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POLICING AL QAEDA'S ARMY OF RHETORICAL TERRORISTS

Jarret Brachman[†]

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As al Qaeda continues to reconceptualize the brand image that it sells to its Western consumers, America's law enforcement community must fundamentally reexamine its assumptions about homegrown terrorism.¹ Over the past decade, the arrests of many Americans on terrorism-related charges hinged on their illicit operational activities.² These activities include seeking to acquire bomb-making materials, fundraising in the name of al Qaeda, or clandestinely communicating with known terrorist cells outside the United States. The collective focus of law enforcement has been on thwarting attempts by individuals in this country to mount a terrorist attack.

But given the way that al Qaeda has retooled itself as a media organization as opposed to a terrorist group vis-à-vis its American

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1. Jarret Brachman, *Al-Qaeda's Armies of One*, FOREIGN POL'Y, Jan. 22, 2010, http://www.foreignpolicy.com/articles/2010/01/22/al_qaedas_armies_of_one.

2. A comprehensive list of terrorism-related arrests broken out by year can be found on the Anti-Defamation League's website at http://www.adl.org/main_Terrorism/american_muslim_extremists_criminal_proceedings.htm?Multi_page_sections=sHeading_1.

support base, conventional indicators and warnings no longer serve their purpose.³ The al Qaeda movement has been undergoing a strategic recalibration in the way it seeks to spread its ideology in the West over the past several years. Rather than advancing itself as a terrorist organization that uses the media, al Qaeda in the West has portrayed itself as a media movement that happens to promote terrorism.

It now prods its followers in this country to get involved in advancing al Qaeda's interests. That may or may not include conducting terrorist attacks. In fact, according to the American Yemeni cleric Anwar al-Awlaki, who is now the poster child of al Qaeda's organization in Yemen, there are at least forty-four alternative ways to support al Qaeda without necessarily joining the frontlines.⁴

In short, al Qaeda has sought to level the playing field so that no matter who somebody is or what resources they have at their disposal, they can feel like they are an equal part of al Qaeda's global movement. No longer does one need to die in Iraq or Afghanistan to be al Qaeda. One need not attend a Pakistani training camp or fight alongside their brothers in Algeria or Chechnya. Al Qaeda's revised position is that there is no longer a distinction between the frontlines and the rear; there is no difference between the military conflict and the cultural conflict. Conducting violence and uploading videos are now equal parts of a collective whole.

The problem for law enforcement in this country is that attempts to conduct or support acts of terrorism are illegal, but spreading a message through the media is not necessarily illegal. Certainly there are ways to prosecute threatening messages and hostile content, and those charges are becoming increasingly leveraged by law enforcement seeking to counteract this growing problem of vocal al Qaeda supporters. But threatening communication charges are a far cry from material support to terrorism charges, even though rhetoric is now viewed by terrorist organizations themselves as a viable and praiseworthy way of

3. DANIEL KIMMAGE, AL-QAEDA CENTRAL AND THE INTERNET (2010), *available at* http://counterterrorism.newamerica.net/sites/newamerica.net/files/policydocs/kimmagine2_0.pdf.

4. *See* ANWAR AL-AWLAKI, 44 WAYS TO SUPPORT JIHAD (2009), *available at* <http://www.nefafoundation.org/miscellaneous/FeaturedDocs/nefaawlaki44wayssupportjihad.pdf>.

supporting their global ambitions.

Further complicating the job of prosecutors and law enforcement is that subcriminal advancement of al Qaeda's message in this country through media is becoming more difficult to discern from other Islamic activist groups—organizations who might actually shun al Qaeda's message, method and politics. But as al Qaeda supporters increasingly tuck their messages into more common rhetoric, it forces law enforcement—often not well trained to make those nuanced distinctions—to either overpolice or ignore what might be a concerning message.

This classic insurgency strategy, where the fighters seek to blur the distinctions between themselves and the host population, creates a situation that can only be in al Qaeda's favor. If law enforcement is perceived as overpolicing the Islamic community—even if their goal is to make the kinds of nuanced distinctions necessary to separate extremist militant supporters from others—they may inadvertently alienate themselves with the Muslim American community. This is precisely what groups like al Qaeda are hoping to achieve: outsourcing the radicalization of Muslims to America's law enforcement.

