

NOTES

Terrorism, the Internet, and Propaganda: A Deadly Combination

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INTRODUCTION

The Internet provides a relatively unregulated and unrestricted place where terrorists can craft and disseminate propaganda through seemingly limitless numbers of websites and social media platforms, tailoring their pitch so as to target thousands of potential new recruits to join their organization and further their cause. ISIS, in particular, produces the most technologically advanced propaganda yet. Through sophisticated digital means, they have promoted the idea that ISIS has successfully established a caliphate and recruited thousands of new members to join the terrorist organization. ISIS films, which range from minutes to hours long, use Hollywood-style production tricks and special effects to portray ISIS terrorists as heroes and depict fighting for ISIS as akin to playing in a real-life video game. These violent and gruesome depictions are sent out alongside pictures and posts describing romantic, exciting encounters and riches enjoyed by ISIS youth. ISIS propaganda combines the horrifying and tantalizing to deliberately target young adults through social media, portraying life in ISIS territory as glamorous and utopian, and its members as heroic and desirable. Such propaganda fails to disclose the harsh realities of life in ISIS or ISIS-perpetrated atrocities.

Efforts to thwart this propaganda in its many forms thus far have been relatively unsuccessful. For instance, it has not been sufficient to suspend pro-ISIS social media accounts; new pro-ISIS accounts quickly spring up to replace them. Likewise, law enforcement efforts to stop potential ISIS recruits at airports can only do so much; they cannot successfully prevent every would-be recruit from traveling to join ISIS. Even the Material Support Statute has its drawbacks as a tool for countering ISIS propaganda. Prosecuting individuals for promoting and distributing ISIS propaganda under the Statute, for instance, may have the more harmful effect of chasing other terrorists to sites that are more difficult for law enforcement to monitor. Lack of available time and resources plays a role, too. Hence, Twitter might suspend the accounts of only those users who have the most outrageous or highest quantities of postings, leaving behind many dangerous but more scrupulous users. Furthermore, dissemi-

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nating propaganda on the Internet would not necessarily satisfy the terms of the Material Support Statute, especially if the user cannot be shown to have coordinated with ISIS.

This paper proposes a multi-faceted approach for combatting ISIS propaganda focusing primarily on counter-propaganda measures that expose the reality of living conditions in an ISIS society and poke holes in ISIS's false veil of legitimacy and power. Some such measures already have been taken. For instance, the Center for Strategic Counterterrorism Communications – an initiative within the U.S. Department of State – along with a small number of individuals have tried to expose the truth behind ISIS and to ridicule the organization. However, these measures have not proven to be particularly effective. Such measures need to be plentiful enough to not get buried beneath pro-ISIS propaganda. Counter-propaganda should avoid appearing biased and utilize a credible communicator. It should target the powerful lures that attract teenagers to ISIS. Furthermore, while counter-propaganda measures should aim to flood social media, social media sites such as Twitter should use a more discerning approach, e.g., they should be selective about suspending accounts so as to avoid pushing pro-ISIS users onto encrypted communication platforms. Law enforcement officials should also be selective: they must use care when considering propaganda as a basis for prosecuting material support cases; otherwise, they could undermine the Government's legitimacy by prosecuting untenable cases. However, suspensions and prosecutions may be useful in at least temporarily preventing dangerous propaganda from reaching teenagers and thus should not be completely abandoned.

I. WHAT IS PROPAGANDA?

Propaganda has been defined in many different ways and can take on a variety of forms. For example, the United States military defines propaganda as “[a]ny form of communication in support of national objectives designed to influence the opinions, emotions, attitudes, or behavior of any group in order to benefit the sponsor, either directly or indirectly.”¹ Merriam-Webster defines propaganda as a “dissemination of ideas, information, or rumor for the purpose of helping or injuring an institution, a cause, or a person.”² According to Black's Law Dictionary, propaganda is “the systematic dissemination of doctrine, rumor or selected information to promote or injure a particular doctrine, view, or cause.”³ These definitions of propaganda are very broad and can encompass a wide range of positive and negative activity. Thus, it is helpful to

1. Peter J. Smyczek, *Regulating the Battlefield of the Future: The Legal Limitations on the Conduct of Psychological Operations (PSYOP) Under Public International Law*, 57 A.F.L.REV. 209, 215 (2005) (citing Joint Chiefs of Staff, Joint Pub. 1-02, Department of Defense Dictionary of Military and Associated Terms 427-428 (12 Apr. 2001)).

2. *Propaganda*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1961).

3. *Propaganda*, BLACK'S LAW DICTIONARY (10th ed. 2014).

break down the term propaganda into smaller, workable categories to understand the various forms in which propaganda appears.

Propaganda can be categorized in a variety of ways. For example, propaganda can be categorized according to the source of the message. “White propaganda” refers to “messages issued from an open and acknowledged source, targeting a specific audience and not hiding the source.”⁴ “Black propaganda” refers to messages from an unknown source, often based on lies or fabrications.⁵ “Gray propaganda” is neither completely true nor completely false, and does not specifically identify its source.⁶

International human rights literature categorizes prohibited propaganda as either 1) defamatory propaganda, 2) subversive propaganda, or 3) propaganda or incitement to aggressive war or genocide.⁷ Defamatory propaganda refers to “communications that tend to ‘degrade, revile, and insult’ foreign states, their institutions, leaders or other agents with the intent to disturb the peaceful relations between states.”⁸ Subversive propaganda refers to “communications intending to overthrow the political leader, or existing internal political order of a state,” which violates the international norm of non-interference in the internal affairs of a sovereign state.⁹ Propaganda or incitement to aggressive war or genocide refers to communications “intending to implant in the minds of people a disposition or desire to engage in or normalize unlawful violence.”¹⁰ Although ISIS has engaged in all three of these types of propaganda, the one most relevant to this paper is this third category of propaganda.

Propaganda can be effective at winning the hearts and minds of populations if it is used effectively. However, if used ineffectively, and its origin made too obvious, propaganda may result in unanticipated negative consequences for the originating entity, referred to as blowback in the intelligence community.¹¹ Thus, any counter-propaganda by the United States against ISIS, for example, by planting a false story about its members, must be wary of the potential for it to cause more harm than good. The potential for blowback is especially high in the 21st century as twenty-four hour news and the Internet have made accessing information faster and easier and more difficult for the government to prevent.

4. Smyczek, *supra* note 1, at 215.

5. *Id.*

6. *Id.*

7. See Sarabeth A. Smith, Note, *What is Old is New Again: Terrorism and the Growing Need to Revisit the Prohibition on Propaganda*, 37 SYRACUSE J. INT’L L. & COM. 299, 303 (2010).

8. *Id.* (citing JOHN B. WHITTON & ARTHUR LARSON, PROPAGANDA: TOWARDS DISARMAMENT IN THE WAR OF WORDS 62 (Public Affairs Press 1964)).

9. *Id.*

10. *Id.*

11. Stephen Dycus et al., NATIONAL SECURITY LAW 472 (5th ed. 2011).

A. Propaganda: History and Evolution

The use of propaganda has been documented throughout the history of civilization.¹² The ancient Greeks used the theater, games, and oratory to promote ideas and beliefs.¹³ The pharaohs of Egypt controlled the news by using carvings on temple walls to legitimize their reigns and rewrite failures into successes.¹⁴ Genghis Khan, in order to lower enemy morale before an attack, allegedly used spies to plant rumors of the Mongols' huge numbers and ferocity.¹⁵ By the 17th century, the term "propaganda" came into common usage in Europe as a result of the Catholic Church's missionary activities, whereby church members sought to indoctrinate new adherents.¹⁶ Thus, in 1718, when propaganda first appeared in the English language, it referred to that "which ought to be propagated" in a religious sense.¹⁷

The twentieth century saw an upsurge of propaganda related to war and political activity. The term "propaganda" came into common usage in the United States as a result of World War I.¹⁸ During World War I, countries involved in the conflict used propaganda to promote the righteousness and importance of their causes; to win the support of nonbelligerent nations; to weaken the enemy's morale and efficiency; and to bolster the morale and efficiency of their own nations.¹⁹ In the 1930s, Germany disseminated extensive anti-Jew and pro-Nazi propaganda.²⁰ During World War II, both Allied and Axis countries crafted propaganda with scientific expertise never before seen. The Cold War brought a barrage of anti-Soviet Union propaganda by the United States, and anti-United States propaganda by the Soviet Union. In sum, propaganda has been associated with religion, war, and politics, depending on when and how it has been crafted and deployed.²¹

Currently, the United States President has the authority to conduct "global broadcasting in any region in the President's discretion to promote U.S. policies, achieve U.S. objectives, and promote Democracy."²² Hence, the United

12. Smith, *supra* note 7.

13. *The Story of Propaganda*, AM. HIST. ASS'N, <http://www.historians.org/about-aha-and-membership/aha-history-and-archives/gi-roundtable-series/pamphlets/what-is-propaganda/the-story-of-propaganda> (last visited Mar. 24, 2015).

