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Message from the Editor-in-Chief

As JTSA entered its thirteenth year, we turned our focus to the ongoing War on Terror that sparked the creation of this organization and only predates it by a few short years. We began with the idea of finding proposed solutions to the many challenges presented by a war against an ideology. In order to understand where we are going, however, we must understand how we arrived at this point.

This year's publication, *Reflections on the War on Terror*, examines many important issues in a manner that can help chart the path forward. The majority of the articles provide insight into our enemies' minds so that we can better understand how to approach the War on Terror. This thirteenth edition of JTSA also includes articles analyzing the threat from North Korea, as well as the limits on Executive authority regarding a unilateral use of force. While these issues may transcend the War on Terror itself, they remain critical points of concern. The following pages include the abstracts of the papers that will be published in our upcoming issue, along with the biographies of our distinguished authors.

Thank you to all authors who contributed and to the JTSA editorial staff for assisting in preparing our latest issue. I am particularly grateful to Elizabeth Snyder and Conor Sullivan, without whom I would have been completely overwhelmed. We hope you enjoy this year's *Journal on Terrorism and Security Analysis*.

Sincerely,

Ryan D. White

Editor-in-Chief

“The Highest Rank of Worship”: What a Convicted Terrorist Taught Me About Islamic Radicalization and the False Promise of Martyrdom

Thomas N. Wheatley

Introduction

This paper provides a synopsis of events occurring August 13-17, 2017, at Guantanamo Bay, Cuba, with the goal of exposing a broader audience to the secular forces that fuel radicalization and violent jihad. Throughout the synopsis, the author’s external research, observations, and reasonable inferences are inserted where necessary for clarity and/or context. The author’s personal reflections and analysis on said events follows the substantive account.

DAY 1 - August 13, 2017 (Sunday)

One of the first things a person notices on approach to Guantanamo Bay (GTMO) is the intensely blueish hue of the water. Nothing like the gray, murky waters of the Potomac River back home in Washington; the bay’s aquatic radiance stands in stark contrast to the hazy, brown mountain ridges that serve as Guantanamo’s backdrop. Admittedly, the mountains were themselves a somewhat surprising sight. Although Cuba has a tropical climate, the Bay part of the island, from the air at least, looks more like a desert—cacti included—compared to the lush, Caribbean paradise widely imagined.

I surveyed the landscape as our aircraft, a chartered jet that had departed Joint Base Andrews earlier that morning, slowly descended in preparation for landing. A few minutes later, a gentle bump and tire screech confirmed our arrival at Leeward Point Field. Rumbling to a slow roll, the plane taxied off the runway and up to a small passenger terminal building where the welcoming committee—a cadre of U.S. military and civilian officials from the base—extended their salutations and verified our travel documents.

On this visit to GTMO, I am serving as a non-governmental organization (NGO) observer appointed on behalf of Judicial Watch to report on pretrial hearings in the United States’ case against Abd al Hadi al-Iraqi—or, more precisely, against the man prosecutors claim is Abd al Hadi al-Iraqi. The defense argues the accused is actually Nashwan al-Tamir, a victim of mistaken identity. Yet prosecutors insist the man they have in custody is Abd al Hadi al-Iraqi, one of al Qaeda’s liaison to the Taliban, commander of al Qaeda’s fighters in Afghanistan and Pakistan between 2002 and 2004, and senior advisor to the first General Emir of al Qaeda, Osama bin Laden.

My selection as an observer arose from a collaborative effort between Judicial Watch and the National Security Institute at George Mason’s Antonin Scalia Law School. In addition to an escort from the Office of Military Commissions, five other

NGO observers accompanied me: Kasie Durkit, from the Georgetown University Law Center; Scott Johnston, from Human Rights First and Columbia Law School; Anil Kalhan, a Drexel University law professor representing the New York City Bar Association; Bob Satti, a Connecticut prosecutor from the National District Attorneys Association; and Tyler Smith, from the Indiana University McKinney School of Law's Military Observation Commission Project. Despite our varied backgrounds, our job function was simple: to attend, observe, be observed, analyze, critique, and report on the commissions.

After deplaning, we boarded a ferry that took us across the bay to Camp Justice, a community of tents and other temporary structures designed to house the soldiers, lawyers, NGO observers, media, and civilian personnel associated with the proceedings. Adjacent to Camp Justice was the Expeditionary Legal Complex (ELC), a small, secured compound containing holding cells, restrooms, and a courthouse. Both Camp Justice and the ELC sat on what remains of McCalla Field, a deactivated naval airfield used to house Haitian and Cuban refugees in the 1990s.¹ It would not have been obvious Camp Justice was once an airstrip except for the old hangar and control tower; the abundance of weeds and shrubs slowly reclaiming the asphalt surface made it clear the old runway was losing its battle with Mother Nature.

At the ELC, we secured our official NGO identification badges and found our way to the assigned NGO tents, which thankfully were fitted with both electricity and air conditioning. Unwrapping our freshly cleaned sheets from their sealed plastic bags, we made our beds, unpacked our suitcases, and after a hearty dinner at the base's galley, began preparing for the first round of hearings scheduled for the next morning.

DAY 2 - August 14, 2017 (Monday)

The next day's proceedings were enlightening, but could fairly be described as a lawyer's paradise. Put less euphemistically, the proceedings were fairly humdrum, consisting primarily of disputes concerning discovery procedure, disclosure requirements, and the logistics of the deposition of Ahmed Mohammed Ahmed Haza al Darbi, scheduled to occur the next day.

A major portion of the August 14 hearing concerned whether the accused could be permitted to use a laptop computer to assist in organizing his case.² The defense argued that because the number of documents in the case neared 33,000, the accused could not reasonably be expected to meaningfully assist in the preparation of his defense without using a laptop computer for organizational purposes.³ The government pointed out that laptops had only been provided historically to pro se defendants (defendants choosing to proceed without counsel), and that no court has

1 See, e.g., Adam Oberdalhoff, *Repurposing Gitmo*, GUANTANAMO PUB. MEMORY PROJECT (Oct. 15, 2012), <http://blog.gitmomemory.org/2012/10/15/repurposing-gitmo/>.

2 Transcript of Motions Hearing of August 14, 2017 at 1516, *United States v. Abd al Hadid al-Iraqi* (Office of Military Comm'ns 2017), [http://www.mc.mil/Portals/0/pdfs/allraqi/AI%20Iraqi%20\(TRAN-S14Aug2017-AM1\).pdf](http://www.mc.mil/Portals/0/pdfs/allraqi/AI%20Iraqi%20(TRAN-S14Aug2017-AM1).pdf).

3 *Id.* at 1519-20, 1522.

held that a criminal accused has a right to a personal laptop computer.⁴

DAY 3 - August 15, 2017 (Tuesday)

By our second visit to the ELC, our group was well-acquainted with the formidable security measures necessary for the safety of the proceedings. Although the ELC is barely the size of a football field, its security apparatus may as well belong to Fort Knox—in addition to several layers of razor wired fences, guard towers, and powerful spotlights shining on the occupants below, the ELC has multiple security checkpoints, complete with armed guards, metal detectors, and multiple ID checks.⁵ The guards themselves are U.S. military personnel, but their nametapes are concealed from visitor’s view.⁶ NGO observers like myself are not permitted to move about the ELC without an escort, and even then, may only see certain areas of the facility. Photographs of the facility—even from a distance—are strictly prohibited.⁷ All this, of course, is in addition to the more routine security measures common to all military installations.

Once inside the courtroom, we took our seats in the gallery, a small room at the rear of the courtroom with large windows peering inside that allowed for real-time visual observation of the proceedings. Audio streamed in from the courtroom through a television screen and intercom system, which operated on a forty-second delay designed to keep those in the gallery from hearing classified information were it to be inadvertently disclosed by a party or witness.⁸ Although there were multiple cameras in the courtroom, during the deposition, the television in the gallery was linked to a single camera trained on the witness box.

Sitting next to the NGO observers in the gallery were family members of victims killed by the accused’s alleged actions. In one section sat the sister, brother, and mother of Private Jerod Dennis, an infantryman who died of wounds he sustained during a firefight in Shkin, Afghanistan on April 25, 2003.⁹ Adjacent to the family members of Private Dennis sat the widow of William “Chief” Carlson, a 21-year Army Special Operations veteran who was killed on October 25, 2003, when his team was ambushed near the border of Afghanistan and Pakistan.¹⁰ The victims’ family members sat immediately behind the prosecution’s side of the courtroom.

4 *Id.* at 1518, 1520-21.

5 For more information, see Carol Rosenberg, *Guantánamo Prison: A Primer*, MIAMI HERALD (Oct. 12, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article1939250.html>.

6 Given the nature of this hearing, some events are attributable only to firsthand experience and cannot be verified by any independent, third party source.

7 John Knefel, *The World’s Weirdest Courtroom is in Guantanamo Bay, Cuba*, INVERSE (Dec. 12, 2016), <https://www.inverse.com/article/25066-guantanamo-bay-court>.

8 This delay has been the subject of much controversy. See Carol Rosenberg, *Judge in 9/11 Trial OKs Audio Delays, Censor at Guantánamo*, MIAMI HERALD (Nov. 7, 2014), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article3620242.html>.

9 Silas Allen, *A Decade Later, Antlers Soldier’s Death Leaves a Void that Can’t Be Filled*, NEWSOK (Mar. 25, 2013), <http://newsok.com/article/3770936>.

10 See ROBERT B. DURHAM, *FALSE FLAGS, COVERT OPERATIONS, & PROPAGANDA* 471 (1st ed. 2014).

NGO observers, media, and other visitors sat on the other side of the gallery, immediately behind the defense tables.

After I sat down, I began scanning the courtroom in front of me. Rows of tables occupied the courtroom. On the defense side, six rows of tables separated the gallery from the judge's bench. This layout was not arbitrary; the courtroom was planned with the 9/11 case in mind.¹¹ There is one table for each of the original six defendants: Khalid Shaikh Mohammad, Walid Muhammad Salih Mubarek Bin 'Attash, Ali Abdul Aziz Ali, Ramzi Bin al Shibh, Mustafa Ahmed Adam al Hawsawi, and Mohammed al-Qahtani (in 2009, the Convening Authority, Susan J. Crawford, ultimately declined to refer the case against Mohammed al-Qahtani because she believed his treatment in captivity met the legal definition of torture).¹² On the prosecution's side, there were fewer, but still multiple tables. An aisle and lectern separated the prosecution from the defense, and the judge's bench stood at the front of the courtroom.

As I took in the scene, my gaze fell on a thin, elderly man seated at the leftmost end of the first defense table. The man appeared well-groomed and healthy; he wore a white robe, black vest, turban, and had a long, ashen beard. I watched as the man leaned over to another man seated next to him, whispered something, and chuckled.

"That's the accused," one of the other NGO observers informed me.

I glanced over at the victims' family members to my right. They were also looking at the man the prosecution believed to be Hadi. Although their expressions seemed calm and focused, it was impossible to discount the moment; they were, after all, looking upon the man accused of orchestrating the deaths of their loved ones.

Al Darbi's Deposition Begins

A faint crackling sound over the intercom system signaled the proceedings were about to begin.

As of this writing, Hadi's case remains at the pretrial stage. In a few moments, another detainee, Ahmed Mohammed Ahmed Haza al Darbi, would begin testifying against Hadi as a part of a pretrial agreement al Darbi made with the prosecution.¹³ For the day's proceedings, the judge was serving as the deposition officer.

The deposition officer, seated at the judge's bench at the front of the courtroom, leaned into the microphone and spoke, his voice filling the gallery. After ensuring the prosecution and defense were prepared to go forward, the deposition officer initiated the deposition and invited the prosecution to approach the lectern. The witness, al Darbi, sat upright in the witness box, which sat to the left of the deposition officer. Al Darbi was clean-shaven and wore a dark suit. After swearing

11 Carol Rosenberg, *New Court Can Silence Captives Who Tell Secrets*, MIAMI HERALD (May 31, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article1937779.html>.

12 Bob Woodward, *Guantanamo Detainee Was Tortured, Says Official Overseeing Military Trials*, WASH. POST (Jan. 14, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html>.

13 Thomas Wheatley, *Trump, Honor Obama's Agreement to Release Guantanamo Detainee*, THE HILL (Oct. 4, 2017), <http://thehill.com/opinion/national-security/353868-trump-honor-obamas-agreement-to-release-guantanamo-detainee>.

al Darbi in and exchanging a few introductory remarks, the examining prosecutor pursued a more substantive line of questioning. Al Darbi spoke through an interpreter.

Soon, what started as a simple back and forth transformed into a rare and disturbing first-hand account of a man who had once pledged his life to Islamic extremism.

Al Darbi's Testimony¹⁴

Almed Mohammed Ahmed Haza al Darbi was born in Saudi Arabia in 1975 and grew up in Jizan. The second oldest child of ten (eight brothers and one sister), al Darbi was born into a middle-class Saudi family. His father, whom al Darbi described as a somewhat difficult parent, worked at the local cement factory. Al Darbi's family members were not devout in their Islamic faith and did not attend mosque regularly.

Al Darbi led a troubled childhood. He attended school until the age of sixteen, when he dropped out due to "familial problems." As a teenager, he used drugs on a regular basis, including hashish and khat. At the age of seventeen, al Darbi served in the Saudi Arabian Army for a little over a year and a half as an artillery soldier, a decision he said arose out of a desire to "join that line" with his friends. His basic training included instruction in infantry tactics, weapons, hand-grenades, and obedience. Al Darbi also developed a proficiency for rifle handling and attended armor school. Following his brief stint in the Army, al Darbi went to Jeddah and drove a taxi cab for a few months but eventually returned to Jizan.

By 1994, the 20-year-old al Darbi was unhappy. Unemployed and dissatisfied with the direction his life was heading, al Darbi began attending a local mosque regularly. Although he lacked a strongly religious upbringing, he soon found that retreating further into Islam gave him the purpose he craved. In addition to attending mosque, al Darbi began reading books on Muhammad and the ethics and jurisprudence of Islam. He met an older man from the mosque, who soon introduced al Darbi to the idea of jihad, or "self-defense" against spiritual corruption and foreign invaders of Muslim homelands, which was purported to be "the highest rank of worship" in Islam.¹⁵

Prior to attending mosque regularly and meeting the old man, al Darbi said he was unaware jihad existed, but he was nonetheless intrigued. Sermons delivered at the mosque called for people to wage jihad in Bosnia, where Muslims were fighting

14 This section seeks to summarize many of the points al Darbi made in his direct deposition testimony, following questions posed by the prosecution, without forming judgments as to the truth or falsity of al Darbi's statements. For flow, this piece does not preface each sentence by "he said" or "he stated." In addition, as of the time this article was written, the unredacted transcript and video of Al Darbi's testimony remains sealed by court order. Until such material is unsealed, this article, to the author's best knowledge, is the only publicly-available record providing a detailed account of al Darbi's August 15-16, 2017 testimony to the Commission. When unsealed, the unredacted transcript and video may be released by the Office of Military Commissions. *Cases, OFF. MIL. COMMISSIONS*, <http://www.mc.mil/CASES.aspx> (last visited Feb. 23, 2018).

15 According to the Islamic Supreme Council of America, the term "jihad" does not exclusively refer to violent jihad. See Shaykh Muhammad Hisham Kabbani & Shaykh Seraj Hendricks, *Jihad: A Misunderstood Concept from Islam*, ISLAMIC SUPREME COUNCIL AM., <http://islamicsupremecouncil.org/understanding-islam/legal-rulings/5-jihad-a-misunderstood-concept-from-islam.html?showall=1> (last visited Feb. 23, 2018).

against Serbian aggression. Al Darbi, who had “dreamed about” becoming a martyr for Islam and achieving “eternal life,” was eager to oblige, and, over his family’s objections, joined the Bosnian mujahideen.

When he arrived in Bosnia, al Darbi surrendered his possessions and received a Bosnian Army uniform. Along with many other Saudis, he was sent to a mujahideen training camp, where he received instruction on small arms (specifically, the Kalashnikov rifle), shooting, tactics, explosives, mortars, and anti-aircraft guns. The training took several months, and was reportedly more advanced than the training he had received in the Saudi Arabian Army.

After completing his training, Bosniak commanders sent al Darbi to the front lines. Al Darbi was excited; his chance at martyrdom—and the everlasting admiration it would supposedly draw from other Muslims—was within his grasp. Given his eagerness, al Darbi embraced his exceedingly-risky combat role. His job was to “clean trenches”—a genteelism for the act of entering enemy trenches and killing all enemy combatants therein. Surely, al Darbi reasoned, martyrdom could not elude someone with such a dangerous job?

Yet elude him martyrdom did. After his first battle, al Darbi felt “depressed” by his failure to die at the enemy’s hands. Despite fighting in several other battles, al Darbi would survive all of them, and would ultimately be forced to return to Saudi Arabia only nine months after his arrival in Bosnia. The Dayton Accords, which would bring an end to the Bosnian War, were signed on December 14, 1995.¹⁶

Back in Jizan, al Darbi soon fell back into a life of dissatisfaction. Although he obtained a job at a cement factory south of Jizan, he found his work boring and unfulfilling. He missed the excitement of jihadi life and frequently traveled to Mecca, where he met and reminisced with other mujahideen fighters of the Bosnian war. One of these fighters—Khalid Muhammad Abdallah al-Mihdhar—would later become his brother-in-law, but their relationship would be short-lived. Only a few years later, in January 2000, Khalid al-Mihdhar would travel to the United States by way of Bangkok to study English and undergo flight training in preparation for a plot then cryptically referred to as the “planes operation.”¹⁷

Al Darbi also met Salim Ahmed Hamdan—Osama bin Laden’s future bodyguard and chauffeur, as well as the future namesake of the 2006 landmark Supreme Court case *Hamdan v. Rumsfeld*, the case in which the Court deemed military commissions to be unlawful absent congressional authorization or especially exigent circumstances.¹⁸

Returning from Mecca, al Darbi was more committed than ever to return to jihad, which for him meant joining the fight in Chechnya. Before he could once again wage war in Islam’s name, however, he required additional training, which he

16 General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz.-Croat.-Fed. Rep. Pub. Yugo., Dec. 14, 1995, 35 I.L.M. 75.

17 NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT 180-81 (2004) [hereinafter 9/11 COMMISSION REPORT].

18 548 U.S. 557, 567, 570, 591, 593-95 (2006).

received at a training camp in Afghanistan. With the assistance of Abu Zubaydah, who operated a safe house¹⁹ in Peshawar for mujahideen fighters, al Darbi crossed the border into Afghanistan, and, after making a stop in Jalalabad to purchase traditional Afghan clothing, began training at Khalden training camp near Khost, Afghanistan. The year was 1996.

The camp's training program was led by Ibn al-Sheik al-Libi, a Libyan national. Prior to its closure, the camp would train the likes of dozens of infamous Islamic extremists, to wit: Ahmed Ressam, the LAX "millennium bomber,"²⁰ Mohamed Rashid al-Owhali, responsible for bombing American embassies in Africa,²¹ Ramzi Yousef, the 1993 World Trade Center bomber,²² Majed Moqed and Satam al-Suqami, both 9/11 hijackers,²³ and Richard Reid, the shoe bomber.²⁴ In addition to advanced weapons and explosives instruction, trainees were indoctrinated with a more aggressive Islamic teaching—one which al Darbi claimed required him to abandon the interpretation of Islam he had been taught originally. Despite disagreements over al Qaeda's influence in the camp, there is little dispute that its purpose was to train Islamic extremists for violent jihad.²⁵

While at the camp, there was occasional talk about Osama bin Laden. At the time, although he knew of the prominent bin Laden family through newspaper coverage, al Darbi had never personally met with bin Laden. That would change by the winter of 1996 after al Darbi finished his training at the Khalden camp.

Al-Libi arranged for the promising young al Darbi to meet with bin Laden at bin Laden's compound in Jalalabad. The meeting lasted about one hour, a great portion of which bin Laden spent venting his frustrations with the Saudi government and other Islamic scholars. At some point, bin Laden focused his attention on al Darbi and inquired as to the purpose of the meeting. Al Darbi explained his need for training more advanced than the sort he had received in Bosnia and at the Khalden camp, and knew al Qaeda's camps could provide such training. To attend, however, al Darbi would need bin Laden's blessing. After considering al Darbi's credentials as a warrior and faithful disciple of Islam, bin Laden assented, and al Darbi was sent to a camp known as the Jihad Wahl training camp near Khost.

For al Darbi, the difference between the Jihad Wahl camp and the previous training camps was immediately apparent. The training at Jihad Wahl—which

19 The actual term the interpreter used in the deposition was "guest house," but "safe house" better describes the purpose of the structure.

20 Transcript of Record at 545, 549, 572, *United States v. Haouari*, No S4 00 Cr. 15 (S.D.N.Y July 3, 2001).

21 Mark Fineman, Bob Drogin & Josh Meyer, *Camps Are Rubble but Their Threat Remains*, L.A. TIMES (Dec. 18, 2001), <http://www.latimes.com/la-121801camps-story.html?barc=0>.

22 *Id.*

23 9/11 COMMISSION REPORT, *supra* note 17, at 234.

24 Maria Ressa, *Sources: Reid is al Qaeda Operative*, CNN (Dec. 6, 2003), <http://www.cnn.com/2003/WORLD/asiapcf/southeast/01/30/reid.alqaeda/>.

25 See, e.g., Verbatim Transcript of Combatant Status Review Tribunal Hearing for ISN 10016 at 5, 9-10 (Mar. 5, 2007), <https://www.aclu.org/legal-document/verbatim-transcript-combatant-status-review-tribunal-cs-rt-hearing-abu-zubaydah>.

lasted several months -was “super advanced,” featuring private special training and an introduction to newer, different tactics, such as instruction on shooting from a moving vehicle and “execution training.” The camp was not only better equipped and supported than other camps; everything from the living quarters to the food was of superior quality. More weapons, more ammo, and an entire library of jihadi literature made the camp ideal for further radicalization and honing combat efficacy.