In short, this new approach of softening their message to make it less openly militant and more rhetorical as opposed to operational in nature has changed the rules of the game for law enforcement and criminal prosecutors. The Internet is the new battle space and it is one where the youth have the advantage. It is a space that allows for anonymity and disproportionate impact.

It should, therefore, come as no surprise that more individuals being charged with terrorism-related crimes are also found using the Internet, either as the vehicle with which they committed their crimes or in concert with their criminal behavior in the physical world. It is increasingly important to examine the precise nature of this activity. Even though not illegal in nature, the activity itself has become a cornerstone of al Qaeda's ideology and approach to recruiting and mobilizing in the United States.

This article will provide a recap of recent U.S.-based arrests where the individuals charged with material support of terrorism used the Internet in the course of their activities. It will create a typology of the nature and extent of online support for al Qaeda by drawing on the charges made in the criminal complaints and indictments.

I. AL QAEDA'S STRATEGIC MOVE ONLINE

One of the primary ways in which al Qaeda supporters have sought to retool their arsenal is to retreat to the Internet. Rather than building bombs, American al Qaeda supporters are being told that they can upload a video. Rather than acquiring weapons, American al Qaeda supporters can publish a magazine. Any action in the name of al Qaeda is, for al Qaeda, advancing the overall mission. The point is less about taking action as it is about garnering interest and fomenting a revolution.

Federal, state, and local law enforcement in this country find themselves in a situation where they must identify emerging plots from Americans seeking to execute acts of terrorism, yet the individuals under surveillance are talking openly and aggressively only about the need for terrorism. Both courses of action are viable from al Qaeda's perspective, but one falls beneath the criminal threshold—making it difficult to do anything about. Furthermore, it is al Qaeda's hope that their Internet-based supporters will organically and spontaneously decide to take action at some point, further complicating the task for law enforcement. The United States does not have the resources necessary to actively monitor everyone who openly supports al Qaeda. Furthermore, open support is not illegal: it is speech that is protected under the First Amendment.

In the mid-2000's, little attention was paid by law enforcement or prosecutors to an individual's extremist Internet activities unless it was viewed as being explicitly criminal in nature. In the rare instance that a criminal complaint mentioned a suspect's Internet usage, it was usually offered as a general aside, noting, for example, that a suspect had browsed extremist websites.

Since at least 2008, however, America's counterterrorism community has increasingly recognized that subcriminal Internet activity can be both problematic and telling about the extent to which an individual is engaged in nefarious activities. That recognition is increasingly manifesting itself in the growing amount of detail now appearing in criminal complaints about an individual's Internet activities. This information includes specific information about extremist websites they may have visited and hostile videos that they may have downloaded. Full-text chat transcripts, Facebook posts, and even comments to YouTube videos are now being included in criminal complaints as a way of demonstrating the scope of an individual's extremist activities.

As law enforcement tries to make sense of how to police an illegal movement that is increasingly operating in plain sight, al Qaeda's American-focused messaging is seeking to empower even more activity. Since at least 2005, the al Qaeda organization has made a notable shift in prioritization from pursuing terrorist operations in the physical world to inspiring and equipping their global movement in the virtual world with the resources they needed to be effective.⁵

Al Qaeda's movement now translates more of their media products into English and directly appeals to Americans in their messaging. Al Qaeda's franchise group in Yemen, having recruited two high-profile Americans into their organization, now releases an English-language Internet magazine specifically focused on mobilizing western youth for al Qaeda. In many ways, al Qaeda has transcended itself as a terrorist organization and is looking more like a media enterprise each year. The result of al Qaeda's shift to messaging in cyberspace has started to show in the United States where a growing number of American citizens are openly supporting, and in some cases plotting to conduct acts of terrorism in the name of, al Qaeda and its global movement. A great deal of that support occurs on the Internet, as does some of the operational planning, coordination, and fundraising.