14. *Egypt's Golden Empire: Art and Architecture*, PBS.ORG, <http://www.pbs.org/empires/egypt/newkingdom/architecture.html> (last visited Apr. 20, 2015).

15. Smyczek, *supra* note 1, at 215.

16. AM. HIST. ASS'N, *supra* note 13.

17. Erin W. Fellows, *Propaganda: History of a Word*, 34 AM. SPEECH 182, 182 (1959).

18. *The Story of Propaganda*, *supra* note 13.

19. Fellows, *supra* note 17, at 182.

20. Allen W. Palmer & Edward L. Carter, *The Smith-Mundt Act's Ban on Domestic Propaganda: An Analysis of the Cold War Statute Limiting Access to Public Diplomacy*, 11 COMM. L. & POL'Y 1, 6 (2006).

21. Fellows, *supra* note 17, at 188.

22. Smyczek, *supra* note 1, at 215 (citing National Security Directive 51, US Government International Broadcasting).

States relies on radio broadcasts abroad as one form of propaganda.²³ For example, Radio Free Afghanistan is a radio station used to promote the United States and its democratic ideals in Afghanistan.²⁴ However, until recently, this authority did not extend to disseminating propaganda about the United States domestically. Such propaganda was banned under the United States Information and Educational Exchange Act of 1948 (Smith-Mundt Act). This Act prohibited domestic dissemination of information and material about the United States intended primarily for foreign audiences out of concern that the United States would appear to be indoctrinating its own citizens; in light of Germany and Japan's harmful use of propaganda in WWII; and out of fear that possible communist sympathizers had infiltrated the United States government and would use domestic propaganda to advance a communist agenda.²⁵ However, the Smith-Mundt Act prohibition was rendered obsolete with the rise of the Internet and twenty-four hour news, which made it nearly impossible for the United States to prevent its citizens from easily accessing materials online.²⁶

The Smith-Mundt Modernization Act of 2012 amended the 1948 Act to allow the Secretary of State and the Broadcasting Board of Governors to engage in previously prohibited domestic dissemination of information and materials covered under the Smith-Mundt Act. It does not apply to any initiatives by the Pentagon. The bill's supporters argued that the removal of the domestic prohibition would enhance government transparency, bolster strategic communications and public diplomacy, and help to counter the radical messages and undermine the recruitment abilities of terrorist groups online.²⁷

International law does not provide much guidance with respect to the legality of propaganda. The International Covenant on Civil and Political Rights, Article 20(1), imposes an obligation on State Parties to prohibit propaganda for war. Some states, including the United States, entered reservations to the Article, reserving the right to seek, receive, and impart any information, even if it constitutes war propaganda. The lack of a clear definition or articulation of the prohibition's scope further suggests that the Article did little to alter the international perception of the legality of propaganda.²⁸

B. How does Propaganda Work with Respect to Terrorism? Who is Susceptible to Propaganda?

Individuals who engage in terrorism come from a wide variety of socio-economic backgrounds and possess a vast spectrum of individual characteristics.

23. *Id.* at 221.

24. *Id.*

25. See Jeremy Berkowitz, Comment, *Raising the Iron Curtain on Twitter*, 18 *COMMLAW CONSPPECTUS* 269, 272 (2009).

26. *Id.* at 273.

27. *US Ends Ban on Domestic Propaganda*, RT.COM (Jul. 15, 2013, 6:32 PM), <http://rt.com/usa/smith-mundt-domestic-propaganda-121>.

28. See Smith, *supra* note 7, at 327.

Furthermore, despite the fact that so many people are exposed to the conditions sometimes associated with generating terrorism, such as presence in a conflict zone or religious ideology, most individuals do not become radicalized to the point that they engage in terrorism.²⁹ However, certain predisposing risk factors are associated with involvement in terrorism. These factors include: the presence of some emotional vulnerability, alienation, or disenfranchisement; dissatisfaction with the one's current life situation and the perception that conventional political activity is useless to improve it; identification with certain perceived victims; the belief that engaging in violence against the state is not inherently immoral; and a sense of kinship with those experiencing similar issues.³⁰ A factor of particular importance is that recruits expect a sense of reward from being involved with terrorism.³¹ This reward may come in the form of heightened status, respect, or authority within an individual's immediate peer group, broader racial movement, or wider religious community, or personal spiritual or emotional reward.³² For example, suicide bombers typically believe that they will be rewarded in the afterlife.³³

Individual characteristics and motivations are not the only considerations relevant to understanding why a given individual may become radicalized. Instead of looking solely at predisposing risk factors, some researchers have proposed assessing the common features associated with the development of a terrorist.³⁴ These features include, but are not limited to, "the gradual nature of the relevant socialization processes into terrorism . . . the supportive qualities associated with that recruitment . . . migration between roles . . . [and] the importance of role qualities."³⁵

In certain communities, the relevant socialization process into terrorism begins at a very young age, with propaganda playing a large role. For example, there are accounts of Palestinian neighborhoods where graffiti glorifies suicide bombers and calendars are illustrated with the "martyr of the month."³⁶ Role models can serve as an important source of authoritative legitimacy for the justification of violent action.³⁷ Enhanced status among an immediate circle of activists and the broader supportive community can be a powerful incentive for sustaining commitment.³⁸ For some individuals, a sense of approval from a significant individual, such as a wife or brother, is a catalyst into more extreme

29. John Horgan, *From Profiles to Pathways and Roots to Routes: Perspectives From Psychology on Radicalization into Terrorism*, 618 ANNALS AM. ACAD. POL. & SOC. SCI. 80, 83 (2008).

30. *Id.* at 84-85.

31. *Id.* at 85.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 84.

36. *Id.* at 88.

37. *Id.*

38. *Id.*

behavior.³⁹

Increased involvement in a terrorist organization typically follows a period of gradual progression.⁴⁰ An increased commitment to the group's narrow, extremist society consequently results in more marginalization from conventional society.⁴¹ Commitments are often solidified as life inside the terrorist organization becomes more challenging and the individual convinces him or herself that the need to "stick it out" is essential.⁴²

II. THE IMPACT OF THE INTERNET ON TERRORIST PROPAGANDA

"We are in a battle, and more than half of this battle is taking place in the battlefield of the media."⁴³ In 2005, Ayman al-Zawahiri, then al-Qaeda's second-in-command, allegedly wrote these words in a letter to Abu Musab al-Zarqawi, the al-Qaeda leader in Iraq at the time.⁴⁴ However, terrorists no longer have to rely on the media to spread their propaganda. Instead, terrorists can use the Internet to fulfill and even surpass the media's functions.

The Internet has revolutionized terrorism in many ways. For example, activities that were once conducted face-to-face, such as fundraising or training, are now conducted through websites and virtual training camps. Geospatial imagery, such as Google Earth, can be used to study locations and plan potential attacks. Hacking and cyber-attacks present the possibility that great harm can be done to a country's infrastructure from a computer halfway across the world. Likewise, the Internet has emerged as a dangerous tool for terrorist propaganda and recruitment purposes. There are at least nine key ways that the Internet has changed the way that terrorists use propaganda.

First, social media allows terrorist groups to provide limitless content directly to numerous websites or individuals, without having to go through a third party.⁴⁵ Traditionally, the media had a monopoly on covering and interpreting terrorist incidents. Now, terrorists have the ability to instantly convey their messages directly to their target audience. The terrorists can also tailor their recruiting pitch, sending different messages to individuals based on their age, gender, location, or other factors. For example, ISIS sends starkly different messages to Muslims in the West than those closer to the Middle East.⁴⁶ The

39. *Id.* at 89.

40. *Id.*

41. *Id.*

42. *Id.*

43. Simon Cotte, *Why it's so Hard to Stop ISIS Propaganda*, THE ATLANTIC (Mar. 2, 2015), <http://www.theatlantic.com/international/archive/2015/03/why-its-so-hard-to-stop-isis-propaganda/386216/>.

44. *Id.*

45. Emily Goldberg Knox, Note, *The Slippery Slope of Material Support Prosecutions: Social Media Support to Terrorists*, 66 HASTINGS L.J. 295, 300 (2014).

46. Scott Shane & Ben Hubbard, *ISIS Displaying a Deft Command of Varied Media*, NYTIMES.COM (Aug. 30, 2014), <http://www.nytimes.com/2014/08/31/world/middleeast/isis-displaying-a-deft-command-of-varied-media.html>.

messages to English speakers tend to highlight jihad as a means of personal fulfillment and tend to be softer in nature than the messages in Arabic, and the Arabic media messages tend to focus on jihad as a duty for all Muslims.⁴⁷

Second, social media provides terrorist organizations with an efficient way to recruit new members, spread propaganda, and spread their ideology to a large audience with minimal effort.⁴⁸ Physical geography is no barrier to communications between potential recruits and terrorists. Terrorists can create any number of account names on social media platforms, making communication cheap, easy, and almost impossible to stop. Twitter and other social media platforms have attempted to thwart terrorist groups by suspending ISIS-supporting Twitter accounts, only to find that the accounts are replaced quickly by other ISIS-supporting accounts. Like the mythical Hydra, the suspension of an ISIS-supporting Twitter account seems to yield two more ISIS-supporting accounts in its place.

