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Twitter and the Islamic State: What is the Government's Role?

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TWITTER AND THE ISLAMIC STATE: WHAT IS THE GOVERNMENT'S ROLE?

A Master Thesis

Submitted to the Faculty

of

American Public University

by

Claire Elizabeth Bowyer

In Partial Fulfillment of the

Requirements for the Degree

of

Master of Public Administration

June 2015

TWITTER AND THE ISLAMIC STATE

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TWITTER AND THE ISLAMIC STATE

DEDICATION

I dedicate this thesis to my family. To my husband, for his constant support throughout the past 2 ½ years as I've worked to complete this degree. Without his encouragement and constant shouldering of domestic duties and toddler wrangling, this endeavor would never have been possible. And to my two young daughters, Mom's finally done. Let's go play!

TWITTER AND THE ISLAMIC STATE

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TWITTER AND THE ISLAMIC STATE

ABSTRACT OF THE THESIS

TWITTER AND THE ISLAMIC STATE: WHAT IS THE GOVERNMENT'S ROLE?

by

Claire Elizabeth Bowyer

American Public University System, June 21, 2015

Charles Town, West Virginia

Dr. Christi Bartman, Thesis Professor

Terrorist groups are increasingly turning to social media to recruit, raise funds, and spread propaganda in support of their cause. One group, the Islamic State, has used social media, especially Twitter, as a vehicle to recruit thousands of foreign fighters and their future brides, disseminate their violent ideology, and incite and inspire others to commit terrorist attacks in their name. The results of this study indicate that there are many initiatives and strategies the government could undertake to reduce the online reach and power of terrorist groups like ISIS. These initiatives should include more collaboration with and cooperation from the social media companies themselves. The research also found that should there be little cooperation, there are remedies through existing law and potential amendments to existing law that could force social media companies to better monitor their platforms for extremist content and take down violent material in order to help the government and intelligence agencies better protect the nation's security.

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TWITTER AND THE ISLAMIC STATE

American newspapers would have never allowed our enemies in World War II to place ads in, say, *The New York Times* for recruitment of people to go and fight against America. So why do social media companies allow terrorist content on their platforms?

-- Ted Poe, chairman, Subcommittee on Terrorism, Nonproliferation, and Trade

Committee U.S. House of Representatives

Examining the Government's Role in Restricting Terrorist Activity and Recruitment
Efforts by the Islamic State Through Social Media

INTRODUCTION

This issue of terrorist groups using social media as a means to spread their propaganda and recruit fighters and followers is relatively new. Government, intelligence, and law enforcement agencies are scrambling, trying to quickly figure out the best possible ways to stop these groups from gaining more publicity and more importantly, funding and supporters to increase their scope and their ability to conduct terrorist attacks. But many questions remain unanswered: What role does government play or can government play in restricting terrorist activity and/or terrorist recruitment efforts through social media sites such as Twitter and YouTube? What laws, if any, are in place to allow this to happen? Examining past cases, how would the Supreme Court likely rule if a case involving terrorist activity and Twitter came before the justices? Because this problem is fairly new, there is much room to research potential policies to help curb the ability of terrorist groups to use social media to further their violent extremism. The purpose of this paper is to examine these strategies. The United States has led in innovative online technology, which has revolutionized the way we all communicate around the globe. Unfortunately, it has made it easier for this nation's foes to use it toward their nefarious ends, spreading propaganda and inciting like-minded individuals to share terrorist propaganda and possibly incite followers to commit jihad. The nation needs to take on an "us versus them" approach, and bring together the brightest technological minds with experts who understand the Middle East, to innovate ways to better track and stop online jihadists who have so far been out-

sleuthing their law enforcement adversaries. In addition, the government should examine and possibly amend existing laws in an effort to encourage, or force, if necessary, U.S. social media companies to do everything in their power to stop the spread of online violent extremism. The fight against ISIS should not just be a military one. An important front is online and we as a nation have a real opportunity to change the course of this war against ISIS if we use our own innovative mindset to counter this group's social media-based manipulative recruitment strategies. It's not enough to monitor, cross fingers, and count bodies. Our government needs to consider implementing a broad set of actions, from incorporating online countermeasures and garnering more cooperation and collaboration from social media companies, to employing hardball tactics, litigation, and a little more outside the box thinking, in order to stop the spread of online terrorist propaganda and protect the nation's security.

Literature Review

The literature contains numerous scholarly articles about the growing use of the Internet and social media by terrorist groups. Advances in technology mean the ability to share ideas, videos, and other digital content is available to more people than ever before. The technology has also grown more user-friendly and is cheaper. This has leveled the playing field, both for those who communicate information for good as well as those who have more sinister reasons to get their messages across. (Metz, 2012, Von Behr et al., 2013) Violent extremists today use the Internet to "recruit, radicalize, and mobilize individuals – including Americans." (Majority and Minority Staff, 2012, p. 1) The Internet has become the main tool used by terrorist organizations to communicate with like-minded peers, followers, and potential members. (Weimann, February 2014)

The Internet also offers terrorist groups a level of anonymity. In years past, jihadists would have to travel to different mosques trying to find the few like-minded individuals who shared their extremist views. Or they would be forced underground and would risk being found out. (Metz, 2012). Today that lengthy process of locating other extremists and sharing ideas has been greatly reduced. (Majority and Minority Staff, 2012, p. 2) The Internet, through chat rooms, websites, and now social media, enables terrorist groups to recruit from across the globe. (Von Behr et al., 2013)

According to terrorism expert Gabriel Weimann, today, 90 percent of terrorist groups' communications over the Internet are accomplished through social media. (January 2014). Younger people favor social media, which is free, as well as interactive. Social media enables anyone to share messaging, contribute to the discussion, and even ask questions of terrorist group leaders. (Weimann, January 2014). Weimann goes on to illustrate just how quickly social media use and technology is evolving. Facebook, which began in 2004, had 1.31 billion users a decade later. YouTube, which began in 2005, as of last year counted 100 hours of video uploaded each minute. And Twitter, which started in 2006, had 555 million Twitter users tweeting about 58 million tweets a day last year. (January 2014).

One terrorist group that has proven its skills in using social media, to expand its reach, increase its publicity and gain followers, is the Islamic State. In June 2014, the Islamic State declared that it had formed a caliphate. According to the literature, at that point, the group had upwards of 15,000 militants in its membership. Following mass desertions from the Iraqi army, the Islamic State, or ISIS, took control of a large swath of land in Syria and Iraq. Since then, foreign fighters from 80 countries have joined ISIS. Many come from Muslim-majority countries, but others have traveled to Syria from the United States, Australia, and Western

European countries. (Cronin, 2015). Some 150 Americans are believed to have traveled or attempted to travel to Syria over the past three years to take part in jihadist activities. (Jenkins, 2015). The organization offers young people instant gratification – including adventure, power, community, and sex. (Cronin, 2015).

The literature also describes life under ISIS rule in Syria. The organization carries out a brutal form of sharia law. It rules via terror and indoctrination. It has kidnapped Western journalists and aid workers and beheaded them. The group kidnapped and burned alive a Jordanian air force pilot. ISIS has carried out large-scale attacks against civilian populations throughout Syria. It attempts to force those of other religions to convert to its form of Islam. If they don't convert, they face torture, enslavement, and death. The group has forced thousands from their homes and recruited children to fight for its cause. In short, ISIS has committed a multitude of war crimes. (UN Report, 2014)

The group is also considered to be the richest terrorist organization in the world. According to the literature, some estimates put ISIS at accumulating \$1 million a day through black market sales of stolen oil and looted goods, including the region's rare antiquities. This heavily funded, dangerous group is spending the money on building up its caliphate. But fears exist that ISIS could turn its attention toward expanding its reach or using its wealth to orchestrate terror attacks in Europe or the United States. (Johnston, 2014). The group has already carried out brutal killings of Westerners and has encouraged followers in the West to conduct its own terrorist attacks and killings in their home countries. (Jenkins, 2015).

ISIS is also considered to be among the most skilled terror organizations in the use of social media, especially Twitter and YouTube. ISIS uses social media technology as a weapon

of war to spread propaganda and recruit young Muslim followers – both men to serve as fighters and women to wed them and form families in the caliphate. ISIS followers have established dozens of Twitter accounts. These accounts allow the group to reach potentially millions of supporters who then can consume and share the group’s violent anti-Western ideology. ISIS also uses video-sharing websites such as YouTube. There they post videos of their cruel war methods – the beheadings of hostages and strict eye-for-an-eye form of Sharia law. (Vitale & Keagle, 2014)

A March 2015 Brookings Institution study found that last fall, ISIS supporters were using at least 46,000 Twitter accounts. Three quarters of the supporters listed Arabic as their first language, but nearly one in five chose English. These accounts also had a higher than average number of followers (1,000 each) and a higher than average number of tweets. (Berger & Morgan, 2015).

There is a significant amount of literature about terrorist groups using social media, the history, growth, and threat of ISIS and how it uses Twitter and YouTube. However, the strength of the literature weakens when discussing ways to limit ISIS’s use of social media to recruit followers and what the government’s role could and should be in doing so. Some literature discusses the possibility of the United States waging “covert information operations” similar to undercover military maneuvers. Under this scenario, the United States would leverage its extensive media, technology, and intelligence experience to carefully craft and insert anti-ISIS messages to Muslim audiences around the globe. (Sorenson, 2014).

Another idea is to pay groups of skilled hackers, like the global group Anonymous, which has mounted its own online battle against ISIS. There is a State Department program aimed to

counter ISIS social media messaging. It's called Think Again Turn Away. Its results, scholars say, have been mixed. A group like Anonymous, as controversial as it might be, could be tasked with launching counter-messages against ISIS. The group could also hack into ISIS's social media accounts and eliminate ISIS's messaging altogether – hindering the terrorist organization's ability to spread propaganda and recruit. (Brookings, 2015).

The literature also touches upon the pros and cons of simply deleting the Twitter accounts of terrorist groups such as ISIS. One argument in favor of shutting down these accounts is that research does indicate that while a jihadist's pathway to radicalization is personal, social media can speed up the rate by which a person becomes radicalized. An argument against removing these accounts is that they provide useful information to U.S. and international intelligence officials, including possible targets and jihadist tactics. (Vitale & Keagle, 2014). And if they are no longer on Twitter, the extremist groups will conduct their conversations elsewhere, in secret.