Following his training at Jihad Wahl, al Darbi was invited to fight for the Taliban by Abu Jandal and Asim Abdulrahman; the former al Darbi had first met in Bosnia, and the latter was a close follower of Osama bin Laden and son of the so-called “Blind Sheik,” the man sentenced to life in prison for his involvement in the 1993 World Trade Center bombing.²⁶ Al Darbi accepted this invitation, and by the spring of 1997 he was a full-fledged Taliban loyalist.

Shortly after finishing his training at Jihad Wahl and pledging allegiance to the Taliban, al Darbi traveled with other jihadists to an al Qaeda safe house in Kabul to await further instructions. This particular safe house proved a popular hideout among senior al Qaeda leaders, including Abu Khayr al-Masri, bin Laden’s deputy, Saif al-Adel, al Qaeda’s senior intelligence officer, and Salim Ahmed Hamdan—all in addition to Osama bin Laden himself. It was also at this safe house where al Darbi first laid eyes on the accused, Abd al Hadi al-Iraqi; in fact, al Darbi claimed, it was Hadi who operated the site.

The safe house served as a sort of forward operating base; prior to departing for the front lines, the jihadists at the safe house were issued weapons, ammunition, and grenades. Fitted for battle and ready to seize another opportunity at martyrdom, the jihadists departed Kabul for the Panjshir Valley. At the time, Afghanistan was embroiled in a bitter civil war over struggles to fill the power void left by the fall of the Soviet Union. Taliban fighters clashed with the Northern Alliance, an anti-Taliban force under the command of the “Lion of the Panjshir,” Ahmad Shah Massoud.²⁷ Amidst the grisly conflict and daily firefights, al Darbi served in an all-Arab unit, led by Abu Mohammed al-Masri as an assistant reconnaissance soldier, providing information on enemy locations and movement to senior Taliban commanders.

He remained in the Panjshir Valley for roughly a month before leaving to accompany a fellow jihadist to the rear for medical attention. By the time al Darbi made it back to the front lines, Massoud had successfully pushed back the Taliban line; the Taliban’s new headquarters was further south at Bagram. More than the location had changed, however; Hadi was now in command of all Arab jihadists. Al Darbi worked under Hadi’s command daily and regularly received orders to engage the enemy, which al Darbi dutifully obeyed. “I am a fighting soldier,” al Darbi remarked. “I have to follow orders.”

Having established his Hadi bona fides, al Darbi then gave prosecutors the

26 Von Nafees Takkar, *In der Trutzburg des sanften Scheichs*, SÜDDEUTSCHE ZEITUNG (May 17, 2010), <http://www.sueddeutsche.de/politik/bin-laden-in-der-trutzburg-des-sanften-scheichs-1.654970>.

27 Quil Lawrence, *In Afghanistan, Assessing a Rebel Leader’s Legacy*, NPR (Sept. 9, 2011), <https://www.npr.org/2011/09/09/140333732/in-afghanistan-assessing-a-rebel-leaders-legacy>.

evidentiary connection they needed: he identified the accused—who had remained silent throughout al Darbi’s testimony—as Abd al Hadi al-Iraqi.

After identifying the accused, al Darbi returned to discussing his time at Bagram.

Only a few weeks after his arrival at Bagram, al Darbi accepted an offer by Hadi to relocate to just north of Kabul and resume fighting there. By this time, however, the jihadist’s will to fight was dwindling. Not long after al Darbi arrived at the battlefield north of Kabul, in 1997, Saudi fighters slowly began to trickle away from the front lines and return home. Al Darbi himself admitted to being disenchanted with both al Qaeda and bin Laden—neither seemed serious about defeating the enemy. With al Qaeda lacking the tenacity to bring about the total destruction of Massoud’s forces, the fight lacked purpose, and thus no longer seemed like a valiant exercise in jihad. Al Darbi cast aside his arms and retreated to Kandahar, where he could enter Pakistan and secure the paperwork necessary to get back home to Saudi Arabia.

Osama bin Laden was furious. In his view, al Darbi was turning his back on his Muslim brothers and fellow warriors. After failing to convince al Darbi to remain in the fight, despite his anger, bin Laden eventually relented and accepted al Darbi’s decision. Soon thereafter, Salim Hamdan provided al Darbi with the funds and resources necessary to get back to Saudi Arabia.

Returning to his parent’s house, al Darbi remained a committed jihadist. Along with other fighters from the Afghanistan civil war, he would frequently visit Mecca. His reprieve from a transient life would be cut short, however, when Saudi Arabian authorities began cracking down on jihadists hiding in the country. Al Darbi escaped to Yemen, where there was less pressure from the government. He later married Muna al-Hada, Khalid al-Mihdhar’s sister, in 1998 in a traditional Islamic ceremony and took his new bride to Afghanistan.

By that time, whatever dissatisfaction al Darbi felt about al Qaeda only a year earlier had apparently dissipated; he soon found himself meeting once again with bin Laden and offering his support for al Qaeda’s mission. In that meeting, al Darbi describe bin Laden as “cold;” it was obvious to al Darbi that bin Laden was still upset over al Darbi’s prior return to Saudi Arabia. Still, bin Laden granted permission to allow al Darbi to rejoin the fight.

Al Darbi’s first stop was at a safe house in Kabul, where he again saw Hadi daily. The safe house was an ideal operations center, as it was equipped with wireless communication capabilities, which Hadi used to check on the status of his fighters and receive the latest reports from the front. In terms of command structure, little had changed; Hadi was still the commander of all Arab fighters, serving as their liaison to the Taliban.

Between 1998 and 2000, al Darbi served as an instructor at the Al Farouq training camp under the direction of the camp’s emir, Abu Faraj al-Libi. Although al Darbi’s duties were limited at the camp, he frequently helped supply the camp and taught weapons proficiency to recruits, all in exchange for what he described as “social assistance” from al Qaeda.

At this point in his life, al Darbi was a devoted member of al Qaeda. He swore *bayat*—an oath of allegiance—personally to Osama bin Laden and vowed to follow the general emir’s orders, whatever they be. Around the same time period, in February 1998, bin Laden issued a fatwah under the banner of the “International Islamic Front for Jihad against the Jews and the Crusaders,” declaring it was God’s will that every Muslim “‘kill Americans . . . wherever and whenever’ found,” and to “kill the Americans and their allies, civilians, and military.”²⁸ A few months later, bin Laden accentuated his fatwah’s goal: “[I]t is the duty of the Muslims to prepare as much force as possible,” said bin Laden, “to terrorize the enemies of God.”²⁹

Ever the loyal soldier, al Darbi would prove all too ready to follow those orders.

DAY 4 - August 16, 2017 (Wednesday)

The next day, August 16, marked the second day of the al Darbi deposition and the third day of the Hadi hearings. The accused was not present for the second day of the deposition.

After asking a few questions to clarify ambiguities in Tuesday’s testimony, the prosecution began showing al Darbi a battery of exhibits for identification and authentication. These exhibits included images of bin Laden’s compound near Kandahar airport, multiple high profile al Qaeda leaders, and even a video entitled “Al Fitr at Tarnak Farm,” which depicted a group of al Qaeda fighters, including bin Laden, celebrating Eid al Fitr, a Muslim holiday marking the end of Ramadan. The video’s timestamp indicated January 8, 2000; less than a year later, bin Laden ordered Tarnak Farm, an al Qaeda compound near Kandahar, evacuated in fear of retaliation for al Qaeda’s involvement in the October 2000 bombing of the *USS Cole*. However, any prospect of American retaliation was “lost in the transition” to the new Bush administration.³⁰

Not long after the attack on the *USS Cole*, al Darbi traveled to Karachi, Pakistan in an attempt to smuggle his wife and daughter back into Yemen. Pakistan was home to several al Qaeda operatives who would help facilitate such travel and provide the papers necessary for entrance into Yemen. While in Pakistan, al Darbi agreed to work for and live with Abd al-Rahim al-Nashiri, a Saudi Arabian citizen and the alleged mastermind of the *USS Cole* bombing. Included in al Darbi’s job duties was collaboration on an upcoming plot to sink one or more oil tankers in the Strait of Hormuz, effectively closing off the Strait and the maritime access it provided to the UAE, Qatar, Bahrain, Saudi Arabia, Kuwait, Iraq, and Iran. Specifically, al Darbi’s job

28 Stipulation of Fact at 2, *United States v. Ahmed Mohammed Ahmed Haza Al Darbi* (Office of Military Comm’n’s Dec. 20, 2013), [http://www.mc.mil/Portals/0/pdfs/alDarbi2/Al%20Darbi%20II%20\(PE001\)%20Stipulation.pdf](http://www.mc.mil/Portals/0/pdfs/alDarbi2/Al%20Darbi%20II%20(PE001)%20Stipulation.pdf).

29 *Id.* at 2-3.

30 Glenn Kessler, *Bill Clinton and the Missed Opportunities to Kill Osama bin Laden*, WASH. POST (Feb. 16, 2016), https://www.washingtonpost.com/news/fact-checker/wp/2016/02/16/bill-clinton-and-the-missed-opportunities-to-kill-osama-bin-laden/?utm_term=.56f167b37fd3.

was to provide logistical support for another attack via boat, similar to the attack on the *USS Cole*; after receiving \$10,000 from al-Nashiri for operational expenses in the summer of 2001, al Darbi traveled to the UAE to search for and acquire a large wooden boat—one which could be used for launching smaller watercraft that would be used during the attack. After receiving further money and support from al-Nashiri (including falsified travel visas), al Darbi settled on a wooden ship named the *Adnan*, for which he paid 475,000 dirhams. He registered the boat in the UAE and renamed it the *al Shamsi*.

In early 2002, al Darbi and four other Yemeni operatives (Bassam Waji, Munir al Sharabi, Fayiz ali Najjar, and Gharib al Taizi) were living aboard the *al Shamsi* and training for their upcoming attack. The group purchased a smaller fiberglass boat, which they used to learn how to swim and improve their mariner skills.

As spring 2002 approached, al Darbi began to fear capture. In April 2002, at the direction of al-Nashiri, al Darbi cancelled the UAE registration of the *al Shamsi* and re-registered the boat under the flag of São Tome as the *al Rahal*. A month later, in May 2002, al-Nashiri instructed al Darbi to sail aboard the *al Rahal* to Mukallah, Yemen, where he would hand the ship over to Walid al Shiba, a terrorist cell leader tasked with leading the oil tanker attack, and pick up a bomb that would deal the fatal blow. Fearing his imminent capture, al Darbi instead diverted the ship to Bosaso, Somalia, where he stayed for ten days.

Al Darbi's near-decade of jihadist crusading would ultimately come to an end in June 2002, when he attempted to gain access to Azerbaijan following his stay in Somalia. After a four to five-hour layover in Djibouti, al Darbi was stopped by the Azerbaijani authorities, who had found \$150 in counterfeit money on his person. The subsequent arrest and search yielded two bankcards, a Saudi passport with fraudulent visas, and other travel receipts and documents. Not long thereafter, al Darbi found himself in the custody of the United States.

For the Strait of Hormuz plot, however, al Darbi's arrest was too little, too late. On October 6, 2002, a team of suicide bombers, acting on al-Nashiri's orders, attacked the *MV Limburg*, a French oil tanker carrying roughly 400,000 barrels of crude oil.³¹ Excluding the bombers, the attack killed one person and is said to have contributed to the temporary collapse of international shipping in the Persian Gulf.³²

Al Darbi's change in demeanor

Throughout his deposition, al Darbi, for the most part, appeared polite, attentive, and agreeable. He promptly answered the prosecution's questions in a concise, but helpful manner, and he seemed quite content to lend his assistance wherever possible.

That would change, however, when the prosecution began questioning

31 Jon Henley & Heather Stewart, *Al-Qaida Suspected in Tanker Explosion*, *GUARDIAN* (Oct. 6, 2002), <https://www.theguardian.com/world/2002/oct/07/alqaida.france>; see also Miami Herald Staff Report, *USS Cole Bombing Trial Guide*, *MIAMI HERALD* (Feb. 21, 2018), <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article100104397.html>.

32 Henley & Stewart, *supra* note 31.

him about his post-capture experiences. This apparent change in demeanor was understandable, for al Darbi would be recounting in vivid detail the abuse he endured at American hands at the CIA black site at Bagram, Afghanistan.

Following his capture, al Darbi arrived at Bagram and was promptly handcuffed, shackled, and hooded. After processing, which included a cavity search, al Darbi was given prison clothes, assigned a number, and ushered into an adjacent room, where he would be interrogated for the first time.

By al Darbi's account, the first interrogation was relatively tame. Restraining him in a standing position, interrogators screamed questions at him, trying to elicit any information they could on his involvement with al Qaeda. After the first session, al Darbi was escorted on foot to a small cell which had wooden walls, a cement floor, and a net ceiling, but no bathroom or bed.

Although al Darbi described subsequent interrogations as far worse, while on the stand during the deposition, he appeared to do his utmost to avoid divulging any details. However, the prosecution, needing to account for such treatment as it related to the credibility of his testimony against Hadi, would not be thrown off—they pressed al Darbi for answers:³³

Prosecutor's

Question: *Were you interviewed on the second day you were at Bagram?*

Al Darbi's Answer: *Yes.*

Q: *Did you tell the truth?*

A: *No.*

Q: *Why didn't you tell the truth in your second day interview?*

A: *I was afraid.*

Q: *Why were you afraid?*

A: *It's human nature.*

Q: *How long did the second day interview last?*

A: *I do not remember.*

Q: *Were you mistreated during this interview?*

A: *I do not remember.*

Q: *Did your situation change after the first day?*

A: *Yes, sir.*

Q: *How did it change?*

A: *I was taken for questioning in the morning and at night and it was tough questioning—the situation was harsh. It was harsher than before.*

Q: *Was it harsher than it had been previously?*

A: *Yes, everything was different after the first day.*

33 Given the unredacted transcript of the deposition is publicly unavailable, the following is based off the combined notes of three NGO observers present - Scott Johnston, Bob Satti, and the authors. Although much of the following is verbatim testimony, some parts have been reconstructed but nonetheless accurately reflect the substance of each exchange.

Q: How was it different? What changed?

A: It is hard to remember. Very hard to remember the details.

Q: Did the interrogators use “techniques” on you?

A: Many.

Q: Did they put you in stress positions?

A: Yes, very.

Q: Can you give us an example of a stress position that they used on you?

A: It was mainly putting pressure on the head while leaning on the back, sprinkling with water, kneeling with knees at a right angle.

Q: Did they use sleep deprivation on you?

A: Yes.

Q: Were you physically assaulted?

A: This happened.

Q: How long did the physical assaults last?

A: There were very many, I do not recall them. I do not remember.

Q: Were there bathroom facilities available to you? Were you allowed to use the bathroom?

A: There was no bathroom. In order to use the bathroom, I had to go to the street outside the building.

Q: Just to make sure I am understanding you correctly, you are saying that you were forced to go to the bathroom in public?

A: There was a box outside.

Q: How long did this treatment continue?

A: I do not remember.

Q: What was the focus of the interrogations?

A: My personality, who I am, and my purpose in Afghanistan. In the beginning the focus was on me.

Q: Did the focus of the questions eventually shift to al Qaeda leadership?

A: Yes, that is correct.

Q: Were there demeaning tasks you were forced to perform?

A: Cleaning the bathrooms, mopping the floors, preparing the boxes that were supposed to be in front of the cell blocks with food and water.

Q: Were you subjected to demeaning photographs?

A: Yes.

Q: How were these photos demeaning?

A: I do not remember.

Q: Do you recall being forced to take a photograph with bunny ears and a diaper on your head?

A: [Shifts in chair.] Yes.

Q: Did you ever meet a person named Damien Corsetti, and when did you meet him?

A: Yes, the first night in Bagram when they uncovered the hood from my head.

Q: *Did he mistreat you?*

A: *Yes.*

Q: *How did he mistreat you?*

Suddenly, al Darbi's answers became barely audible; he had shrunk back into his chair. With this new line of questioning, it was clear the prosecution had touched on a particularly sensitive subject.

Private First Class (PFC) Damien Corsetti—"The King of Torture"—was an American soldier who would become the face of torture in the War on Terror. Following an investigation into abuse of captives by American hands, PFC Corsetti was court-martialed for his treatment of detainees, but would ultimately be acquitted in June 2006. Al Darbi had provided testimony in that court martial.³⁴

Sensing al Darbi's apprehension, the prosecution offered a moment of relief:

Q: *Mr. al Darbi, I know you have gone through this before and that this is very difficult for you. I am sorry, but you have to talk us through this again. Do you need a break before we continue?*

A: *No, we can continue. It started with pushing me to the floor, hitting me, throwing chairs at me, and then exposing his private parts and putting them in my face.*

Al Darbi was evading the question and the prosecution knew it.

Q: *Can you give us the context of this exposure?*

A: *Do you mean that after he hit me he threw me against the wall, threw chairs at me, threw garbage at me, and he exposed himself? That's not why are here. He was pulling me on the floor, standing on the points of my handcuffs, on my handcuffs before securing it, kneeling on my chest, pushing my chest with his knees. Yes, after that he exposed little Corsetti and put it in my face.*

Even in this agitated answer, al Darbi appeared to be glossing over his experience. Yet by doing so, he was casting Corsetti in a less culpable light.

In truth, Corsetti's alleged conduct exceeded egregious. According to the record of proceedings from the 2006 court-martial, al Darbi was thrown against walls, kned in the stomach and testicles, and dragged by the handcuffs and calves around the interrogation room.³⁵ Corsetti reportedly pulled on al Darbi's chest hairs, sat on al Darbi's chest cavity to hinder respiration, and threatened al Darbi with anal rape.³⁶ When al Darbi exclaimed "Oh, God!" in reaction to the torture, Corsetti allegedly pulled out his penis, thrust it in al Darbi's face, and declared, "That's your God."³⁷

In a December 2007 interview with the Spanish newspaper *El Mundo*,

34 Tim Golden, *In Final Trial, G.I. Is Acquitted of Abusing Jailed Afghans*, N.Y. TIMES (June 2, 2006), <http://www.nytimes.com/2006/06/02/world/asia/02bagram.html?mcubz=0>.

35 Record of Proceedings at 12 (Mar. 8, 2006), http://media.mcclatchydc.com/smedia/2008/06/04/14/Corsetti-4.source.prod_affiliate.91.pdf.

36 *Id.* at 12-13.

37 *Id.*

Corsetti denied that he participated in torture. He did not deny, however, that torture occurred. “I have seen people die in combat. I shot at people. That is not as bad as seeing someone tortured,” Corsetti said.³⁸

... [T]he cries, the smells, the sounds, they are with me all the time. It is something I can't take in. The cries of the prisoners calling for their relatives, their mother. I remember one who called for God, for Allah, all the time. I have those cries here, inside my head.³⁹

Now, fifteen years later, al Darbi was visibly shaken and angry. Angry that the prosecutor would not relent; angry at having to relive one of the worst parts of his life; angry at what he believed was his captors relishing the thought of his torture.

That anger eventually spilled over. After recounting his torment, al Darbi, who had been speaking Arabic until that point, stared directly at the prosecutor, his jaw clenched and face red in fury and humiliation.

“Are you happy?” he asked in perfect English.

“No, I'm not happy,” the prosecutor replied. “I'm sorry that this happened and you have to talk about it, but I need to ask these questions.”

Al Darbi softened his tone. “Okay,” he replied.

Soon thereafter, the prosecution moved on to al Darbi's transfer to Cuba in March 2003. Although it became immediately clear al Darbi's experience at Guantanamo Bay was better than his time at Bagram (his cell at GTMO, for example, had both a toilet and a bed), when he first arrived in Cuba, he nonetheless claimed he was subjected to hours-long interrogations sessions, which occasionally turned physical. In these sessions, al Darbi was threatened with torture, sexual abuse, and execution. Amidst disagreements over his unwillingness to sign a written statement, al Darbi's captors—notably, two FBI agents who allegedly referred to themselves as “Tom” and “Jerry”—told him he would be returned to Bagram or be sent to Camp X-Ray. On occasion, U.S. personnel would throw al Darbi's Koran to the ground and “scatter gruesome photos of bloodied and mutilated bodies” on the floor of his cell.

Concluding the deposition, the prosecution asked al Darbi if the English translation of a 2009 statement concerning his treatment at Guantanamo Bay was accurate. Al Darbi confirmed it was.

“Word for word,” he said.

al Darbi's Future

In exchange for his cooperation, on October 13, 2017, al Darbi was sentenced to a prison term of thirteen years.⁴⁰ A portion of that sentence will be served at Guantanamo Bay, after which al Darbi is likely to be repatriated to Saudi Arabia and

38 Juan Cole, *Former US Interrogator Recounts Torture Cases in Afghanistan and Iraq*, INFORMED COMMENT (Dec. 15, 2007), <https://www.juancole.com/2007/12/former-us-interrogator-recounts-torture.html>.

39 *Id.*

40 Charlie Savage, *Guantánamo Detainee Is Sentenced, in Rare Success for Military Commission*, N.Y. TIMES (Oct. 13, 2017), <https://www.nytimes.com/2017/10/13/us/politics/guantanamo-defendant-sentenced-darbi.html>.

participate in a Saudi-run reintegration program for repatriated detainees.

In his 2009 declaration, al Darbi said that when he gets home, he hopes to move on with his life. “I want to put this chapter behind me, find work, and take care of my wife and two children,” he wrote in his 2009 declaration.⁴¹

My daughter is nine years old now and my son is seven. I have never met my son. I have already missed many years of their lives. Also, my parents are elderly and I have heard that my father is sick. I would like to join my brothers and sisters in taking care of them in their old days.⁴²

It is possible, of course, al Darbi may never leave Guantanamo Bay. The pretrial sentencing agreement was made under the Obama Administration with a Pentagon official that can only recommend, but not order, the transfer. As award-winning Guantanamo Bay reporter Carol Rosenberg noted in the *Miami Herald* in March 2017, it is not clear President Trump will abide by the agreement’s terms.⁴³ The interim prognosis for al Darbi is hopeful, but uncertain; in January 2017, then-President-elect Trump tweeted “[t]here should be no further releases from Gitmo.”⁴⁴ More recently, the Trump administration failed to adhere to a previously agreed upon release date, saying the Saudi Arabian government had not yet provided adequate “assurances.”⁴⁵ It is possible al Darbi could remain at Guantanamo Bay indefinitely.

