The weapons, “designed to scare” (p. 76), bring up images of war in Afghanistan and Iraq as well as those in countless films and television programs. The weapons most vividly illustrate that the sting operation is the stuff of premediation.

## Premeditated terror

[The Newburgh Four plot was] a very serious threat that could have cost many, many lives if it had gone through. ... *It would have been a horrible, damaging tragedy* (Republican Congressman Peter King, quoted in Baker & Hernandez, 2009).

The defense council called the Newburgh sting a production. The remediation of televisual and filmic terrorist plots into a live action play of a potential future attack in Riverdale was certainly enhanced by the upwards of one hundred federal agents and the bomb squad that descended on the scene. It is a peculiar production in that the climax is left to the imagination. The bombs did not explode, and the rockets were never fired. In fact, there was no chance that either could be activated; not only were they props, but the informant himself had to “activate” them due to the targets’ buffoonery, which was “Shakespearean in scope” according to the presiding judge (quoted in Harris, 2011). The resulting scenario required authorities to perform a communicative balancing act. They had to pronounce the severity of the threat, enhanced by the dramatic scene in Riverdale reproduced on the evening news, while simultaneously reassuring the public that it was in no actual danger—this time (security is as fleeting as the flash of an explosive). Control of the situation was credited to FBI’s preemptory savvy, an attribution that maintained the warning of what might have been. “It would have been horrible ...”

Premeditation is not concerned with a “predetermined or preexisting state that can be predicted or forecast or planned” (Grusin, 2010, p. 59). Rather, what is premediated is “what could happen next” (p. 41). The subjunctive nature of the attack acts as an “affective prophylactic” (Grusin, 2010, p. 46) aimed at maintaining a base level of anxiety that garners support for preemptive policing. The news reports featuring the dramatic scene of the arrest certainly indicates that, pace Grusin, the news media “become part of the juridical apparatus of securitization” (p. 42). Grusin’s insight matches well with media and legal scholars who identify televisual and filmic representations that mediate the war on terror as part of the war effort itself. However, in the Newburgh case, premediation not only occurs on television, movie, or computer screens but is at the heart of the counterterror sting itself. Much like the climax of the attack, the links elicited, facilitated, and established by the informant are essentially subjunctive. In a partly improvised assemblage of technologies, narratives, and cash-fueled relationships, the informant premediated the men’s link to global jihad in that the links were not actual but stood in for those that could have materialized had he been a real recruiter. Ultimately, the role of the informant in constituting the “cell” and making it legible to juries illustrates how mediation in the form of premediation is a more fundamental part of counterterrorism.

The vector-mediator-informant made things happen. Given the subjunctive nature of the attack and links, it is perhaps tempting to state that not much actually happened—no explosion, no messages exchanged with actual terrorists. This would however miss the very real consequences of premediation in counterterrorism. With the three conventional indicators of predisposition clearly absent, the informant produced subjunctive proxies, which marked “what could happen next” while simultaneously standing in for a past that never was. The legibility of the ties as legally establishing predisposition and precluding any mitigating factors (e.g. the men’s poverty or vulnerability) depends largely on the fantasy/fear of connectivity with its internal rot (Hu, 2015), neoliberal notions of freedom/choice (Chun, 2006), and superimposition of sociality onto technical links (van Dijk,

2013). The intricate informant-mediated counterterrorism practices are also deeply intertwined with the racialized discourse of terrorism that media and legal scholars have detailed. In the midst of the sting Hussain told his handler that the plot was moving along as if out of a movie script. Thus, it was no accident that Hussain was sent to a mosque. Nor is it mere happenstance that he chose one in a poor town, with a largely Black congregation. The sting operation creates a feedback loop: the informant's actions are mediated by the racialized discourse of terrorism, and the "success" of the operation—the life sentences of four Black Muslim men—reinforces the salience of the racial representations integral to the war on terror.