But it's one thing for social media companies to voluntarily take down jihadist material from their websites. Can the government compel such behavior? In 2012, several legal experts, including the president of the American Civil Liberties Union, professors and associate deans at several law schools, and a U.S. Supreme Court correspondent for *The New York Times* participated in a panel discussion about Supreme Court freedom of speech decisions. They cited a study by Monica Youn at the Brennan Center, which found that through 2011, out of 29 decisions having to do with free speech, just 10 of them sided with the First Amendment – equaling about 34 percent. (Youn, 2012). The studies concluded that the current Supreme Court is not seen as a “free speech –protective Court,” and that the Roberts Court is made up of “free-

speech opportunists,” who side with free speech when it goes along with their individual ideologies. (Morrison, Herman, O’Neill, Collins, Richards & Liptak, 2012).

The law experts discussed the very crux of this thesis, which is whether the government should be allowed to compel social media companies, such as Google (which owns YouTube) to take down content or videos that “incite violence.” The experts agreed that there is no harm in the government requesting that companies take down content that could spur lawless activity. But the question remains whether the government is authorized to compel companies to remove content. That question is not fully answered in the literature, although there is some precedent found in past Supreme Court cases. (Morrison, Herman, O’Neill, Collins, Richards & Liptak, 2012).

One of these cases is *Holder v. Humanitarian Law Project (2010)*, which involved material support laws. These laws began in 1994 and were expanded two years after the Oklahoma City bombing and again after the September 11, 2001 terrorist attacks and as part of the Patriot Act. These laws prohibit Americans from giving weapons or funding to terrorist groups. The idea being, that some groups that are considered terrorist organizations also run schools. The government doesn’t want people donating money to the schools only to have the terrorist groups instead divert the money to building bombs. (Morrison, Herman, O’Neill, Collins, Richards & Liptak, 2012). However, the law also says that it is also unlawful to provide personnel, expert advice, or training to groups designated by the U.S. State Department as terrorist groups or any groups that are conducting terrorist activities. (Title 18 – Crimes and Criminal Procedure, p. 4)

In *Holder v. Humanitarian Law Project (2010)*, the Humanitarian Law Project wanted to work with members of the Kurdistan Workers Party. This organization is at odds with the Turkish government and claims that they are being mistreated by them. However, the Kurdistan Workers Party, known as PKK, has been designated as a terrorist organization by the State Department. The Humanitarian Law Project wanted to teach the Kurdistan Workers Party how to better work out differences with the Turkish government, and avoid terrorist activities. The Supreme Court, in a 6-3 vote, ruled that even though Humanitarian Law Project's goals were peaceful, they still violated the government's material support laws. (Morrison, Herman, O'Neill, Collins, Richards & Liptak, 2012).

Given how high the stakes are when it comes to violent, well-financed terror groups like ISIS, what is the government's role in stopping the spread of jihadist material and recruitment efforts via social media? The literature does not fully answer this important question. More research needs to be done to further discuss government authority as well as potential policies and legislation that could be developed as means to halt the spread of terrorist propaganda and recruitment efforts through social media.

The gap this research seeks to fill is the government's role in stopping the Islamic State's use of social media to spread its propaganda and recruit followers to its so-called caliphate in Syria and Iraq. A specific focus will be on the free speech consequences of doing so. In some cases, Twitter and YouTube have quickly taken down content and suspended accounts by those who post the executions of ISIS hostages. (Mack, 2015). While these companies may act on ethical grounds, there is no U.S. law that requires them to take down the posts, even when they include such objectionable content as an execution. (Stone, 2014). Should there be?

Theoretical Framework

There already exists much information about terrorist groups and their use of social media to recruit likeminded individuals to join their causes. Instead of traveling from mosque to mosque in hopes of locating the one extremist, the needle-in-a-haystack jihadist, terrorist groups can set up shop online, post their propaganda and wait for interested individuals to come to them. Advances in technology have made computers and mobile devices more cheaply available and as such, people around the globe can access terrorist propaganda over the Internet, including disaffected young people who are often targeted by these groups. And as social media has evolved, there are more ways for these groups to communicate. Facebook and Twitter help link extremists to other extremists. Twitter has been cited as the means by which several British schoolgirls came in contact with members of the Islamic State before they left England and traveled to Syria in February. (*Three Missing British...*, 2015; *Three U.K. Schoolgirls...*, 2015). ISIS also has used YouTube to broadcast its gruesome killings, including the beheadings of western journalists, the immolation of a Jordanian air force pilot, and other grisly examples of how the terrorist group metes out punishment under its strict interpretation of sharia law. (Jenkins, 2015). As such, there is also a growing body of literature about the Islamic State and its use of social media to recruit foreign fighters and potential brides for these fighters throughout the West. It is estimated 150 people from the United States have traveled to Syria over the past three years. (Cronin, 2015).

To examine ways in which the government or intelligence agencies can gain a deeper understanding of how and terrorist groups use social media and how to combat it, one can consider a range of theories, including Situational Action Theory, Social Movement Theory, Social Psychology, and Conversion Theory

Situational Action Theory

Followers of ISIS believe that they are conducting moral acts when they decided to join and fight on behalf of the caliphate. They believe that their actions are setting the stage for the Days of Judgment. According to the teachings of the Prophet Muhammad and his earliest disciples, the Roman armies (the West) will meet the armies of Islam in northern Syria. After the West is defeated, it will lead to a final showdown in Jerusalem and the apocalypse. (Wood, 2015) Understanding this fundamental belief of ISIS followers, along with their reasoning for joining ISIS can help intelligence agencies better counteract ISIS ability to spread propaganda and recruit new followers. The Situation Action Theory is about propensity and environment. In order to stop the growth of a terrorist organization or an influx of foreign fighters, there needs to be a reduction in people's propensity to join a terrorist group and the environment of like-minded individuals or support of terrorism also needs to be lessened or eliminated. (Bouhana & Wikstrom, 2010)

Social Movement Theory

Social Movement Theory involves groups, whose individuals join because they all have like-minded views – often negative. An important part of sustaining a social movement is ensuring that there is always a stable number of participating members and that the group is able to grow that membership through successful recruitment techniques. (Borum, 2011) ISIS uses social media to spread its propaganda, to make itself appear stronger and more powerful than it is, and to use that power to then raise funds and recruit other followers to join their cause.

Social Psychology

Violent extremism is “most often a group-related phenomenon” and as such, the study of social psychology is relevant. In this group context, the ideas can become polarized and the use of social media exacerbates this, as extremist ideas can easily bounce from one laptop in Syria, to a smart phone in the UK, to an iPad in the United States. Other components are “groupthink” and “in-group/out-group bias” which occur when members of a group highlight their own successes and way of life and report negatively and ostracize those outside of their group. This is often seen among ISIS followers as they try to recruit others to their cause and influence their reputation on the world stage. (Borum, 2011)

Conversion Theory

This concerns the individual process of accepting a terrorist group’s beliefs. The process involves a set of steps, which include having a personal crisis, then seeking out solutions to fix the crisis or obtain more stability, an online encounter and subsequent interaction with a “spiritual option” or in this case, an ISIS follower, and a commitment to be a member, a follower or a supporter of the group. (Borum, 2011)

The research in this paper will also examine potential policies and legislation that could reduce the access that groups like ISIS have to social media. These could include out-of-the-box ideas such as paying groups of skilled hackers to infiltrate ISIS’ messaging and accounts. Another idea is to employ a covert information operations strategy, similar to an undercover military operation, and bring to bear the nation’s expertise in media, technology, and intelligence to combat the Islamic State’s messaging to Muslim audiences throughout the world. (Brooking, 2015; Sorenson, 2014). However, as mentioned above, these policies need to take into account

the constitutional right of free speech and consider any slippery slopes that can arise when content is removed or accounts are shut down from social media sites without users' consent.

This research will go a step further and consider the hypothetical situation that could arise if a case was brought to the U.S. Supreme Court after a Twitter account connected to ISIS was shut down because it purported to support terrorist activity. The research will consider past cases as precedent to examine how the current Roberts Supreme Court might rule if this issue came before them. One of these cases is *Holder v. Humanitarian Law Project (2010)*, in which the Supreme Court in a 6-3 vote said that members of a peace activist group couldn't assist the Kurdistan Workers Party in its dealings with the Turkish government because doing so violated the nation's material support laws. (Morrison, Herman, O'Neill, Collins, Richards & Liptak, 2012); (*Holder v. Humanitarian Law Project*, n.d.).

Hypothesis Statement

The main hypothesis this paper presents is that there are a number of ways to tackle the Islamic State's growing use of social media, and that if the government required that Twitter and YouTube take down content connected to ISIS, such actions likely would be sanctioned by the U.S. Supreme Court because the Court would side with the Executive Branch as well as Congress in their collective view that any services given to foreign terrorist organizations, even if those services are seemingly benign, can further advance a group's terror activity.

Methodology

The issue of terrorist groups using social media as a means to spread their propaganda and recruit fighters and followers is relatively new. Government, intelligence, and law enforcement agencies are trying to develop strategies to stop these groups from gaining more

funding and supporters to increase their reach and their ability to carry out terrorist attacks. Because this problem is fairly new, there is much room to research potential policies to help curb the ability of these groups to use social media to further their violent extremism. In addition, past U.S. Supreme Court decisions will shed light on how the current Supreme Court would rule should a free speech case involving removing content associated with terrorist groups, comes before the nine justices. One independent variable is how the U.S. Supreme Court would potentially rule if faced with a free speech case involving content connected to the Islamic State that was removed from social media sites. Other independent variables are strategies, policies, and legislation to curb the Islamic State's ability to recruit or spread propaganda over Twitter and YouTube. The dependent variable is the ability of the Islamic State to recruit and spread propaganda through social media.

Research Design

This project will rely upon a qualitative research methodology. Research will include current news articles, scholarly journals, congressional hearing transcripts, and case law. No interviews or surveys will be conducted for this thesis. The collected information will then be analyzed in order to craft police proposals and legislative ideas. The goal of these policy proposals will be to aid in curbing terrorists groups' ability to use social media to further their violent extremism while still protecting the free speech rights of law abiding citizens and social media companies alike.