Third, social media “lowers the barrier of access” to terrorist propaganda.⁴⁹ Social media platforms provide individuals with ways to easily reach terrorist propaganda and terrorist users. Unlike terrorist websites, which typically require individuals to intentionally locate the specific site, individuals may also stumble across terrorist social media accidentally.⁵⁰ For example, an individual may click on a link posted by a friend and unintentionally land on a jihadist forum. Furthermore, smart phones have made it possible for individuals to constantly have access to the Internet at almost all times and places. Thus, physical location and time are no longer relevant constraints on an individual’s ability to access terrorist information.

Fourth, Internet postings are not regulated as sources of news, and thus terrorists can post inaccurate information with almost no oversight or regulation.⁵¹ The Internet removes the ability to effectively prescreen content by allowing for instantaneous broadcast of terrorist messages. Readers might consider terrorist Internet postings to be factually correct, and the stories may go unchecked.

Fifth, terrorists can use anonymity on the Internet to their advantage. The anonymity of the Internet has been found to foster higher levels of violence in people.⁵² Terrorists can encourage feelings of violence, drawing people to their cause. Anonymity also allows the terrorists to evade detection by law enforcement.⁵³ Previously, if terrorists communicated by electronics, they were limited to using telephones or radios, which were at risk of being monitored by

47. *Id.*

48. Knox, *supra* note 45, at 300.

49. *Id.*

50. *Id.*

51. Gregory S. McNeal, *Cyber Embargo: Countering the Internet Jihad*, 39 CASE W. RES. J. INT’L L. 789, 800 (2007-2008).

52. *Id.* at 795.

53. *Id.* at 796.

electronic surveillance tools such as wiretaps.⁵⁴ Now, individuals can make countless usernames that mask their true identities on numerous platforms.

Sixth, terrorists can gain knowledge about social media in order to distort the prevalence and ranking of their messages on search results. Social media, in particular Twitter, allows terrorists to amplify their messages by posting links to their propaganda and “hashtags” at an unnaturally fast pace, causing the postings to place higher in search results and in content aggregated by third parties.⁵⁵ ISIS and al Qaeda reportedly both use “bots,” which are computer-controlled Twitter accounts that automatically send out content in a similar manner.⁵⁶

Seventh, the Internet allows for multidirectional communication between the terrorists and the potential recruits. Individual communication allows terrorists to craft propaganda specifically tailored for certain types of individuals. Furthermore, interactive participation can foster a sense of cohesion and generate a sort of virtual community between the terrorists and potential recruits, thereby creating a sense of unity.⁵⁷

Eighth, terrorist groups can use social media to search for and target individuals who might be particularly vulnerable to their ideology.⁵⁸ For example, ISIS utilizes social media platforms that are popular with teenagers to attract and recruit young people, who are more susceptible to its propaganda. Terrorists can craft their propaganda to appeal to certain vulnerable populations by portraying their organization as the solution to individuals’ problems. Furthermore, terrorists can weed out less susceptible populations by blocking apparent nonbelievers from their communications.

Ninth, encryption allows terrorists to maintain private networks of communication without law enforcement oversight. Encrypted communications cannot be easily accessed by law enforcement, and as such, recruitment efforts and other terrorist activities can take place in relative secrecy. As more websites and smartphone applications turn to encryption, its ability to hide such communications and actions will likely be a growing concern. In September 2014, Apple and Google announced plans to strengthen encryption of data stored on smartphones using their operating systems.⁵⁹ Two encrypted messaging applications, WhatsApp and Kik, have been especially popular with ISIS. These applications make it much more difficult for law enforcement to intercept communications than would otherwise be possible on Twitter or Facebook. Furthermore, extrem-

54. *Id.* at 797.

55. J. M. Berger, *The Evolution of Terrorist Propaganda: The Paris Attack and Social Media*, BROOKINGS (Jan. 27, 2015), <http://www.brookings.edu/research/testimony/2015/01/27-terrorist-propaganda-social-media-berger>.

56. *Id.*

57. McNeal, *supra* note 51, at 795.

58. Knox, *supra* note 45, at 300.

59. Will Oremus, *Obama Wants Tech Companies to Install Backdoors for Government Spying*, SLATE (Jan. 19, 2015, 9:30 AM), http://www.slate.com/blogs/future_tense/2015/01/19/obama_wants_backdoors_in_encrypted_messaging_to_allow_government_spying.html.

ist propaganda that might be filtered out on Twitter due to its violent or graphic nature can be transmitted freely through encrypted platforms.

A. The Internet and ISIS's Propaganda Machine

The Islamic State, also known as “ISIS” or “ISIL,” is a violent extremist group that espouses a return to a seventh-century caliphate (a unified Muslim state run according to a strict interpretation of Islamic law). The group, which is located in parts of Syria and Iraq, has been shockingly successful at spreading its message through 21st century social media. In Summer 2014, ISIS started using various social media platforms to post videos of hostage executions and other atrocities, to recruit fighters, and to promote its claim of having successfully established a caliphate. ISIS propaganda tends to frame its campaign in “epochal terms,” mounting a frontal assault on the national divisions and boundaries in the Middle East that were drawn by Western powers after World War I.⁶⁰

ISIS represents the latest of three generations in an evolution of modern jihadist propaganda. The first was the era of Osama bin Laden who relied on video to spread his message. Bin Laden used a single static camera to film his long-winded rhetoric in highly formal Arabic.⁶¹ These videos then had to be smuggled to Al Jazeera or other television networks in order to be aired.⁶² The second generation was represented by Anwar al-Awlaki, the American-born cleric killed in a drone strike in Yemen in 2011.⁶³ Al-Awlaki was a YouTube star, had a blog and a Facebook page, and helped produce a full-color English-language magazine called *Inspire*.⁶⁴ The third generation is represented by ISIS and its full-fledged embrace of the most current communications technology. ISIS boasts thousands of Twitter accounts spreading its message in several different languages, videos with Hollywood-like effects, and an adept command of various other social media platforms and Internet websites.

An example of ISIS’s revolutionary approach to propaganda can be found in its use of hostages in film. Hostages first appeared in propaganda videos in the 1980s: when Western hostages held in Lebanon were forced to appear on camera, mainly to provide proof of life and communicate their captors’ demands.⁶⁵ Al Qaeda took the tactic further and began killing of hostages on camera. In 2014, the newly renamed “Islamic State” group, in an even more sophisticated approach, produced professional-looking English-language videos of hostages being killed.

60. Shane & Ben Hubbard, *supra* note 46.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *A Short History of ISIS Propaganda Videos*, HUFFINGTON POST (Mar. 11, 2015), http://www.huffingtonpost.com/2015/03/11/isis-propaganda-videos_n_6846688.html.

ISIS has gone so far as to establish the “Al Hayat Media Center” in which generates media specifically aimed at non-Arabic speakers, particularly younger viewers. Its output resembles that of mainstream broadcasts,⁶⁶ though their videos are distinguished by glossy identifying marks: either a teardrop-shaped logo of Arabic script materializing from a digital cascade of water⁶⁷ or a black and white ISIS flag in the corner of the screen.⁶⁸ The Center makes videos in several different languages and formats, including everything from minute-long Twitter-friendly “mujatweets” to hour-long Hollywood-style documentaries showcasing special effects and action scenes.⁶⁹ It also publishes audio content and Dabiq, an English-language PDF magazine.⁷⁰ Al Hayat Media’s programming includes a jihadi-type travel show called “Eid Greetings from the Land of Khilafah,” filmed in Raqqa, Syria, which features ISIS fighters from Western countries proclaiming how happy they are to be there.⁷¹ The show ends with the sign-off: “I wish you were here.”⁷² “The Flames of War,” ISIS’s feature-length film, glorifies ISIS’s “military heroism” with gruesome footage and poetic verse.⁷³ The more violent images of the film have been edited into a rapid-fire action montage accompanied by a recruitment hymn.⁷⁴ This film, like other ISIS creations, implies that warfare is a real-life game of “Grand Theft Auto.”⁷⁵ These films include little evidence of ISIS atrocities such as abduction, rape, destruction of mosques, persecutions, crucifixions, and the whipping of women who were caught without a hijab.⁷⁶

The ISIS propaganda machine produces as many as 90,000 posts on Twitter, YouTube, Facebook, and many other social media platforms every single day.⁷⁷ Twitter, the San Francisco-based social media network, has more than 288 million active users worldwide,⁷⁸ and is by far the most popular platform for ISIS propaganda. Recently, Twitter has tried to thwart ISIS threats, propaganda, and recruiting efforts by suspending accounts linked to the group, but these efforts have not stopped ISIS sympathizers from maintaining thousands of

66. Steve Rose, *The ISIS Propaganda War: A Hi-Tech Media Jihad*, THE GUARDIAN (Oct. 7, 2014), <http://www.theguardian.com/world/2014/oct/07/isis-media-machine-propaganda-war>.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Calls Mount for Shutdown of ISIS Propaganda Machine as London Girls Vanish*, CBS NEW YORK (Feb. 20, 2015, 5:17 PM), <http://newyork.cbslocal.com/2015/02/20/calls-mount-for-shutdown-of-isis-propaganda-machine-as-london-girls-vanish/>.