## Notes

1. Thus, raising the entrapment defense is risky in that it allows for evidence of predisposition, evidence that would otherwise be deemed prejudicial and irrelevant.
2. In contrast, a young white supremacist with a clear political message who murdered nine congregants at a church in Charleston, North Carolina was charged, instead, under hate crime legislation (for the implications of this difference, see Patel & Tierney, 2015).
3. Hussain claimed that \$250,000 was code (pp. 1795–1801), though his explanation was shaky at best. On cross, he admitted that he had neither told Cromitie this outright nor written it down on the list of other code words. Hussain simply "thought he would understand" (pp. 1880–1881).

## References

- Aaronson, T. (2013). *The terror factory: Inside the FBI's manufactured war on terrorism*. Brooklyn, NY: Ig Publishing.
- Alsultany, E. (2012). *The Arabs and Muslims in the media: Race and representation after 9/11*. New York, NY: NYU Press.
- Andrejevic, M. (2007). *Ispy: Surveillance and power in the interactive era*. Lawrence, KS: University Press of Kansas.
- Apuzzo, M., & Goldman, A. (2013). *Enemies within: Inside the NYPD's secret spying unit and bin Laden's final plot against America*. New York, NY: Touchstone.
- Arquilla, J., & Ronfeldt, D. (1996). *The advent of netwar*. Santa Monica, CA: RAND.
- Baker, A., & Hernandez, J. C. (2009, May 21). 4 Accused of bombing plot at Bronx synagogues. *The New York Times*, A1.
- Bloom, R. (2005). A historical overview of informants. *Legal Studies Research Paper Series*, No. 64. Boston College Law School. Retrieved from <http://ssrn.com/abstract=688042>
- CHRGJ. (2011). *Targeted and entrapped: Manufacturing the "homegrown" threat*. New York, NY: NYU School of Law.
- Chun, W. H. K. (2006). *Control and freedom: Power and paranoia in the age of fiber optics*. Cambridge, MA: MIT Press.
- Conover, T. (2010). The pathetic Newburgh Four: Should the FBI really be baiting sad- sack homegrown terrorists? *Slate*. Retrieved from [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2010/11/the\\_pathetic\\_newburgh\\_four.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2010/11/the_pathetic_newburgh_four.html)
- Davis, K., & Heilbronner, D. (Directors & Producers) (2014). *The Newburgh sting* [Motion Picture]. United States: HBO.
- Department of Homeland Security. (2011). Domestic terrorism and homegrown violent extremism lexicon. Retrieved from <https://info.publicintelligence.net/DHS-ExtremismLexicon.pdf>
- Edgerton, D. (2007). *The shock of the old: Technology and global history since 1900*. Oxford: Oxford University Press.