Organization of Collected Data

The research collected will begin with a case study involving three British girls who used Twitter to communicate with a member of the Islamic State. Following that communication, the

girls then left London on February 17, 2015, traveled to Istanbul and then on to Syria. (*Three Missing British...*, 2015). The girls' relatives say they had no knowledge that the girls intended to travel to Syria to join the terrorist organization. The search is currently on to find the girls, who are feared to be destined to become wives of jihadist fighters. (*Three U.K. Schoolgirls...*, 2015). The paper will then outline a short evolution of terrorist group recruitment strategies, from Iran in the 1980s until present day. It will briefly touch upon, in general, Internet use among terrorist groups and how they use social media to their advantage. The paper will then focus on the Islamic State, how it began, who is in it, what its territory is, how it's funded, and how it uses social media, particularly Twitter and YouTube to attract more followers and spread its message. It will offer statistics on how many people have joined the ISIS, including from Europe and the United States. The paper will discuss strategies, potential government policies and legislation that could curb ISIS's ability to use social media to further its goals, but it will then go on to discuss consequences of this, including whether it's constitutional for the government to require offensive content or accounts be taken down by social media companies and how the current U.S. Supreme Court would likely rule if such a case came before it.

Study Limitations

A main limitation to this study is that because this phenomenon – the Islamic State's use of social media to attract fighters and followers – is fairly new, there may be limitations in the amount of research that can be gathered to support the hypothesis. Another limitation is that because this topic is active right now and is consistently in the news, the research may be a moving target and will require revisions up until this paper's publish date. Still another potential limitation is that since there has not yet been a U.S. Supreme Court case considering the constitutionality of the government requiring that ISIS content be removed from social media

sites, this analysis will be based on likely behaviors of U.S. Supreme Court Justices based on their statements, votes, and overall rulings in past cases. This examination will be based on careful examination of the evidence, however it is not possible to definitively determine how individual members of the Court would rule on a case that has yet to be, and may never be brought before them.

Findings and Analysis

ISIS's Foreign Recruits

In February, three British schoolgirls, 15-year-old Shamima Begum, 16-year-old Kadiza Sultana, and 15-year-old Amira Abase of East London kissed their families goodbye, and led them to believe they were going to school at nearby Bethnal Green Academy, like they did every weekday morning. Instead, the three girls boarded flights at London's Gatwick Airport, bound for Turkey with the intention of crossing the border into Syria to join a friend of theirs who travelled there in December to join the Islamic State. They are believed to have been "groomed" by ISIS supporters over social media – people who have become experts in manipulation to convince others to join their terrorist organization. The exact whereabouts of the three teenage girls is unknown and their families say they had no idea the girls were being radicalized.

(Rkaina, 2015)

The three girls are just one example of the power of the Islamic State and its unique propaganda efforts. As ISIS continues to try to strengthen its so-called caliphate, it employs a recruitment strategy different than any used in past conflicts. The Islamic State's use of social media is not just a way to publicize the group's conquests, social media is an integral part of ISIS's growth plan. (Carter, Maher & Neumann, 2014). The group is unlike other foreign

terrorist organizations for its reliance upon foreign fighters – people who are not Syrian, but travel to that country to fight against the Syrian government. (Carter, Maher & Neumann, 2014). According to the International Centre for the Study of Radicalisation and Political Violence, some 11,000 fighters from 74 different nations have traveled to Syria. The numbers of foreign fighters mobilizing to join another conflict hadn't been as high since a similar mobilization took place during the Afghanistan-Soviet conflict in the 1980s. Although the vast majority of those currently fighting in Syria are from the Middle East, more than a quarter of them (up to 2,800) are from the West, including Europe and the United States. (Carter, Maher & Neumann, 2014).

Many of those who join the Islamic State are converts to Muslim. They are predominately young. Many come from broken homes or have behavioral or psychological issues. They are often considered “lost souls searching for answers” and some seek the rules, the sense of belonging, and the strict lifestyle that the Islamic State offers. They look to Allah for a second chance in life. (Faiola & Mekhennet, 2015) ISIS uses social media to reach out, connect online with, and lure in these young people by communicating in ways and mediums that they're most familiar with and attracted to – using high-tech graphics, tweets, videos, rap and hip hop music. For example, ISIS recently released a video from a German hip-hop artist named Deso Dogg. The video includes a rap about the path to jihad, which he claims offers a spiritual way forward, power, adventure, and revenge for past ills. Such videos are often released in various languages, in Arabic, but also English and other tongues to be able to attract a wide range of fighters from around the globe. In another video, a Swedish convert speaks in both Arabic and Swedish, telling potential Western fighters: “The door to jihad is standing there waiting for you. It is the fastest way to paradise.” (Faiola & Mekhennet, 2015) The global reach of social media allows people with extremist views to gather and share ideas. Although this group of ISIS

supporters are extremely small when considering the size of Twitter's user base, their influence is much greater in terms of affecting global politics or events. And a key to all of this influence is social media. (Jihad 2.0..., 2015)

Examples of Social Media use by Foreign Terrorist Organizations

Pushing out extremist material by foreign terrorist organizations has been elevated to a type of jihad. Al Qaeda deputy leader Ayman Al-Zawahiri once lauded those who interface with potential jihadists online, saying: "May Allah reward you the best reward for your good job in serving Islam. You must know that you are [fighting] on a great front of Islam, and that the tyrants [of our time] are very disturbed by your efforts." (U.S. Strategy for Countering Jihadist Websites, 2010 p. 11) As such, there are numerous examples of U.S. State Department-designated foreign terrorist organizations using Twitter, YouTube and other forms of social media to further their causes. The Khorasan Group in Syria, an organization established by al Qaeda to attack the United States and Europe, has a Facebook fan page, complete with photos and a message board. In April 2013, another terrorist group – Al Qaeda in the Islamic Maghreb – held an online press conference where interested parties could pose questions and then have them answered by AQIM leaders the following week. In February 2014, a Saudi cleric used Twitter to host a fundraising drive to subsidize Syrian jihadists. Al Shabaab used Twitter to live-tweet its attack on the Westgate shopping mall in Kenya that left 72 people dead. Al Qaeda and ISIS have both posted videos to YouTube. (The Evolution of Terrorist Propaganda..., 2015, p. 2)

At a congressional hearing earlier this year, Rep. Ted Poe, R-Texas, likened the use of social media by terrorist groups as a new and sophisticated weapons system they are using against U.S. citizens – and that government officials have yet to fully understand and catch on to

this phenomenon. (The Evolution of Terrorist Propaganda..., 2015, p. 4) These groups have been so successful in recruiting young people through social media because that is how young people get their information – through the 30 second sound bite or the 140 character tweet. Mark Wallace, chief executive officer of the Counter Extremism Project, a nonprofit, nonpartisan policy organization that monitors and attempts to counter online recruitment strategies associated with extremist ideology, said that terrorist groups have “hijacked and weaponized” social media for their gains. (The Evolution of Terrorist Propaganda..., 2015, p. 6)

Role of Disseminators

It’s not just those who are actively involved in Syria’s civil war that are influencing the world view and potential fighters, but those sitting on the sidelines are playing an important part as well. ISIS relies on these so-called “disseminators” – often people in the West – to spread the group’s message, provide religious legitimacy for ISIS’s actions, interface, engage, and encourage would-be recruits, including answering questions about life in the caliphate. These disseminators may have never actually been to Syria, but nonetheless influence those who may travel there as well as influence how the world perceives the current struggle in that region. (Carter, Maher & Neumann, 2014). These disseminators also act as cheerleaders, encouraging and providing a kind of spiritual guidance to troubled young people who might be open to starting a new life as a foreign fighter in a war-torn land. As such, the disseminators often have a greater role than the official jihadist group accounts, because they have the time and ability to be more prolific – especially if they are thousands of miles away from the war-torn region of Syria and Iraq. They can share real-time propaganda photos and videos, including of equipment, so-called “martyrs,” statements, responses to attacks, or battlefield information. (Carter, Maher & Neumann, 2014) and they speak a range of Western languages in hopes of drawing greater

numbers of recruits from a wide variety of nations. During a recent congressional hearing, Brookings Institution scholar J.M. Berger outlined the three main ways that ISIS and its followers use social media. These include disseminating propaganda, inflaming hatred of the group and attempting to draw foreign governments into a war with ISIS, and recruiting additional foreign fighters. (Jihad 2.0..., 2015, Berger p. 2) This constant propaganda helps ISIS appear more powerful than it is, as it uses photos and videos and rhetoric to mask the fact that the caliphate is becoming “overstretched.” The dissemination of propaganda has helped the group from “experiencing even greater setbacks.” (Jihad, 2.0..., 2015, Gartenstein-Ross p. 2)

The role of a disseminator in a conflict such as what we’re seeing in Syria isn’t entirely new. During the fighting in Chechnya and Bosnia in the 1990s, groups would distribute videotapes in Muslim communities to raise awareness. And during the Iraq war, disseminators began spreading messages about that conflict via jihadist forums on the Internet. (Carter, Maher & Neumann, 2014). Today, Twitter and social media has enabled legions of terrorist organization disseminators to spread more propaganda at an even faster pace. What makes these people so dangerous is that it is often the disseminator that lures in potential recruits and eventually coaxes a would-be foreign fighter to take that leap and travel to Syria. Just this month, a 17-year-old from Woodbridge, VA admitted in court that he was the person behind the pro-Islamic State Twitter handle @AmreekiWitness, which at its peak had 4,000 followers. The teenager, Ali Skukri Amin, was a high school student who posted 7,000 tweets and often interacted with the State Department’s countermessaging Twitter handle. Amin is believed to have converted an 18-year-old to Islam and helped arrange his trip to Syria to join ISIS. (Zapatosky, 2015)

In 2014, the International Centre for the Study of Radicalisation and Political Violence assembled a database of social media profiles of nearly 200 foreign fighters from the West and Europe. In analyzing those social media profiles, the organization found that more than two-thirds were following the Twitter account of a popular disseminator called @ShamiWitness. The person behind the Twitter account and others like him were not fighting in Syria (nor did they intend to join) but merely supported the Islamic State and used their series of 140 character messages as a bully pulpit to denounce opponents to the group, encourage followers to support ISIS, and voice their support for Sunni Muslims in Syria and Iraq. (Carter, Maher & Neumann, 2014).