Yet even if al Darbi is repatriated to Saudi Arabia, it is not clear al Qaeda will let him lead a normal life. Al Darbi offered critically inculcating evidence against a former senior al Qaeda leader and personal friend of Osama bin Laden; it is perhaps wishful thinking to believe one of the world’s most resourceful and vicious terror syndicates would not have an interest in making an example of such a grievous act of betrayal. For some, al Qaeda exacting revenge on al Darbi would constitute a cruel deprivation of a chance at redemption. For others, it would be the exemplar of poetic justice. It may well be both.

Personal Reflections & Analysis

Realizing the jihadist as a person

Watching al Darbi’s deposition left an impression on me as both a soldier and a lifelong student of the rule of law.

On September 11, 2001, I was in fourth grade and living in a close-knit rural

41 Declaration of Ahmed Al Darbi, July 1, 2009, CTR. FOR STUDY HUM. RTS. AMS., <http://human-rights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/prisoner-testimonies/declaration-of-ahmed-al-darbi-july-1-2009> (last visited Feb. 24, 2018).

42 *Id.*

43 Carol Rosenberg, *Saudi Plea Deal to Test Trump’s Call for Halt of Guantánamo Transfers*, *MIAMI HERALD* (Mar. 9, 2017), <http://www.miamiherald.com/news/nationworld/world/americas/guantanamo/article137540383.html>.

44 Donald J. Trump (@realDonaldTrump), *TWITTER* (Jan. 3, 2017), <https://twitter.com/realdonaldtrump/status/816333480409833472>.

45 Charlie Savage, *U.S. Misses Deadline to Repatriate Detainee Who Pleaded Guilty*, *N.Y. TIMES* (Feb. 20, 2018), <https://www.nytimes.com/2018/02/20/us/politics/darbi-guantanamo-detainee-repatriation.html>.

community a few miles south of Lawrence, Kansas. Despite my young age, I can clearly remember that day: Images of smoke and fire billowing out of tall buildings, exasperated newscasters describing the horror unfolding before them, and ghostly human figures roaming the dust-covered streets of Lower Manhattan will forever be seared in my memory.

Soon, so would pictures of al Qaeda. Videos emerged of bearded men shouting in a foreign language, burning the American flag, and cheering the deadliest attack on the American homeland since Pearl Harbor. In their celebration, I remember they seemed more like monsters than men, engulfed, it seemed, with maniacal rage.

Like many Americans, this was my introduction to radical Islamic terrorism. I would carry this portrait throughout my childhood, into my adolescence, and as I matured into a young adult. When I joined the Army in college and swore to “support and defend the Constitution of the United States against all enemies, foreign and domestic,” it was these heathens to whom I hoped to deal merciless justice. I would ensure a group fueled by fear would find its doom in the same.

After the al Darbi deposition, that vision remains, but it has taken on a different character. Although it was likely not his intent, al Darbi’s life story demystified the most enigmatic and frightening aspect of Islamic extremism: the “why.” Al Darbi’s deposition showed that what makes terrorism so fearsome is not its violence or even its randomness; it is, rather, its senselessness. What sickness, Westerners often wonder, plagues a culture when the idea of paradise is embracing one’s own violent demise? How insane must a person be to willingly fly an airliner into a building, or drive an explosive-laden car into a group of civilians? For many, the notion is anathema to reason itself, and if something is void of reason—especially at the most rudimentary level of self-preservation—how can it possibly be worthy of any measure of human dignity?

For this reason, Westerners frequently describe militant Islamists as anything but human; instead, they are one-dimensional monsters, driven only by their most primal impulses and indistinguishable from savage brutes. “Humans,” on the other hand, are complex and multi-faceted. They are mindful of others’ needs and can strategically exercise their talents to maximize their utility to the outside world.

Drawing this contrast is, I believe, a form of self-protection; the proverbial “why” opens a Pandora’s box of frightening revelations—ones which draw uncomfortable parallels between militant Islamists and ourselves. By stripping the enemy of its very humanity, there remains little purpose in exploring the “why.”

That is a mistake. Exploring the “why” is not to indulge in or even entertain a moral relativism argument, but to offer a coherent understanding of how a fellow human can perpetrate such tremendous violence and feel justified in doing so. Against that backdrop, al Darbi’s deposition represented something far greater than a simple legal proceeding or profile in human depravity; it was an expedition into the limits of human dignity itself, where the reasoning, autonomy, and choices of a terrorist were scrutinized, cast in a light many Westerners—myself included—could not understand absent such extraordinary exposure.

Consequentially, I soon found myself confronted with a new, seemingly-dissonant bifurcation of what was supposed to be “the enemy.” On the one hand, in virtually any other context, al Darbi and I would have been actively trying to kill each other—no questions asked. Yet on the other hand, as I listened to al Darbi’s story, I began to see how the madmen of my childhood could rationalize their way into becoming the villains of the world. This new, human face was simultaneously a frightening and encouraging revelation, frightening because it revealed how easily rational people may fall from grace, yet encouraging because with the shared ability of reason comes understanding, and with understanding comes the opportunity to act preventatively.

Do not misunderstand me: those responsible for acts of terrorism deserve swift justice. Their victims, the rule of law, and human dignity itself requires it—to withhold punishment for malefactors is to deny them the dignity of autonomy. But al Darbi’s testimony offered a rare view into how al Qaeda—along with other militant Islamic groups—manipulates the human capacity for reason. In his case, it was by appealing to al Darbi’s obsessive need to lead a life of significance.

Recall al Darbi’s position in life, as he described it, when he was first introduced to the notion of violent jihad. A strained relationship with his father and familial problems led him to drop out of school at sixteen, after which he fell into a sort of despair, turning to drug abuse for whatever satisfaction it could deliver. Allured at the prospect of being a hero in battle, he joined the army. Yet after serving, al Darbi soon found himself slipping back into his pre-military outlook on life. Unemployed, al Darbi was unhappy and disappointed with his life’s direction, and, like many, he turned to religion for fulfillment. Like an addict, however, his tolerance level rose, and simply attending mosque or reading about Muhammed soon became inadequate. An older Muslim saw al Darbi’s longing for more, and introduced the young Muslim to jihad. Al Darbi was captivated; after all, what greater purpose in life is there than to embody “the highest rank of worship?”

Yet al Darbi spiraled further into his own thirst for greatness. He was “depressed” that he survived the war in Bosnia and had his hopes of becoming a martyr dashed. He returned to Saudi Arabia, but he never forgot the taste of purpose he experienced in Bosnia. Despite growing up in a relatively secular household, he regularly participated in Hajj in Mecca to connect with other Bosnian veterans in the hopes that doing so could prolong, even if only slightly, the intoxicating sense of meaning he felt as a mujahideen fighter.

In sum, al Darbi’s life struck me as a never-ending hunt for glory. In time, that hunt would help him justify the slaughter of civilians and fellow Muslims, and rationalize a personal oath of allegiance to Osama bin Laden, bin Laden’s sadistic fatwahs, and eventually, terrorism itself. Al Darbi’s views may have been antithetical to every Western value responsible for unprecedented human flourishing, but he was not a madman; he sought out and rationalized his destiny. Exploring how he did so—and the basic framework al Qaeda uses to exploit young and ambitious Muslims—is a worthwhile undertaking.

Recruiting patterns in present-day Islamic extremist groups

Although witnessing a raw and first-hand account, like al Darbi's testimony, of how militant Islamic organizations recruit is relatively rare, the tactics describe therein are not. Each world's most dangerous Islamic terror organizations employ methods designed to exploit vulnerable young people. With some variation to accommodate individual circumstances, in cases like al Darbi's, Islamic extremist groups employ a recruiting strategy that generally follows three steps: select a suitable target, entice him or her with promises of grandeur, and retain with fear. It is a strategy that has found success not just in the Middle East, but in the West as well.⁴⁶

Select a target

Al Darbi's testimony offers key information as to his quality of life when he first turned to violent jihad. He had dropped out of school prematurely, and was unemployed and directionless. He had a difficult relationship with his father, and was willing to try anything to find some sense of fulfillment. A profile of desperate willingness and a need for meaning made al Darbi a valuable target for jihadist groups, as it would countless others.

This is hardly conjecture—indeed, both al Qaeda and the Islamic State have admitted to favoring this sort of profile. A publication titled “A Course in the Art of Recruiting,” by a pseudonymous author credited as Abu Amru Al Qa’idy, offers jihadi recruiters a “graded, practical program for recruiting via individual da’wa.”⁴⁷ First published sometime around 2009, the guidebook instructs recruiters on how to practice da’wa, or invite others to join Islam, on an individual basis, rather than collectively. According to the guide, the individual da’wa is superior because “collective da’wa cannot foster a close relationship between the da’ee and the candidate.”⁴⁸ In addition, individual da’wa allows for the da’ee to craft a recruitment strategy tailored to the individual’s needs; specific doubts may be rebutted and follow-up measures implemented with ease. In addition, individual da’wa is more amenable to secrecy—“principles of jihad” may be discussed more freely, and an individual relationship is far easier to manipulate than is a collective relationship.⁴⁹

The guidebook then provides clues as to which people make ideal targets for individual da’wa. Preferably, the prospective recruit is a nonreligious Muslim, but the guide does make some allowance for religious recruits, assuming they do not exhibit one of the five disqualifying characteristics.⁵⁰ University students are useful, as are

46 The following analysis explores the application of a specific strand of extremist recruiting. Notably, how groups like al Qaeda recruit depends in large part on the characteristics of the targeted candidate. See, e.g., Scott Gerwehr & Sara Daly, *Al-Qaida: Terrorist Selection and Recruitment*, in MCGRAW-HILL HOMELAND SECURITY HANDBOOK 85-86 (David G. Kamien, ed., 2006).

47 Abu Amru Al Qa’idy, *A Course in the Art of Recruiting*, INTERNET ARCHIVE, https://ia800300.us.archive.org/32/items/ACourseInTheArtOfRecruiting-RevisedJuly2010/A_Course_in_the_Art_of_Recruiting_-_Revised_July2010.pdf (last visited Feb. 24, 2018).

48 *Id.*

49 *Id.*

50 *Id.*

high school students. The former because university “is like a place of isolation for a period of four, five, or six years and is full of youths,” and the latter because high school students “have pure minds” and are unlikely to be spies.⁵¹ Selectees should have “leadership characteristics,” be “courageous, transparent, . . . generous, [and] positive,” and have “Islamic morals.”⁵²

Once the recruiter has found a young, impressionable mind, the recruiter must also discern whether the recruit is ripe for radicalization. In the words of John Graham, former U.S. diplomat and Director of Giraffe Heroes International, that means finding people who “feel inadequate, disrespected, full of unfulfilled ambitions, angry at real or perceived injustices, and who are blaming other people or institutions for their woes.”⁵³

Al Darbi certainly fit this profile, as have more recent recruits. In 2015, the Mannans, a family of twelve from Luton, England made the journey to Syria to join the Islamic State.⁵⁴ According to a press release later issued purportedly by the family,⁵⁵ the family’s new home was apparently “free from the corruption and oppression of manmade law and is governed by the shariah, the perfect and just laws of Allah subhanAllah wa Ta’la.”⁵⁶ The statement polemicized “so called freedom and democracy,” and boasted that in the Islamic State, “a parent doesn’t feel the worry of losing their child to the immorality of society” and the “sick and elderly do not wait in agony, tolerating the partiality of race or social class.”⁵⁷ Friends and relatives of the Mannans described the family’s move to Syria as “completely out of character,” going so far as to believe the Mannans had been tricked.⁵⁸ Yet if the family’s statement is true, then their decision to travel to Syria was fueled at least in part by a degree of estrangement and thirst for salvation similar to that felt by al Darbi, which made the family prime targets for radicalization.

It seems the Mannan family, or at least influential figures therein, harbored a “desire to escape the ennui of home and to find an identity.”⁵⁹ According to their statement, they found it in the Khilafah.

51 *Id.*

52 Abu Amru Al Qa’idi, *supra* note 47.

53 John Graham, *Who Joins ISIS and Why?*, JOHN GRAHAM LIFE ON EDGE (Dec. 27, 2015), <https://www.johngraham.org/blog/who-joins-isis-and-why>.

54 Tom Brooks-Pollock, *‘Yes we have joined Isis’ Say Missing British Family of 12 Who Fled to Syria*, INDEPENDENT (July 4, 2015), <http://www.independent.co.uk/news/uk/home-news/yes-we-have-joined-isis-say-missing-british-family-of-12-who-fled-to-syria-luton-islamic-state-isis-10365915.html>.

55 It is unclear whether this press release was genuine or coerced. Regardless, according to criminologist Simon Cottee, the press release “accurately reflects the sentiments expressed by other Western migrants who have made the journey to Syria, and who in their social-media postings have mocked the notion that they have been ‘brainwashed’ into joining ISIS.” See Simon Cottee, *Pilgrims to the Islamic State*, ATLANTIC (July 24, 2015), <https://www.theatlantic.com/international/archive/2015/07/isis-foreign-fighters-political-pilgrims/399209>.

56 Press Release, Mannan Family (July 3, 2015), <https://justpaste.it/m4sy>.

57 *Id.*

58 Nicola Harley, *Family of 12 Feared to Have Travelled to Syria*, TELEGRAPH (July 1, 2015), <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/11711176/Family-of-12-feared-to-have-travelled-to-Syria.html>.

59 *It Ain’t Half Hot Here, Mum: Why and How Westerners Go to Fight in Syria and Iraq*, ECONOMIST (Sept. 1, 2014), <https://www.economist.com/news/middle-east-and-africa/21614226-why-and-how-westerners-go-fight-syria-and-iraq-it-aint-half-hot-here-mum>.

Entice with promises of grandeur

While talking about his early experiences as an early mujahideen fighter, al Darbi revered the reminisced-about pride it afforded him, even going so far as to call jihad the “highest rank of worship.” For someone searching for a purpose, a prospect of such greatness would no doubt be irresistible—something of which the older Muslim who first recruited al Darbi was likely very much aware. Appealing to al Darbi’s “dream” of becoming a martyr served as the decisive catalyst in his journey to joining the Taliban, and ultimately, al Qaeda.

Returning to al Qaeda’s guidebook on recruiting, promises of grandeur—personal fulfillment, admiration among Muslims, eternal paradise—are all referenced as ways to convince a recruit to take up violent jihad. “Jihad” is even defined as “the means to obtain the Pleasure of Allah.”⁶⁰ Failure to join jihad, in contrast, leads to “His Punishment.”⁶¹ Moreover, the guidebook instructs the da’ee to emphasize how mujahideen fighters are the “most honorable” of the Muslim world.⁶²

On a more superficial level, Islamic extremist groups have gone to great lengths to make violent jihad seem sexy. In late 2015, the Islamic State released an English-language video advertisement inviting Western Muslims—namely, men—to come to the Levant and engage in violent jihad.⁶³ Doing so, the video said, would enable fighters to “march through the gates, of the paradise where our maidens await.”⁶⁴ The words are sung à la a sobering, but stirring chant, as a montage of grainy combat footage featuring mujahideen fighters in action flashes on screen.⁶⁵ “Oh my brothers, jihad is the way, to bring back the honor of our glorious days,” the chant continues, “the promise of Allah will always remain, that fighting for his sake is the ultimate gain.”⁶⁶

The Islamic State has also geared some of its propaganda toward Muslim women; indeed, the group employs women to recruit other women, promising a husband and a virtuous life filled with modern amenities should they choose to join.⁶⁷ “. . . [A]n eagerness among good Muslim girls to hook up with bad jihadi boys,” wrote lawyer and journalist Sadakat Kadri in 2015, “is a strong part of the group’s appeal.”⁶⁸

These promises of grandeur certainly worked on al Darbi, and they continue to work on countless other young Muslims as well. Three English-speaking fighters

60 Abu Amru Al Qa’idy, *supra* note 47.

61 *Id.*

62 *Id.*

63 PPD Staff, “For the Sake of Allah”: ISIS Releases English Pop Video Targeting Western Recruits, PEOPLE’S PUNDIT DAILY (Nov. 5, 2015), <https://www.peoplespunditdaily.com/news/video/2015/11/05/for-the-sake-of-allah-isis-releases-english-pop-video-targeting-western-recruits/>.

64 *Id.*

65 *Id.*

66 *Id.*

67 Mia Bloom, *How ISIS Is Using Marriage as a Trap*, HUFFINGTON POST (Mar. 2, 2015), https://www.huffingtonpost.com/mia-bloom/isis-marriage-trap_b_6773576.html.

68 Sadakat Kadri, *Want to Understand the Appeal of Isis? Think Like a Young Muslim Outsider*, GUARDIAN (Jun. 18, 2015), <https://www.theguardian.com/commentisfree/2015/jun/18/appeal-isis-muslim-outsider-recruits>.

named Ifthekar Jaman, Umm Layth, and Abu Hud, the latter-most known online as the “Paladin of Jihad,” both played a significant role in convincing the Khan siblings, led by their oldest brother Mohammed Hamzah, to leave their home in suburban Chicago and travel to Syria to join the Islamic State.⁶⁹ The Khan children were thankfully intercepted by U.S. officials at O’Hare International Airport before their departure, but examining the siblings’ motives to desert their parents for the Islamic State reveals the children believed in earnest they were heading to a better life.

The second-oldest of the three Khan siblings, a sister named Mariyam,⁷⁰ had been a devout follower of Ifthekar Jaman on social media, and had been exposed to Jaman’s propaganda sent from Syria. Images of a leisurely life (the so-called “five-star jihad”), including villas of swimming pools, small kittens, and stolen war treasures, filled young Mariyam’s social media page, along with endless selfies of Jaman (whose good looks was the primary reason for his recruitment as a spokesman for the Islamic State).⁷¹ When Jaman was killed in December of 2013 (in his very first battle, no less), Mariyam celebrated his being martyred online.⁷²

Another voice had an especially compelling pull on Maryiam. Umm Layth, a Scottish woman, had given up her home in the West to move to Syria in November of 2013. She described life in the Caliphate as one endowed with riches “handed to you personally by Allah . . . as a gift.”⁷³ Everything Mariyam loved in the United States would be replaced by Allah with something far superior, and the riches young women would find upon arrival—namely, their new family—would be “like the pearl in comparison to the shell you threw away into the foam of the sea which is the Ummah.”⁷⁴

Hamzah and Mariyam also corresponded with Abu Hud, who offered practical guidance via Tumblr on how to travel to Syria to join violent jihad. He would also periodically and publicly romanticize his life as a jihadist.⁷⁵ On one post, he described an especially euphoric feeling because “at long last, [he] ‘belonged’ to something, to a project, to a cause.”⁷⁶ “You don’t have to fear the [nobelievers],” Abu Hud wrote to describe his satisfaction, “you don’t have to hide yourself nor your beliefs . . . [you finally have the freedom to] be yourself and . . . who you’re supposed to be.”⁷⁷

Together, these grand promises depicting a life of honor and paradise were enough to induce three otherwise normal Western children to leave everything behind and pledge loyalty to the Islamic State.

69 See Janet Reitman, *The Children of ISIS*, ROLLING STONE (Mar. 25, 2015), <https://www.rollingstone.com/culture/features/teenage-jihad-inside-the-world-of-american-kids-seduced-by-isis-20150325>.

70 Given the second-oldest of the three Khan children was a minor, “Mariyam” is a pseudonym used by the author in the cited source. *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 Reitman, *supra* note 69.

75 *Id.*

76 Kadri, *supra* note 68.

77 *Id.*

Retain with fear

It is uncertain whether al Darbi feared or should have feared direct retribution for his occasional attempts to leave the jihadi life. What is certain, however, is that he was utterly dependent on al Qaeda to both evade capture and conduct his affairs. Travel documents, financial assistance, and protection all needed to be provided by al Qaeda. That dependency ultimately failed to protect al Darbi from capture, but it was successful in securing his loyalty. For today's jihadis, forced reliance is just as present and just as effective for control over members.

Fear of retribution and fear of capture are the primary means by which Islamic extremist groups may control their members once they have joined. The former is an especially brutal form of control—particularly as it affects women.

It is not unusual for some to eagerly join extremist groups, only to then later develop deep regrets about their decision. When such regret surfaces, the controlling extremist group, in cult-like fashion, clamps down on the apostate member.

At least, that is what happened to Samra Kesinovic and Sabina Selimovic, two Austrian teens who abandoned their middle-class life in Vienna in early 2014 to join the Islamic State.⁷⁸ The girls left a note pledging allegiance to Allah and instructing their parents not to look for them.⁷⁹ Months later, however, reports indicated the two girls had come to regret their decision, and now desperately sought a way back home.⁸⁰ They contacted their loved ones in Europe, but there was little the relatives could do. In addition to Austria's laws, which aimed to prevent radicalized citizens from returning, the jihadis had an iron grip on every aspect of the girls' lives.⁸¹ The cheerful photos of the two girls brandishing automatic rifles released by the Islamic State turned out to be a lie; instead, reports indicated at least Samra had been used as sex slave, passed around as a "sexual present for new fighters."⁸² When she tried to escape, the jihadists caught her, and, to send a message to other would-be defectors, they beat her to death with a hammer.⁸³ The other Austrian girl, Sabina, was killed the same year while fighting for the Islamic State in Syria.⁸⁴

Despite the tragic story of Sabina Selimovic and Samra Kesinovic, Islamic extremist groups need not always use brute force to control their recruits. Frequently, after aligning themselves with the extremist group, members find themselves unable to return to their previous lives, and in fact are completely reliant on the group for

78 TOI Staff, *Austrian Girls Who Joined IS 'Want to Come Home,'* TIMES ISR. (Oct. 11, 2014), <http://www.timesofisrael.com/austrian-girls-who-joined-is-want-to-come-home/>.

79 *Id.*

80 *Id.*

81 *Id.*

82 Lizzie Dearden, *Isis Austrian Poster Girl Samra Kesinovic 'Used as Sex Slave' Before Being Murdered for Trying to Escape,* INDEPENDENT (Dec. 31, 2015), <http://www.independent.co.uk/news/world/middle-east/isis-austrian-poster-girl-samra-kesinovic-used-as-sex-slave-before-being-murdered-for-trying-to-a6791736.html>.