II. MOBILIZING AN AMERICAN AL QAEDA FROM YEMEN

Perhaps more than any other element of al Qaeda, the group operating from Yemen known as al Qaeda in the Arabian Peninsula (AQAP) now targets American youth with one primary objective in mind: mobilize and activate their online followers in this country to commit acts of terrorism. Different from the traditional call to action from the al Qaeda senior leadership, AQAP's message provides its online American community with a comic-like experience, one that equips individuals with the tools they need while demystifying the path they must take to become their own al Qaeda superhero.

5. Jarret Brachman, *Watching the Watchers*, FOREIGN POL'Y, Nov. 10, 2010, http://www.foreignpolicy.com/articles/2010/10/11/watching_the_watchers.

6. For an in-depth discussion of the ways in which al Qaeda in the Arabian Peninsula is now targeting an American homegrown support base through strategic messaging, see *Terrorist Threat to the U.S. Homeland – Al Qaeda in the Arabian Peninsula (AQAP)*, Hearing Before the Subcomm. Counterterrorism and Intelligence of the H. Comm. on Homeland Sec., 112th Cong. (2011) (testimony of Barak Barfi, Christopher Boucek and

Sheikh Anwar Al-Awlaki has become a key engine of growth for al Qaeda's Western-focused media machine.⁷ Although al-Awlaki has been focused on quietly desensitizing his audiences to a hardline reading of Islam through his prolific Internet-based video and audio lectures for over a decade, al-Awlaki's recent shift to openly and directly calling for violence against the United States has meant new challenges for America's counterterrorism professionals.

Al-Awlaki offers AQAP something that few al Qaeda personalities have been able to do: speak persuasively to an English-speaking audience without a deep knowledge of Islamic history or interest in complex theological arguments. To the contrary, al-Awlaki speaks as a populist about everyday challenges that Muslims face. This inclusive approach has helped to brand al-Awlaki as one of al Qaeda's most user-friendly personalities—he has become an al Qaeda gateway drug, so to speak.

III. INSPIRING ACTION

Perhaps no AQAP media product has blurred the line between the virtual and physical worlds more than its English-language magazine, *Inspire*. Since releasing their first issue of *Inspire*, AQAP has continued to pioneer creative ways for empowering and motivating their online supporters. Although the magazine's kitschy tactical advice and slick graphical featurettes has made for compelling headlines, most public discussions about the magazine have yet to provide an adequate explanation for why *Inspire* actually matters.

Certainly the *Inspire* series has helped make al Qaeda's personalities and ideology more accessible to more people. But such intense focus about the magazine's engaging tone and stylistic attributes reflect the general lowlevel of theoretical sophistication in the counterterrorism field today. *Inspire* is far more than just another propaganda junket released by al Qaeda: it is not just about getting kids to blindly follow *Inspire's* recipe for building "a

Jarret Brachman), available at <http://homeland.house.gov/hearing/subcommittee-hearing-%E2%80%9Cterrorist-threat-us-homeland-%E2%80%93-al-qaeda-arabian-peninsula-aqap%E2%80%9D>.

7. For more on the why Al-Awlaki matters in mobilizing American youth, see Jarret Brachman & Alix Levine, *You Too Can Be Awlaki*, FLETCHER F. WORLD AFF., Winter 2011, at 25, available at <http://fletcher.tufts.edu/forum/archives/pdfs/35-1pdfs/Brachman-Levine.pdf>.

bomb in the kitchen of your mom.”⁸

The real reason that *Inspire* should be considered such an achievement for al Qaeda is that it lowers the proverbial wall that has deterred most online al Qaeda supporters from actually going operational. Until recently, most of al Qaeda's Internet supporters have confined their participation to the bounds of their online communities. It was the exception to the rule that an Internet supporter would actually log off their computers and pick up a weapon to go kill in the physical world.

Before individuals like Zachary Chesser and the Fort Hood shooter Major Nidal Malik Hasan⁹—both of whom had been in direct email contact with al-Awlaki—there had been few Internet supporters who became real-world terrorists because the gulf between thought and action had been too great. The incentives for bridging that gulf were not compelling enough to entice a mass migration of online jihadists to the physical world. Political scientists might refer to this as a freerider problem, where individuals benefit off of the work being done by others without paying their share.