78. Rick Gladstone & Vindu Goelmarch, *ISIS Is Adept on Twitter, Study Finds*, N.Y. TIMES (Mar. 5, 2015), http://www.nytimes.com/2015/03/06/world/middleeast/isis-is-skilled-on-twitter-using-thousands-of-accounts-study-says.html?_r=1.

active accounts on the social network.⁷⁹ Twitter's efforts against ISIS have led to death threats against the social media company's leaders and employees.

In a recent paper, J.M. Berger and Jonathon Morgan of the Brookings Institute presented a demographic snapshot of ISIS supporters on Twitter by analyzing a sample of 20,000 ISIS-supporting Twitter accounts.⁸⁰ They found, amongst other things, that between September and December 2014, an estimated 46,000 Twitter accounts were used by ISIS supporters, and at least 1,000 ISIS-supporting Twitter accounts were suspended during this time.⁸¹ Embedded location metadata revealed that approximately one in five ISIS supporters selected English as their primary language when using Twitter, and three quarters of users selected Arabic.⁸² Each ISIS-supporting account had an average of about 1,000 "followers" (individuals who subscribe to a given Twitter user's postings), far more than an average Twitter user would have.⁸³ Furthermore, ISIS-supporting accounts were much more active than those of non-supporting users.⁸⁴ A relatively small group of Twitter users, overseeing between 500 and 2,000 accounts, post their "tweets" in concentrated bursts of high volume, a tactic so effective that they are responsible for much of ISIS's social media success.⁸⁵

B. *Who is Joining ISIS?*

"The International Centre for the Study of Radicalisation and Political Violence estimates that of the 20,000 or more foreign jihadists believed to have gone to fight in Syria and Iraq, around 100 are from the United States, reports one article."⁸⁶ The majority of ISIS recruits are men, but there are also quite a few women.⁸⁷ American recruits come from across the United States, and range from teenagers to middle-aged adults with families and careers, petty criminals to diligent students, and Islam converts to children of Muslim immigrants.⁸⁸ Notes one observer, "Most of the American ISIS volunteers display an earnest religious zeal, usually newfound."⁸⁹

Since 2013, twenty-nine people in the United States have been charged or detained as juveniles on allegations of supporting ISIS, usually after trying to

79. *Id.*

80. J.M. Berger & Jonathon Morgan, *The ISIS Twitter Census*, BROOKINGS (Mar. 2015), <http://www.brookings.edu/research/papers/2015/03/isis-twitter-census-berger-morgan>.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. Cottee, *supra* note 43.

87. Scott Shane, *Minneapolis to ISIS: An American's Path to Jihad*, NYTIMES.COM (Mar. 21, 2015), <http://www.nytimes.com/2015/03/22/world/middleeast/from-minneapolis-to-isis-an-americans-path-to-jihad.html>.

88. *Id.*

89. *Id.*

travel to Syria to fight for the terrorist group. Two dozen other young Americans are believed to either be with ISIS or to have been killed in the fighting.⁹⁰ Three teenage girls from Denver, ages 15, 16, and 17, were stopped in Germany in October 2014, reportedly on their way to Syria to join ISIS.⁹¹ In mid-February, three British schoolgirls, ages 15 and 16, were reported missing after taking a flight to Turkey, apparently on their way to join ISIS.⁹²

Teenagers who have been caught at airports attempting to leave the United States to join ISIS have provided a variety of explanations for doing so. For example, Shannon Conley, 19, was stopped by the F.B.I. in Denver.⁹³ She thought she could use her skills as a nurse's aide to help ISIS fighters, and had hoped to marry a Tunisian recruiter for ISIS whom she had met online.⁹⁴ Mohammed Hamzah Khan, 19, was stopped with his younger brother and sister in Chicago.⁹⁵ Khan left his parents a letter saying he could not stay in the United States because his taxes might be used to kill Muslims overseas.⁹⁶ Some young Americans who have successfully traveled to join ISIS have commented about their new life on Twitter. For example, a Muslim convert from San Francisco who calls herself "Chloe" appears to have married a Welsh fighter who joined Nusra Front.⁹⁷ She posts pictures of their cat along with expressions of marital devotion, religious exclamations, and light-hearted remarks about her life in Syria.⁹⁸

President Obama and Secretary of State John Kerry have publicly recognized that ISIS is targeting young people through its propaganda. According to President Obama, it is crucial to shut down the ISIS propaganda machine that is attracting the young recruits.⁹⁹ In February 2015, at a Washington summit on Countering Violent Extremism, President Obama stated that "[t]errorist groups like al-Qaeda and ISIL deliberately target their propaganda in the hopes of reaching and brainwashing young Muslims, especially those who may be disillusioned or wrestling with their identity."¹⁰⁰ "The high-quality videos, the online magazines, the use of social media, terrorist Twitter accounts – it's all designed to target today's young people online," said President Obama.¹⁰¹ Secretary of State John Kerry, while addressing a White House Summit, stated

90. *FBI: ISIS message resonating with young people from U.S., West*, CBS NEWS (Mar. 5, 2015, 8:15 PM), <http://www.cbsnews.com/news/isis-targeting-young-people-from-u-s-western-countries-as-recruits/>.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. Kathy Gilsinan, *Is ISIS's Social Media Power Exaggerated?*, THE ATLANTIC (Feb. 23, 2015, 7:05 AM), <http://www.theatlantic.com/international/archive/2015/02/is-issis-social-media-power-exaggerated/385726/>.

101. *Id.*

that “Those recruiting for ISIS are not looking for people who are devout and knowledgeable about the tenants of Islam . . . [t]hey’re looking for people gullible enough to believe that terrorists enjoy a glamorous lifestyle.”¹⁰²

ISIS is recruiting more than just fighters: the group is using propaganda to attract potential wives and professionals such as doctors, engineers, and accountants, as part of its plan to build a new “utopian” society.¹⁰³ ISIS propaganda varies, then, depending on the target audience, and is calculated to attract young individuals to serve a variety of purposes, luring them in through a range of deceptive strategies. While the group’s violent, outrageous propaganda draws the most attention, the most dangerous propaganda may arguably be that which attempts to glamorize and normalize life in ISIS as a way of recruiting teenagers.¹⁰⁴

The propaganda that targets potential jihadi brides tends to romanticize life in ISIS. It presents ISIS as espousing gender equality and offering a positive place for women and families. For example, in early March 2015, a Western “jihadi bride” posted a picture in which she and other ISIS women posed around a luxury BMW, brandishing guns much like their male counterparts.¹⁰⁵ This image, which suggests power and a sense of equality among male and female militants, is in stark contrast with the situation revealed in recent ISIS documents that indicate that women are heavily monitored and treated as inferior to men.¹⁰⁶ Other pictures have attempted to portray ISIS as pro-family by showing ISIS fighters enjoying an average family life and playing with children in the sunshine.¹⁰⁷ In 2014, at least 100 French women were recruited to join ISIS as either jihadi brides or suicide bombers.¹⁰⁸ The propaganda targeting women likely played a large role in recruiting them.

Propaganda aimed at men also often portrays life in ISIS as utopian. For example, a fighter posted a picture on Twitter of himself and other young male ISIS fighters in Raqqa, relaxing and laughing together, with the caption “brothers enjoying a day in the sun.”¹⁰⁹ Such propaganda attempts to normalize militants and their daily activities in order to construct an idyllic image of life in

102. Rebecca Kaplan, *ISIS Recruiting Teenagers: Why the Government is Sounding the Alarm*, CBS NEWS (Mar. 10, 2015, 6:00 AM), <http://www.cbsnews.com/news/isis-recruiting-teenagers-why-the-government-is-sounding-the-alarm/>.

103. Eric Tucker, *Islamic State Recruits More than Just Fighters*, BOSTON GLOBE (Dec. 17, 2014), <http://www.bostonglobe.com/news/world/2014/12/16/islamic-state-recruits-more-than-just-fighters/Wu34jcNUyj4HSiNqrDxIOI/story.html>.

104. Heather Saul, *The Most Dangerous ISIS Propaganda Yet?*, THE INDEPENDENT (Mar. 20, 2015), <http://www.independent.co.uk/news/world/middle-east/the-most-dangerous-isis-propaganda-yet-jihadi-brides-with-m5s-fighters-relaxing-and-children-playing-used-to-present-caliphate-as-a-utopia-10121653.html>.

105. *Id.* The article also describes, for example, a photograph of young men captioned “brothers enjoying a day in the sun.”

106. *Id.*

107. *Id.*

108. Tucker, *supra* note 104.

109. Saul, *supra* note 105.

ISIS.¹¹⁰ What's more, this propaganda often appeals to foreign recruits, particularly those from the West, who may be looking for signs that their new life will still contain aspects of their present life that they may find hard to leave behind.¹¹¹ Teenagers have said that one of the main reasons they were drawn into ISIS was the desire to be a part of the perceived "romanticism" of what ISIS is building.¹¹² ISIS propaganda suggests that these young adults can enjoy the glamor and romanticism of their new society while still having the luxuries of home.