The danger of the disseminators, even if they are not the ones with the automatic weapons, killing innocent bystanders or flipping a switch to set off a suicide bomb, they have the influence and the power to incite others to join and conduct attacks. Online jihadists are blamed for influencing terrorist attacks that have occurred in the United States, Canada, France, and Australia in recent months. (The Evolution of Terrorist Propaganda..., 2015, p. 12) What's different about the Islamic State and perhaps more dangerous is that the Islamic State's senior leaders do not necessarily direct its followers to attack specific targets – something that was done under al Qaeda, with the September 11, 2001 terror attacks being a prime example. FBI Director James Comey made this point at a May 2015 news conference, adding that “Al Qaeda core would never give anybody an assignment to kill on their behalf until they had been vetted.” (Comey, 2015) The Islamic State, however, urges people to travel to join their caliphate, but if they can't, to kill where they are and more specifically, kill someone in uniform – a police officer, or a member of the U.S. military. The difference is that under al Qaeda and other terrorist groups, violent acts are directed and under ISIS, they are merely inspired by the group.

And while followers once had to locate members of terror groups in specific chat rooms, today, the Islamic State's propaganda can be sent directly to their smart phones in their pockets.

(Comey, 2015)

A recent example of this is American-born, Minneapolis-based jihad supporter with the online name is Mujahid Miski. Well known by law enforcement, Miski exchanged tweets with Elton Simpson, one of two men who opened fire at a security guard outside a Prophet Muhammed cartoon contest in Garland, Texas on May 3, 2015. (Callimachi, 2015) Simpson and his co-conspirator, Nadir Soofi, were killed. For more than a week before the attack, ISIS followers urged fellow extremists to attack the event. (Jihad 2.0..., 2015) These supporters included Miski, who shared a link on Twitter to the contest on April 23 and encouraged his followers to go there and cause violence. He tweeted: "The brothers from the Charlie Hebdo attack did their part. It's time for brothers in the #US to do their part." Nine followers retweeted Miski's statement, including Simpson. (Callimachi, 2015) After that, Simpson requested that Miski contact him privately. Although that conversation, if any, was not public, several minutes before Simpson began shooting at the cartoon contest, he went on Twitter. He connected the impending attack to the Islamic State, tweeting, "the bro with me and myself have given bay'ah to Amirul Mu'mineem." The statement meant that the two men had pledged their allegiance to the head of the Islamic State, Abu Bakr al-Baghdadi. Miski then tweeted, "May Allah accept us as mujahedeen," and added the hashtag #TexasAttack. (Callimachi, 2015) Following the attack, Miski posted several times on Twitter, including, "I'm gonna miss Mutawakil. He was truly a man of wisdom." Miski gave Simpson that name, which means "one who has faith."

(Callimachi, 2015)

Social Media Companies Respond

U.K. Prime Minister David Cameron said after the January 2015 attack at the offices of the Charlie Hebdo satirical magazine in Paris that U.S. Internet and social media companies have a responsibility to do their part in helping intelligence agencies fight terrorism. (Watt & Wintour, 2015) He and others question how groups like ISIS can operate out in the open on the Internet. Following the Charlie Hebdo attacks, a video of perpetrator Ahmedy Coulibaly surfaced. In it, he claimed responsibility and issued the threat: “If you attack the Caliphate, if you attack the Islamic State, we will attack you.” A link to the video was posted on ISIS’s online chat forum, alplatformmedia.com. (The Evolution of Terrorist Propaganda..., 2015, p. 47) Alplatformmedia operates because it receives protection from cyber and denial of service attacks from the Internet company CloudFlare, based in San Francisco. CloudFlare has come under fire for protecting terrorist websites. The company’s CEO, Matthew Prince, responded to criticism by saying, “A website is speech. It is not a bomb. There is no imminent danger it creates and no provider has an affirmative obligation to monitor and make determinations about the theoretically harmful nature of speech a site may contain.” He said that his company has not had any requests from individuals or court orders to terminate the Alplatformmedia.com site. (The Evolution of Terrorist Propaganda..., 2015, p. 47, 55)

Facebook and YouTube have instituted reporting policies for users to flag terrorist-related content. Both services prohibit “hate speech” threats or “direct attacks” on individuals or organizations or any content that shows “excessive violence.” (Facebook Community Standards) YouTube says it has a team that reviews videos around the clock and posts a detailed description for users who wish to flag videos and report them to YouTube personnel. (YouTube Flagging Content)

Mark Wallace, head of the nonprofit Counter Extremism Project, said his organization has repeatedly called for Twitter to take down Tweets posted by purported terrorist sympathizers, but to little avail. He mentioned Miski to members of Congress earlier this year, saying Miski was using Twitter to post objectionable content, including threats to behead Fran Townsend, a former advisor to the Department of Homeland Security. (The Evolution of Terrorist Propaganda..., 2015, p. 7) Other tweets talk about crucifying upside down an Emirati woman pilot, assassinating President Barack Obama, and others advocate the genocide of all non-Muslims. (The Evolution of Terrorist Propaganda..., 2015, p. 19-22) Miski has boasted that Twitter has suspended his accounts 20 times, but that he still manages to get back on Twitter and open new accounts. Twitter is singled out because some consider it social media's "gateway drug" and that once a potential jihadist enters into a Twitter conversation with a member of the Islamic State, that conversation then moves to other social media platforms such as AskFM, where members can set up profiles and ask each other questions, anonymously, such as "What is life like as part of the Islamic State?" They then can move on to other platforms such as Kick or WhatsApp, which enable users to have private conversations. (The Evolution of Terrorist Propaganda..., 2015, p. 12) By then, some fear, it's too late, because the conversations are likely firming up travel plans or planning details for the next attack.

An unnamed Twitter official said in an interview last November with *Mother Jones* magazine, that "one man's terrorist is another man's freedom fighter." The same official noted that Twitter has been a home for dissidents and those with "extreme views." (McLaughlin, 2014) Hundreds of Twitter accounts have been suspended, but they often reappear. The authors of the March 2015 Brookings report said that they could confirm that Twitter had been suspending some accounts, estimated to be about 800 but added that the real number could well

into the thousands. Yet many more accounts supportive of ISIS remain. Some tweet violent threats, others post pictures of stolen American weapons, still others show maps of territory now under ISIS control. (McLaughlin, 2014)

The Counter Extremism Project has written several letters to Twitter, pleading with the social media company to shut down the accounts of the most egregious offenders. As of January, the group received one response from Twitter's head of public policy communications. Nu Wexler gave five bullet points, outlining how users report conduct on Twitter and pointed out that "We have 284 million users worldwide sending approximately 500 million Tweets per day and we do not proactively monitor content on the platform." (The Evolution of Terrorist Propaganda..., 2015, p. 39) Twitter's rules prohibit people from impersonating others, releasing private information about other people, making direct personal threats, or publishing copyrighted material. Twitter also maintains that those who use their service are solely responsible for any content that is posted, that the company may not monitor or control the content and don't take any responsibility for it. Twitter also states in its terms of service that "under no circumstances will Twitter be liable in any way for any content, including...any loss or damage of any kind incurred as a result of the use of any content posted..." (Twitter Terms of Service)

Following the death of American journalist James Foley at the hands of ISIS, people took to Twitter requesting that other users not look at the photos or video associated with Foley's death. Some used the hashtag #IsisMediaBlackout and tweeted their intent to not further disseminate any material from the Islamic State. (Parkinson, 2014) That prompted Twitter's CEO, Dick Costolo, to announce that the company would suspend all accounts associated with the graphic images of Foley's death. (Parkinson, 2014.) However, Twitter also noted that when it is confronted with requests to remove content, "Twitter considers public interest factors such

as the newsworthiness of the content and may not be able to honor every request.” (Parkinson, 2014) YouTube removed the video of Foley’s death shortly after it was first uploaded. The company said it does not allow foreign terrorist organizations or their members to operate YouTube channels. (Parkinson, 2014)

Countermeasures

The U.S. government has tried countermeasures to combat terror groups’ anti-American sentiment online – with limited success. In 2002, the State Department spent \$15 million on a video campaign featuring Muslims living in the United States. Called “Shared Values,” it was derisively nicknamed the “Happy Muslim campaign” and shelved soon after. Other efforts followed, but as the U.S. slowly rolled out its programs – including ones to counter anti-American messaging in chat rooms and to enlist the help of movie studios to put together “a feel-good ‘Portraits of America’ film” – the terrorist groups were seizing their own opportunities to sway opinion on the Internet. Al Qaeda started a media wing, turning to an American convert named Adam Gadahn to help put together propaganda movies and then to U.S. born cleric Anwar al-Awlaki whose fiery video sermons enticed a substantial following of supporters, including Nidal Hassan, accused of killing 13 in an attack on Fort Hood in Texas in 2009. Al Qaeda in the Arabian Peninsula then began putting out the online magazine *Inspire*, which included instructions on how to make bombs and encouraged followers to stage lone wolf attacks throughout the West. (Miller & Higham, 2015)

In 2010, the State Department stood up the Center for Strategic Counterterrorism Communications as a way to help stop the spread of terrorist propaganda on social media platforms. The idea was to not just try to force the take down of extremist propaganda on the

Internet but to counter that material online with another view, against violence. They pointed out that the Islamic State's victims are predominately Muslim and that the terrorist group is hurting local Sunni tribes and inflicting violence on the local community. (ISIS and the Threat..., 2014 p. 28, 37) The center worked in conjunction with the CIA and employed Urdu, Arabic, and Somali speakers to converse on Twitter and Facebook and the like. (Miller & Higham, 2015) Early efforts included videos mocking al Qaeda. But by mid-2013, the Center's top concern was ISIS. ISIS also has a media wing. It equips its fighters with GoPro cameras on the battlefield and then uses the footage to produce propaganda news reports and feature films. Also in 2013, the Center for Strategic Counterterrorism began its "Think Again, Turn Away" program. One of its tweets included a photo of a weakened Osama bin Laden and warned ISIS followers: "I want to remind you what happens to terrorists who target us." The program also included a video called "Welcome to ISIS Land" which included footage from acts of brutality committed by ISIS. (Miller & Higham, 2015) Over the course of 2014, the Center posted 1,000 anti-ISIS tweets and posted 25 anti-ISIS videos online. (ISIS and the Threat..., 2014 p. 37)