With the barriers so high and the incentives for martyrdom so seemingly distant, most online supporters of al Qaeda kept running into a glass ceiling. No matter what they did, their global online supporters remained, by and large, part-time jihadists—logging on to their favorite websites after work or on weekends. These armchair enthusiasts do not necessarily help al Qaeda advance its global objectives in this country. *Inspire* and al-Awlaki have been trying to change all that.

IV. TYPES OF AMERICAN INTERNET SUPPORT FOR AL QAEDA

Just as al Qaeda places more pressure on its American constituency to mobilize and become operational, law enforcement in this country has grown more perceptive about how Americans are using the Internet for advancing nefarious and criminal purposes. A review of recent criminal complaints of individuals

8. An article with this title appeared in AQAP's first issue of *Inspire*, which was released in late June 2010.

9. See Tara Bahrapour, *Out of Suburbia, the Online Extremist*, WASH. POST, Nov. 2, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/01/AR2010110107035.html>; James Dao, *Suspect Was 'Mortified' About Deployment*, N.Y. TIMES, Nov. 5, 2009, <http://www.nytimes.com/2009/11/06/us/06suspect.html>.

arrested on al Qaeda-related charges highlights at least three categories of ways that an individual's Internet activity is being looked at by law enforcement.

In some cases, the Internet has been used as a leading indicator where one's online activities lead investigators to suspect that an individual may be breaking the law, or preparing to do so, in the physical world. Just as a drug addict requires higher amounts of drugs over time in order to achieve the same high, al Qaeda's online supporters tend to desire increased amounts of participatory experiences. These experiences may come in the form of subcriminal activities, such as arranging al Qaeda-video watching parties or conducting nonviolent public activism in the name of al Qaeda. It may also move into the criminal sphere. Online supporters who seek out more ways of finding their fix tend to look to illegal acquisition of firearms and ammunition, illicit travel to warzones and fundraising in the name of al Qaeda or with the intention of moving funds and material to al Qaeda.

On the one hand, an individual's Internet activities may not be necessarily illegal, but some are so egregiously advocating violence that law enforcement is drawn to them under the suspicion that they may be seeking to operationalize their online rhetoric in the physical world. Such was the case with Emerson Begolly, whose extensive online heralding of al Qaeda caught the attention of federal authorities.¹⁰ The twenty-one-year-old Begolly had become something of an Internet reality star thanks to his incessant web presence under several different monikers. Posting on blogs, web forums, file-sharing sites, and in a variety of other ways, Begolly's excessive support for al Qaeda via the Internet seemed to attract the attention of federal law enforcement who followed the trail he was leaving in the virtual world back to him in the physical world. Although none of his postings seem to have met the threshold for being criminal in nature,¹¹ they did lead law enforcement to his doorstep, prompting them to dig deeper into his physical world activities.

In other instances, law enforcement has arrested individuals

10. *A Look Into the Troubled Mind of Jihadist Emerson Begolly*, INTELWIRE.COM (Jan. 13, 2011), <http://news.intelwire.com/2011/01/look-into-troubled-mind-of-jihadist.html> [hereinafter *Troubled Mind*].

11. *See* Criminal Complaint, United States v. Begolly, No. 11-4M (W.D. Pa. Jan. 15, 2011), *available at* <http://www.talkingpointsmemo.com/documents/2011/01/criminal-complaint-against-emerson-begolly.php?page=1> (charging Begolly for assaulting a federal employee).

out of concern for the content of their Internet statements. These statements may include posts that either threaten the safety and well-being of specific individuals or make broad threats to conduct illegal action. An archetypal example of this type of extremism is Awais Younis, a twenty-five-year-old Virginian who discussed using explosives in the Washington D.C. area on his Facebook account.¹² Despite his ideological support for al Qaeda, Younis was charged for communicating threats across state lines, not material support of terrorists.¹³