In countries where basic necessities such as gas and flour are unavailable, propaganda with a more materialistic focus is an effective recruitment tool.¹¹³ For instance, pictures suggesting financial gains for recruits can be persuasive to a young person of no means. In fact, financially focused propaganda is a powerful way to attract fighters who may not truly believe in the ideological or theological message.¹¹⁴ Financial incentives have been blamed at least in part for luring young British Muslims to join ISIS. In the UK, this demographic had the highest level of unemployment in 2011.¹¹⁵ The lack of job prospects at home, when combined with propaganda suggesting financial rewards, may make it more likely that young adults will become radicalized.¹¹⁶

Another form of ISIS propaganda is that which speaks of creating a "pure" Muslim race. Such propaganda has been compared to Nazi propaganda for its emphasis on building a "master race."¹¹⁷ Some potential new recruits have tried to prove their worthiness as part of this "master race" by demonstrating their faithful adherence to ISIS's view of Islam. Examples of such responses can be seen in certain Muslim teenagers' fixation on only befriending or becoming romantically involved with certain other types of Muslim individuals, and their descriptions of their own "pure" familial lineage.

III. PROPOSALS FOR COUNTERING TERRORISM PROPAGANDA ON THE INTERNET

To effectively thwart ISIS in its online terrorist activities, the United States should employ a multi-faceted approach that undermines and weakens the group and its messages. This effort should consist of: (1) physically removing the offending propagandists through the criminal justice process; (2) removing offending propaganda on social media platforms; and (3) discrediting and undermining the group through active counter-propaganda measures.

110. *Id.*

111. *Id.*

112. Caplan, *supra* note 103.

113. Saul, *supra* note 105.

114. *Id.*

115. Felicity Capon, 'Perfect Storm' For Teenagers Lured by Islamic State, *NEWSWEEK* (Mar. 19, 2015, 9:32 AM), <http://www.newsweek.com/perfect-storm-british-teenagers-lured-islamic-state-315022>.

116. *Id.*

117. *Id.*

A. *Charge Propagandists Under the Material Support Statute*

Terrorist group supporters who publish propaganda about their organization may be subject to criminal prosecution under 18 U.S.C. § 2339A for providing material support to terrorists.¹¹⁸ The Act, known as the Material Support Statute, was originally passed by Congress in 1994, in response to the bombing of the World Trade Center in 1993, and updated by the USA Patriot Act of 2001, in response to the terrorist attacks on 9/11. Section (b)(1) of the statute defines material support or resources 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 (one or more individuals who may be or include oneself), and transportation, except medicine or religious materials.” The Act requires that the individual knows or intends that the material support or resources be used in preparation for or in carrying out a specific crime enumerated in the statute.

The United States Supreme Court opined on the Material Support Statute in a case involving the Humanitarian Law Project (HLP), a United States based human rights organization with consultant status to the United Nations. HLP sought to “provide support for the humanitarian and political activities of the PKK [(Partiya Karkeran Kurdistan)] and LTE [(Liberation Tigers of Tamil Eelam)] in the form of monetary contributions, other tangible aid, legal training, and political advocacy, but could not do so for fear of prosecution under the material support provision of the Antiterrorism and Effective Death Penalty Act (“AEDPA”).”¹¹⁹ PKK and LTE are foreign terrorist organizations (FTO). The plaintiffs challenged the AEDPA provision – also known as the Material Support Statute – in federal court.¹²⁰ Among other things, the plaintiffs claimed the statute was invalid to the extent that it prohibited them from engaging in certain activities, including training members of the organizations on how to peacefully resolve disputes through the legal process and how to petition representative bodies, such as the UN, for relief.¹²¹

The Supreme Court held the material support provision of the AEDPA to be constitutional as applied to the particular forms of support that the plaintiffs sought to provide to the designated organizations. First, the Supreme Court found that Congress spoke to the necessary mental state for a violation of § 2339B when it mandated that the plaintiff be cognizant of the organization’s connection to terrorism. The Court distinguished the Material Support Statute from the statute at issue in *Scales v. United States*¹²² by finding that the statute

118. See 18 U.S.C. § 2339A (2012).

119. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 10 (2010).

120. *Id.* at 10-11.

121. *Id.* at 14-15.

122. 367 U.S. 203 (1961).

did not criminalize mere membership in a designated foreign terrorist organization, but instead prohibits providing “material support” to such a group.¹²³ The Court rejected the plaintiffs’ vagueness challenge to the statute, finding that the statutory terms were not impermissibly vague as applied to the plaintiffs.¹²⁴

Next, the Court found that the plaintiffs’ activities would fall within the scope of “training” and “expert advice.”¹²⁵ According to the Court, support meant to “promot[e] peaceable, lawful conduct” could further terrorism by foreign groups in multiple ways, including by freeing up resources within the group that may be put to violent ends, helping lend to the legitimacy of foreign groups and thus making it easier for those groups to recruit members, and undermining cooperative efforts between nations to prevent terrorist attacks.¹²⁶ The Court also found it important that there were sensitive interests in national security and foreign affairs at stake, which entitled Congress and the Executive Branch’s judgments to significant weight.¹²⁷

Finally, the Court found that the prohibition of particular forms of support under the statute did not violate the plaintiffs’ freedom of speech.¹²⁸ The Court noted that the statute reaches only material support that is coordinated with or under the direction of a designated foreign terrorist organization, so that independent advocacy promoting the group’s legitimacy would not be prohibited.¹²⁹ However, it was undisputed that the HLP’s advocacy was not independent, so the Court did not elaborate further on the issue of coordination.

Thus, after *Holder*, as long as speech takes the form of expert advice or assistance conveyed in coordination with or under the control of a designated foreign terrorist organization, it can be considered material support for terrorism under the Material Support Statute. A prosecution based on such material support does not violate the First Amendment. However, the Supreme Court has yet to rule definitively on what counts as coordination or control under the statute.

1. *United States v. Mehanna*

In 2011, in *United States v. Mehanna*, the United States District Court for the District of Massachusetts found United States citizen Tarek Mehanna guilty under the Material Support Statute.¹³⁰ Among other things, the government charged that Mehanna had provided material support and attempted to provide material support by translating al Qaeda propaganda into English and disseminat-

123. *Humanitarian Law Project*, 561 U.S. at 17–18.

124. *Id.* at 20.

125. *Id.* at 21.

126. *Id.* at 30–32.

127. *Id.* at 33–34.

128. *Id.* at 39.

129. *Id.* at 31.

130. 735 F.3d 32 (1st Cir. 2013).

ing it over the Internet.¹³¹ Mehanna allegedly provided a translation of the pro-jihadi propaganda text called “39 Ways to Serve and Participate in Jihad” to a jihadi website called Tibyan Publications, which published and distributed it.¹³² The government also alleged that Mehanna flew to Yemen to undergo military training at a terrorist camp, though he was unsuccessful in the endeavor.¹³³ The trial record was replete with evidence that Mehanna had supported al-Qaeda. However, neither side argued that Mehanna translated the materials at the request of al-Qaeda.¹³⁴ Nevertheless, the government argued that by associating with al-Qaeda operatives and promoting its jihadist speech, Mehanna coordinated with the terrorist organization.¹³⁵

To demonstrate that Mehanna violated the Material Support Statute as interpreted by *Holder*, the prosecution had to prove three elements.¹³⁶ First, the prosecution demonstrated that Mehanna knew either that the organization was designated as a foreign terrorist organization or that it engaged in terrorist activity. Even if Mehanna was not aware of al-Qaeda’s designation as a foreign terrorist organization, they argued, he certainly knew it was engaged in terrorist acts given that he had visited jihadist websites and online message boards and had sent his friends links to a video tribute to the 9/11 hijackers.¹³⁷ Second, the prosecution demonstrated that Mehanna provided material support or resources by advancing two theories. The first theory was that Mehanna attempted to himself as “personnel” when he went to Yemen in 2004 to seek terrorist training.¹³⁸ Under the statute, “personnel” is defined as providing “one or more individuals (who may be or include himself) to work under that terrorist organization’s direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization.” There is no requirement that the individual be an employee or even a member of the terrorist organization to qualify as “personnel” under the statute. Alternatively, the government argued that Mehanna provided material support when he provided “expert advice” in the form of translating propaganda material into English, and that his translations enhanced the propaganda and helped to spread al-Qaeda’s message and aid recruitment.¹³⁹ Under the statute, “expert advice” refers to “advice or assistance derived from scientific, technical, or other specialized knowledge.”

131. Nikolas Abel, Note, *United States v. Mehanna, The First Amendment, and Material Support in the War on Terror*, 54 B.C. L. REV. 711, 731 (2013).

132. *Id.*

133. *Id.*

134. Mark Joseph Stern, *Translating Terrorism*, SLATE (Sep. 3, 2014, 6:49 AM), http://www.slate.com/articles/technology/future_tense/2014/09/mehanna_at_the_supreme_court_is_translating_jihad_texts_a_crime.html.