83 *Id.*

84 The Sun and Network Writers, *Austrian Girl Who Joined ISIS in Syria Was 'Used as a Sexual Present' Before Being Beaten to Death,* NEWS.COM.AU (Dec. 31, 2015), <http://www.news.com.au/world/middle-east/austrian-girl-who-joined-isis-in-syria-was-used-as-a-sexual-present-before-being-beaten-to-death/news-story/ca34c5000472f8e0765d424273e13da5>.

survival. Mohammed Emwazi—infamously known around the world as “Jihadi John”—found the restrictions on his freedom wrought by his affiliation with the Islamic State to be nearly unbearable, and warned his younger brother not to follow the same path.⁸⁵ “Don’t be like me,” Emwazi’s younger brother, Omar, recalled his older brother telling him.⁸⁶ “Look where I am. I can’t get married and I can’t get a proper job. I can’t travel and I can’t go nowhere.”⁸⁷

The brutal nature of Islamic extremist groups, combined with the natural alienation from mainstream society caused by radicalization, underscores just how permanent is the decision to ally with militant Islam. Once a Muslim embraces violent jihad, there is no turning back.

Final Thoughts

Following his deposition, once the final layer of al Darbi’s barbarous façade fell away, only a small, sad figure remained. There was no ferocity or pride; just a pitiful man divulging on command the worst parts of his life as a courtroom full of U.S. personnel gawked at him. Al Darbi’s life, it seems, was a tragic irony; the more he chased a legacy of heroic grandeur, the further away from it he became—not unlike the other radicalized Muslims mentioned previously. He set out to be a martyr and idol, but ended up a disgraced jihadist—a traitor universally hated by the world for his acts of atrocity. Even in death, he will not find absolution, let alone martyrdom.

If there is any redeeming aspect of al Darbi’s life, it is that he shows combatting terrorism requires an approach beyond sheer military force. The fight also involves confronting the same despair and frustrations that plagued al Darbi as a young man. Today’s young Muslims contemplating Islamic extremism as a means to quench their ambition should study al Darbi’s life—as well as the lives of the jihadists mentioned above—and discover for themselves where the road of violent jihad ends.

Doing so, however, would only be the first step. It is up to the goodness of humanity to remain vigilant for terror-breeding hopelessness, intercept our most vulnerable brothers and sisters, and, if possible, provide them a path back to redemption. “I wish that I could talk now to myself years ago,” al Darbi remarked at his sentencing hearing, “or to any young man considering the same path, and tell them: ‘Don’t lose your life and future for something that is not real.’”⁸⁸

85 Robert Verkaik, *Mohammed Emwazi: ‘Jihadi John’ Warned Younger Brother Not to Follow Him to Syria and Isis*, INDEPENDENT (Jan. 24, 2016), <http://www.independent.co.uk/news/uk/home-news/jihadi-john-mohammed-emwazi-isis-syria-warned-brother-a6831666.html>.

86 *Id.*

87 *Id.*

88 Savage, *supra* note 40.

The Psychosocial Development of Terrorists and the Role of Education and Media to Thwart the Spread of Terrorism

Erica Cucinella

Introduction

Terrorism has been present in societies for many centuries, from the ancient Jewish Sicarii, in the 1st Century CE, to modern terrorist organizations such as Al-Qaeda and ISIS.¹ After the 9/11 attacks on U.S. soil, terrorism came to the forefront of international discussion and became an issue of global significance. As a result, there has been a new surge of interest in understanding the causes of terrorism. There have been attempts to approach this inquiry by way of traditional profiling, like criminal profiling; however, these have proved inadequate.² Research on the personality, psychological traits, and socioeconomic characteristics of terrorists has proved only that they are no different in these areas than the rest of us.³ This discovery of “normalcy” has challenged scholars and practitioners to explore different approaches to understanding the development of terrorists in hopes to prevent initial engagement and the spread of terrorism.⁴

No action happens in isolation; therefore, it is important to consider the micro, meso, and macro-level influences that are at play in the process of terrorist development. The path to becoming an active terrorist agent is unique for each person and is largely based on the level of involvement within a terrorist organization and the strength of his or her ideological development. Given this, it is more effective to move away from profiling the person and towards examining the process of terrorist development using a psychosocial approach.⁵ This paper argues that the key to curbing extremist ideological development is to focus on tolerance-based education, peacebuilding initiatives, and using mass media to reveal the realities of day-to-day life as a terrorist. This counterterrorism approach could help stop the process of terrorist development before it starts.

1 Audrey Heffron-Casserleigh, *History of terrorism* (2015) (from presentation and lecture at Florida State University).

2 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); Jonathan Rae, *Will it Ever be Possible to Profile the Terrorist?*, 3 J. TERRORISM RESEARCH 64, 64 (2012).

3 Scott Atran, *Genesis of Suicide Terrorism*, 299 SCIENCE 1534, 1537 (2003); Charles A. Russell & Bowman H. Miller, *Profile of a Terrorist*, 1 STUDIES IN CONFLICT & TERRORISM 17, 17 (1977).

4 Horgan, *supra* note 2, at 80-81, 93. Martha Crenshaw, *The Causes of Terrorism*, 13 COMP. POL. 379, 390 (1981).

5 *Id.* at 85. See also Randy Borum, *Understanding the Terrorist Mind-Set*, FBI L. ENFORCEMENT BULL., (July 2003) at 7; John Horgan, *The social and psychological characteristics of terrorism and terrorists*, in ROOT CAUSES OF TERRORISM: MYTHS, REALITY AND WAYS FORWARD 45 (Björge, 2005); Crenshaw, *supra* note 4, at 380.

Literature Review

The literature overwhelmingly agrees that a singular terrorist “mindset” or “personality” does not exist.⁶ Traditional profiling, which focuses on the examination of personal and behavioral characteristics, is an ineffectual approach to predicting involvement in terrorism.⁷ One possible explanation is that the likeliness to commit a terrorist act is more dependent on the inter-group dynamic within a terrorist organization rather than the individual’s attributes alone.⁸ In other words, by focusing on the individual’s personality and socio-economic status, one may overlook the importance of the role of the individual within the terrorist organization. Scott Atran makes a similar point when describing a term used in social psychology called the “fundamental attribution error.”⁹ This term describes the tendency to put too much weight on personality traits to explain behavior (micro-level influences), while overlooking considerable situational factors that are affecting behavior (the importance of macro-level influences). This “error” reflects a Western perspective that emphasizes individuality, rather than the collective.¹⁰

However, this does not mean that researching and understanding common traits among terrorists is completely futile. As early as the 1970s, researchers were trying to find a terrorist “profile.” A seminal work on this topic at that time looked at different terrorist groups from the Middle East, Latin America, Japan, and Western Europe.¹¹ The pre-9/11 quest for a “profile” found that terrorists were mainly single males in their early 20s, from middle-class to upper-class families, and had at least some university education.¹² Does that sound like anyone you know, perhaps even yourself? Research by psychologist Ariel Merari on Palestinian and Israeli suicide bombers revealed that these individuals had personality types, socioeconomic status, and education levels within the normal distribution of the population.¹³ The post-9/11 “profile” of terrorists remains pretty much the same.¹⁴

In one sense, attempts to profile terrorists were useful in that they shed light on the normalcy of terrorists. As Crenshaw notes, “[w]hat limited data we have on individual terrorists . . . suggest that the outstanding common characteristic of terrorists is their normality.”¹⁵ This research was also important in that it challenged the long-standing belief that individuals who engage in terrorism are poor, uneducated,

6 See, e.g., Horgan, *supra* note 2, at 82-83; Crenshaw, *supra* note 4, at 390; Rae, *supra* note 2, at 69.

7 Horgan, *supra* note 2, at 84.

8 *Id.* at 81; Crenshaw, *supra* note 4, at 393.

9 Atran, *supra* note 3, at 1536.

10 CLARK McCAULEY & SOPHIA MOSKALENKO, *FRICTION: HOW CONFLICT RADICALIZES THEM AND US* 12 (2011).

11 Russell, *supra* note 3, at 17.

12 *Id.*

13 Atran, *supra* note 3, at 1537.

14 Audrey Heffron-Casserleigh, *Psychological and sociological attributes in terrorism*, (2015) (from presentation and lecture at Florida State University).

15 Crenshaw, *supra* note 4, at 390.

depressed, or mentally disturbed.¹⁶ In sum, physical traits, personality, behavior patterns, and socioeconomic status provide only a piece of the puzzle. Profiling the individual based on these criteria misses the more pertinent matter of understanding the process of terrorist development and the path towards radicalization.¹⁷

Instead of relying on traditional profiling, it may be more effective to use a psychosocial approach to understand the process of terrorist development. Looking at terrorist development as a process allows a broader view that incorporates all levels of influence: micro (individual), meso (communities and groups), and macro (government and society). This approach helps explain why two very similar individuals (in terms of personality, status, and experiences), one may get involved in terrorism and the other does not.¹⁸ Alternatively, this approach helps explain how two very different people, both may get involved in terrorism. The psychosocial lens fills in the gaps where traditional profiling lacked. A psychosocial approach to the process of terrorist development “. . . allows us to see how different people, with different backgrounds, and each with distinct routes into and through the terrorist movement, engage with the process in different ways.”¹⁹

Horgan’s psychosocial approach focuses on risk factors for involvement in terrorism. These factors include feelings of vulnerability, dissatisfaction, identification with victims, belief in the morality of terrorism, and a sense of reward for being involved in terrorism.²⁰ Collectively, these factors serve as a framework to assess an individual’s “openness to socialization.”²¹ However, these factors are only salient in the initial phase when the individual is contemplating becoming involved, before he or she actually engages in terrorist activity.²² Analyzing factors at this initial (and crucial) phase of involvement is important for counterterrorism efforts. Horgan argues that a common incentive exists for involvement in terrorism: the feeling or promise of reward (either real or perceived).²³ Focusing on these psychosocial risk factors of terrorist development provide a framework from which to build effective counterterrorism strategy.

Borum’s four stages of ideological development is a simplistic, yet acute, model that showcases the different psychological and social factors at play in the progression towards terrorist development.²⁴ Each stage is captured by a defining statement. For example, stage one is characterized by an individual’s belief that “it’s not right,” followed by stage two, “it’s not fair.”²⁵ Stage three and four make a decisive increase in intensity, “it’s your fault” and “you’re evil,” respectively.²⁶ The first stage starts

16 Atran, *supra* note 3, at 1537.
17 Horgan, *supra* note 5, at 45.
18 Horgan, *supra* note 2, at 85.
19 Horgan, *supra* note 5, at 45.
20 Horgan, *supra* note 2, at 84-85.
21 *Id.* at 85.
22 *Id.*
23 *Id.*
24 Borum, *supra* note 4, at 7.
25 *Id.* at 7-8.
26 *Id.* at 8.

when the individual experiences some displeasing event or circumstance.²⁷ This can come in many forms, but mainly relates to undesirable economic or social conditions (e.g., poverty, low-quality living conditions, or restricted personal freedoms).²⁸ The main point is that the individual perceives the event or circumstance as something that is “not right.” The second stage is characterized by a feeling of injustice; the event or condition is perceived as unfair, perhaps because of inequitable distribution or application.²⁹ The third phase, “it’s your fault,” is crucial because it is the first time the individual seeks to identify someone or something to blame. In this stage, a target is established.³⁰ The fourth and final stage seeks to dehumanize the target.³¹ Once the target is deemed “evil,” violence can emerge. Seeing the target in this way makes it easier for the individual to justify the use of extreme violence. Applying this ideological development model sheds light on the social cognition of terrorists. Social cognition is a cognitive-behavioral paradigm that posits the way people behave is based on their perceived reality. Knowing terrorists’ social cognition, or what Borum calls their “internal map,” can help counterterrorism professionals better understand and anticipate terrorist development.³²

Discussion

Now that the psychological and social attributes of the process of terrorist development have been discussed, the question remains as to how to use this information towards effective counterterrorism efforts. Among the literature, one commonality has been identified among terrorists. It is not a common characteristic or trait, but rather a common incentive for involvement which is the belief of reward (either real or perceived).³³ With this in mind, I argue that counterterrorism efforts should focus on undermining the attractiveness of involvement in terrorism and equip individuals with the skills and insight needed to engage in legitimate, positive alternatives to advocate for change. The two best vehicles for accomplishing this are the media and education. These institutions have the power to convey a strong and convincing counter narrative to involvement in terrorism. Using education and media as counterterrorism strategies is a long-term, proactive approach that will work to stop the process of terrorist development before it starts. The goal of education as a counterterrorism strategy is to equip youth with the skills needed to challenge stereotypes, empathize, and think critically about the world around them.³⁴

27 *Id.* at 7.

28 *Id.*

29 Borum, *supra* note 4, at 8.

30 *Id.*

31 *Id.*

32 *Id.*

33 NAT’L DEF. RESEARCH INST., SOCIAL SCIENCE FOR COUNTERTERRORISM: PUTTING THE PIECES TOGETHER xxv (2009).

Horgan, *supra* note 2, at 85.

34 Michael J. Stevens, *What is Terrorism and Can Psychology Do Anything to Prevent It?*, 23 BEHAV. SCI. & L. 449, 518, 520-21 (2005).

One way to achieve this is by offering youth opportunities to learn about tolerance and engage in peacebuilding activities.³⁵ An example of an existing program that seeks to do this is PeaceJam. PeaceJam is an international nonprofit organization that promotes peace through tolerance-based curriculum, service-learning projects, and connecting youth to Nobel Peace Laureates.³⁶ The PeaceJam program has shown positive results, including a decrease in violence wherever PeaceJam programming is implemented.³⁷ Additionally, survey data showed that youth participating in PeaceJam programs had statistically significant gains in moral development, compassion, empathy, acceptance, responsible decision-making, and dedication to positive action, among others.³⁸ Another example of an education-based peace building program is Seeds of Peace. This organization believes that through interpersonal relationships, minds and hearts can change which will bring about a gradual change in society.³⁹ Seeds of Peace focuses on three types of change: personal, interpersonal, and societal change.⁴⁰ Personal change begins at the Seeds of Peace Camp in Otisfield, Maine.⁴¹ Camp participants, or “seeds,” are typically between fourteen to sixteen years old and come from one of eight delegations: Egypt, Jordan, Israel, Palestine, India, Pakistan, the U.S., and the United Kingdom.⁴² The camp brings together teens from communities in conflict.⁴³ Often, the camp is the first time a youth has encountered another youth from the “other side.”⁴⁴ The camp aims to shift attitudes and perspectives and build respect and empathy.⁴⁵ This is accomplished through traditional camp activities (recreation and outdoor excursions) but also through rigorous dialogue supervised by a trained facilitator. The camp has been covered in the press mainly for its convening of Palestinian and Israeli teens.⁴⁶ Many former campers recollect the impact the camp had on their lives, and many of them have continued to promote similar peacebuilding activities in their hometowns in Palestine and Israel.⁴⁷ Implementing these or similar programs can stifle the spread of terrorist development by focusing on the next generation. Programs like these have the potential to decrease the likeliness that young

35 *Id.*

36 *Compassion In Action: Bullying Prevention*, 1, 2, PEACEJAM (2016), <http://www.peacejam.org/media/1358/compassion-in-action-curriculum-bullying-prevention-sample-chapters.pdf>.

37 *Id.* at 3.

38 *Id.*

39 Matt Sedensky, *Peace Camp in US Unites Israeli, Palestinian Teens*, SEEDS FOR PEACE (July 29, 2014), <https://www.seedsofpeace.org/peace-camp-in-us-unites-israeli-palestinian-teens-associated-press/>.

40 *About Us*, SEEDS OF PEACE, <https://www.seedsofpeace.org/about/> (last visited Mar. 6, 2018).

41 *Programs*, SEEDS OF PEACE, <https://www.seedsofpeace.org/programs/developing-leaders/> (last visited Mar. 6, 2018).

42 *Get Involved*, SEEDS OF PEACE, <https://www.seedsofpeace.org/getinvolved/become-a-seed/> (last visited Mar. 7, 2018).

43 *Programs*, *supra* note 41.

44 *Id.*

45 *Id.*

46 Lee Horton, *Americans Play Crucial Role for Seeds of Peace*, SUNJ. (July 17, 2017), <http://www.sun-journal.com/americans-play-crucial-role-for-seeds-of-peace/>; Voice of America News, *Seeds of peace still strong after 17 years*, YOUTUBE (Aug. 17, 2009), <https://www.youtube.com/watch?v=VkJXnuXfQLV8>.

47 Matt Sedensky, *Peace Camp in US Unites Israeli, Palestinian Teens*, SEEDS FOR PEACE (July 29, 2014), <https://www.seedsofpeace.org/peace-camp-in-us-unites-israeli-palestinian-teens-associated-press/>.

people will have a desire or motivation to become involved in terrorist organizations or activities. They build youth capacity to problem-solve and cope in ways that are productive and humane.⁴⁸

It is important to recognize the media's power and influence in the dissemination of terrorist activities. Some scholars argue that the way the media reports on terrorism may actually be promoting it.⁴⁹ Over-exposure of terrorism in the media can lead to increased support and sympathy for the organization.⁵⁰ It can lead to a legitimization of their power and violent capabilities while undermining government authority, all of which strengthen their cause.⁵¹ With this in mind, another proposed method for effectively thwarting the spread of terrorism would be to use the media to show the day-to-day reality of life as a terrorists. People's perception of what it is like to be a terrorist and what it actually entails could not be further apart.⁵² This substantial disconnect could be bridged if the media reported on the daily realities of terrorist life, which include isolation from society, dependency on leaders, and the inherent anxiety and stress that comes with covert involvement.⁵³ More accurate reporting of terrorism could have a psychological effect on media consumers, dissuading potential recruits from joining.⁵⁴ As Stevens concludes, the media could effectively undermine the allure and attractiveness of terrorism by "[p]resenting terrorist attacks impartially, thoughtfully, and less often; describing terrorism in unflattering, yet accurate terms . . ."⁵⁵ In addition, the media could effectively work as counterpropaganda by giving equal media attention to incidents of peaceful social change. For example, media outlets could report on progress of programs such as PeaceJam and Seeds of Peace. Based on the most recent figures captured in the Global Terrorism Database, a total of 14,860 incidents of domestic and international terrorism occurred globally in 2015.⁵⁶ Given these figures, a balance in reporting is possible yet, admittedly, very challenging and unlikely based on the media's historical tendency to sensationalize. Even so, the media has the capacity, the clout, and the audience to have a significant influence on viewers' beliefs and attitudes. As such, it could be used as an effective counterpropaganda tool to paint a more accurate picture of terrorist life, report on terrorism less often, and find a balance in reporting incidents of tolerance, compassion, and legitimate, peaceful change.⁵⁷

48 Stevens, *supra* note 34, at 520-521.

49 *Id.* at 520-21.

50 *Id.*

51 *Id.*

52 Horgan, *supra* note 2, at 91.

53 Crenshaw, *supra* note 4, at 393, 395.

54 Stevens, *supra* note 34, at 522.

55 *Id.*

56 Global Terrorism Database, *GTD 2015 world map*, <http://www.start.umd.edu/gtd/>.

57 Stevens, *supra* note 34, at 522.

Conclusion

What leads an individual to engage in terrorism is a complex mixture of psychological and social factors, and is unique for each person. Traditional criminal profiling, which focuses on an individual's physical traits, personality, behavior patterns, and socioeconomic status, only scratches the surface of understanding the path towards radicalization. This paper argues that instead of profiling the person, it is more effective to examine the process of terrorist development using a psychosocial approach. Understanding terrorist development through the psychosocial lens will lead to more pro-active, comprehensive, and effective counterterrorism efforts. From this perspective, long-standing societal institutions, such as education and the media, can be used to play a vital role in thwarting terrorist development. Counterterrorism strategies should focus on tolerance-based education and peace building initiatives (i.e. PeaceJam and Seeds of Peace) and using the media to reveal the realities of daily life as a terrorist to undermine the "attractiveness" of involvement.

Using education and media as counterterrorism strategies accomplishes the important task of presenting youth with *alternative options*. Although no single agreed upon definition of "terrorism" exists, most accepted definitions portray terrorism as a 'last resort' method in the absence of real or perceived alternative options. In this way, terrorists, seeing no other option than to use violence, are acting rationally according to their perception of reality.⁵⁸ This notion of alternative options is crucial for counterterrorism efforts and should not be underestimated. Education and media can present youth with viable options to create change in legitimate and positive ways. They can be used to promote, inspire, and equip individuals to identify and pursue positive alternatives to terrorism.

Using education and the media are long-term, proactive counterterrorism strategies that will work primarily with individuals that have not yet become involved in terrorist activities. It will be important to couple these proactive strategies with others that cater to individuals in different phases of terrorist development; for example, disrupting engagement for those actively involved in terrorism, and promoting disengagement for those trying to get out.⁵⁹ Although tolerance education and peacebuilding initiatives exist, more research needs to be done to measure the effectiveness of such strategies in preventing terrorist development. Likewise, more research needs to be done to determine whether reporting fewer terrorist attacks and focusing on portraying an accurate image of life as a terrorist deters individuals from engaging in terrorism.

Much time, energy, and resources have been poured into counterterrorism efforts worldwide. To reach an achievable solution to terrorism, professionals should move away from trying to profile the individual to looking at the development of terrorists through a psychosocial lens. The key to preventing future terrorist attacks

58 Crenshaw, *supra* note 4 at 385, 396; Rae, *supra* note 2, at 65; Audrey Heffron-Casserleigh, *What is Terrorism?* (2015) (from presentation and lecture at Florida State University).

59 Horgan, *supra* note 2, at 85.

is to focus on preventing an individual from ever becoming engaged in terrorism. Once actively engaged, it is very costly and extremely challenging to rehabilitate terrorists.⁶⁰ Using a psychosocial approach to understanding terrorist development will allow practitioners to see the full picture and consider the many influences that are involved in the path to radicalization.⁶¹ Using education and media as a proactive counterterrorism approach could be the key to stopping the process of terrorist development before it starts.