Using the Facebook, Younis bragged to a friend that he could build a pipe bomb with specific types of shrapnel to cause maximum damage on the Metro system. Younis had also discussed planting pipe bombs underneath a sewer head in the Georgetown neighborhood of Washington, D.C. When the friend suggested he was not serious, Younis responded “watch me.”¹⁴ The friend alerted the FBI. In a subsequent Facebook chat, Younis threatened the unidentified tipster and told her that “the problem with Americans they cant [sic] leave well enough alone until something happens then they sit there wondering why we dropped the twin towers like a bad habit.”¹⁵

The third category of terrorism-related arrests where an individual's use of the Internet played a prominent role is focused on the actual legality of their online activities. Such activities include attempting to recruit members into an operational cell by way of the Internet, soliciting financing for actual terrorist operations, and using the Internet to coordinate with others in the furtherance of a terrorist operation.

Zachary Chesser, a young convert from northern Virginia, is one individual who falls into this category. Arraigned on multiple charges—including communicating threats across state lines and providing material support to terrorists—most of Chesser's web history appeared in the complaint as evidence for each charge, be it from posting repeated threats against specific individuals, such as the creators of the television show *South Park*, or uploading videos

12. Emily Babay, *Facebook Chats Alert Authorities to Va. Man's Bomb Threats*, WASH. EXAMINER, Dec. 12, 2010, <http://washingtonexaminer.com/local/crime-punishment/2010/12/facebook-chats-alert-authorities-va-mans-bomb-threats>.

13. *Id.*

14. Affidavit in Support of a Criminal Complaint and Arrest Warrant at 2, United States v. Younis, No. 1:10-MJ-812, (E.D. Va. Dec. 12, 2010), *available at* <http://www.scribd.com/doc/45068387/Awais-Younis-Complaint>.

15. *Id.* at 5.

to al Qaeda-affiliated websites.¹⁶

These cases and numerous others reveal a changing landscape of terrorism charges in the United States. Far from the operationally dominated years immediately following the attacks of September 11, 2001, the past several years have seen such a saturation of Internet activity by online extremist supporters of al Qaeda that it has begun spilling over into criminal prosecutions.

The next section will examine each of the above cases in depth, drawing on the legal documents associated with each case to demonstrate the importance that an individual's online activities now seems to play in driving law enforcement behavior and prosecution strategy.

V. THE INTERNET AS A LEADING INDICATOR

In the new landscape of an al Qaeda-inspired, American support base, extremist Internet activity has become something of the proverbial canary in the coal mine—signaling trouble before otherwise apparent. One way that law enforcement is coming to understand extremist use of the Internet in this country is as a signal that an individual is heading down a trajectory that may lead to violence.

Twenty-one-year-old Emerson Begolly had become one of the most prolific American-based al Qaeda activists on the Internet.¹⁷ Posting under a variety of monikers, Begolly referred to himself on the al Qaeda-affiliated Internet websites as a “nasheed expert” or a specialist in the soundtracks commonly featured within al Qaeda propaganda videos.¹⁸ Few online users in these forums could boast the size of his personal nasheed collection or the scope of knowledge that Begolly had about those nasheeds. Because of his niche interest in nasheeds, Begolly quickly rose in prominence.

It was also that prominence in the al Qaeda virtual space that brought him to the attention of the law enforcement community. On January 4, 2011, two federal agents approached Begolly to make contact with him in the parking lot of a Burger King in New

16. Criminal Information at 2–5, *United States v. Chesser*, No.1:10-CR-395 (E.D. Va. Oct. 20, 2010), available at <http://intelfiles.egoplex.com/2010-10-20-chesser-criminal-info.pdf>.

17. *Troubled Mind*, *supra* note 10.

18. Rusty Shackelford, *Morons at TPM: Begolly Isn't So Bad, Just a Loner Who Snapped; Morons at Jawa Report: Wow, Are You Guys Lazy or Just Stupid?*, THE JAWA REPORT (Jan. 10, 2011, 4:19 PM), <http://mynetjawa.mu.nu/archives/205788.php>.