135. *Id.*

136. Christopher Pochon, Recent Development, *Applying the Holder Standard to Speech that Provides Material Support to Terrorism in United States v. Mehanna*, 36 HARV. J.L. & PUB. POL’Y 375, 382 (2013).

137. *Id.* at 382.

138. *Id.* at 383.

139. *Id.* at 384.

Third, the government demonstrated that Mehanna knowingly coordinated or attempted to coordinate with al-Qaeda. The best evidence that Mehanna directly coordinated with al-Qaeda came in the form of an email message he received from a member of Tibyan Publications. The message used various code words indicating that Tibyan Publications was working with al-Qaeda.¹⁴⁰ After he received the letter, Mehanna continued to translate al-Qaeda propaganda materials.¹⁴¹ Mehanna was ultimately convicted and sentenced to seventeen and a half years in prison.¹⁴²

The convictions were upheld on appeal to the United States Court of Appeals for the First Circuit. The Court found that the evidence was sufficient to ground a finding that Mehanna had traveled to Yemen with the specific intent of providing material support to al-Qaeda, knowing that this support would be used in a conspiracy to kill persons abroad, and that while in the United States, he conspired with others in a plan to kill persons abroad.¹⁴³ Thus, by sustaining the conviction on the basis of Mehanna's activities in Yemen, the Court avoided having to address the First Amendment issues raised by the theory that he had provided material support by translating al-Qaeda propaganda. The Supreme Court denied certiorari in the case.¹⁴⁴ Thus, it remains an open question as to what "coordination" means under the Material Support Statute and whether assisting in the creation or dissemination of propaganda is sufficient to qualify as material support.¹⁴⁵

2. Twitter and Material Support

Holder and *Mehanna* pose interesting possibilities for the use of social media to materially support a terrorist organization such as ISIS. For example, there is a possibility that "retweets" on Twitter could amount to material support for terrorism. On Twitter, a "retweet" is a reposting of someone else's "tweet" or Twitter posting.¹⁴⁶ The retweet appears on the personal home timeline of the user who retweets the post. A pro-ISIS Twitter user may choose to retweet an ISIS member's tweet, thus republishing the post for her "followers" to see and making the post available on her personal page. Could a simple retweet be viewed as enhancing and spreading ISIS propaganda? Consider Mehanna's case. Mehanna's translation helped to spread al-Qaeda's message to individuals who otherwise would be unable to read it. Similarly, by retweeting a message, a user assists the original tweeter by making the post available on his home

140. *Id.* at 385.

141. *Id.* at 385.

142. Andrew F. March, *A Dangerous Mind?*, N.Y. TIMES (Apr. 21, 2012), <http://www.nytimes.com/2012/04/22/opinion/sunday/a-dangerous-mind.html>.

143. *United States v. Mehanna*, 735 F.3d 32,46 (1st Cir. 2013).

144. *Mehanna v. United States*, 135 S.Ct. 49 (2014) (mem.).

145. Lyle Denniston, *Crime on the Internet: A Difficult New Question*, SCOTUSBLOG (Aug. 14, 2014, 3:49 PM), <http://www.scotusblog.com/2014/08/crime-on-the-internet-a-difficult-new-question/>.

146. *FAQs about Retweets*, TWITTER, <https://support.twitter.com/articles/77606-faqs-about-retweets-rt> (last visited Mar. 24, 2015).

timeline, thereby giving the tweeter's message wider exposure. It would likely not be an issue to establish that the user knew that ISIS was participating in terrorist activities. However, it could be difficult to prove coordination, as it is still unclear what amounts to coordination.

In another scenario, Twitter postings could amount to material support by providing "personnel" to a terrorist group. In such a scenario, a Twitter user could post ISIS propaganda that inspires another individual to join ISIS. Essentially, the argument would be that the Twitter user's propaganda recruited another individual into ISIS, thus providing ISIS with personnel.

In *Brandenburg v. Ohio*, the Supreme Court held that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."¹⁴⁷ A pro-ISIS Twitter user may be found to have incited "imminent lawless action" if the user's postings can be linked to the imminent terrorist activity of others; however, it is unclear how imminent such terrorist activity would need to be to satisfy *Brandenburg*. Furthermore, it is unclear if *Brandenburg* would even apply to a situation involving personnel under the material support statute. As discussed earlier, the Supreme Court in *Holder* found that the *Scales* case did not dictate that the Material Support Statute's prohibition on the plaintiff's speech violated the First Amendment because material support was different than mere association in a group. Similarly, the Court may find that providing personnel under the Material Support Statute excuses the speech from *Brandenburg*'s reach because material support is something different than mere advocacy.

At a cyber-security conference in February 2015, John Carlin, Assistant Attorney General for National Security, suggested that the Justice Department could charge individuals under the Material Support Statute for pro-ISIS social media postings.¹⁴⁸ Carlin noted that the United States could use the statute to prosecute individuals for providing "technical expertise" to a designated terrorist organization, and that spreading the word for ISIS may count as such expertise. The possibility of using the Material Support Statute to prosecute individuals for promoting ISIS on social media is controversial, and the likely legality of such a prosecution has been hotly debated among legal professionals. If possible, it could be a powerful deterrent and active measure to combat pro-ISIS users.

147. 395 U.S. 444, 447 (1969).

148. Shane Harris, *Justice Department: We'll Go After ISIS's Twitter Army*, THE DAILY BEAST (Feb. 23, 2015), <http://www.thedailybeast.com/articles/2015/02/23/justice-department-we-ll-go-after-isis-twitter-army.html>.

B. *Treat Private Internet Users as Unlawful Combatants*

Propaganda is sometimes referred to as a psychological operation because it can be used as a form of warfare designed to destabilize and undermine enemy efforts and morale.¹⁴⁹ Members of the armed services who are engaged in psychological operations, which include propaganda efforts, are referred to as combatants.¹⁵⁰ Private internet users spreading false information or rumors in order to undermine military or other national security interests may run the risk of becoming unlawful combatants if their activities amount to psychological operations.¹⁵¹

C. *Wait for the Propaganda to Backfire*

There is the possibility that ISIS's propaganda will be its own undoing. For example, ISIS appeared exceptionally inhumane when a 2014 ISIS video purported to show Alan Henning, a British humanitarian aid worker, being beheaded after his family and British leaders pleaded for his life.¹⁵² The family's calm, heartfelt, personal pleas stood in stark contrast to ISIS's unapologetically hateful rhetoric and actions.¹⁵³ Furthermore, the execution took place on the eve of the Islamic festival of Eid al-Adha, which celebrates the mercy of god and is regarded as one of the most holy days on the Islamic calendar, which made ISIS also appear un-Islamic.¹⁵⁴ When ISIS shows itself to be so exceptionally violent or un-Islamic, it runs the risk of alienating potential new recruits. It also potentially discredits its own message by being self-contradictory about its views on Islam and the normalcy or glamour of life in the "caliphate."

D. *Physically Stop ISIS Recruits from Joining ISIS*

More than two dozen men and women have been stopped by the FBI and charged before they could get on a plan to join the Islamic State.¹⁵⁵ However, social media posts and court records suggest that perhaps even more individuals have successfully reached the group in Syria than have been stopped, and that at least four Americans have died fighting for ISIS.¹⁵⁶ Thus, while this option should still be pursued when possible, it is insufficient by itself to stop every would-be recruit from traveling to join ISIS.

149. Michael H. Hoffman, *The Legal Status and Responsibilities of Private Internet Users Under the Law of Armed Conflict: A Primer for the Unwary on the Shape of the Law to Come*, 2 WASH. U. GLOBAL STUD. L. REV. 415, 424 (2003).

150. *Id.*

151. *Id.*

152. Rose, *supra* note 66.

153. *Id.*

154. *Id.*

155. Shane, *supra* note 87.

156. *Id.*

E. Fight ISIS on the Ground

In December 2014, a US-led global coalition was formed to fight ISIS in Iraq and Syria.¹⁵⁷ Hundreds of airstrikes have allegedly hit ISIS targets since the formation of this coalition.¹⁵⁸ However, as long as reality supports ISIS's narrative that Sunni Muslims are being persecuted in Syria and Iraq at the hands of the Assad regime and the Iranian-backed Shiite militias, then ISIS's message will continue to appeal to disaffected Sunnis within and outside the Muslim world.¹⁵⁹ Furthermore, as long as ISIS can claim that it is successfully establishing its caliphate, their legitimacy will continue to go relatively unchallenged by those who are lured by its claims of accomplishment. Thus, a change to the current situation in ISIS-occupied areas is likely necessary to precipitate a change in the efficacy of ISIS propaganda.

F. Shut Down ISIS Twitter Accounts

In September 2014, a Twitter account affiliated with the hactivist group "Anonymous" declared a "full-scale cyber war against ISIS."¹⁶⁰ It has since claimed responsibility for cyber-attacks against nearly 800 Twitter accounts, 12 Facebook pages, and more than 50 email addresses linked to ISIS.¹⁶¹ Anonymous reports user profiles it believes are associated with ISIS to the social media companies, which in turn can take action by suspending the accounts. Twitter has suspended thousands of pro-ISIS user accounts, but many of the users have returned under new account names. Currently, Twitter policy requires that individuals report a possible violation of the company's policies before they will look into possibly suspending an account.¹⁶² However, Twitter began a trial policy in March 2015 that allows the site to scan for abusive and offensive language, threats and harassment, and to then remove the abusive posts.¹⁶³ This new feature could render the user reporting requirement obsolete and allow Twitter to be more proactive, rather than reactive in the fight against terrorism.