60 Audrey Heffron-Casserleigh, *Rehabilitation of terrorists- different programs* (2016) (from presentation and lecture at Florida State University); Sam Mullins, *Rehabilitation of Islamist Terrorists: Lessons from Criminology*, 3 DYNAMICS ASYMMETRIC CONFLICT 162, 162-63, 184-85 (2010).

61 Horgan, *supra* note 2, at 84-85.

From Strategy to Tactics: Analyzing al-Qaeda in the Arabian Peninsula's *Inspire* Magazine, Issue 17

Anthony Aversano and Timothy Weinhold¹

Introduction

This article analyzes *Inspire* Magazine issue 17 - Al Qaeda's propaganda magazine - from its strategic ideological preaching to its tactics. As Al Qaeda in the Arabian Peninsula (AQAP) continues to rally and call to action those willing to detest all enemies of Islam, it is vitally important to explore how the organization continues to recruit at the individual level using *Inspire* Magazine. We examine the magazine's format and content to better understand how a reader could potentially sympathize with their cause(s), internalize their ideology, and implement the proposed tactics. Using Rosoka, a natural language processing (NLP) software, we stratify our analysis into a strategic and tactical prospective. The strategic analysis focuses on diagnostic frames, ideological concepts, and image analysis, while the tactical analysis explores entity organizations, persons, weapons, and targets. As a tactic, *Inspire* 17 prioritizes targeting means of transportation with a focus on derailing trains using a simplistic train derailment tool.² Derived from the intelligence provided in the magazine, our team presents a worst-case scenario to bring to light the potential lethal implications. In conclusion, we discuss four recommended courses of action aimed at both the prevention of train derailments and the monitoring of *Inspire* Magazine publications.

AQAP's *Inspire* 17

Inspire Magazine is a professionally composed propaganda and recruitment magazine that acts as a platform for Al Qaeda to project its beliefs in an uncensored format to anyone with internet access.³ The publication is a product of the al-Malahem media foundation, a smaller subset of Al Qaeda, formally known as Al Qaeda in the Arabian Peninsula.⁴ This magazine goes beyond the typical war updates and propaganda you see in publications from similar groups. With seventeen publications since mid-2010, the magazine attempts to radicalize its audience to commit "Open Source Jihad."⁵ *Inspire* poses a grave threat to national security by providing means to its readership. In each issue of the magazine, the authors and editors introduce a

1 The authors would like to thank Stephen Allen, Chris McGinty, and Adam Souza for their thoughtful contributions throughout the writing of this piece.

2 Lone Jihad Guidance Team, *Train Derail Operations*, *INSPIRE* #17, Aug. 13, 2017, at 70-71 [hereinafter *INSPIRE*].

3 *See id.*

4 Haroro J. Ingram, 40 *An Analysis of Inspire and Dabia: Lessons from AQAP and Islamic States Propaganda War*, *STUDIES IN CONFLICT & TERRORISM*, at 357-358 (2017).

5 *Id.*

strategy for radical jihadists to exploit.⁶ With articles like “Make a bomb in the kitchen of your mom” (which some have linked its fruition to the 2013 Boston Marathon bombing), *Inspire* contains valuable intelligence that if found in the wrong hands could prove deadly.⁷

The seventeenth, and latest installment, of *Inspire* magazine continues the trend of previous issues by calling to action against the enemies of Islam.⁸ *Inspire* 17’s overarching theme talks about targeting public transportation as a strategy for potential radical jihadists.⁹ The primary focus of *Inspire* 17 explores train derailment—aptly identified on the cover and through powerful imagery.¹⁰ Detailed targets, locations, times, and best practices for execution are just some of the intelligence available with the click of a mouse.¹¹ The derailment of a train is within reach by following a simple systematic guide on how to build a derailment tool with rudimentary materials available at any hardware store.¹² However, the magazine is much more comprehensive than a how-to guide.

After introducing the strategic goal of targeting transportation, the methodical design then attempts to create sympathizers from its readership, polarize their beliefs, and hopefully, inspire them to materialize the writings into a terror attack.¹³ The deliberate construction and professional quality of articles gives “Advice for Martyrdom Seeker,” discusses the “Imminent Threat” and that “Ideas Don’t Need Visas,” encourages “lone jihad,” and ensures “Security for The Lone Mujahid.”¹⁴ Editors also provide an extensive interview with an idolized radical jihadist, and even go as far as to compare past jihadi operations so readers learn from previous strengths and weaknesses.¹⁵ With a myriad of information, *Inspire* 17 is a lot to unpack. By stratifying the analysis into a strategic lens, which concentrates on AQAP’s larger organizational objectives and an in-depth tactical perspective, and focusing on the means to achieve the strategy, the information is more logical.

Strategic Analysis

Diagnostic Frames

Frame analysis helps recognize the objectives of the sender and the audience’s perception thereof.¹⁶ *Inspire* is purposefully framed to resonate with the reader who

6 *Id.* at 358-59.

7 *Id.* at 358.

8 *INSPIRE*, *supra* note 1, at 3.

9 *Id.* at 10.

10 *Id.* at 1.

11 *Id.* at 94-97.

12 *Id.* at 72-88.

13 James Bamford, *Reading This Magazine Could Land You in Jail*, *FOREIGN POL’Y* (Mar. 25, 2015), <http://foreignpolicy.com/2015/03/25/reading-this-magazine-could-land-you-in-jail/>.

14 *INSPIRE*, *supra* note 1, at 2, 26.

15 *Id.* at 32.

16 Antonio Sanfilippo et al., *Automating Frame Analysis*, in *SOCIAL COMPUTING, BEHAVIORAL MODELING*,

is ready to commit jihad (e.g. suicide bombers are martyrs). Diagnostic framing is a lens that identifies a problem and evaluates blame.¹⁷ The authors and editors attempt to plead their case about what they feel is wrong and place the responsibility at specific targets. Throughout *Inspire 17*, two prevalent diagnostic frames are: Muslim persecution and American injustices.¹⁸

The magazine propagates the point of view that Muslims and the religion of Islam are under persecution worldwide—especially by the United States.¹⁹ This reveals the propagandist objective of establishing those who commit acts of terror for Islam as heroes and victims.²⁰ Muslims have been fighting against infidel persecution for generations.²¹ The magazine references “Crusaders” at various points to call to mind the medieval wars between Christians and Muslims, and refers to mujahedeen fighting Russian invaders out of Afghanistan.²² The United States is AQAP’s scapegoat, and rightfully so.

Since the U.S military has been active in the region for over a decade, there is no shortage of propaganda for organizations like AQAP to exploit. Much of this framing happens early on in an article titled “American Raids in Yemen.”²³ The article shows a picture of an innocent looking girl with the exclamation: “[t]he Americans killed her father, Sheikh Anwar Al-Awlaki. Then killed her brother, and finally killed the girl.”²⁴ This is just one of many examples rattled throughout the magazine of Muslim persecution. The constant persecution has left no other option but to fight back, and there is a vast supply of material attempting to frame jihadists acting with a pure religious cause against a corrupt western government.²⁵

Highlighting any mistakes by the U.S. government, *Inspire 17* establishes the U.S military and political figureheads as common enemies for the reader. The same article, “American Raids in Yemen,” moves on to discredit the effectiveness of the U.S. military with images of a downed Osprey: “are the pilots suffering from something new, is there a new PTSD in town? . . . or are the \$75 million Ospreys just being shot down by local tribesmen?”²⁶

The magazine then shifts its focus to political leaders; both President Donald Trump and former President Barack Obama are portrayed.²⁷ The authors cite select statements by the two gentlemen which they believe will help polarize the readership against them. Referring to politicians and Americans as “serpents carrying lethal venom,” the authors efficiently channel hatred from the previous injustices at the

AND PREDICTION 239 (Huan Liu, et al. eds., 2008).

17 *Id.*

18 *See* *INSPIRE*, *supra* note 1.

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.* at 15-16.

23 *INSPIRE*, *supra* note 1, at 30-31.

24 *Id.* at 31.

25 *See id.*

26 *Id.* at 31.

27 *Id.* at 42.

Western world.²⁸

Ideological Concepts

Inspire 17 includes its own definition of open source or “lone jihad.”²⁹ This definition provides the framework for further analysis and reads: “A resource manual for those who loath the tyrants; includes bomb making techniques, security measures, guerrilla tactics, weapons training and all other jihad related activities.”³⁰ Open source Jihad serves as a tool for the Islamic state and other related extremist groups.³¹ It allows them to claim ownership for acts of terror on a global scale.³² *Inspire* magazine is an effective means of conveying radical Islam’s ideologies in an aesthetically pleasing and well-edited digital piece of literature. Its global reach via the Internet poses a great threat to all western and/or civilized countries.

Inspire 17 begins by urging true Muslims to take up arms against the West.³³ The first true ideology that the editor tries to convey is “. . . the obligation of fighting jihad against oppression.”³⁴ The article attempts to make the reader see through a lens which will help manipulate them to carry out train derailment operations with no consideration for the lives of ‘innocent’ civilians—because in the eyes of the true Muslim, there are none.³⁵ “lone jihad” allows for these ideologies to strike wherever, whenever, and against anyone in the world.³⁶

Another ideological concept central to *Inspire 17* is the belief that any Muslim who disagrees with AQAP’s interpretation of the Qur’an will be considered an apostate, or someone who renounces the religion.³⁷ This ideology, coupled with AQAP’s disregard for both non-Muslims and Muslims of different sects, breeds an innate drive to convert, or practice radical Islam among the public.³⁸ *Inspire 17* makes mention of “apostate . . . regimes” four times.³⁹ These regimes operate within the Middle East and are considered by some to be “. . . more severe in their disbelief and hypocrisy than the foreign enemy”⁴⁰ due to their proximity and direct influence on practicing Muslims. It frames any action taken against the apostate regimes as being against major countries such as the United States and France.⁴¹ This concept is important to understand as a reader, because it provides justification to many of

28 *INSPIRE*, *supra* note 1, at 42.

29 *Id.* at 69.

30 *Id.*

31 CLAIRE WISKIND, LONE WOLF TERRORISM AND OPEN SOURCE JIHAD: AN EXPLANATION AND ASSESSMENT 7 (2016).

32 *Id.* at 7-8.

33 *INSPIRE*, *supra* note 1, at 3.

34 *Id.*

35 *See id.* at 21.

36 WISKIND, *supra* note 30, at 3.

37 *See INSPIRE*, *supra* note 1, at 44-45.

38 *See* Rohan Gunaratna, *Al Qaeda’s Ideology*, HUDSON INST. (May 19, 2005), <https://www.hudson.org/research/9777-al-qaeda-s-ideology>.

39 *See INSPIRE*, *supra* note 1.

40 *Id.* at 45.

41 *Id.* at 44.

the ideologies of the organization. AQAP believes all apostates are targets—including civilians.⁴² Grasping this notion provides more clarity for why the radical jihadists advocate for what they do.

Image Analysis

In addition to glamorizing several key persons and their contribution to Jihad, *Inspire 17* also exploits several images in an attempt to encourage violence towards non-Muslims. Acting as a vessel for their methodology, these images depict senseless violence against Muslim youths.⁴³ They attempt to portray incompetence and malintent within the American military, while framing other Jihadists in a heroic light, and capture the devastating effects of train derailment as a form of “lone wolf” attack.⁴⁴ The images included all serve a particular purpose. Either they attempt to gain the sympathy of the reader or they glorify the idea of train derailment as a means to combat atrocities committed against them. To achieve this glorification, it is necessary to depict the aftermath of a train derailment using a derailment tool. Something so simple could instantaneously cause casualties, millions of dollars’ worth of damage, and disruption to the daily function of an entire region.

Depictive imagery is a critical tool in the advancement of terrorists’ ideologies, as “terrorists were more interested in publicity than in killing, and that terrorists who justified violence with theological imperatives were no more bloody-minded than their secular counterparts were swept aside in a deafening crescendo of death and destruction.”⁴⁵ For example, exploiting the photos of the 9/11 World Trade Center Attacks in their propaganda serves the same purpose as including photos of demolished trains consumed in smoke. Lastly, *Inspire 17* includes images reflecting on the past successes and failures of prior “lone jihad” operations.⁴⁶ This is included as an attempt to portray Al-Qaeda as a learning organization, unwilling to repeat mistakes from the past. According to counterterrorism experts, a pattern has emerged whereby “radical cells learn from each attack and refine their operations, making preventive measures and police investigations more difficult.”⁴⁷ This inclusion is consistent with Hoffman’s statement and may further entice readers into committing an attack using a derailment tool.⁴⁸

In addition to including a step-by-step visual guide on how to create the tool, *Inspire 17* also notes fifteen specific railways that would be ideal targets for a derailment attack, and includes a detailed image of a map showing all the rail lines in the U.S.⁴⁹ Using this image, the reader can note which rail

42 See generally *id.*

43 *Id.* at 30-31.

44 See *INSPIRE*, *supra* note 1, at 18, 30-31.

45 BRUCE HOFFMAN, *INSIDE TERRORISM* ix (Anne Routon ed., Columbia Univ. Press rev. ed. 2006).

46 *INSPIRE*, *supra* note 1, at 17.

47 HOFFMAN, *supra* note 44, at 252.

48 *INSPIRE*, *supra* note 1, at 17.

49 *Id.* at 94-97.

lines and organization are most vulnerable.⁵⁰ For example, using the image provided, one can see that Amtrak and CSX transportation cover the majority of the Eastern United States.⁵¹ As a result, organizations such as Amtrak are becoming a primary focus for AQAP.

Tactical Analysis

Tactics

The overarching strategy in *Inspire 17* is “Targeting . . . Transportation.”⁵² Terrorist organizations have extensively used this as common practice in the past.⁵³ Domestic security resources, subsequent to the 9/11 World Trade Center attack, have been focused on airways and “. . . the federal government has spent hundreds of billions of dollars to protect transportation systems, mostly at airports. But security experts say the overwhelming focus on aviation leaves security gaps in other modes of transportation.”⁵⁴ An early article within *Inspire 17* covers the ideological rationale as to why one should target transportation.⁵⁵ Transportation-centric attacks boast simplicity, effectiveness, and exploit modern society’s reliance on it for both transporting people and goods.⁵⁶ The authors divide the tactic of targeting transportation into three categories: cars, trucks and wheeled passenger transporting machines, lines or pathways of transportation, and stations, terminals, and hubs.⁵⁷ The tactic that is emphasized most in this *Inspire 17* is train derailment to target the lines or pathways of transportation.⁵⁸ As previously mentioned, there are gaps within the protection of America’s transportation systems, most notably the railway.⁵⁹ *Inspire* provides readers a systematic guide of how to derail trains using rudimentary, easily obtained materials.⁶⁰ Using the provided pictures, measurements, and maps, derailment attacks become possible for anyone to carry out.⁶¹

This fact should raise great concern within the U.S. and its Homeland Security efforts due to its simplicity. It is not feasible to constantly surveil or patrol all 200,000

50 *Id.*

51 *Id.* at 96-97.

52 *Id.* at 2.

53 See Brian Michael Jenkins & Bruce R. Butterworth, *Transit is a Terrorist Target*, MINETA TRANSP. INST. (May 31, 2016), <http://transweb.sjsu.edu/PDFs/research/transit-is-a-terrorist-target.pdf>.

54 Ron Nixon, *With Its Focus on Air Travel, U.S. Leaves Trains Vulnerable to Attack, Experts Say*, N.Y. TIMES (Dec. 11, 2015), <https://www.nytimes.com/2015/12/12/us/us-trains-vulnerable-to-attack-security-experts-say.html>.

55 *INSPIRE*, *supra* note 1, at 8-13.

56 *Id.* at 9-11.

57 *Id.* at 11.

58 See generally *id.* (The magazine focuses on derailing train operations, hence the title *Train Derailment Operations*).

59 Nixon, *supra* note 53.

60 *INSPIRE*, *supra* note 1, at 72-88.

61 *Id.* at 72-97.

miles of railway in the United States.⁶² However, it is imperative to secure the already vulnerable and unsecured stretches of railway nationwide.

Another tactic incorporated in *Inspire* 17 is the tactic of targeting civilians.⁶³ It is a critical part of the larger strategy carried out by AQAP.⁶⁴ Hoffman explains the justification: “when their purpose is in fact to kill innocent civilians, the target is still regarded as ‘justified’ because it represents the terrorists’ defined ‘enemy.’”⁶⁵ Terrorists like AQAP have declared war on everyone who does not identify with the ideals of their beliefs.⁶⁶ That allows them to target civilians and use it as a tactic to grab headlines around the world—effectively drawing attention to their cause.⁶⁷ An attack against a U.S railway could result in several million dollars in damages, hundreds of civilian deaths, and a halt in the daily function of a necessary means of transportation.

Entity Organizations

When analyzing *Inspire* magazine, our team utilized a natural language processing software called Rosoka.⁶⁸ This multilingual software scans large volumes of information for important entities, relationships, and saliency.⁶⁹ Entities can be any piece of data, a single person or place, to include documents and websites. Rosoka “determine[s] the relevance and relationship of the data”⁷⁰ that passes through it, and tailors its results to suit the needs of the user. Another useful function is its ability to determine the frequency and pertinence of certain entities within multiple sources, otherwise known as salience.⁷¹

The first entity relationship in *Inspire* magazine which is worthy of study is the relationship between the Arabian Peninsula and Al-Qaeda. Unsurprisingly, this is one of the most salient entity relationships in Rosoka. Used frequently throughout *Inspire* 17, these terms shed light on some of the issues pertinent to the group. AQAP is a subset of Al-Qaeda as mentioned in *Inspire* 17.⁷² The editors of *Inspire* 17 quote an article by Eric Schmitt from the *New York Times* about AQAP:

Al-Qaeda in the Arabian Peninsula, the group’s branch in Yemen, has long been seen by American intelligence and counterterrorism officials as among the most dangerous

62 See Ian Simpson, *Alleged Canada plot turns focus to rail transport’s vulnerability*, REUTERS (Apr. 23, 2013), <https://www.reuters.com/article/us-arrests-usa-railroads/alleged-canada-plot-turns-focus-to-rail-transport-vulnerability-idUSBRE93M1IZ20130424>.

63 *INSPIRE*, *supra* note 1, at 21-25.

64 *Id.* at 22.

65 BRUCE HOFFMAN, *THE CONTRASTING ETHICAL FOUNDATIONS OF TERRORISM IN THE 1980s*, The RAND Corp., <https://www.rand.org/content/dam/rand/pubs/papers/2008/P7416.pdf> (Jan. 1988).

66 BRUCE HOFFMAN, *INSIDE TERRORISM*, 38 Columbia Univ. Press (2006).

67 *INSPIRE*, *supra* note 1, at 25.

68 The statistics regarding salience referred to throughout this article were all obtained after running Rosoka’s analytical features. The authors possess a copy of that statistical output, referred to hereinafter as “Rosoka Data Output.”

69 *Multilingual NLP Solutions*, ROSOKA (2018), <http://www.rosoka.com/capabilities>.

70 *Id.*

71 See *Using Sentiment Analysis to Explore Text Data*, ROSOKA (May 19, 2017), <http://www.rosoka.com/capabilities>.

72 *INSPIRE*, *supra* note 1, at 2, 5.

branches of the global terrorist network, and the one posing the most immediate threat to United States territory. The group's leaders have sought in at least three cases to detonate bombs hidden aboard American commercial jetliners.⁷³

Inspire 17 has two sections which highlight attacks in Yemen by the American government.⁷⁴ They paint the American military as committing war crimes by killing innocent women and children and speak about American combat ineffectiveness.⁷⁵ It should be no surprise that it covers topics in the same proximity of AQAPs main operating area. U.S. officials should pay special attention to the Arabian Peninsula because events happening in that region will directly affect the publication of the magazine. The “narratives designed to empower readers toward action” are largely derived from that region of the world.⁷⁶ While the connection between Al-Qaeda and the Arabian Peninsula would seem obvious due to the name of AQAP, the region is of vital importance and worthy of further study.

A second entity relationship worth noting is *Inspire 17*'s frequent mention of Americans with different entities.⁷⁷ Rosoka links “Americans” under the nationality section, to several other topics in three separate sections, including: Al-Baydh, wounded, crime, battle, bombings, and America.⁷⁸ This is the most salient entity, and it shows AQAPs continued fixation on the West.⁷⁹ The editors talk about Americans in the context of multiple different domains and express great concern for key figures, events, and locations.⁸⁰ This should be of chief concern to U.S. officials, because they see Americans as the enemy, and wish to carry out violent acts against the U.S. If we do not pay attention to how they scrutinize Americans, it could prove deadly.

One of the most salient organizations mentioned in *Inspire 17* is Amtrak.⁸¹ With over 100 hits in Rosoka,⁸² this train company operates on a national scale with transportation services to nearly any major city within the continental United States.⁸³ This organization is mentioned so frequently due to the strategic goal of the magazine to target transportation. *Inspire 17* mentions Amtrak Cascades rail line in the Northwestern United States as a target for mujahedeen to strike, and it specifically lists details about the Cascades line, for example that it is a passenger rail running 156 miles from Vancouver, British Columbia to Seattle, Washington, and then continues 300 more miles to Oregon.⁸⁴ This train system connects eighteen cities along the I-5 corridor, including Seattle, Portland, Vancouver, BC, and Eugene, Oregon.⁸⁵

73 *Id.* at 6.

74 *Id.* at 4, 5, 30-31.

75 *Id.* at 46-47.

76 See INGRAM, *supra* note 3, at 357.

77 Rosoka Data Output, *supra* note 67; see also INSPIRE, *supra* note 1.

78 Rosoka Data Output, *supra* note 67.

79 See *id.*

80 See INSPIRE, *supra* note 1.

81 Rosoka Data Output, *supra* note 67.

82 *Id.*

83 *The Amtrak System*, AMTRAK, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/Maps/Natl-System-Timetable-0317.pdf> (last visited Feb. 19, 2018).

84 INSPIRE, *supra* note 1, at 94-95.

85 *Home Page*, AMTRAK CASCADES, <http://www.amtrakcascades.com/> (last visited Feb. 18, 2018).