Bethlehem, Pennsylvania. Upon opening the door to his car, Begolly “screamed and immediately reached toward his jacket.”¹⁹ Thinking he was reaching for a gun, the agents sought to restrain him. In the course of the struggle, he allegedly bit them both. He was also found to be carrying a concealed, loaded 9 millimeter pistol.²⁰

According to a criminal complaint filed after he was detained for biting the agents, Begolly was already a subject of a criminal investigation and agents had reason to believe that he might be armed when they approached him.²¹ Investigators went on to conduct searches at Begolly’s father’s home in Redbank, Pennsylvania and his mother’s home in Natrona Heights, Pennsylvania. Although they did not explain what specifically they were seeking to find in those searches, investigators did present evidence of Begolly posting anti-Semitic and pro-al Qaeda messages online in support of the detention hearing.

In his affidavit, “FBI Special Agent Thomas Ferguson III testified [that] some of the messages described how to turn a station wagon into a bomb, how to buy a firearm, how to rig a firearm from a flare gun and how to sabotage railroad tracks.”²² None of Begolly’s online activities rose to criminal conduct, however, Ferguson explained.²³ “Putting out instructions on how to make a bomb, as harebrained as that may be and as dangerous as it is, is still free speech,” he said.²⁴ “On the other hand, the postings could be considered ‘material support’ to terrorists if the instructions were given to someone Begolly believed would use them.”²⁵

The case of Antonio Martinez offers another look into how law enforcement is trying to make sense of individuals who are openly calling for illegal behavior in the virtual space but not necessarily breaking the law in the physical world. “Before Martinez began

19. See Affidavit in Support of Criminal Complaint at 2, *United States v. Begolly*, No. 11-4M (W.D. Pa. Jan. 15, 2011), available at <http://www.talkingpointsmemo.com/documents/2011/01/criminal-complaint-against-emerson-begolly.php?page=3>.

20. *Id.*

21. *Id.*

22. Brian Bowling, *National Security Law Put into Play in Begolly Case*, PITTSBURGH TRIB.-REV., Jan. 22, 2011, http://www.pittsburghlive.com/x/pittsburghtrib/news/regional/s_719385.html.

23. *Id.*

24. *Id.*

25. *Id.*

posting radical, anti-American messages on his Facebook wall, he worked retail, selling children's clothes in a Maryland shopping mall."²⁶

According to his Facebook profile, Martinez attended Laurel High School in Maryland in 2005 and is married.²⁷ "Martinez [had] been arrested before, but the charges against him were far from terror-related. In 2006, Martinez was charged with armed robbery in Montgomery County, Md., when he was 16, according to court records. . . . And in 2008, he was convicted of theft and was sentenced to 90 days in jail."²⁸ But in 2010, after newly converting to Islam, Martinez began to post hostile messages openly on Facebook.²⁹

In late September 2010, Martinez posted on his Facebook wall that "[t]he sword is cummin the reign of oppression is about 2 cease inshallah ta'ala YA muslimen! don't except the free world we are slaves of the Most High and never forget it!"³⁰ Several days later, he posted to Facebook that "Any 1 who opposes ALLAH and HIS Prophet PEACE.Be.upon.Him I Hate u with all my heart."³¹ While in no way illegal, it was his extremist Internet activities that initially put him on the radar of authorities.

Martinez's Facebook posts were apparently so concerning to his unnamed associate that he reported Martinez to the federal authorities.³² It was only after his online postings had brought him to the attention of law enforcement that Martinez dove headlong into preparations for an actual terrorist attack.

VI. HOSTILE CONTENT

In a growing number of cases, American al Qaeda supporters seeking to emulate their al Qaeda heroes, particularly Anwar al-Awlaki, use the Internet as a proxy for real action. They use it to vent their anger and frustration. The word becomes their weapon.

26. Mara Gay, *Who Is Accused Baltimore Terrorist Antonio Martinez?*, AOLNEWS (Dec. 9, 2010), <http://www.aolnews.com/2010/12/09/who-is-accused-baltimore-terrorist-antonio-martinez>.