However, some anti-terrorism law enforcement experts have questioned the efficacy of taking down pro-ISIS Twitter accounts.¹⁶⁴ Closing down Twitter accounts can temporarily hinder users from spreading ISIS propaganda, but most of them come back under new account names within a day or so of having

157. Hiba Zayadin, *Fighting Words: Inside the Social Media War Against ISIS*, MEDIA SHIFT (Mar. 5, 2015), <http://mediashift.org/2015/03/fighting-words-inside-the-social-media-war-against-isis/>.

158. *Id.*

159. Cotte, *supra* note 43.

160. *See* Zayadin, *supra* note 157 (noting hactivist groups use hacking for advocacy purposes).

161. *Id.*

162. Victoria Woollaston, *Twitter's "Quality Filter" Set to Rid The Site of Abuse*, DAILY MAIL (Mar. 25, 2015), <http://www.dailymail.co.uk/sciencetech/article-3010827/Twitter-s-Quality-Filter-set-rid-site-abuse-Tool-automatically-censor-tweets-contain-threats-offensive-language.html>.

163. *Id.*

164. Zayadin, *supra* note 157.

their accounts removed. Furthermore, law enforcement and intelligence services find it advantageous to monitor these accounts for useful information. Eliminating them removes the possibility of gaining valuable data. Finally, a pro-ISIS user might respond to losing an account on Twitter or other social media sites by moving to platforms that are more difficult to monitor, such as encrypted messaging services.

G. Create “Backdoors” for Electronic Devices

ISIS has been relatively careful to use social media and chat applications in a way that avoids detection by American surveillance agencies such as the National Security Agency.¹⁶⁵ The use of encryption, such as is available on the iPhone6, exacerbates this problem by putting the government at risk of not being able to monitor terrorists and spies. Some individuals have suggested that lawmakers should come up with a solution for ensuring government access to encrypted communications.¹⁶⁶ However, others have argued that such access would constitute a “backdoor” to spy on people around the world, not just terrorists or others deemed to be a threat.¹⁶⁷ Further, there is debate among American officials over whether this backdoor would be available only to the United States government, or whether other governments should also receive backdoor access to their citizens’ devices.¹⁶⁸

H. Employ Active Counter-Propaganda Measures

The most effective strategy for combatting ISIS may be through active counter-propaganda efforts that challenge and undermine the terrorist group. These efforts should seek to portray the reality of life in ISIS-occupied areas, poke holes in ISIS’s false veil of legitimacy, and provide a counter-narrative to other lures drawing potential recruits into joining ISIS. Importantly, these efforts should concentrate on addressing the “pull” factors or “lures” that attract individuals to terrorism.

Strategies that embarrass and damage the reputations of a terrorist organization can be highly effective in countering the terrorist group’s narrative and making membership appear less attractive. For example, in 1987, a British investigative journalist ran an undercover expose of the racketeering activities of the Ulster Defence Association (UDA), a Loyalist terrorist organization from Northern Ireland.¹⁶⁹ The journalist set up and secretly filmed a meeting where a UDA leader was shown having difficulty with simple arithmetic during his calculation of an extortion demand on a supposed businessman.¹⁷⁰ This documen-

165. Harris, *supra* note 148.

166. *Id.*

167. *Id.*

168. *Id.*

169. Horgan, *supra* note 29, at 90.

170. *Id.*

tary was a source of extreme embarrassment to the UDA and was likely a powerful contributing factor to the group's massive upheaval and permanent reputational damage.¹⁷¹ Similarly, public displays of ISIS members engaging in embarrassing activities could serve to undermine the perceived prestige of the group's adherents.

Another goal of counter-propaganda efforts should be to expose the realities of life in ISIS occupied territories. The media can play an important role in undermining ISIS propaganda that portrays the terrorist life as glamorous and romantic by broadcasting stories of real-life hardships in ISIS and other terrorist organizations. As a result, naive teenagers who might otherwise be drawn to ISIS may be less-inclined to join the group if they knew the dangers of its world.

The United States and other countries should also seek to provide a counter narrative to undermine other aspects of the ISIS narrative. This includes efforts to discredit ISIS claims of power, legitimacy, and moral righteousness. For example, they could damage ISIS claims of power by widely publicizing accounts of ISIS military defeats. Likewise, religious leaders could offer alternative interpretations of the terrorist group's ideology that discredit their actions and puncture their claims of moral and religious righteousness. Additionally, countries should seek to publicize examples of inclusion and respect within their own territories, so as to undermine the ISIS narrative that portrays Western countries as hostile to those the group seeks to recruit. This could include posts on social media outlets about prominent leaders of a variety of faiths working together, advertisements about opportunities to connect with like-minded individuals in a non-hostile environment, and other similar efforts to demonstrate the potential to feel connected and accepted without needing to turn to dangerous organizations.

1. Current Counter-Propaganda Efforts

The Center for Strategic Counterterrorism Communications (CSCC), located in the U. S. Department of State, was founded in 2010 as the world's first government-sponsored enterprise – not run by an intelligence agency – to counter online jihadist propaganda.¹⁷² While she was Secretary of State, Hillary Clinton described the CSCC's mission as vital to diminishing the appeal of terrorism, and noted that the CSCC was focused on “undermining terrorist propaganda and dissuading potential recruits.”¹⁷³ CSCC is at the forefront of what is being referred to as the “war of narratives.”¹⁷⁴ The CSCC's digital outreach team (DOT) crashes various online forums to “troll” ISIS sympathiz-

171. *Id.*

172. Cotte, *supra* note 43.

173. *Id.*

174. *Id.*

ers and often jumps onto pro-ISIS Twitter hashtags.¹⁷⁵ For example, in April 2014, DOT responded to the pro-ISIS hashtag #accomplishmentsofISIS by using the same hashtag to post a series of sarcastic references to ISIS's accomplishments and links to YouTube videos detailing ISIS atrocities in Syria.¹⁷⁶

However, the CSCC is at a disadvantage because they have been unable to match the shocking and outrageous videos of ISIS, the efforts of their dedicated pro-ISIS Twitter users, or ISIS's compelling narrative.¹⁷⁷ Beheading videos are shocking and repugnant, but they are also disturbingly fascinating and go viral for this reason. CSCC videos do not go viral, and this is likely due to their less shocking nature. Whereas ISIS's videos have been characterized as "shock and gore," the CSCC's videos have been described as "mock and bore."¹⁷⁸ ISIS has a wide network of virtual supporters, referred to many as "fanboys," who disseminate the group's online propaganda.¹⁷⁹ ISIS refers to these individuals as "knights of the uploading."¹⁸⁰ These "fanboys" are especially prevalent on Twitter, despite the social media network's efforts to ban them. The CSCC does not have fanboys. Furthermore, and perhaps most crucially, ISIS has a strong, compelling narrative. The CSCC does not have a narrative, or at least not one remotely comparable in emotional strength and resonance to that of ISIS. ISIS's narrative is essentially that Muslims are being killed and that ISIS is the solution. The CSCC's narrative consists of warnings to not do what ISIS wants, but it lacks a positive message of what to do instead. One of the greatest challenges in counterterrorism is finding a narrative that directly speaks to a similar kind of longing among potential terrorists and channels that longing into nonviolent action.

Another current form of counter-propaganda comes from non-governmental actors poking fun at terrorist organizations. For example, a group of young Syrian refugees has been making short YouTube videos mocking ISIS.¹⁸¹ These videos are useful for many reasons, including their potential ability to undermine ISIS's power and make it appear less impressive, but also, very importantly, for having Middle Easterners communicate the satire. The men are effectively saying that not all Middle Easterners support ISIS or are impressed with the group.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. Constanze Letsch, *Laughing at ISIS: Syrian Video Artists Go Beyond Fear to Ridicule Jihadists*, THE GUARDIAN, (Mar. 12, 2015), <https://www.theguardian.com/world/2015/mar/12/laughing-at-isis-syrian-video-artists-jihadis-refugee-islamic-state>.

2. Future Counter-Propaganda Efforts

This paper proposes the following criteria for successful counter-propaganda attacks in the future:

1) Use a credible communicator.