Critics say the Center's efforts have fallen short. As the Center tried to counter ISIS's propaganda, it found itself unable to keep up with the sheer volume of tweets and material posted by the terrorist organization. (Miller & Higham, 2015) Others have said that the State Department's efforts put the country in the role of a "social media punk." (Miller & Higham, 2015) Supporters countered that the Center has suffered because of lack of funding. It received about \$5 million to \$6 million per year compared to \$150 million per year the Pentagon receives annually to try to sway public opinion and \$250 million spent by the CIA to monitor social media and other open source intelligence sources. (Miller & Higham, 2015) Earlier this year, the Center's leadership changed and the "Think Again Turn Away" campaign has now morphed into

“Terror Facts.” Now led by Rashad Hussain, President Obama’s former special envoy to the Organization of Islamic Cooperation and Richard Stengel, a former editor of *Time* magazine, the idea going forward is that the Center will counter ISIS with more facts and less emotion and will try to again reach out to movie studios and media executives for guidance and assistance. The idea is to avoid what Stengel called the “backfire effect: when you try to disabuse somebody who has a strongly held belief, more often than not it makes their belief even stronger.” (Miller & Higham, 2015)

Intelligence Community Concerns

So why doesn’t the government just try to force social media companies to shut down sites or pages or accounts that are deemed to incite or encourage terrorist activity? One reason is because the Syrian conflict is considered “the most socially mediated conflict in history” and provides intelligence agencies and others who would study the actors, methodologies, and other data associated with ISIS a window into how they operate. A concern of the Intelligence Community is that if you shut down groups like ISIS on social media you shut down the information link and the chance to stop their violent assault throughout the Middle East. (Carter, Maher & Neumann, 2014). There is the fear that intelligence agencies will lose out on valuable information associated with terrorist groups. (The Evolution of Terrorist Propaganda..., 2015, p. 41) However, an argument against this line of thinking is that Twitter doesn’t easily release information to law enforcement authorities. In order for law enforcement to view private tweets, it requires a court order. And in order for Twitter to investigate potential rule abuses, it first must receive a report about it from a user. Facebook has an outside workforce that scans user pages for objectionable material, Twitter does not. Twitter said that it received 2,000 requests for information about users in the first half of 2014 from 54 different governments and police

agencies. The majority came from the United States. However, one figure illustrates just how often they fulfill such requests – out of 189 requests for information from Saudi Arabia, Twitter gave up information for 1 percent – just one or two accounts. The company fulfilled none of Turkey’s 24 requests for information. (McLaughlin, 2014).

Free Speech Concerns

Another concern associated with taking action against social media companies in an effort to stop the spread of extremist propaganda is that such action could hinder American citizens’ rights to free expression and free speech. The thought being, that if the government forces social media companies to remove content or holds those companies or individual users liable for terrorist acts or violence associated with content published on their platform, it will amount to an overreach and curb citizens’ use of the Internet. (Commission on Security..., 2011 p. 9) Some fear that restricting online material will lead to less criticism and satire, or comments that are tasteless and shocking, but are allowed to be said and read and heard in a free society. There is also the concern that regimes can use rules to filter or restrict Internet usage from anyone who opposes them or their views, including human rights activists or journalists. In testimony before a 2011 Commission on Security and Cooperation in Europe hearing, Dunja Mijatovic, Representative on Freedom of the Media for the Organization for Security and Cooperation in Europe said, “The free flow of information is, in my view, an oxygen of cyberspace. If we stop it, the Internet cannot breathe. It becomes a meaningless tool.” (Commission on Security..., 2011 p. 15). Free speech advocates say there must be limited liability for Internet and social media companies and that any policies that are agreed upon to limit terrorist activity on social media must be done while considering a range of participant voices, including human

rights groups, private industry, and government entities. (The Evolution of Terrorist Propaganda..., 2015, p. 57)

In February 2011, then Secretary of State Hillary Clinton laid out the challenges the U.S. government faces in crafting policy that tries to eliminate the spread of terrorist propaganda online while protecting the rights of U.S. citizens to express themselves via the Internet and social media as well as the rights of U.S. companies to innovate and operate in the global cyber marketplace. She mentioned instances in Egypt and Iran, when the two regimes pulled the plug on the Internet and cut off mobile networks after protestors took to the streets to demand a new government in the case of Egypt and after thousands of people marched to protest Iranian election results. (Clinton, 2011) Secretary Clinton said she supported an independent Internet and one that is governed by a “multi-stakeholder system” of private and government interests.

Material Support Laws

The question is where do you draw the line? Governments try to prohibit objectionable material from being seen or spread online – child pornography is but one example. Can the U.S. government go further and legally prohibit the online spread of terrorist propaganda? The law is not definitive on this. But one possibility is through the nation’s material support laws. Under 18 U.S. Code 2339B, it is unlawful for a person in the United States to “knowingly provide ‘material support or resources’ to a designated foreign terrorist organization. Material support is defined as “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, and transportation, except medicine

or religious materials.” And training is defined as “instruction or teaching designed to impart a specific skill, as opposed to general knowledge” and “expert advice or assistance means advice or assistance derived from scientific, technical, or other specialized knowledge.” (Title 18 Crimes and Criminal Procedure.) Taking this statute into consideration, does it mean that if Twitter – which one could argue, provides a service to a foreign terrorist organization such as ISIS by allowing its members to open accounts and tweet pictures and inflammatory rhetoric – is violating U.S. law? (The Evolution of Terrorist Propaganda..., 2015, p. 1)

Supreme Court

There is no harm in the government requesting that social media companies take down content that could spur lawless activity, but again, whether or not the government is authorized to compel companies to remove content is unclear. For analysis on how today’s Supreme Court might rule if it took up a case involving Twitter, free speech and ISIS, one could look at how the Court ruled in the 2010 case of *Holder v. Humanitarian Law Project*. The main question in that case was whether it was lawful to provide material support in the form of speech to State Department-designated terrorist organizations. (*Holder v. Humanitarian Law Project*, 2010 p. 23)

Holder v. Humanitarian Law Project Background

In 1997, the U.S. Department of State named 30 different groups as foreign terrorist organizations. Among them were the Kurdistan Workers Party, also known as PKK, and the Liberation Tigers of Tamil Eelam, or LTTE. The Kurdistan Worker Party was created in 1974 with the goal of establishing a Kurdish state in southeastern Turkey. The LTTE was founded in 1976 with the goal of creating a Tamil State in Sri Lanka. Both groups did humanitarian work

but both groups also had been involved in terrorist attacks, some of which have harmed U.S. citizens. (*Holder v. Humanitarian Law Project*, 2010 p. 4) The plaintiffs in the case *Holder v. Humanitarian Law Project* included the Humanitarian Law Project, a human rights organization that has consultative status to the United Nations, as well as several non-profit organizations representing the interests of Tamil persons. The plaintiffs brought their case because they wanted to support the political and humanitarian work of the PKK and the LTTE, but because of the nation's material support laws (2339B as mentioned above), they feared that this support would violate the law and lead to their arrest and prosecution. (*Holder v. Humanitarian Law Project*, 2010 p. 4)

Plaintiffs' Argument

The plaintiffs alleged that the material support law (2339B) violated the First Amendment – both their freedom of speech and their freedom of association – and that the law, particularly in reference to offering “training,” “expert advice or assistance,” and service” was too vague. (*Holder v. Humanitarian Law Project*, 2010 p. 5, 8) The plaintiffs argued that they wanted to assist PKK and LTTE with nonviolent activities, including how to use international law to “peacefully resolve disputes,” petition government bodies (such as the UN) for relief, advocate on behalf of Kurdish people living in Turkey as well as Tamils living in Sri Lanka, and offer legal advice to both groups on how to navigate peace negotiations with the Turkish and Sri Lankan governments. (*Holder v. Humanitarian Law Project*, 2010 p. 9) The plaintiffs also argued that although the vast majority of Americans would agree that protecting the nation from terrorism is the government's top concern, it wasn't necessary to prohibit plaintiffs' speech to do so because they were only supporting the “legitimate activities,” not any violent activities, of the designated terrorist organizations. (*Holder v. Humanitarian Law Project*, 2010 p. 23)

What the Majority Said

The ruling was 6-3, with Justices Breyer, Ginsburg and Sotomayor dissenting. Chief Justice Roberts wrote the majority opinion, which said that that Congress took into consideration the “serious threat posed by international terrorism” when it enacted the material support law (2339B) and rejected the notion that terrorist organizations would somehow compartmentalize their activities. They pointed to language in the statute, which states: “Foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.” (*Holder v. Humanitarian Law Project*, 2010 p. 24) The majority also rejected the plaintiff’s claim that material support meant solely monetary support. Instead, the majority contended that material support is a “valuable resource” in that it “frees up other resources within the organization that may be put to violent ends.” It also can help to give legitimacy to designated terrorist groups that they can then use to more easily raise funds, recruit members, and direct more terror attacks. (*Holder v. Humanitarian Law Project*, 2010 p. 25) The majority rejected the plaintiffs’ argument that the statute didn’t apply to them because they weren’t attempting to further the groups’ terrorist activities. Citing the statute, the majority wrote that “specific intent to further the organization’s terrorist activities” didn’t matter. The majority added that the statute “regulates speech on the basis of its content” meaning it depends on what was said. (*Holder v. Humanitarian Law Project*, 2010 p. 11) Here’s what the other justices who joined the majority said during closing arguments:

Justice Scalia

Justice Scalia pointed out that the material support law doesn’t criminalize speech per se, but it does criminalize aid that would benefit a terrorist organization – including speech. “The

end that Congress seeks to proscribe is the existence of these terrorist organizations. And the theory of the legislation is that when you aid any of their enterprises you're aiding the organization." He asked the plaintiff counsel, "We are supposed to allow our citizens to assist the terrorist organizations that are directing their violence against them?" (*Holder v.*