27. *Id.*

28. *Id.*

29. Affidavit in Support of Criminal Complaint at 3, *United States v. Martinez*, No. 10-4761-JKB (D. Md. Dec. 8, 2010), *available at* <http://documents.nytimes.com/criminal-complaint-united-states-v-antonio-martinez>.

30. *Id.*

31. *Id.*

32. *See Id.*

And the anonymity of the Internet provides just enough cover for them to weaponize those words without deep reflection on the consequences. Awais Younis, the twenty-five-year-old man from Arlington, Virginia, was arrested on charges of making threatening communications across state lines.³³ Younis used his personal Facebook page in order to threaten to set off explosives, according to an affidavit for his arrest by a special agent with the FBI's Joint Terrorism Task Force.³⁴ The documents say Younis described how to build a pipe bomb and advocated placing bombs on the third and fifth cars of Washington, D.C., Metro trains because they "had the highest number of commuters on them and he could place pipe bombs in these locations and would not be noticed."³⁵ Younis also said he could put a bomb under a sewer head in Georgetown at rush hour "to produce the greatest number of casualties."³⁶ Using Facebook's chat feature, Younis told an unnamed associate who alerted authorities, that "you should be nervous. . . . [Y]ou want a reason to complain out me [sic] and my people. [I] will give you one."³⁷

It was the hostile content of Younis's Facebook posts, not his acquisition of bomb materials, attempt to recruit others, or efforts to raise funds that got him arrested. The same became true for Zachary Adam Chesser, better known by his Internet sobriquet of "Abu Talhah al-Amrikee," the 20 year old Virginia man who was indicted for supporting a Somali-based al-Qaida affiliate, Al-Shabab.³⁸ Most Americans learned of him in April 2010, when Chesser's media stunt wishing death upon the creators of the *South Park* cartoon thrust him into the national spotlight.

Similar to Awais Younis, whose Internet content was deemed so hostile that he was arrested for it, Chesser was charged for his Internet threats. But Chesser's charges went beyond that of Younis. "Under the banner of his 'Abu Talhah al-Amrikee' brand, Chesser wanted to fundamentally transform English-language jihadist online activism. He was trying to narrow the gap between the rudimentary thinking of American jihadists and the more advanced

33. Affidavit at 1, *supra* note 14.

34. *Id.* at 2.

35. *Id.*

36. *Id.*

37. *Id.* at 5.

38. Jarret Brachman, *My Pen Pal, the Jihadist*, FOREIGN POL'Y, July 29, 2010, http://www.foreignpolicy.com/articles/2010/07/29/my_pen_pal_the_jihadist.

thinking among Arab jihadists.”³⁹ To do that, the Internet became his primary tool for action.⁴⁰

In support of their case, the prosecution presented a laundry list of evidence about Chesser’s online activities. This included specific mentions of videos he uploaded to YouTube on specific dates, postings to various blogs, including one titled “How to Help the Mujahideen.”⁴¹ “A search of Chesser’s home uncovered a handwritten note called ‘How to Destroy the West’ that contained a bulleted list of activities.”⁴² The prosecution charged Chesser with transmitting communications by Internet postings that threatened to injure the creators of the cartoon *South Park* and reposting clips from Anwar al-Awlaki demanding that Muslims assassinate anyone who blasphemes the Prophet Muhammad.

VII. THE INTERNET’S INSTRUMENTAL ROLE

Although Chesser was found guilty on the charge of making threatening communications, he had been charged on two additional counts. After being pulled from a plane bound for Africa with his infant son, Chesser was indicted in the Eastern District of Virginia on charges of soliciting others to threaten violence and material support to terrorists. Chesser’s online postings provided the authorities with the probable cause they needed to arrest him.

The charge of soliciting others to engage in violent or threatening conduct was evidenced by the broad calls he made in his Internet postings and blog posts for others to leave suspicious packages that looked like package bombs in public places. Even though these packages were otherwise harmless, their purpose was to desensitize the public and law enforcement authorities to the threat of actual package bombs. He also posted the entire leaked United States Transportation Security Administration manual titled *Aviation Security Screening Management Standard Operating Procedures* with the goal of helping others to thwart those safeguards.