In order to effectively discredit ISIS, the target audience must trust the source of the communicated information. The effectiveness of any propaganda lies in large part in the perceived credibility and relevant expertise of the communicator and on the communicator's perceived intentions.¹⁸² Hence, counter-propaganda efforts must identify credible sources to serve as spokespersons. The best candidates for this role perhaps would be distinct from the United States Government, at least on the surface, in order to avoid assumptions of bias. Such assumptions, in fact, may affect the impact of CSCC. Although this program is useful for providing a factual challenge to ISIS's claims, its message may fall on deaf ears if the recipient already assumes the government is biased. Alternative views that are linked to "the enemy" may be perceived as lacking credibility.¹⁸³

In addition, the communicator is more likely to be trusted if he is perceived as having nothing to gain from his speech.¹⁸⁴ Ideally, the counter-propaganda information should come from a source with whom the target audience identifies, such as a prior supporter of the given terrorist group. The communicator's perceived trustworthiness may also be influenced by factors such as having a social background similar to the terrorists'. However, a large difference in age (as in much older) or level of leadership may promote the communicator to an "expert" status.¹⁸⁵ Communicators who can effectively counter ISIS propaganda might include individuals who were previously involved with the organization but then left it. With such firsthand experience, they could help to both dispel the attractions and expose the realities of life in ISIS. Such a communicator could particularly appeal to would-be recruits who are hesitant about joining ISIS or who have already joined but may be thinking about leaving.

It is possible that former ISIS members will come forward on a volunteer basis to work with CSCC. In addition, potential communicators may be found through informant programs, whereby U. S. attorneys could offer incentives to those facing terrorism prosecution in exchange for participation in the counter-propaganda program. However, the government's involvement must not become so obvious as to render the communicator a mere agent of the state. Rather, it is essential to maintain some appearance of legitimacy to preserve the effectiveness of the message.

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

2) Use factual information.

In order for the counter-propaganda to be perceived as neutral and honest, and thus more credible and persuasive, it should be based on objective factual information that cannot be dismissed as anti-ISIS propaganda. The example provided earlier of the Irish terrorist who had difficulty doing simple arithmetic provides an excellent illustration of the power of honest footage. By videotaping an ISIS member in a similarly embarrassing situation, where he or she appears to be incompetent or does something shameful, such footage may cast the group in a negative light. Like the Irish terrorist, the ISIS terrorist caught on tape can be a source of extreme mortification, especially if the video cannot be disputed for its authenticity. Additionally, the group orchestrating the encounter with ISIS should be sure to treat the ISIS member fairly. The resulting videotape will be much more effective if the ISIS member is shown to be incompetent all on his own rather than as a result of unfair treatment or a trick of filmography.

3) Undermine recruitment lures.

Counter-propaganda should target the incentives that have been most effective at recruiting individuals contemplating ISIS membership, taking into account different types of recruitment strategies. For example, there should be counter-propaganda specifically aimed at young adult women. ISIS has been successful in using its young female members to befriend and attract young women recruits by having the group's women portray their lives in ISIS as romantic and pro-family. If possible, counter-propaganda should utilize young women who are not openly anti-ISIS (so as not to appear biased), but who live romantic and happy lives with their families. Counter-propaganda efforts should also include factual reports of the dangerous reality of living in ISIS, so as to dispute the ISIS reports of a glamorized utopian society.

4) Increase manpower.

To successfully counter the sheer prevalence of pro-terrorist propaganda, counter-propaganda efforts need more staff to push anti-terrorist communications and information. ISIS has utilized "fanboys" and bots to push large amounts of information and overwhelm Internet search engines and social media platforms. Likewise, anti-ISIS measures also should employ bots and a multitude of individuals who can push mass amounts of anti-ISIS information. These counter-propaganda measures similarly need to be able to rise to the top of search engine results and be prevalent on social media sites. Otherwise, important counter-propaganda content will remain hidden behind the mountain of pro-ISIS tweets and other communications.

Additionally, countries engaging in counter-propaganda work should reach out to those already involved in similar endeavors – be they other countries or individuals or organizations – in order to streamline and harness their efforts to discredit ISIS. Currently, the counter-propaganda efforts of two or three individuals are too easily drowned out by the overwhelming tide of ISIS propaganda. Consider, for instance, an Iraqi student group's satirical video of ISIS. Despite the group's noble motivations, their efforts may be in vain if they achieve only a

minor online presence. Imagine instead, if a coalition of anti-ISIS governments or individuals were to join forces in such numbers that they would create a coalition comparable to the one behind the ISIS propaganda machine. If such a coalition were to fight ISIS electronically, they would ensure that the voices of their various members would be heard at a volume that would be nearly impossible to achieve while acting alone.

5) Provide a compelling narrative.

Counter-propaganda needs to be exciting. The inescapable reality about ISIS propaganda is that it is engrossing: ISIS films utilize Hollywood-style tricks and impressive stunts; the group brands its propaganda with its flag and hymns; and it boasts a captivating narrative. Unfortunately, as repellent as its beheading videos are, they do garner a lot of attention. Anti-ISIS videos are struggling in part because they lack attention-grabbing action and a compelling narrative. Counter-propaganda officials should hire entertainment professionals to help make their propaganda films more thrilling to watch.

Even more important, the narrative must grab the target audience. It should not simply argue “do not join ISIS.” Instead, it should put forward some equally compelling reason to “join us” – to drive individuals to want to be involved in activities and social movements that are not ISIS-related. Take, for example, teenagers who are drawn to ISIS by its promise of an accepting community. Effective counter-propaganda for such young people might advertise the availability of social groups and other opportunities available close to home. For recruits drawn to ISIS for religious reasons, counter-propaganda materials might quote from religious leaders and other trusted figures who discredit the group’s anti-Islamic violence and provide alternative interpretations.

CONCLUSION

The Internet has revolutionized terrorism forever. Terrorists exploit the Internet’s vast resources and capabilities to further their causes in ways never before possible. Recruitment, funding, publicity, and other essential organizational needs are now conveniently met through the click of a button. The Internet-savvy terrorist can simultaneously fill the roles of photographer, publicist, fundraiser, and fighter. The previously unreachable potential new member can now be fully recruited, from initial contact to travel arrangements, all without ever having to leave his house.

One of the key ways that the Internet has transformed terrorism has been in its effect on terrorist propaganda. The Internet allows terrorists to design and deploy potentially limitless amounts of propaganda to millions of potential new members with relatively few regulations or restrictions. Terrorists can utilize anonymous user names and post to websites, social media platforms, chat applications, and more, all while tailoring their message to attract a range of different target audiences. ISIS has been remarkably adept at using various media forms on many different Internet sites and social media platforms. So far, efforts to thwart the ISIS propaganda machine have proven relatively fruitless.

The evolution of terrorism propaganda via the Internet requires equally advanced methods to effectively combat it. The reliance on antiquated Cold War techniques that predate the rise of social media will not be sufficient to adequately respond to the technologically equipped terrorist threat. In order to effectively combat ISIS propaganda, anti-ISIS forces should draw upon the psychological and sociological dynamics of propaganda, as well as the full range of available resources. Successful programs and established research can serve as the framework for future efforts, but they must be updated to fully utilize the Internet's capabilities and resources. Counter-propaganda measures will continue to be ineffective against ISIS and other terrorist organizations unless they fully address the enemy's technological capabilities.

These measures should employ credible communicators and put forth factual information in order for the target audience to trust it and absorb its message rather than immediately dismiss it. Counter-propaganda also should focus on undermining the most effective recruitment lures for new ISIS members. Creating such counter-propaganda will require the use of different types of communications and communicators so as to adequately address the range of motivators and individuals targeted. Also, digital counter-propaganda must rival terrorists' online activity in prevalence and frequency so that it rises to the top of search queries and helps to shape Internet use trends. These measures will require an increase in manpower, as well as a concentrated effort at enhancing counter-propaganda's appeal to its target audiences. In particular, young Internet users are more likely to be drawn to exciting, compelling stories than those that are dull; this truth must be reflected in the content of counter-propaganda if it is to be effective.

It is also important that for the fight against terrorism to continue to rely on other non-propaganda tactics, such as stopping teenagers at airports and prosecuting individuals for providing material support to terrorism via digital means. However, law enforcement and social media sites should be selective about whom they target. Twitter and other social media sites should avoid suspending so many user accounts that they inadvertently push ISIS supporters into using communication platforms are difficult to monitor. Such social media sites provide important intelligence information by allowing law enforcement and intelligence officers to monitor the pro-ISIS users' communications. Furthermore, the government should not prosecute individuals under the Material Support Statute unless they are fairly certain of a conviction, because over-prosecution may lead to distrust of the government. However, these options should not be abandoned entirely, for their use may still help to temporarily hinder terrorist activities. Occasional suspensions and prosecutions may remove the most outspoken and persuasive ISIS sympathizers from the marketplace of ideas, and may deter other users from disseminating ISIS propaganda online.

As technology evolves, so will its potential to be used for either good or evil. The Internet is only the latest vehicle to be manipulated to serve terrorists' agenda. Just as the handheld camera provided terrorists with a new way to

speak to distant followers without ever having to meet, social media has provided terrorists with an unprecedented ability to directly attract young recruits and indoctrinate new followers through direct messaging, hashtags, and more. Propaganda can now be deployed with relative ease and at little to no expense, as anyone can open a Twitter account and share his or her views. Future technology will inevitably bring with it new, innovative ways for terrorists to manipulate its qualities to serve their purposes. Counter-propaganda efforts will likewise continue to need to evolve to match the ever-looming threat of terrorism.