Humanitarian Law Project, 2010 oral argument p. 25) Scalia also commented that assistance to the groups cannot be separate from aid to their terrorist activities. (*Holder v. Humanitarian Law Project*, 2010 oral argument p. 12-13)

Justice Kennedy

Justice Kennedy asked questions about the kind of material support the plaintiffs thought was allowable. After the plaintiffs' counsel said that money and speech were different, he seemed to side with the language in the material support statute 2339B in that if you are a terrorist organization and receive funding for benevolent reasons, such as aid, it then "frees up your other assets for terrorist money. So why can't the government forbid teaching you how to get that money?" Although he called the case "a difficult case for me," he concurred with Chief Justice Roberts, saying that support "in any context" can benefit a terrorist group and that it is in the government's best interest to not allow that to happen. Kennedy also made the key point that citing past First Amendment cases anti-government speech and conduct were argued before material support laws were put in place, before foreign terrorist groups became such a major threat against the United States. (*Holder v. Humanitarian Law Project*, 2010 oral argument p. 7, 18, 20)

Justice Alito

Justice Alito didn't comment much during the oral argument, other than to ask the plaintiffs' counsel whether his position was that under the First Amendment, training offered to designated terror groups could not be prohibited unless it furthered the group's terrorist activities. (*Holder v. Humanitarian Law Project*, 2010 oral argument p. 16)

Justice Stevens

Justice Stevens has retired and was replaced by Elena Kagan, who was the U.S. Solicitor General who argued this case on behalf of the Obama Administration. He asked the plaintiffs' counsel if he thought all speech should be protected and "don't you agree that some of the speech could be regulated?" (*Holder v. Humanitarian Law Project*, 2010 argument p. 5)

Justice Thomas

Justice Thomas joined the majority, but as is customary, he didn't ask questions or comment during oral arguments.

What the Dissent Said

Justice Breyer wrote the dissent. In his dissent, Justice Breyer wrote that he didn't agree that the government was authorized under the Constitution to criminally prosecute those who attempt to further an organization's "lawful political objectives" even if the organization is a Department of State-designated terrorist group. He wrote that the kinds of services the Humanitarian Law Project was providing to the PKK were activities protected by the First Amendment. "All the activities involve the communication and advocacy of political ideas and lawful means of achieving political ends," Breyer wrote. (*Holder v. Humanitarian Law Project*,

2010 dissent p. 1-2) He quoted *Citizens United v. Federal Election Commission* (2010): “If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech.” He went on to say that the plaintiffs in *Holder v. Humanitarian Law Project* “seek to advocate peaceful, lawful action to secure political ends; and they seek to teach others how to do the same.” (*Holder v. Humanitarian Law Project*, 2010 dissent p. 4) “Not even the ‘serious and deadly problem’ of international terrorism can require automatic forfeiture of First Amendment rights,” Breyer wrote. (*Holder v. Humanitarian Law Project*, 2010 dissent p. 4) Here’s what the other justices who joined the majority said during closing arguments:

Justice Ginsburg

Justice Ginsburg’s concern was that these organizations were trying to train terror groups to use the law to achieve their goals instead of violence. During oral arguments, she seemed to side with the plaintiffs when she noted that when the plaintiffs say they want to promote the lawful activities of designated terror groups that it is speech and not conduct. (*Holder v. Humanitarian Law Project*, 2010 argument p. 35, 46) The plaintiffs’ counsel had argued that speech has a higher standard because it is protected under the First Amendment.

Justice Sotomayor

Justice Sotomayor noted that the First Amendment allows for the “right to petition the government for redress of grievances” and asked if the material support law 2339B could be used to bar organizations from petitioning government agencies to “peacefully...affect legal change?” (*Holder v. Humanitarian Law Project*, 2010 argument p. 33) The government’s counsel said the statute allows people to “petition peacefully” but it does not allow organizations

to petition “international organizations” on behalf of or in support of designated foreign terrorist groups. (*Holder v. Humanitarian Law Project*, 2010 argument p. 33-34)

How *Holder* Might Influence a Case Involving Twitter

How Twitter Might Win

Twitter could prevail if the Court considers a few provisions of the statute. One provision has to do with service. The statute prohibits entities from offering a service “to a foreign terrorist organization.” The “to” indicates there is a direct connection between the service provider and the terrorist group. Someone or an organization that independently advocates on behalf of a cause may not be subject to material support laws. (*Holder v. Humanitarian Law Project*, 2010 p. 19) The statute also allows people to speak about a topic, as it “does not prohibit independent advocacy or expression of any kind.” (*Holder v. Humanitarian Law Project*, 2010 p. 20) Congress has narrowed the statute to include only a small category of speech – only speech that is directed or coordinated by foreign terrorist organization and that the person doing the speaking knows to be a foreign terror group. (*Holder v. Humanitarian Law Project*, 2010 p. 21) Although one could argue that Twitter provides a service to foreign terrorist organizations and their supporters, Twitter executives have pointed out that they do not actively monitor all of its nearly 300 million users, so they could argue that they don’t know when their users are followers of foreign terrorist organizations. And, according to the majority, the statute only addresses material support that either coordinates with or is under the direction of a designated terrorist organization. “Independent advocacy that might be viewed as promoting the group’s legitimacy is not covered,” the majority ruled. (*Holder v. Humanitarian Law Project*, 2010 p. 26) This could also lead to a ruling in Twitter’s favor as those who support ISIS and

conduct terror attacks (as in the case of Garland, Texas) or recruit people to join the Islamic State are often not “members” per se of the group, but as FBI Director Comey recently pointed out, they are “inspired” by the group. (Comey, 2015) In order to evolve this nation’s national security laws to be more in line with today’s terror threats, Congress should seek to amend Section 2339B’s “Provision of Personnel” section to read: “No person may be prosecuted under this section in connection with the term ‘personnel’ unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with one or more individuals...to work under that terrorist organization’s direction or control, *or is inspired by that terrorist organization* [emphasis added], to organize, manage, supervise, or otherwise direct the operation of that organization. ((Title 18 Crimes and Criminal Procedure p. 4)

Breyer also wrote “it is inordinately difficult to distinguish when speech activity will and when it will not initiate the chain of causation the Court suggests – a chain that leads from peaceful advocacy to ‘legitimacy’ to increased support for the group...” (*Holder v. Humanitarian Law Project*, 2010 dissent p. 11) This could support Twitter’s case in that they can argue that their service is protected under the First Amendment and there is no way to tell if someone’s speech, albeit unpopular or anti-American, will lead to terrorist acts and that we should not “chill” speech as a preventive measure.

Where Twitter might lose

The majority ruled that under the material support statute, people could speak, but it depends on what was said. It also added that providing material support in any form to terrorist groups not only furthers terrorism, but it strains relationships between the United States and its international allies. (*Holder v. Humanitarian Law Project*, 2010 p. 27) This point could be used

against Twitter or other social media companies today. In January 2015, following the Charlie Hebdo attacks, U.K. Prime Minister Cameron lashed out at U.S. social media companies for not doing enough to help intelligence agencies fight terrorism. (Watt & Wintour, 2015)

The majority also ruled that the material support statute is a “preventive measure” by criminalizing not the acts of terrorism but the aid given that would make a terrorist attack more likely to occur. (*Holder v. Humanitarian Law Project*, 2010 p. 30) This line of thinking could be used in a case against Twitter as well. If Twitter provides a forum that allows terrorists to post their propaganda that then incites others to conduct violence in the name of their terrorist organizations, Twitter could be seen as aiding that terrorist attack. The majority goes further to say that by the dissent’s reasoning, that we could equate allowing material support in the form of speech to designated terrorist organizations to offering advice to the Japanese government to resolve disputes during World War II. (*Holder v. Humanitarian Law Project*, 2010 p. 34)

In his dissent, Breyer cites *Brandenburg v. Ohio* (1968) – another free speech case. That case involved a member of the Ku Klux Klan who spoke at a rally, was arrested and then convicted of Ohio’s criminal syndication law. The 1968 Court sided with the Klan member, saying the law was overly broad and violated the Constitution because it banned his speech without proving that the speech directed “lawless action” or that it would likely incite lawless action. (*Brandenburg v. Ohio, n.d.*) Breyer differentiates *Holder v. Humanitarian Law Project* from *Brandenburg v. Ohio* in that in *Holder*, “No one contends that the plaintiffs’ speech to these organizations can be prohibited as incitement under *Brandenburg*.” (*Holder v. Humanitarian Law Project*, 2010 dissent p. 4) If a case was brought against Twitter, they might lose at the Supreme Court level because it is clear that the language some ISIS supporters are posting is inciting terrorist activity. It is enticing people to travel to Syria to fight with the Islamic State

and it incited several people in the United States to attack the Mohammed cartoon drawing contest in Garland, Texas last month.

Breyer also wrote that the material support statute 2339B should criminalize free speech and association “only when the defendant knows or intends that those activities will assist the organization’s unlawful terrorist actions” but that material support should not be protected when a “defendant purposely knows (or willfully blinds himself to the fact) that the activity is significantly likely to assist terrorism.” (*Holder v. Humanitarian Law Project*, 2010 dissent p. 18) This too could go against Twitter in a Supreme Court case as one could argue that Twitter does not go far enough in monitoring its content and or verifying the accounts of its users.