The Amtrak Cascade line is only one of fifteen major train networks outlined in *Inspire 17*.⁸⁶ Schedules, frequency, and ideal locations are given for each station.⁸⁷ This reveals how committed the editors and authors are to helping potential violent jihadists carry out an attack. They do the research and provide the details—all the person has to do is follow the advice.

Another salient organization in *Inspire 17* is the Al-Malahem media group.⁸⁸ According to Rosoka, the media organization is mentioned over 100 times.⁸⁹ Al-Malahem is the media group responsible for publishing *Inspire* magazine and its salience is due largely in part to the fact that the name of the organization is on the bottom left of every page, and mentioned once during the interview with Sheikh Abu Mus'ab Abdul-Wadood.⁹⁰ In one section of the interview, the Sheikh mentions another release by the media group and says: “may Allah reward those overseeing Al-Malahem Media.”⁹¹ The media group is the primary publisher on behalf of Al-Qaeda in the Arabian Peninsula.⁹² *Inspire 17* is professionally composed to ensure a quality product which will reach and resonate with potential sympathizers.⁹³ The meticulous effort placed into *Inspire 17* shows the commitment of everyone in the media group, and that they are not to be underestimated. With the ability to publish online and distribute an uncensored message to anyone with access to the Internet, their influence is vast.

Persons of Interest

In order to more effectively combat the ideology and methodology embedded within *Inspire* magazine, our team has identified three decisive individuals within *Inspire 17* who warrant further investigation. Sheikh Abu Mus'ab Abdul Wadood is featured in an interview acting as an inspirational figure to Muslims.⁹⁴ This interview is included in order to strengthen the message of “lone jihad” and to share with the reader the importance of “lone jihad.” Portrayed in a heroic light, his profound words on many controversial issues currently facing the Middle East may motivate *Inspire*'s readers to act. Readers may even follow his path to radicalization, from his first steps engagement with jihadism to his current battle-tested state.

The next individual featured, Ibrahim Ibn Hassan Al-Asiri, authored a passage titled “Targeting Means of Transportation.”⁹⁵ He is evidently well-educated and is able

86 *INSPIRE*, *supra* note 1 at 94-95.

87 *Id.*

88 Rosoka Data Output, *supra* note 67.

89 *Id.*

90 *INSPIRE*, *supra* note 1, at 46.

91 *Id.* at 46.

92 See Thomas Joscelyn, *AQAP leader calls for 'simple' attacks in the West*, FED'N FOR DEF. DEMOCRACIES (May 8, 2017), <https://www.longwarjournal.org/archives/2017/05/aqap-leader-calls-for-simple-attacks-in-the-west.php>.

93 James Bamford, *Inspire Magazine: The Most Dangerous Download on Earth*, GQ (Dec. 9, 2013), <https://www.gq.com/story/inspire-magazine-al-qaeda-boston-bombing>.

94 *INSPIRE*, *supra* note 1, at 32.

95 *Id.* at 8.

to effectively articulate “lone jihad” tactics.⁹⁶ His job may not be to pick up a gun or make a bomb, but rather to mastermind a strategy for others to carry out.

Lastly, the editor of *Inspire* magazine, Yahya Ibrahim, should be a primary concern for all organizations combating terrorism. As the main editor of *Inspire*, Ibrahim likely has the final say as to what is included and not included in each edition. In a way, he is the most influential person on the *Inspire* team. Through his continued work in editing and producing this propaganda magazine, he is able to reach a large audience resulting in the potential radicalization of many readers.

Weapons

There are few types of weapons mentioned in *Inspire* 17. Rosoka’s analysis and key word search identified only nine weapons.⁹⁷ The most notable on the list, with forty-eight hits, is “explosive,” which is to be expected.⁹⁸ In addition, there are three entity relations involving weapons identified throughout *Inspire* 17: “Weapon to Organization,” “Weapon to Place,” and “Weapon to Person.”⁹⁹ Rosoka flagged “Weapon to Organization” because *Inspire* talks about AQAP’s use of explosives in previous “Lone Wolf” attacks.¹⁰⁰

Offering the train derailment tool in lieu of an explosive device may increase the appeal of a “Lone Wolf” attack. As previously mentioned, the use of non-conventional weaponry, such as the derailment tool, results in increased security for a “Lone Wolf” attacker as “. . . he doesn’t need weapons, storage dumps or explosives,”¹⁰¹ which are easy to track, monitor, and investigate.

One does not need conventional weapons to accomplish an attack against a railway, and even though the train derailment tool is not a traditional “weapon,” its potential should not be underestimated.

Targets

Inspire 17 calls attention to several key geographic locations as potential targets for train derailment operations.¹⁰² It notes several routes, but identifies three railways that are particularly vulnerable when assessed using the following criteria: population density, surrounding infrastructure, and ridership.¹⁰³ The Acela Express, the Cardinal, and the Coast Starlight are among the most damage inflicting routes, as each boasts a high number of patrons daily and travel through population-dense zones containing critical domestic infrastructure.¹⁰⁴ A “Lone Wolf” attack aiming to derail one of these lines could have lasting impacts on their respective

96 See *id.* at 11-13.

97 Rosoka Data Output, *supra* note 67.

98 *Id.*

99 *Id.*

100 *Id.*

101 See *INSPIRE*, *supra* note 1, at 51.

102 See *id.* at 94-95.

103 *Id.*

104 *Id.*

regions—both socially and economically. The first track, the Acela Express, is a passenger train that runs between Washington D.C. and Boston, reaching speeds of up to 150 miles per hour.¹⁰⁵ This makes the Acela trains among the fastest traveling in the United States, resulting in a stopping distance of one mile or more.¹⁰⁶ This long stopping distance could create near impossible braking conditions in the event a train derailment device were on the track. On March 24, 2017, the Acela derailed near a platform, resulting in the evacuation of 248 passengers.¹⁰⁷ One of the passengers “aboard the NJ Transit train described the experience as ‘scary as hell’ in a tweet.”¹⁰⁸ So, the question arises, how much more frightening would this have been if it were an intentional terrorist attack? In between the Acela’s two, population-dense cities, Washington D.C and Boston, it makes fourteen stops at major cities, such as New York City, Philadelphia, and Baltimore.¹⁰⁹ In addition, the average ridership of this route is such that there is potential for significant civilian casualties if an intentional derailment were to occur at a high rate of speed. Coupled with that is a notable disruption to the daily routine of thousands of commuters, as well as potential damage to surrounding infrastructure.

Similarly, the Cardinal travels east to west, and, again, passes through population-dense cities with much surrounding infrastructure.¹¹⁰ Its average ridership is just below the Acela’s, but it passes through major cities such as Chicago, Indianapolis, and Washington D.C.¹¹¹ The last route, the Coast Starlight, is located on the west coast and is the longest of the three, making for miles of unguarded track through open land.¹¹² This route also hits the major population centers in the west coast, such as Los Angeles and Seattle.¹¹³ This assessment aims to cover both the overarching areas of alarm, as well as specific targets of interest. Throughout *Inspire 17*, there are over 100 mentions of specific locations ideal for terrorist attacks around the world.¹¹⁴ *Inspire 17* promises to its target audience a high payoff if they carry out a “Lone Wolf” attack against any of these transportation targets.¹¹⁵ As a result, U.S. officials should increase security for all fifteen rail lines mentioned.

Currently, there is very little emphasis placed on the security of rail stations, and even less placed on the security of rail lines, as security agencies would rather

105 *Id.*

106 *See Train and Track Safety: Stopping Distance*, MINN. SAFETY COUNCIL (Feb. 23, 2018), <https://www.minnesotasafetycouncil.org/facts/factsheet.cfm?q=858251BECECF1976F908D7D68B570E85>.

107 Lori Aratani, *D.C.-Bound Acela Train Derails at New York’s Pennsylvania Station*, WASH. POST (Mar. 24, 2017), https://www.washingtonpost.com/news/dr-gridlock/wp/2017/03/24/d-c-bound-acela-train-derails-at-new-yorks-pennsylvania-station/?utm_term=.7761a004c179.

108 *Id.*

109 *Amtrak fact sheet: Acela service*, RAIL PASSENGERS ASS’N (2018), <https://www.narprail.org/site/assets/files/3480/1.pdf>.

110 *Amtrak fact sheet: Cardinal service*, RAIL PASSENGERS ASS’N (2018), <https://www.narprail.org/site/assets/files/3480/1.pdf>.

111 *Id.*

112 *See INSPIRE*, *supra* note 1, at 94.

113 *Id.*

114 Rosoka Data Output, *supra* note 67.

115 *See INSPIRE*, *supra* note 1, at 13.

accept the impossibility of “defending” such “soft” targets, and focus on intelligence to prevent attack.¹¹⁶ The specific details included within *Inspire 17* could prove to be helpful to anyone wishing to attack a railway. As mentioned above, major rail lines and stations in New York, Los Angeles, and Chicago are all potential targets. However, those locations are already high-value targets for terrorist groups. Some of the less targeted areas mentioned in *Inspire 17* which officials should initiate extra precautions include: Charleston and Columbia, South Carolina, Fayetteville, North Carolina, and, in particular, Seattle, Washington. The magazine mentions King Street Station in Seattle multiple times.¹¹⁷ It is fifteenth on the list for most daily riders according to Amtrak, leaving its nearly 700,000 annual passengers vulnerable if the threat is not taken seriously.¹¹⁸ Due to its lack of notoriety, Seattle’s King Street Station and the railways intersecting it may be a secondary focus for security when placed up against targets like Penn Station or Grand Central Station. King Street Station’s exposure in the magazine, however, now makes its railways a prime target.

The derailment tool is *Inspire 17*’s focal point, and using it to cause a derailment is the desired end state of AQAP. It is imperative that the United States take a proactive approach towards preventing intentional derailments by considering the criteria and designating high-risk routes such as the Acela, Cardinal, and Coast Starlight.

Worst Case Scenario

We assert that the most casualty-producing incident from *Inspire 17* would be a targeted derailment of a chemical or hazardous material train in a densely populated area. The effects could be long-term, and would have immediate physical, psychological, and economic implications. Trains play a critical role in the United States economy; accounting for nearly \$274 billion in output in 2014, they are responsible for moving “[t]he approximately 2.2 million carloads of chemicals . . .” that are transported each year.¹¹⁹ These chemicals serve many purposes, but more ominously, are a target for those intending on using a train derailment tool. Other natural resources, and products such as oil, coal, lumber, and food products also rely on America’s railways.¹²⁰

When these trains accidentally derail, the economic and social effects are both lasting and significant. A recent train derailment in Taunton, Massachusetts, caused over 1,800 gallons of diesel fuel to spill and absorb into the ground, causing economic and environmental damage.¹²¹ In 2005,

116 See Nixon, *supra* note 53.

117 See *INSPIRE*, *supra* note 1, at 94-95.

118 *Amtrak National Facts*, AMTRAK (2017), <https://www.amtrak.com/about-amtrak/amtrak-facts/amtrak-national-facts.html>.

119 ASS’N OF AMERICAN RAILROADS, *THE ECONOMIC IMPACT OF AMERICA’S FREIGHT RAILROADS 1-3* (2017).

120 *Id.*

121 *Train Derailment Causes 1,800 Gallon Fuel Spill*, CBS BOSTON (Dec. 13, 2017), <http://boston.cbslo->

chlorine escaped from a punctured train car in South Carolina subsequent to an accidental derailment.¹²² As a result, 9 people died, 72 were hospitalized, and over 500 had to seek medical treatment.¹²³ This accidental derailment resulted in only one punctured tank.¹²⁴ In December of 2017, the Amtrak, Cascade derailed on an overpass while traveling upwards of 80 mph over a busy highway, killing 3 people and injuring over 100.¹²⁵ These three specific instances show how ruinous the effects of unintentional derailments are to the economic, social, and environmental interests.

In addition, *Inspire* 17 focuses especially on encouraging open source jihad, and in light of recent attacks, the threat of an individual using readily-accessible materials to conduct an attack is constantly present. The “See Something, Say Something” campaign helps to mitigate the risk of an explosive being left aboard a train, but there are very few other security safeguards on actual railroad tracks throughout the United States.¹²⁶ The burden of security on America’s railways falls mostly on private companies and not on the federal government, which leaves them vulnerable to attack.¹²⁷ Al-Qaeda’s analysis of the weaknesses of the American transportation system, and recognition that a lone wolf attack will be easier to accomplish and just as devastating as a coordinated group attack, shows that they are an adaptive, learning organization. This means that Al-Qaeda will continue to find new ways to attack the United States, and other Western nations, and that the intelligence community must always be monitoring sources such as *Inspire* to detect and prevent new threats.

Conclusion: A Way Forward

We propose four recommended courses of action surrounding the next steps against *Inspire* magazine. Instead of preventing and limiting production of the magazine, we recommend tracking its readership, and keeping record of those who search and download the magazine. Simply outlawing the magazine like Australia and the United Kingdom plan to will not solve the problem. Publishers will turn to the dark corners of the web to distribute publications resulting in the inability to track viewers.

cal.com/2017/12/13/train-derailment-taunton-fuel-spill/.

122 NAT’L TRANSP. SAFETY BD., RAILROAD ACCIDENT REPORT, COLLISION OF NORFOLK SOUTHERN FREIGHT TRAIN 192 WITH STANDING NORFOLK SOUTHERN LOCAL TRAIN P22 WITH SUBSEQUENT HAZARDOUS MATERIALS RELEASE AT GRANITEVILLE, SOUTH CAROLINA, JANUARY 6, 2005 1 (2005).

123 Mary Wenck et al., *Rapid Assessment of Exposure to Chlorine Released from a Train Derailment and Resulting Health Impact*, 122 PUB. HEALTH REP. 784, 784 (Nov.-Dec. 2007).

124 *Id.* at 785.

125 Rodika Tollefson et al., *At least 3 killed after Amtrak train derails in Washington state, spilling rail cars onto busy highway*, WASH. POST, (Dec. 19, 2017), https://www.washingtonpost.com/news/dr-grid-lock/wp/2017/12/18/amtrak-train-derails-in-washington-state-rail-cars-fall-onto-interstate-5/?utm_term=.3f967d322913.

126 See Jeremy Plant, *Terrorism and the Railroads: Redefining Security in the Wake of 9/11*, 21 REV. OF POL’Y RES. 293, 293-94 (2004).

127 *Id.*

And as a result, even more websites hosting *Inspire* will begin to appear.¹²⁸

While it is important to gather intelligence, it is equally important to ensure safety and prevent a terrorist act. Once released, we would like to see government agencies alter published *Inspire* content rather than block it entirely. For example, in *Inspire* 17 using this recommended approach, the steps in building the derailment tool—if modified—would render the tool ineffective once deployed. Similarly, instructions to make a pressure cooker bomb could be altered to make it malfunction. Changing small steps in the how-to guide sections may go unnoticed to the untrained eye and remove the effectiveness of the magazine while still allowing agencies to track viewers.

The train derailment tool is the focal point of *Inspire* 17, and there are few mitigating entities in place to prevent such an attack.¹²⁹ A derailment tool can be made using easily obtainable items totaling just over \$100 USD to build.¹³⁰ The simplicity and feasibility of such an attack is reason enough for local, state, and federal agencies to consider our proposed courses of action. Trains are one of the most vulnerable means of transportation.¹³¹ With over 200,000 miles of railway nationwide in the U.S and hundreds of thousands more globally, the train derailment tool has the potential to wreak havoc. In order to mitigate physical risk in conjunction with our previously mentioned recommendations, increased surveillance and patrol of railways nationwide, especially those deemed optimal targets identified by our algorithm, is recommended. Professor Jeremy Plant of Penn State University calls this approach to railway security the “policing” approach, and he notes the success of this approach during World War II America in his paper “Competing Models for Enhancing Railway Security.”¹³² Similar to the already existing notification precautions for anyone who buys large amounts of fertilizer or select chemicals,¹³³ we recommend expanding the scope of the precautions already in place to include purchases of rebar and concrete in combination with rubber and sheet metal. Proper training among hardware store employees, or electronic tracking to identify the purchase of such items, is an economically efficient way to have more eyes on the lookout for suspicious purchasing trends.

128 See Bamford, *supra* note 12.

129 Plant, *supra* note 125.

130 See *INSPIRE*, *supra* note 1, at 88.

131 Plant, *supra* note 125, at 302.

132 See Jeremy Plant, *Competing Models for Enhancing Railroad Security*, 34 *PUB. MANAGER*, Fall 2005, at 13.

133 Clayton Sandell, *FBI Letter Warns of Fertilizer Purchases for Explosives*, ABC NEWS (Feb. 24, 2011), <http://abcnews.go.com/US/fbi-sends-letter-warning-fertilizer-purchases-explosives/story?id=12991048>.

The Executive's Power to Engage in a Limited Use of Military Force

Brian Neufuss

Introduction

Since the end of the Cold War, presidents have often been persuaded by the use of military air power to intervene in various conflicts.¹ Limited airstrikes offer an option to shift, or even halt, a conflict in the interests of the United States.² Both the Obama and Trump administrations have used this policy, most notably in Libya in 2011³ and in Syria in 2017.⁴ In both cases, the Executive Branch utilized U.S. military power to launch air strikes against a foreign power without the express authorization from Congress to conduct military operations.⁵ These interventions closely mirror each other because of their length, goal, and conduct.⁶ Limited airstrikes are likely to continue through, and beyond, the Trump administration as a key tool in American foreign policy. However, there remains an ongoing legal and political debate about the legal authority for a president to engage in a limited but undeclared military action.⁷ The question this essay investigates is what is the legal authorization and extent of the President's ability to engage in a limited but unilateral use of military power abroad when the national security of the United States is not directly threatened. The essay concludes that such ability centers on several distinct factors that various Presidents have historically relied upon which provide a clearer framework for analyzing these issues.

Historical and Legal Background

Limited military engagement is not a new policy in United States foreign policy. Its practice extends back to the founding of the nation.⁸ The United States has formally declared war only eleven times since its founding, but the federal government

1 See Barbara Salazar Torreon, INSTANCES OF USE OF UNITED STATES ARMED FORCES ABROAD, 1798-2017 (R42738), CONG. RESEARCH SERV. (Oct. 12, 2017).

2 DAVE SLOGGETT, A CENTURY OF AIR POWER: THE CHANGING FACE OF AIR WARFARE 1912-2012 90 (2013).

3 See *Libya: US, UK, and France attack Gaddafi forces*, BBC (Mar. 20, 2011), <http://www.bbc.com/news/world-africa-12796972>.

4 See Spencer Ackerman et al., *Syria missile strikes: US launches first direct military action against Assad*, GUARDIAN (Apr. 7 2017), <https://www.theguardian.com/world/2017/apr/06/trump-syria-missiles-assad-chemical-weapons>.

5 *Id.*; Charlie Savage, *Attack Renews Debate Over Congressional Consent*, N.Y. TIMES (Mar. 21, 2011), <http://www.nytimes.com/2011/03/22/world/africa/22powers.html>.

6 Compare Jeffrey Goldberg, *The Obama Doctrine*, ATLANTIC (Apr. 2016), <https://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/>; with Michael Gordon, et al., *Dozens of U.S. Missiles Hit Air Base in Syria*, N.Y. TIMES (Apr. 6, 2017), <https://www.nytimes.com/2017/04/06/world/middleeast/us-said-to-weigh-military-responses-to-syrian-chemical-attack.html>.

7 *Balance of U.S. War Powers*, COUNCIL ON FOREIGN REL. (Dec. 1, 2013), <https://www.cfr.org/backgrounder/balance-us-war-powers>.

8 See Torreon, *supra* note 1.

has used force abroad hundreds of times.⁹

These 11 U.S. war declarations encompassed five separate wars: the war with Great Britain declared in 1812; the war with Mexico declared in 1846; the war with Spain declared in 1898; the First World War, during which the United States declared war with Germany and with Austria-Hungary during 1917; and World War II, during which the United States declared war against Japan, Germany, and Italy in 1941, and against Bulgaria, Hungary, and Romania in 1942.¹⁰

Most often, the President's use of limited and brief military power has been to advance the national interest of the United States. Beginning as early as the Quasi-Wars against France in 1798, the President has committed military force across a wide variety of locations and situations and for a range of diverse reasons and objectives.¹¹

So long as certain circumstances exist, the President can lawfully order limited airstrikes against a foreign power, even absent a direct threat to the security of the United States. The founders determined that war involvement should not rest within a single branch of government, but rather should have sufficient checks and balances to theoretically prevent a hasty advance into conflict.¹² Article I, section 8 of the Constitution states that "Congress shall have the power . . . to declare war."¹³ Article II Section 2, the Commander in Chief clause, states that "[t]he President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States."¹⁴ Therefore, the founders likely believed it was best to require the two political branches of government to cooperate before entry into a foreign conflict. Delegate James Wilson stated this clearly during the Constitutional Convention by explaining that

this [new constitutional] system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large.¹⁵

The indication is that the clauses are meant to be complementary rather than conflictual.

Debates during the Constitutional Convention revolved around the drafting of the war clause, and whether Congress should have the power to "make war" or to "declare war."¹⁶ Obviously, the outcome of the debate was to draft the language as the "power to declare war." According to David Adler, "at the time of the framing, the word 'declare' enjoyed a settled understanding and an established usage."¹⁷ Simply stated, "as early as 1552, the verb 'declare' had become synonymous with the verb

9 *See id.*

10 *Id. at i.*

11 *See id.*

12 David Gray Adler, *The Constitution and Presidential Warmaking: An Enduring Debate*, 103 *POL. SCI. Q.* 1, 36 (1998).

13 U.S. CONST. art. I, § 8.

14 U.S. CONST. art. II, § 2.

15 Adler, *supra* note 12, at 5.

16 *Id. at* 3-6.

17 *Id. at* 6.