39. *Id.*

40. *Id.*

41. Affidavit at 11, *United States v. Chesser*, No. 1:10-MJ-00504-TCB (E.D. Va. Sept. 21, 2010), available at <http://intelfiles.egoplex.com/2010-07-21-chesser-affidavit.pdf>.

42. *Terror Suspect Pleads Guilty in Threat against South Park Creators*, CNN.COM (Oct. 20, 2010), http://articles.cnn.com/2010-10-20/justice/us.south.park.terror.threat_1_material-support-federal-court-charges/?_s=PM:CRIME.

Additionally, he posted a link to 200 “books on Jihad, Islam and Warfare,” and in which, under a section titled “Preparation,” he included a book, titled “*Guerilla Air Defense, Antiaircraft Weapons and Techniques for Guerrilla Forces* containing, among other items, information on the construction of antiaircraft missiles, and tactics, techniques and weapons for targeting aircraft, including jet airplanes and helicopters.”⁴³

Finally, with regard to the charge of material support to a designated terrorist organization, Chesser was charged both individually and through recruitment of other personnel, publicity, and training to the foreign terrorist organization al Shabaab. He was charged for his attempt to travel to Somalia to fight for, and at the direction of, al Shabaab. Chesser was also charged for his posting of material related to violent jihad and its tactics on the Internet for, and at the instruction of, al Shabaab.⁴⁴

What is important to recognize is that the overwhelming amount of evidence presented by the prosecution in order to support the charges against Chesser’s al Qaeda-related activities was tied to his use of the Internet. For Chesser, the Internet was an instrument by which he could advance al Qaeda’s agenda in this country without actually having to conduct an attack. Believing himself to be safe from arrest because he was engaged in what he thought were subcriminal activities protected by the First Amendment, Chesser, like a growing number of American al Qaeda supporters, wielded the Internet as a tool by which he could proselytize, provide counsel, and even conduct rhetorical attacks.

VIII. CONCLUSION

America’s law enforcement community is finding itself having to reconceptualize its understanding of what constitutes support for terrorism. Rather than the conventional ways of viewing support—acquisition of explosives, fundraising, clandestine recruiting, and other operational tasks—al Qaeda’s strategic recalibration has introduced a wholly new dimension to American homegrown terrorism.

Rhetorical support by way of the Internet is now being

43. Statement of Facts at 12, *United States v. Chesser*, No. 1:10-cr-00395-LO (E.D. Va. Oct. 20, 2010) (internal quotation marks omitted, italics added), available at http://s88179113.onlinehome.us/2010-10-27/USA_v_Chesser-Statement_of_Facts.pdf.

44. For more about Chesser’s online activities, see Brachman, *supra* note 38.

promoted as an equivalent way to support al Qaeda in the United States. By making a website, sending a text message, posting on Facebook, or uploading a video to YouTube, an individual can, in essence, become al Qaeda.

Al Qaeda's hope is that, by hooking an individual at a low, subcriminal level of participation, the individual will organically and spontaneously decide to commit a terrorist attack. But short of that decision, they are content to cultivate an army of rhetorical soldiers.

The challenge for law enforcement in this country is twofold. First, as a growing number of individuals engage in behavior that teeters on the line of legality, resources become increasingly stretched. That, however, is part of al Qaeda's grand strategy. Since law enforcement cannot actively monitor all of the lone voices espousing pro-al Qaeda sentiment for the one or two who decide to go operational, they will invariably allow some to filter through the cracks.

On the flip side, as law enforcement seeks to ferret out those al Qaeda supporters who demonstrate a greater likelihood of going operational, or whose online rhetoric crosses the line of legality, al Qaeda believes that they will invariably alienate other Muslims in this country, including Muslims who do not support violence or extremism. That alienation, however inadvertent it may have been, will only contribute to the ranks of those fertile for future recruitment. America's law enforcement community must therefore tread carefully and vigilantly, ensuring that it strives to find that balance between vigilant monitoring and nuanced discretion.