This is where Twitter could be held accountable. Twitter, by allowing followers of these groups to use a public forum to reach millions of people, it gives legitimacy, perhaps more than is due, to groups like ISIS. They can then use that legitimacy to more easily raise funds, recruit members, and direct more terror attacks. (*Holder v. Humanitarian Law Project*, 2010 p. 25) This publicity and notoriety has helped the organization to recruit followers from around the world. The majority closed by saying that it may rule differently in other cases involving free speech and material support laws, but that in this case the government’s prohibition of material support to the plaintiffs doesn’t violate the First Amendment. (*Holder v. Humanitarian Law Project*, 2010 p. 34)

Another reason the government could prevail in a case against Twitter is because the Solicitor General that argued the case on behalf of Attorney General Eric Holder was Elena Kagan. During oral arguments she spoke in strong support of the nation’s material support laws, saying, “...Congress reasonably decided that when you help a terrorist – foreign terrorist

organization's legal activities, you're also helping the foreign terrorist organization's illegal activities." (*Holder v. Humanitarian Law Project*, 2010 argument p. 40) Today, she is a U.S. Supreme Court justice. However, during her Senate confirmation hearings, Kagan discussed the *Holder vs. Humanitarian Law Project* case and the difficulty in deciding cases involving personal rights amid today's national security challenges. "It was an incredibly hard case because it involved very hard, but competing legal values: the value of free speech on the one hand and the value, really, of protecting and defending our country on the other." (Senate Committee on the Judiciary, 2010 p. 87)

In addition, a Brennan Center Study about freedom of speech decisions by the current Supreme Court found that through 2011, out of 29 decisions having to do with free speech, just 10 of them sided with the First Amendment – equaling about 34 percent. (Youn, 2012). The study concluded that the current Supreme Court is not seen as a "free speech –protective Court," and that the Roberts Court is made up of "free-speech opportunists," who side with free speech when it goes along with their individual ideologies. (Morrison, Herman, O'Neill, Collins, Richards & Liptak, 2012).

Not all speech is protected. In its ruling, the Court cited *United States v. O'Brien*, a 1968 case in which the Court rejected a First Amendment challenge by a man convicted of burning his draft card in protest of the Vietnam War. The Court said it would sustain restrictions on speech "if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests." (*Holder vs. Humanitarian Law Project*, 2010 p. 21) Congress can decide that material support is illegal even if it is considered speech and doesn't violate the First Amendment. This is because the government "has a compelling interest in the suppression of terrorism." (Terrorist Material

Support....p. 7) But even if a group says it is acting in peace and using its efforts to stop further violent activity, according to the Supreme Court, it still violates the nation's material support laws because such material support is "fungible," meaning that providing supplies or other goods to an organization can free that terrorist organization's treasury to then spend available funds on violent activities. (Terrorist Material Support....p. 7) The Supreme Court ruled, "A foreign terrorist organization introduced to the structures of the international legal system might use the information to threaten, manipulate, and disrupt. That possibility is real, not remote." (*Holder vs. Humanitarian*, 2010 p. 32)

It is likely, given the way the court ruled in *Holder vs. Humanitarian Law Project*, that should the government bring a case against Twitter involving the social media company's allowance of extremist groups to have accounts and post propaganda, the government would prevail. In *Holder*, the Humanitarian Law Project argued that it was trying to stop terrorist activity and steer the PKK toward peace. Twitter is allowing members or supporters of known State Department-designated terrorist groups to open Twitter accounts and post material that can be used to incite people to conduct terror attacks.

Discussion/Recommendations

The United States has led in innovation of online technology. American companies, including Facebook, Twitter, Google, YouTube, and Instagram, have revolutionized communication across the globe. It has leveled the playing field in Third World countries, it has empowered people to expand their small worlds – to learn more, spread knowledge, share the truth, establish businesses and increase their potential. It also has allowed nefarious individuals to more easily steal, spread hateful speech, broadcast their extremist views, and incite others to

commit violent acts. While governments are trying to track and stop these online jihadists, the terrorists so far have been out-pacing and out-sleuthing their law enforcement adversaries. (The Evolution of Terrorist Propaganda..., 2015, p. 7)

The United States has managed to track down and kill Osama bin Laden and stop any mass casualty terror attacks from again occurring on U.S soil. But the United States hasn't managed to stop the spread of extremist ideology. In fact, it has grown. (Miller and Higham, 2015) FBI Director James Comey has likened the spread of terrorism in the Middle East to a cancer. There was core al Qaeda and it still exists, but it has metastasized and today there are offshoots that have sprouted throughout the Middle East and North Africa, from al Shabaab in Somalia, to AQAP in Yemen and al Qaeda in the Islamic Maghreb in Algeria and now the Islamic State in Syria and Iraq. (Comey, 2014)

ISIS is proving to be a formidable foe to Western democracy. The United States and its allies may be prudent in conducting airstrikes – this paper does not debate the physical war strategies of fighting the Islamic State. However one front where war must be waged is online. That's because those that are fighting on behalf of ISIS are predominately young. They have grown up with the Internet and are adept at using social media and evolving alongside advances in technology. If the U.S. government fails to use its country's own innovative minds to counter online extremism, it loses out on a real opportunity to change the course of the war against ISIS. (The Evolution of Terrorist Propaganda..., 2015, p. 13) This is especially important because there is growing evidence that ISIS is weakening. It is fighting on many fronts, angering too many people, but because the group's online propaganda campaign is so strong, it has prevented ISIS from getting even weaker. This campaign is critical to ISIS's ability to attract financial support and to recruit additional fighters. (Jihad 2.0...,2015, Gartenstein-Ross p. 4,5) As such,

the best course forward for the U.S. is a broad one, with strategies that incorporate online countermeasures, cooperation and collaboration with social media and technology companies, using hardball tactics and litigation if necessary, amending existing laws and regulations, and thinking a bit more outside the box. Again, it's not enough to monitor, cross fingers, and count bodies. Our government must take action.

Challenging Terrorist Groups Online

The U.S. government and intelligence agencies should use countermeasures to combat the lure of terrorism. To do this effectively, they must fully understand the current challenges facing predominately Muslim youth, and those particularly vulnerable to calls to participate in violent jihad. Countermeasures should include education about the diverse history and heritage of the Middle East and North Africa. (The Evolution of Terrorist Propaganda..., 2015, p. 4)

Another idea is to support and encourage additional crowdsourcing campaigns similar to one employed by the Counter Extremism Project. Called #CEPDigitalDisruption, it highlights extremists' tweets and reports the hateful messages to Twitter and to law enforcement authorities. (The Evolution of Terrorist Propaganda..., 2015, p. 6) CEP's project has identified hundreds of extremists as well as people who have called for violent actions and who have made direct threats against others. Moving forward, there needs to be a greater buy-in to these kind of campaigns from Twitter.

In addition there needs to be more support from the Executive Branch and from Congress for the State Department's Center for Strategic Counterterrorism Communications. It should be the one centralized hub where U.S. personnel can begin to monitor, assess, answer, and counteract anti-American sentiments online, with photos and videos to undercut ISIS

propaganda. We have the technological know-how, we have the diversity, and we have the educated and social media-savvy young people to take on this task. It's not impossible; it just requires strong leadership and a robust budget. This effort should be allowed to have its occasional missteps and be given time and leeway to try a strategy and tweak it if it is not working. (Jihad 2.0..., 2015) If an online campaign is successful in turning the tide of foreign fighters away from joining ISIS in Syria, the effort will have been well worth the cost and effort.

Treasury regulations

Some companies are not deterred from working with terrorist organizations because they either don't fear any sort of sanction or prosecution for doing business with these groups or they don't realize these groups are affiliated with terrorism. However, there are existing regulations that the U.S. government could use against terrorist activity in cyberspace. Following the September 11, 2001 terrorist attacks, Congress passed the Emergency Economic Powers Act. The Act gives the President the power to declare a national emergency to threats against the homeland, the U.S. economy, or foreign interests and allows the President to exercise authority in investigating and blocking transactions. Under that Act, the Treasury Department could use their authority to issue cease and desist orders on U.S. Internet Service Providers to prevent them from providing material support to foreign terrorist organizations. This could then force these groups to seek out overseas companies to host their websites. (U.S. Strategy for Countering Jihadist Websites, 2010 p. 30) In addition, regulators, in conjunction with Congress could use or amend existing laws to sanction any American company that helps a foreign terrorist group like ISIS grow and succeed. (The Evolution of Terrorist Propaganda..., 2015, p. 69)

Hackers and Undercover Operations

In addition to overtly attempting to change the minds of would-be jihadists, the government should consider conducting potential “covert information operations” similar to undercover military maneuvers. Under this scenario, the United States would leverage its extensive media, technology, and intelligence experience to carefully craft and insert anti-ISIS messages to Muslim audiences around the globe. The idea would be to show the organization’s true colors and illustrate that it is a far cry from the pure Islamic group that it claims to be. (Sorenson, 2014).

Another idea is to pay groups of skilled hackers, like the global group Anonymous, which has mounted its own online battle against ISIS. A group like Anonymous, as controversial as it might be, could be tasked with launching counter-messages against ISIS. The group could also hack into ISIS’s social media accounts and eliminate ISIS’s messaging altogether – hindering the terrorist organization’s ability to spread propaganda and recruit. (Brooking, 2015). In March 2015, Anonymous released a list of more than 25,000 accounts it said belonged to ISIS supporters. Of that number, 30 of them had 100,000 followers each. (Cuthbertson, 2015) The group is interested in taking down ISIS. Perhaps Anonymous makes a strange bedfellow to U.S. intelligence agencies, but this nation is known to take on strange bedfellows from time to time.

Cooperation and Collaboration

The federal government doesn’t want to be known for censoring the Internet, so the better course of action may be to encourage Internet companies to take down extremist content found on their websites or social media pages. Government officials should continue to pressure social media companies like Twitter to step up their monitoring of accounts belonging to potential

terrorist supporters. Because although they will likely not be able to shut down every account, removing some can slow down the path to radicalization for those interested in jihad. The idea being that in order to become radicalized, a person follows a process of gathering information and talking to like-minded people. Suspending Twitter accounts makes it that much more difficult to find extremist information. And if the suspensions continue at a regular pace, it will be more difficult for ISIS members and supporters to keep up and regenerate accounts. (The Evolution of Terrorist Propaganda..., 2015, p. 41)

There are a few things Twitter could do to assist the government's national security efforts. These include giving the United States government, intelligence agencies, interagency law enforcement task forces and other selected partners a special, expedited reporting mechanism so that they can notify Twitter quickly of any objectionable content and have Twitter swiftly take it down. This would allow trusted advisors a direct access to those in charge of monitoring content at Twitter so that they could circumvent Twitter's often complicated and cumbersome reporting process. (The Evolution of Terrorist Propaganda..., 2015, p. 7) Twitter could also streamline its reporting process. Today, if someone wants to report a tweet as offensive, it goes into a generic spam category. Twitter has already set up a more streamlined reporting process for women to report harassment. As such, Twitter could set up another reporting category for users to alert the company of tweets associated with terrorist groups or impending terrorist acts. (The Evolution of Terrorist Propaganda..., 2015, p. 14) Another idea is to compel users to verify their accounts. There should not be unverified accounts on Twitter. Twitter officials should know everyone that is using its platform. And if there are potential terrorists among their users, Twitter needs to be transparent about that with law enforcement and

intelligence agency officials. Those who engage in the spread of hateful, violence-inducing propaganda do not deserve anonymity. (The Evolution of Terrorist Propaganda..., 2015, p. 7)

Overall, there needs to be a more coordinated and collaborative working relationship between the U.S. government, intelligence agencies, and social media companies in rooting out and removing extremist, violence-inciting material. There are instances when there is a fine line between tasteless and objectionable content. And dissent must be allowed in free society. However in many cases the difference is much more clear. There's no reason U.S. social media companies should allow videos that show executions, beheadings, stonings, or other forms of abuse as a way to instill fear or recruit other sick-minded individuals to the cause of the terrorist groups that use their social media platforms. Likewise, there's no place online for tweets or posts that encourage violent acts or call for the killing of named public officials because they oppose a terrorist group's message.