‘commence’; they both meant the *initiation* of hostilities.”¹⁸ Adler further explains that this meaning “was the established usage in international law as well as in England, where the terms to declare war and to make war were used interchangeably.”¹⁹ Therefore, it appears that the originalist understanding of the power to initiate military action rested predominantly, if not completely, with Congress. One interpretation of this perspective states, “[t]aken together . . . the grants to Congress of power over the declaration of war and issuance of letters of marque and reprisal likely convinced contemporaries . . . that the new Congress would have nearly complete authority over the commencement of war.”²⁰ Under this interpretation, the President’s power in the realm of war only exists once war has begun.²¹ The Constitution does not disclose the possibility for the President to conduct military operations to meet sudden attacks; however, it is clear that the states had the primary authority to repel a surprise attack.²²

Interpretation of the relationship between the Declaration Clause and the Commander in Chief Clause was put to the test early in the history of the Republic. In *Bas v. Tingy*, the U.S. Supreme Court laid out the power of Congress to declare a “perfect war,” today known as a total war, and the power to prescribe an “imperfect war,” also known as a limited war.²³ Justice Washington, writing for the majority, explains that “every contention by force between two nations, in external matters, under the authority of their respective governments is . . . war.”²⁴ Writing for the concurrence, Justice Chase echoed this sentiment by writing,

Congress is empowered to declare a general war, or Congress may wage a limited war; limited in place, in object, in time. If a general war is declared, its extent and operations are only restricted and regulated by the *jus belli*, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal laws.²⁵

In *Talbot v. Seeman*, the Court reiterated that Congress has the power to initiate a war, to prescribe the limits of the war, and to bind the Commander in Chief to those limits.²⁶ Finally, in *United States v. Smith*, the Circuit Court for New York explained the assumption that built the foundation in these cases, and that assumption is that nations can only exist in one of two mutually exclusive states of affairs: either at war or in peace.²⁷ The Court stated that “it is the exclusive province of Congress to change a state of peace into a state of war.”²⁸ Clearly, the early Circuit Court believed that nations are perpetually at peace until one of the nations creates a state of war against the other. This sentiment has not stood the test of time, and the Supreme Court has

18 *Id.*

19 *Id.*

20 Charles Lofgren, *War-Making under the Constitution: The Original Understanding*, 81 *YALE L. J.* 672, 700 (1972).

21 *Id.*

22 *Id.*

23 4 U.S. 37, 40 (1800).

24 *Id.* at 40.

25 *Id.* at 43.

26 5 U.S. 1, 6 (1801).

27 27 F. Cas. 1192, 1230 (C.C.D.N.Y. 1806).

28 *Id.*

subsequently stated that “there are constantly new applications of unchanged powers, and it is ascertained that in novel and complex situations, the old grants contain, in their general words and true significance, needed and adequate authority. So, also, we have a fighting Constitution.”²⁹

The view that only Congress can legally authorize military action persisted in the United States until about 1950.³⁰ The technological and political realities of the modern age, the expansion of executive power, and the shift against formalism convinced the Supreme Court to take a more lenient view towards the use of force abroad.³¹ The debate today around the Executive’s power to use force has largely polarized around two views, where either the President has near unlimited power as Commander in Chief to engage in military action, or where the President is powerless unless granted by Congress.³² However, the reality is more nuanced and largely depends on the facts of a given scenario and the actions of each branch.

The landmark Steel Seizure Case, *Youngstown Sheet & Tube Co. v. Sawyer*, explains that Presidential action must find some authority in the constitution or congressional grant.³³ Justice Robert Jackson’s famous concurrence explains that there are three scenarios in which the actions of the political branches fall: (1) When the President acts pursuant to an express or implied authorization of Congress, the President is granted the widest latitude to fulfill that authorization; (2) When the President acts in absence of either a congressional grant or statutory permission, he can only rely upon his own independent powers, but there is a zone of twilight where the test of the President’s authority depends on the imperatives of events and contemporary imponderables; or (3) When the President acts in a measure incompatible with the express or implied will of congress, then his power is at its lowest ebb, and he can only rely upon his own constitutional power minus any constitutional powers of Congress over the matter.³⁴ In *Little v. Barreme*, Chief Justice Marshall explains that even Presidential power committed through constitutional authority may still be restricted through Congress.³⁵ However, *Little v. Barreme* can also be interpreted to imply that where there is congressional silence the President is free to act.³⁶

Youngstown also delineates a sharp difference between executive power domestically and abroad.³⁷ It expanded on the important precedent set in *United States v. Curtiss-Wright Export Corporation* that explains that in the vast external

29 *Lichter v. United States*, 334 U.S. 742, 781-82 (1948).

30 Adler, *supra* note 12, at 2.

31 See William P. Rogers, *Congress, The President and the War Powers*, 59 CALIF. L. REV. 1194, 1207-09 (1971).

32 Adler, *supra* note 12, at 2.

33 343 U.S. 579, 585-87 (1952).

34 *Id.* at 635-38.

35 6 U.S. 170, 177 (1804).

36 J. Gregory Sidak, *The Quasi War Cases – and Their Relevance to Whether “Letters of Marque and Reprisal” Constrain Presidential War Powers*, 28 HARV. J.L. & PUB. POL’Y 465, 492 (2005).

37 See generally *Youngstown*, 343 U.S. 579 (1952) (explaining the increased power of the president in foreign affairs).

realm of foreign affairs, the President alone has the power to speak or listen as a representative of the nation.³⁸

[We] are here dealing not alone with an authority vested in the President by an exertion of legislative power but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations - a power that does not require [an act of Congress as a basis for its exercise.]³⁹

Dames & Moore v. Regan reinforces the notion that the president is granted wide latitude in foreign affairs and is given particular deference involving responses to international crises which Congress would not be expected to anticipate.⁴⁰ Past practice by the executive does not create power, but “long continued practice, known to and acquiesced in by Congress,” raises a presumption that the action “had been taken in pursuance of its consent.”⁴¹ The case goes on to explain that where a particular action has been determined to be a “necessary incident to the resolution of a major foreign policy dispute between our country and another,” and Congress has not disapproved of the President’s action, the President cannot be said to lack the power to perform that action.⁴²

It must be considered that the war powers deserve special consideration within the realm of foreign affairs, and were not meant to be considered within the same legal framework as other foreign policy tools. There is reason to believe this is the case considering the inherent consequences of war and the relatively clear explanation of Congressional powers to declare war within the Constitution.⁴³ However, “[t] here is ample authority to support the proposition that Congress does not have the exclusive right to determine whether or not the United States will engage in war.”⁴⁴ As the Court has explained, “there are some types of war which, without Congressional approval, the President may begin to wage . . .”⁴⁵ “As to the power to conduct undeclared hostilities beyond emergency defense . . . [the Court is] inclined to believe that the Constitution, in giving some essential powers to Congress and others to the executive, committed the matter to both branches” to reconcile.⁴⁶ The courts have continued to indicate that when Congress refuses to exercise its power to restrain the President in foreign affairs, the Executive and Legislative branches are not in conflict because Congress is essentially lending their support for the President’s conduct.⁴⁷

38 299 U.S. 304, 319 (1936).

39 *Id.* at 320.

40 453 U.S. 654, 669 (1981).

41 *Id.* at 686.

42 *Id.* at 688.

43 See Lofgrent, *supra* note 20, at 672 (invoking Madison’s principle that war-making was a legislative function and executive exceptions should be strictly interpreted).

44 *Drinan v. Nixon*, 364 F. Supp. 854, 859 (D. Mass. 1973); *see also Durand v. Hollins*, 8 F. Cas. 111, 112 (C.C.S.D.N.Y. 1860); *The Prize Cases*, 67 U.S. 635, 641 (1863).

45 *Drinan*, 364 F. Supp. at 859 (quoting *Mitchell v. Laird*, 488 F.2d 611, 613 (D.C. Cir. 1973)).

46 *Id.* (quoting *Massachusetts v. Laird*, 451 F.2d 26, 33 (1st Cir. 1971)).

47 *See id.* at 859-861.

Of final consideration is the War Powers Resolution of 1973.⁴⁸ The War Powers Resolution requires the President to notify Congress within forty-eight hours of committing armed forces into hostilities and forbids armed forces from remaining for more than sixty days, with a further thirty-day withdrawal period, without a Congressional authorization for use of military force or a declaration of war.⁴⁹ Initially, the War Powers Resolution was created to eliminate the slow but continuous increase of military involvement in foreign countries.⁵⁰ President Nixon's belief was that the Act unconstitutionally restricted his power as commander in chief of the armed forces.⁵¹ However, it is significant that the War Powers Resolution has essentially given Congress's blessing to the President to conduct short, limited military engagements, so long as they are notified shortly after the engagement and before any additional escalation.⁵² This gives the President an increased ability to conduct his plenary and exclusive foreign affairs powers through additional tools of foreign policy. It also reinforces the belief that the powers of war are committed to both political branches.

Discussion

The legal framework leaves a complicated prospect for the continued use of short military force. At first glance, it appears that the situation where most limited military engagements take place is in Jackson's "zone of twilight," where Congress has done nothing to either restrain or authorize the President's actions. However, this is not the case and each particular circumstance falls "at some point along a spectrum running from explicit congressional authorization to explicit congressional prohibition,"⁵³ This paper argues that the several factors typically considered by Presidents provide for a clear framework when assessing a situation that falls along that spectrum. Specifically, these factors include the level of force being used, the historical practice of the action at issue, Congressional action regarding the President's conduct, and the contemporary imponderables and imperative of events.

The first factor surrounds not the meaning of "declare," but rather the definition of "war." Historical practice and legal precedent have generally indicated that there must be at least some affirmative grant of authority by Congress to engage in prolonged military action.⁵⁴ The question presented by modern military engagements, however, is whether they rise to the level of even a limited war that requires congressional notification or involvement at all. It remains unclear what is the threshold of veracity of hostilities to require Congressional approval, but at least

48 50 U.S.C. §§ 1541-1548 (2012).

49 *Id.*

50 See Matthew C. Weed, THE WAR POWERS RESOLUTION: CONCEPTS AND PRACTICE (R42699) 1 CONG. RESEARCH SERV. (Mar. 28, 2017).

51 See Richard Nixon, Veto of the War Powers Resolution, 1 PUB. PAPERS 893 (Oct. 24, 1973).

52 See Jennifer K. Elsea & Matthew C. Weed, DECLARATIONS OF WAR AND AUTHORIZATIONS FOR THE USE OF MILITARY FORCE: HISTORICAL BACKGROUND AND LEGAL IMPLICATIONS (RL31133) 26, CONG. RESEARCH SERV. (2014).

53 *Dames & Moore v. Regan*, 453 U.S. 654, 669 (1981).

54 See *Orlando v. Laird*, 443 F.2d 1039, 1042-43 (2d Cir. 1971).

some factors must be considered, including the commitment of troops, the possibility of exchanges of gunfire, the risk of entanglement in a sustained international conflict, and the level of threat to U.S. personnel.⁵⁵ Direct bombing campaigns, rescue missions, or immediate reprisals are essential tools of foreign policy in the twenty-first century. Requiring Congressional approval for each and every military action would drastically constrain the President in the conduct of U.S. foreign affairs. The President, “not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war.”⁵⁶ Jackson also acknowledged this concern in *Youngstown* by stating that the Court should not “circumscribe, much less contract, the lawful role of the President as Commander in Chief. [The Court] should indulge the widest latitude of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society.”⁵⁷

Although the President does not hold the power to solely engage in massive U.S. military buildups abroad, more limited uses of military would likely still be permitted. Congress acknowledged the possibility of this type of force when it drafted the War Powers Resolution.⁵⁸ Importantly, the definition of “hostilities” within the War Powers Resolution is never defined and left ambiguous as to the threshold of what level of force is considered hostilities.⁵⁹ According to Harold Koh, “members of Congress understood the term was vague, but specifically declined to give it more concrete meaning, in part to avoid unduly hampering future presidents by making the Resolution a ‘one size fits all’ straitjacket that would operate mechanically, without regards to particular circumstances.”⁶⁰ Koh went on to explain that the interpretation of what qualifies as hostilities “must be addressed in light of a long history of military actions abroad” and “whether a particular set of facts constitutes hostilities for purposes of the Resolution has been determined less by a narrow parsing of dictionary definitions than by interbranch practice.”⁶¹ The courts have lent credence to this historical practice and political branch wrangling approach. In *Lowry v. Reagan*, the Court explains that “the very absence of a definitional section in the Resolution, coupled with debate suggesting that determinations of ‘hostilities’ were intended to be political decisions made by the President and Congress, suggest to this Court that fixed legal standards were deliberately omitted from this statutory scheme.”⁶² The Court also explains that definitional ambiguity affords the “President . . . flexibility in executing military and foreign policy on a day to day basis.”⁶³ This indicates that even

55 See DEP’T OF STATE LEGISLATIVE AFFAIRS & DEP’T OF DEF. LEGISLATIVE AFFAIRS, UNITED STATES ACTIVITIES IN LIBYA 25 (2011), <https://fas.org/man/eprint/wh-libya.pdf>.

56 *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936).

57 *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 645 (1952) (Jackson J., concurring).

58 50 U.S.C. §§ 1541-1548 (2012).

59 *Id.* See also Weed, *supra* note 50, at 3.

60 *Libya and War Powers: Hearings before the S. Comm. On Foreign Relations*, 112th Cong. 13 (2011) (statement of Harold H. Koh, U.S. Department of State).

61 *Id.* at 8, 13.

62 676 F. Supp. 333, 340 n.53 (D.D.C. 1987).

63 *Id.*

though Congress disapproved of the massive expansion of troops into Vietnam, the members did not wish to preclude the President from all uses of military force abroad.

The second factor that should be considered is the historical frequency of the type of action that the President has used. Congress has historically indicated its support for brief and limited military action by the President through its own actions and general acquiescence.⁶⁴ As far back as 1966, Leonard Meeker wrote that “[s]ince the constitution was adopted, there have been at least 125 instances in which the President has ordered the armed forces to take action or maintain positions abroad without obtaining prior congressional authorization, starting with the ‘undeclared war’ with France (1798-1800).”⁶⁵ At the extreme, President Truman ordered 300,000 troops to Korea from 1950 to 1953 without congressional approval.⁶⁶ Other notable uses of Executive force include President Clinton deploying troops to Somalia and the Former Yugoslavia, President Reagan ordering troops to Grenada, and President H.W. Bush sending troops to Panama.⁶⁷ Although at times members of Congress have taken individual legal action or made political statements condemning the President’s use of force, Congress as a whole has taken remarkably few formal steps to curtail Executive authority in these events.⁶⁸

... [A] systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution, making as it were such exercise of power part of the structure of our government, may be treated as a gloss on “executive power” vested in the President by [section] 1 of [Article] II.⁶⁹

In short, the brief and limited use of force abroad has been used so extensively by the President, with such little Congressional objection, that it has demonstrated that the President holds at least some power to solely employ military power. However, the extent of this power remains within the bounds of the limited use of force that Congress has permitted the President to exercise.⁷⁰ This customary power continues to emphasize that the constitutional tug-of-war between the President and Congress regarding war powers grants some ability to the President to initiate force. As explained by Henry Monaghan, “. . . this historical development of our institutions has settled the legitimacy of ‘inherent’ presidential power to commit the armed forces to hostilities. A practice so deeply embedded in our governmental structure should be treated as decisive of the constitutional issue.”⁷¹

Third, Congress still retains the power to limit the President’s use of force. Absent congressional restrictions, the President is permitted to use military force as

64 See Weed, *supra* note 50, at 7-8.

65 Leonard Meeker, *The Legality of the United States Participation in the Defense of Vietnam*, 75 Yale L.J. 1085, 1101 (1966).

66 See Torreón, *supra* note 1, at 10-17.

67 See *id.*

68 See Weed, *supra* note 50, at 49-51.

69 *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610-11 (1952) (Frankfurter J., concurring).

70 See Weed, *supra* note 50, at 1.

71 Henry Monaghan, *Presidential War-Making*, 50 B.U. L. REV. 19, 31 (1970).

a function of his foreign affairs power.⁷² However, legal precedent clearly indicates that Congress holds the power to restrict the President's action when it does not approve of it.⁷³ The President may act in the limited space that Congress has historically permitted, but because it has given that power, Congress may also take it away.⁷⁴ Where Congress continues to acquiesce, the President is permitted to act.⁷⁵ However, when Congress implicitly or explicitly demonstrates its disapproval toward a particular military action, the President must obey Congress's terms.⁷⁶ Of course, there remains the concern about mission creep through executive commencement of war. This was the most feared outcome by the founders at the Constitutional Convention.⁷⁷ However, nothing in the modern interpretation of the War Powers Doctrine precludes Congress from acting in the event of its disapproval of executive war making.⁷⁸

If not good law, there was worldly wisdom in the maxim attributed to Napoleon that "The tools belong to the man who can use them." We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.⁷⁹

Congress retains extensive checks and balances power to restrain the President from engaging in conduct that is substantially disapproved of.⁸⁰ Furthermore, the President sits in the most public office in the country, which makes it the most responsive to the political will of the people.⁸¹ Although Justice Jackson was concerned about the gravitas of the Office of the Presidency to influence Congress and the people, this constant prevalence in the public eye forces the President, far more than Congress, to practice due diligence.⁸² Where a member of Congress may blame-shift or hide from his or her decision, the President's actions fall squarely on his shoulders. This restrains the President from engaging in actions that unduly harm the security of the nation.

Regarding the fourth factor, it would have been impossible for the Founders to envision the range and complexity of issues that loom over the Presidency in foreign affairs during the modern era. The legality of any individual military action must

72 See Rogers, *supra* note 31, at 1205-07 (discussing the foreign affairs powers of the President when Congress has remained silent on the issue).

73 See *Youngstown*, 343 U.S. at 587-89; *Little v. Barreme*, 6 U.S. 170, 177-78 (1804); *Bas v. Tingy*, 4 U.S. 37, 43-44 (1800).

74 See *Youngstown*, 343 U.S. at 602 (Frankfurter, J., concurring).

75 *Id.* at 637 (Jackson, J., concurring).

76 See, e.g., Jules Lobel, *Conflicts between the Commander in Chief and Congress: Concurrent Powers over the Conduct of War*, 69 OHIO ST. L. REV. 391, 413 (2008). The extent of the President's power under the Commander in Chief clause when Congress has expressed its disapproval is beyond the scope of this paper but the President may have military powers that he is designated through the Constitution.

77 See Lofgren, *supra* note 20, at 686.

78 See *Doe I v. Bush*, 257 F.Supp.2d 436, 439 (D. Mass. 2003).

79 See *Youngstown*, 343 U.S. at 654 (Jackson, J., concurring).

80 See *id.* at 587-89; *Little v. Barreme*, 6 U.S. 170, 177-78 (1804); *Bas v. Tingy*, 4 U.S. 37, 43-44 (1800).

81 See *Youngstown*, 343 U.S. at 653-54 (Jackson, J., concurring).

82 *Id.*; see also Jack Goldsmith, *The Accountable Presidency*, NEW REPUBLIC (Feb. 1, 2010), <https://newrepublic.com/article/72810/the-accountable-presidency>.

examine the contemporaneous factors surrounding the Executive action.⁸³ However, the need for action would likely be given deference to the President.⁸⁴ In the modern age

... the world has grown much smaller. An attack on a country far from our shores can impinge directly on the nation's security ... The Constitution leaves to the President the judgment to determine whether the circumstances of a particular armed attack are so urgent and the potential consequences so threatening to the security of the United States that he should action without formally consulting the Congress.⁸⁵

The President may also have additional international legal authority when the U.S. use of force is used in conjunction with additional foreign states to maintain international security.⁸⁶ Because of the near unlimited variability in each particular presidential use of force, it remains impossible to give a sufficient list of factors that must be considered in any given case. However, at a minimum, the legality of a limited military engagement must at least consider the proposed effect on U.S. and world security and the necessity of such an action. The courts tend to not want to turn their backs on the realities of foreign affairs, and that gives significant deference to the President when employing force in a given situation.⁸⁷ These factors give the President a degree of legal flexibility to respond to the world as it presents itself. The world is constantly evolving and the Constitution would be self-defeating if it did not, in some measure, evolve with it.

Conclusion

The Founders envisioned a world where there only existed one of two relationships between states, either a state of war or a state of peace, and only Congress had the power to change the status quo.⁸⁸ However, the realities of the modern world have shifted this balance into a more complex relationship between Congress, the President, and War. The President has the lawful power to engage in brief, limited military action as long as several factors are present. These factors include a limited amount of force being used, a continuous and repeated practice of the particular action at issue, Congressional acquiescence regarding the President's conduct, and the contemporary imponderables and imperative of events. If at least some of these factors exist when the President engages in unilateral force, he is engaging in a lawful action.

83 *Youngstown*, 343 U.S. at 635-38 (Jackson, J., concurring) (suggesting that when evaluating the legality of individual military action through Executive action one must determine if the action is within the realm of foreign affairs, whether it was an issue for which Congress had acquiesced, granted explicit authority or explicitly denied authority, among other contemporaneous factors of the order).

84 *See id.* *See also* *Dames & Moore v. Regan*, 453 U.S. 654, 688 (1981).

85 54 DEP'T ST. BULL. 473, 484-85 (1966).

86 U.N. Charter art. 51.

87 *See* David Gray Adler, *The Judiciary and Presidential Power in Foreign Affairs: A Critique*, 1 RICH. J. L. & PUB. INT. 1, 37 (1996).

88 *See Youngstown*, 343 U.S. at 643 (Jackson, J., concurring).