- Foucault, M. (2007). *Security, territory, population: Lectures at the Collège de France, 1977–1978* (G. Burchell, trans.). New York, NY: Picador.
- Galloway, A. R., & Thacker, E. (2007). *The exploit*. Minneapolis, MN: Minnesota University Press.
- Glaberson, W. (2010, June 15). Trial of Newburgh men accused of terror plot delayed. *The New York Times*, p. A25.
- Grusin, R. (2010). *Premediation: Affect and mediality after 9/11*. New York, NY: Palgrave Macmillan.
- Hardt, M., & Negri, A. (2000). *Empire*. Cambridge, MA: Harvard University Press.
- Harris, P. (2011, December 12). Newburgh four: Poor, black and, jailed under FBI “entrapment” tactics. *The Guardian*. Retrieved from <http://www.theguardian.com/world/2011/dec/12/newburgh-four-fbi-entrapment-terror>
- Hu, T.-H. (2015). *A prehistory of the cloud*. Cambridge, MA: MIT Press.
- Human Rights Watch. (2014). *Illusion of justice: Human rights abuses in US terrorism prosecutions*. New York: Columbia Human Rights Institute.
- Laguardia, F. (2013). Terrorists, informants and buffoons: The case for downward departure as a response to entrapment. *Lewis & Clark Law Review*, 17(1), 171–214.
- Marx, G. T. (1974). Thoughts on the neglected category of social movement participant: The agent provocateur and the informant. *Journal of Sociology*, 80(2), 402–442.
- Massumi, B. (2007). Potential politics and the primacy of preemption. *Theory & Event*, 10(2). doi:10.1353/tae.2007.0066
- Moynihan, C. (2011, March 25). Entrapment reasserted in appeal in synagogue bombing case. *The New York Times*, p. A24.
- Napolitano, J. (2010). Nine years after 9/11: Confronting the terrorist threat to the homeland. Retrieved from <http://www.dhs.gov/news/2010/09/22/statement-secretary-janet-napolitano-united-states-senate-committee-homeland>
- Norris, J. J. (2015). Why the FBI and the courts are wrong about entrapment and terrorism. *Mississippi Law Journal*, 84, 1257–1327.
- Patel, F., & Tierney, A. (2015). The reasons why Dylann Roof wasn’t charged with terrorism. Retrieved from <https://www.justsecurity.org/25071/reason-dylann-roof-charged-terrorism/>
- Rayman, G. (2011, March 2). Were the Newburgh 4 really out to blow up synagogues? A defendant finally speaks out. *The Village Voice*. Retrieved from <http://www.villagevoice.com/2011-03-02/news/were-the-newburgh-4-really-out-to-blow-up-synagogues/>
- Roth, J. A. (2014). The anomaly of entrapment. *Washington University Law Review*, 91(4), 979–1034.
- Said, E. (1997). *Covering Islam: How the media and the experts determine how we see the rest of the world*. New York, NY: Vintage Books.
- Said, W. E. (2010). The terrorist informant. *Washington Law Review*, 85, 687–738.
- Sherman, J. (2008). “A person otherwise innocent”: Policing entrapment in preventative, under-cover counterterrorism investigations. 11 *U. Pa. J. Const. L.* 1475 2008–2009.
- Smith, M. (2016, October 15). 3 Held in bomb plot against Somalis in Kansas. *The New York Times*, A11.
- Stahl, R. (2006). Have you played the war on terror? *Critical Studies in Media Communication*, 23 (2), 112–130.
- Stevenson, D. (2008). Entrapment and terrorism. *Boston College Law Review*, 49(1), 125–215.
- Stohl, C., & Stohl, M. (2007). Networks of terror: Theoretical assumptions and pragmatic consequences. *Communication Theory*, 17, 93–124.
- Szpunar, P. M. (2016). From the other to the double: Identity in conflict and the Boston marathon bombing. *Communication, Culture & Critique*, 9, 577–594.
- Thacker, E. (2005). Living dead networks. *The Fibreculture Journal*, 4. Retrieved from <http://four.fibreculturejournal.org/fcj-018-living-dead-networks/>
- United States v. James Cromitie, David Williams, Onta Williams and Laguerre Payen. (2010). [Trial Transcripts] Criminal No. 09-CR-00558.
- United States v. Mohamad Ibrahim Shnewer, Dritan Duka, Eljvir Duka, Shain Duka, and Serdar Tatar. (2008). [Trial Transcripts] Criminal No. 07-CR-00459 (RBK).



- van Dijck, J. (2013). *The culture of connectivity: A critical history of social media*. Oxford: Oxford University Press.
- Volpp, L. (2002). The citizen and the terrorist. *Immigration and Nationality Law Review*, 23, 561–586.
- Wacquant, L. (2009). *Prisons of poverty*. Minneapolis, MN: University of Minnesota Press.
- Weiser, B. (2011, June 30). 3 men draw 25-year terms in synagogue bomb plot. *The New York Times*, p. A22.
- Wilkins, K., & Downing, J. (2002). Mediating terrorism: Text and protest in interpretations of The siege. *Critical Studies in Media Communication*, 19(4), 419–437.