Clarification – When is it not Free Speech?

There also must be clarification in defining what speech is permissible and what is not. Things like “harmful content” or extremist material or even terrorist propaganda can be vague and seen differently depending on a person's point of view. (Commission on Security..., 2011 p. 58) Instead, the definition must be clear and then social media companies need to clearly state what will be permitted on their sites and what will not. (The Evolution of Terrorist Propaganda..., 2015, p. 14) An easy place to start is any material that “incites violence” and calls for a direct attack on a scheduled activity, such as the Prophet Muhammed cartoon contest, or a death threat against a specific person, such as Fran Townsend, the former Department of Homeland Security official. If the Supreme Court has ruled that non-profit organizations cannot

give peace-building advice to State Department-designated foreign terrorist organizations because doing so violates material support laws, how can U.S. companies host websites or help to distribute online magazines of terrorist groups? It seems that these actions would also amount to material support of terror groups and should be stopped. However, this may not happen unless it becomes part of a case brought before the Supreme Court. There also needs to be more transparency on what it takes to get suspended on social media. (The Evolution of Terrorist Propaganda..., 2015, p. 44) Social media must also continue the steady pace of suspensions. If it doesn't, the accounts will regenerate. It's like weeding. If you don't regularly do it, the weeds grow back and get out of control. (The Evolution of Terrorist Propaganda..., 2015, p. 44)

There has been little legislative action in Congress to compel Internet or social media companies to remove or prohibit jihadist propaganda. In 2007, the Rep. Bill Shuster (R-PA) introduced a resolution "expressing the sense of the House of Representatives that corporate owners of websites that share user-posted videos should take action to remove jihadi propaganda." The resolution was referred to the Telecommunications and the Internet subcommittee, but no further action was taken. (Expressing the Sense..., 2007) Earlier this year, Rep. Mark Walker (R-N.C.) introduced a bill that would authorize new grant funding to counter violent extremism. The legislation would allow for additional federal money to be spent on engaging communities that may have ties to violent extremism and fund programs to help communities prevent radicalization among its citizens. That bill also has been referred to committee and no further action has been taken. (CVE Grants Act, 2015)

Naming and Shaming

If social media companies like Twitter fail to cooperate with government and intelligence agencies, those agencies can employ “naming and shaming” tactics. These could include leveling sanctions against U.S. companies that host websites or provide Internet services to foreign terrorist organizations designated by the State Department. An example of this is the Palestinian Islamic Jihad, which was receiving website services from U.S. companies. The activist website Internet Haganah listed the names of the U.S. companies and encouraged people to contact those companies and tell them to stop supporting terrorists. The Palestinian Islamic Jihad was then forced to search for a website host overseas from Internet Service Providers outside of the reach of U.S. laws. Shaming not only hurts the reputation of U.S. companies, but it is against the law to offer material support to designated terrorist organizations. If listed companies don’t take action, the list can then be shared with the media. No company wants to see their good name sullied in the press. (U.S. Strategy for Countering Jihadist Websites, 2010 p. 27, 31)

Cyber Embargo

Another idea to countering extremist material online is through a cyber embargo against Internet companies that provide material support by helping the online presence of terrorist groups. Gregory McNeal, a law professor at Pepperdine Law School, suggested legislation that will establish a new “cyber supporter designation.” This would make it illegal for U.S. companies or individuals to conduct business with overseas companies that work with and provide Internet services to designated terrorist organizations. It would cut off U.S.-based income to overseas companies, forcing them to choose between their terrorist clients or losing all

American business. The likely resulting scenario would be that the foreign companies would drop their terrorist group clients because they couldn't afford to lose all of its business in the United States. However, if that didn't work, another idea would be to have other countries adopt the "cyber supporter designation" legislation, leading to a more global cyber embargo. (U.S. Strategy for Countering Jihadist Websites, 2010 p. 28) This shouldn't be too difficult an effort as 95 percent of the world's domain registrars are housed in nine countries, all of which enjoy strong diplomatic ties with the United States. (U.S. Strategy for Countering Jihadist Websites, 2010 p. 36)

Amending Material Support Laws

It's not right to allow U.S. companies to earn profits at the risk of harming our national security. And it's not right to allow these same companies to do so, knowing full well who they are working for, while facetiously hiding behind the First Amendment. The First Amendment protects speech. It does not allow that speech to encourage others to commit mass murder.

You can make the argument that allowing State Department-designated terrorist organizations or members of such organizations to open Twitter accounts and use those accounts to spread their propaganda means that Twitter is providing a service under the definition of "material support or resources" under U.S.C 2339B (Title 18 Crimes and Criminal Procedure p. 542) Material support laws do, however, require that those accused must have known that the receiver of services was either a member of a terrorist organization or that the group engaged in terrorist activity. (Terrorist Material Support....p. 8) Twitter could make the argument that it doesn't know the background of every one of its nearly 300 million users, but the social media company should also not be allowed to hide behind their users' anonymity. A change in the

statute would make it unlawful for Twitter to feign ignorance and require that social media companies verify those who use their services.

However, under Section 2339's "Provision of personnel" it says that people cannot be prosecuted under this section unless the person is a member of a terrorist organization or works under the organization's "direction or control." It further states that "individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization's direction and control." (Title 18 – Crimes and Criminal Procedure, p. 544) This is where the law may need to be amended. In today's day and age, as the FBI Director recently pointed out, terrorist organizations are not always directing terrorist activity. As we saw with the Garland, Texas attack, supporters of State Department-designated terrorist groups who take to Twitter and other forms of social media and use it to then encourage or inspire others to conduct terrorism are just as dangerous as so-called bona fide members of terrorist groups. And one could ask, what makes a person a member of a terrorist organization? Do they have an induction ceremony? Different groups likely define membership differently.

A violation of material support laws can mean imprisonment up to 15 years and a fine of not more than \$500,000 if an organization is found to be in violation. (Terrorist Material Support... p. 20) Material support laws (Section 2339B and Section 2339A) do not provide for a civil penalty, but under 18 U.S.C. Section 2333, it states: "Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefore in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit,

including attorneys fees.” (Legal Information Institute) Under this, could some injured in an attack like what occurred recently in Garland, Texas have a civil case against Twitter?

The material support statute has been used mostly against people who provide weapons and raise funds for terrorist organizations, but it has been used against those who provide Internet services as well. In 2004, a federal court in Connecticut indicted Babar Ahmad on terrorism charges for allegedly creating web sites in order to recruit terrorist fighters, raise money, and transfer funding to extremist groups. (U.S. v Babar Ahmad...., 2004) However, no cases have been brought against Internet companies, in most part because they cooperate when faced with prosecution. The government could have a case against Twitter at the Supreme Court for allowing ISIS members or sympathizers to post material on its website, therefore providing material support to this group to incite others to commit violent acts. Or perhaps they could have a case against companies like CloudFlare for hosting an ISIS website, because they are providing material support to the terrorist group by allowing it a forum incite others to commit jihad.

Conclusions

Social media companies need to expand their prohibition on extremist content. People are not subject to child pornography videos on YouTube or links to child pornographic photos on Twitter. Moving forward, social media companies should do everything in their power to halt any posting of grisly death videos associated with terrorist activity as well as prohibit foreign terrorist organizations from using social media platforms to incite violence or post death threats. Many strategies exist to disrupt and eliminate the Islamic State’s growth. Having Twitter suspend accounts based on extremist activity won’t unilaterally kill the Islamic State, as many of those who have suspended accounts may eventually get back on Twitter with a new handle. But

if the disruption slows down the path to radicalization for some, it would be worth it.

Radicalization directly threatens our nation's security.

Some argue that cutting terrorists' access to social media platforms will mean that U.S. intelligence agencies and their allies will lose out on obtaining actionable intelligence about the groups' whereabouts, upcoming plans, and funding sources. However, as illustrated by the case of the recent Muhammed cartoon contest in Garland, Texas earlier this month, that intelligence may not give law enforcement personnel enough time to act. In the case of Garland, the attack was thwarted but it occurred anyway. The U.S. government needs to continue to target these groups and not allow them to operate in our backyard.

With technology moving at the speed of light, and with terrorist groups seeming to be so far ahead of government officials in using this technology unabated, it's easy to be discouraged. But we must take action; we must engage these groups on what's become an online battlefield. Twitter needs to be an involved and active participant in stopping terrorist organizations from using and abusing its platform to post inflammatory rhetoric and encourage its followers to conduct jihad. Social media companies like Twitter are hardly helpless and hamstrung in their abilities to curb extremist material from being posted on their online platforms. Of course, free speech protections must be considered in any policies or legislation brought forth. However, therein lies the conundrum – protecting free speech at what cost? Because it only takes one lone wolf, one self-radicalized person to obtain jihadist material through social media, go undetected by intelligence agencies and then commit a terrorist act.

In the end, the government should make the case that it is not against speech, it is against the providing of material services and support, which is unlawful under U.S. law. And for those

levying free speech concerns, one could note that the websites or social media platforms, tweets or posts are not just putting forth extremist views, they are also publishing death threats, calling for more funding to further their illicit activities, and attempting to recruit additional fighters to wage jihad, including against Americans here and abroad.

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