Democratic People's Republic of Korea: Offensive Military Attack Against U.S. or U.S. Allies Unlikely without Viable Nuclear Defense

Ryan E. Gross

Introduction

Over the past nine months, hostilities between the U.S., its pacific allies, and the Democratic People's Republic of Korea (DPRK) has intensified to levels rarely seen since the Korean war, driving worldwide concern that a war with the DPRK may be increasingly inevitable.¹ Using press reporting and official U.S. Department of Defense reports on the DPRK, this paper explores the likelihood of a DPRK offensive military attack against the U.S. or U.S interests within the near to midterm, and concludes that while Kim Jong Un certainly possesses a better military and is outwardly more aggressive than his father and grandfather, he is no more likely to preemptively strike the U.S. or its pacific allies in the next few years. The DPRK holds the survival of the Kim dynasty above ego and rhetoric, which it acknowledges cannot endure a certain war should it conduct an unprovoked offensive attack against the U.S. or its allies.² The DPRK is likely within three years of having a nuclear weapons arsenal capable of striking the lower forty-eight states;³ however, the current lack of a nuclear weapons inventory with this capacity suggests that it is unlikely that it will conduct an offensive military attack against the United States or its Allies in the near to midterm. Instead, the DPRK will continue dissuading its perceived enemies with inflammatory rhetoric, missile and nuclear tests, and cyber attacks while developing nuclear-capable ballistic missiles, which Kim Jong Un sees as the essential deterrence mechanism to ensure the Kim dynasty rules forever.⁴

Regime Survival Remains Primary Strategic Long-Term Goal

Regime survival remains Kim Jong Un's strategic priority, and he sees an internationally respected nuclear weapons inventory as the only viable way his regime can survive in the long term.⁵ The regime intends to deter perceived legitimate

1 Evan Osnos, *The Risk of Nuclear War with North Korea*, NEW YORKER (Sept. 18, 2017), <https://www.newyorker.com/magazine/2017/09/18/the-risk-of-nuclear-war-with-north-korea>.

2 See, e.g., OFFICE OF THE SEC'Y OF DEF., *MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA* 7 (2012); see also Jung H. Pak, *The Education of Kim Jong-Un*, BROOKINGS INST. (Feb. 2018), <https://www.brookings.edu/essay/the-education-of-kim-jong-un/>.

3 Stepan Kravchenko & Henry Meyer, *North Korea Two to Three Years From Missile That Could Hit U.S., Russia Says*, BLOOMBERG (Nov. 7, 2017), <https://www.bloomberg.com/news/articles/2017-11-08/n-korea-2-3-years-from-missile-that-could-hit-u-s-russia-says>.

4 Pak, *supra* note 2.

5 OFFICE OF THE SEC'Y OF DEF, *supra* note 2, at 3-6; ; Joby Warrick, Ellen Nakashima & Anna Fifield, *North Korea Now Making Missile-Ready Nuclear Weapons, U.S. Analysts Say*, WASH. POST (Aug. 8, 2017), <https://www.washingtonpost.com/world/national-security/north-korea-now-making-missile-ready-nuclear->

midterm threats to its survivability at all costs—short of offensive military attacks—until it reaches its desired nuclear capacity.⁶ Kim Jong Un is gaining confidence in his nuclear program, which likely is driving more aggressive rhetoric and provocation; however, this does not mean he is any more willing to strike the U.S. or its allies.⁷

The DPRK has numerous guiding principles and national security objectives including *juche* (self-reliance), *songun* (military-first ideology), the *byungjin* line (developing a recognized nuclear weapons program), and the reunification of Korea under DPRK rule.⁸ The regime views these objectives as means to achieve the DPRK’s foremost strategic goal: ensure that the Kim family rules for perpetuity.⁹ The U.S. Department of Defense assesses that regime leaders perceive that ballistic missile and nuclear programs represent “a credible deterrent capability essential to its survival, sovereignty, and relevance,” and supplement “its coercive military threats and actions.”¹⁰

Kim Jong Un’s actions and policies towards the U.S. since taking power are likely being drawn from deep-seated perceptions about the U.S. learned from his grandfather, Kim Il Sung.¹¹ U.S. actions during the Korean war, and the eleven-month DPRK seizure of the U.S.S. Pueblo in 1968 (to which the U.S. did not retaliate, and later apologized for), convinced Kim Il Sung that the U.S. always backs down, and did not intend to fight the North Koreans again.¹²

Kim Jong Un sees an arsenal of nuclear-capable ICBMs as a guarantor of his regime’s survival, and his inherited perceptions of a weak and unwilling U.S. are driving him to ignore U.S. warnings about the consequences of moving forward with his nuclear weapons and ICBM programs.¹³ These perceptions, coupled with Kim’s confidence in his regime’s recent technological developments, drive his increased aggression.¹⁴

Viable ICBMs Armed with “Miniaturized” Nuclear Warhead Unlikely at this Time

The regime has conducted five nuclear weapons tests since 2006, and with each test, experts admit the DPRK is advancing its nuclear technology.¹⁵ U.S. officials

weapons-us-analysts-say/2017/08/08/e14b882a-7b6b-11e7-9d08-b79f191668ed_story.htm; Eleanor Albert, *North Korea’s Military Capabilities*, COUNCIL ON FOREIGN REL. (Jan. 3, 2018), <https://www.cfr.org/background-er/north-koreas-military-capabilities>

6 Albert, *supra* note 5.

7 *Id.*; see also Warrick, *supra* note 5.

8 OFFICE OF THE SEC’Y OF DEF., *MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA* 3, 5 (2015); Albert, *supra* note 5.

9 *Id.* at 5.

10 *Id.* at 6.

11 See, e.g., Osnos, *supra* note 1.

12 *Id.*

13 Warrick, *supra* note 5.

14 *Id.*

15 *Id.*

assess the latest test on September 3, 2017 was an “advanced nuclear device” that yielded 140 kilotons of TNT.¹⁶ A leaked August 2017 U.S. intelligence assessment seemingly corroborated DPRK claims that it miniaturized a nuclear warhead capable of being delivered by a ballistic missile, but there is no reliable information to confirm that the DPRK has successfully paired a miniaturized warhead with a missile.¹⁷ U.S. officials have declined to comment on the leaked intelligence report, and while South Korean and U.S. officials admit that miniaturization efforts are advancing, no media or government agency is able to confirm whether the DPRK successfully tested a missile containing a miniaturized warhead as the regime has claimed.¹⁸

Another question is how much longer it will take the regime to perfect the means to deliver a nuclear payload via ICBM to the U.S. or its Pacific allies.¹⁹ The DPRK has a robust missile and rocket inventory capable of striking most of South East Asia and possibly Alaska (see figure 1), and while miniaturized nuclear warheads can be mounted to many of these rockets and missiles, Kim Jong Un sees a reliable ICBM inventory capable of reaching the continental U.S. as a critical part to his nuclear deterrence strategy.²⁰ Despite regime claims that the missiles tested on July 4, 2017 and July 28, 2017 could reach the lower forty-eight states, quantitative assessments from numerous international organizations state that the DPRK has not developed reliable ICBMs capable of reaching the continental U.S.²¹

16 A *Timeline of North Korea's Nuclear Tests*, CBS NEWS (Sept. 3, 2017), <https://www.cbsnews.com/news/north-koreas-nuclear-tests-timeline/>; Ankit Panda, *U.S. Intelligence: North Korea's Sixth Test Was a 140 Kiloton 'Advanced Nuclear' Device*, DIPLOMAT (Sept. 6, 2017), <https://thediplomat.com/2017/09/us-intelligence-north-koreas-sixth-test-was-a-140-kiloton-advanced-nuclear-device/>.

17 *Id.*; Warrick, *supra* note 5; Geoff Brumfiel, *North Korea Has Miniaturized a Nuclear Warhead, U.S. Intelligence Says*, NPR (Aug. 8, 2017), <http://www.npr.org/2017/08/08/542286036/north-korea-has-miniaturized-a-nuclear-warhead-u-s-intelligence-says/>.

18 Warrick, *supra* note 5; Brumfiel, *supra* note 17; Reuters Staff, *N. Korea Still Needs Time to Perfect Re-entry Technology- S. Korea Vice Def Min*, REUTERS (Aug. 13, 2017), <https://www.reuters.com/article/north-korea-missiles-technology/n-korea-still-needs-time-to-perfect-re-entry-technology-s-korea-vice-def-min-idUSL4N1L017Q/>.

19 Ken Dilanian, *North Korea Can Put a Nuclear Weapon on a Missile, Officials Believe*, NBC NEWS (Aug. 8, 2017), <https://www.nbcnews.com/news/north-korea/north-korea-can-put-nuclear-weapon-missile-officials-believe-n790871>.

20 *See, e.g.*, KATHLEEN J. MCINNIS, ANDREW FEICKERT, MARK E. MANYIN, STEVEN A. HILDRETH, MARY BETH D. NIKITIN & EMMA CHANLETT-AVERY, CONG. RESEARCH SERV., R44994, *THE NORTH KOREA NUCLEAR CHALLENGE: MILITARY OPTIONS AND ISSUES FOR CONGRESS 43-44* (2017).

21 Nina Burleigh, *Newsweek Exclusive: North Korean Missile Claims Are 'a Hoax,'* NEWSWEEK (Aug. 11, 2017), <http://www.newsweek.com/trump-north-korea-missiles-nuclear-scientists-649702>.

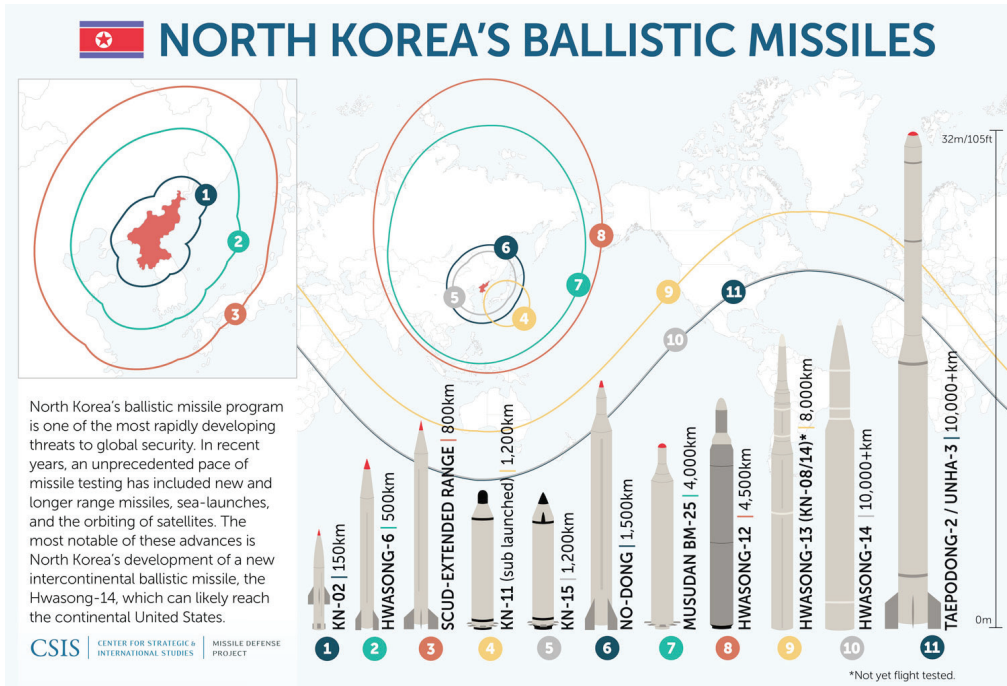


Figure 1. North Korea's Ballistic Missiles.²²

****Note:** The Tapodong-2 has traditionally been used specifically for satellite launches, the numbers in this chart reflect projected distances if it were used as an ICBM. The DPRK would have to perfect re-entry for delivery via ICBM to be possible.

Experts agree that the DPRK is struggling with perfecting its ICBM re-entry technology. U.S. and international defense officials and aerospace experts refute DPRK claims that it successfully tested an ICBM capable of reaching the U.S.²³ During a press interview a senior U.S. Department of Defense official stated, “[i]t is clear North Korea has the capability to build a missile that can range the distance to the United States, but North Korea has yet to demonstrate it has the requisite technology and capability to actually target and strike the United States with a nuclear weapon”²⁴ South Korea’s Vice Defense Minister agreed, stating the DPRK is still having problems with ICBM re-entry, and it is likely one or two years away from perfecting the required technology.²⁵

Several U.S. and German physicists and aerospace engineers conducted a study following what DPRK officials called two successful ICBM tests in July 2017, that supports U.S. and South Korean statements on DPRK’s ICBM program, and casts further doubt that the DPRK is capable of reaching the continental U.S. with

22 CSIS Missile Defense Project, *Missiles of North Korea*, MISSILE THREAT, <https://missilethreat.csis.org/country/dprk/> (last visited Feb. 26, 2018).

23 Burleigh, *supra* note 22.

24 Anthony Capaccio, *North Korean ICBM Technology Still Falls Short, Top General Says*, BLOOMBERG (Aug. 30, 2017), <https://www.bloomberg.com/news/articles/2017-08-30/north-korean-icbm-technology-still-falls-short-top-general-says>.

25 Reuters Staff, *supra* note 19.

ICBMs.²⁶ The scientists concluded that the ICBMs the DPRK launched in July did not possess the capabilities touted by DPRK officials and the international press.²⁷ Instead, the scientists claim the tests were a “carefully choreographed deception by North Korea to create a false impression that the [missiles] . . . pose[] a nuclear threat to the continental U.S.”²⁸

After analyzing their data, they assess that the missile tests were designed to maximize distance for propaganda purposes.²⁹ The missiles were fitted with extremely light payloads, allowing them to travel much farther than if they were carrying the actual weight of a nuclear warhead.³⁰ They conclude that if the missiles were fitted with a payload similar to the weight of Chinese or Pakistani nuclear warheads during the tests, the missiles may have flown 6,000 km—the distance from the DPRK to Anchorage, Alaska—but nowhere near the lower forty-eight states.³¹ They caveat their assessment by stating this conclusion is based on speculation, as there is no evidence that the DPRK has developed a nuclear warhead as lightweight as Chinese or Pakistani warheads.³²

The DPRK will not Risk Regime Survival without Viable Nuclear Deterrence

Though the DPRK likely will develop this technology within the next few years, the lack of credible corroborating evidence of Pyongyang’s ability to deliver a nuclear weapon to the continental U.S. means it does not yet possess the nuclear weapon capacity needed to deter threats against regime survivability.³³ Experts agree that without this key deterrence mechanism, the DPRK is unlikely to conduct offensive kinetic military attacks against U.S. interests.³⁴

A U.S. international relations scholar who analyzed the Kim family for five years for the Department of Defense states that while Kim Il Sung’s stories of victory (including the U.S.S. Pueblo incident) “drive[] the [DPRK] toward[s] provocation,” the regime “knows its limits;” survival means violence without escalation.³⁵ A former U.S. arms control director agrees, judging that Kim Jong Un is not suicidal and that he

26 Theodore A. Postol, Markus Schiller & Robert Schmucker, *North Korea’s “Not Quite” ICBM Can’t Hit the Lower 48 States*, BULL. ATOMIC SCIENTISTS (Aug. 11, 2017), <http://thebulletin.org/north-korea%E2%80%99s-%E2%80%9Cnot-quite%E2%80%9D-icbm-can%E2%80%99t-hit-lower-48-states11012/>.

27 *Id.*

28 *Id.*

29 *Id.*

30 *Id.*

31 Postol, *supra* note 27.

32 *Id.*

33 Brumfiel, *supra* note 18; Reuters, *supra* note 19.

34 Reuters, *supra* note 19; John Mecklin, *Commentary: The North Korean Nuclear ‘Crisis’ is an Illusion*, REUTERS (Sept. 11, 2017), <https://www.reuters.com/article/us-mecklin-nkorea-commentary/commentary-the-north-korean-nuclear-crisis-is-an-illusion-idUSKCN1BM2HA>.

35 Osnos, *supra* note 1.

knows his regime is overpowered and would not survive use of a nuclear weapon.³⁶ Given the DPRK's capable but aging military, the threat of overwhelming force they would face following any offensive attack makes a conventional attack against the U.S. or regional allies just as unlikely.

Underscoring the lack of imminent threat, the DPRK's neighbors to the south are not concerned with a DPRK military attack, despite recent aggressive rhetoric, and missile and nuclear weapon tests.³⁷ South Korea's Vice Defense Minister assessed that the DPRK will likely continue testing missiles and nuclear weapons, but claimed that there is not a major risk of the North engaging in military conflict.³⁸

Status Quo Remains the DPRK's Most Likely Course of Action in the Near-term

While an offensive military attack remains unlikely in the midterm, the DPRK almost certainly will continue using short-notice missile and nuclear tests, inflammatory rhetoric, and cyber attacks as deterrence mechanisms.³⁹ Analysis of historical DPRK rocket and missile launches shows that an estimated 73% of the DPRK's launches since it began testing in 1984 have occurred since Kim Jong Un took power in 2012 (see Figure 2).⁴⁰ Kim Jong Un understands that he must continue testing if he is going to perfect warhead miniaturization and ICBM re-entry, indicating the regime almost certainly will continue testing at this rate, since sanctions and international pressure have yet to deter him.⁴¹ In fact, U.S. analysts assess that the DPRK is preparing for its first missile test of 2018, less than two weeks after the U.N. unanimously imposed new economic sanctions against the country on December 21, stressing that new sanctions or threats of sanctions are unlikely to deter DPRK missile and/or nuclear testing.⁴²

36 Mecklin, *supra* note 35.

37 Haeryun Kang, *In South Korea We're Scared but We've Normalized the Fear*, *GUARDIAN* (Aug. 9, 2017), <https://www.theguardian.com/commentisfree/2017/aug/09/south-korea-normalised-fear-north-korea-missile-kim-jong-un/>.

38 Reuters, *supra* note 19.

39 See Pak, *supra* note 2.

40 Joshua Berlinger, *North Korea's Missile Tests by the Numbers: What You Need to Know*, *CNN* (Dec. 3, 2017), <http://www.cnn.com/2017/05/29/asia/north-korea-missile-tests/index.html>.

41 Warrick, *supra* note 5.

42 Associated Press, *U.N. Imposes Tough New Sanctions On North Korea*, *USA TODAY* (Dec. 21, 2018), <https://www.usatoday.com/story/news/world/2017/12/21/united-nations-north-korea-sanctions/975394001/>; Tom O'Connor, *North Korea Will Launch First Missile of 2018 Soon, U.S. Reports Say*, *NEWSWEEK* (Jan. 2, 2018), <http://www.newsweek.com/north-korea-will-launch-first-missile-2018-soon-us-reports-say-768497>.

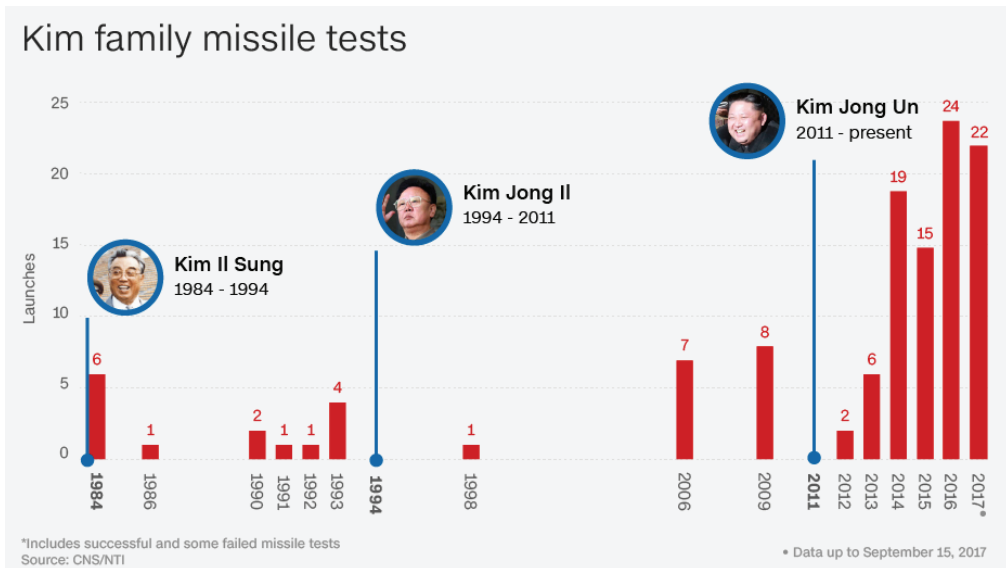


Figure 2. The Number of Missile Tests Conducted by Kim Jong Un Compared to his Father and Grandfather.⁴³

DPRK government perceptions of recent U.S. actions and U.N. sanctions will also continue driving a consistent propaganda campaign. Pak Song Il, a DPRK diplomat assigned to the DPRK’s mission to the U.N., blames the recent influx of DPRK aggression on 2016 U.S. sanctions that blacklisted leaders, and “smeared them by name.”⁴⁴ Pak Song Il stated “[a]t that point, we could not accept it. We cut off the New York channel and we adopted wartime measures. From then on, we said, the situation will stay as is.”⁴⁵ Another individual, Lieutenant Colonel Pang Myong Jin from the Korean People’s Army, underscored the DPRK’s intent to continue using aggressive rhetoric to deter any attempts at regime change, stating that if provoked, “[w]e will fire a warning shot at Guam, and if that doesn’t work then we will fire a warning shot at the mainland United States. We want to achieve world peace, but if this isn’t possible then we are prepared for war.”⁴⁶ Jo Chol Su, a senior DPRK diplomat also criticized the latest round of U.S. sanctions during a September 2017 interview with a U.S. journalist stating, “[t]oday, we’ve got everything we need in our hands [meaning a nuclear weapons program], and it’s preposterous to think that new sanctions and new threats will change anything.”⁴⁷

Though too early to assess, 2018 seems to be picking up where 2017 left off. Kim Jong Un surprised DPRK experts around the world, in what many consider unprecedented, when he stressed the importance of easing tensions between the North and South and offering to immediately send a delegation to Seoul to discuss the DPRK’s participation in the 2018 Winter Olympics in PyeongChang, South Korea.⁴⁸

43 Berlinger, *supra* note 41.

44 Osnos, *supra* note 1.

45 *Id.*

46 *Id.*

47 *Id.*

48 Choe Sang-Hun, *Kim Jong-Un Offers North Korea’s Hand To The South, While Chiding The U.S.*, N.Y.

He remained defiant against the U.S. by mentioning his country's mastery of nuclear weapons during the speech.⁴⁹ This in turn drove an immediate response by President Trump, who again reiterated the U.S.'s superior nuclear weapons capabilities.⁵⁰ If the DPRK continues to reach out to South Korea and/or the U.S. in the near term, these tit-for-tat exchanges between the DPRK regime and the U.S. Presidential administration are also likely to continue.⁵¹ South Korean analysts assess that, even while seeking opportunities to engage in dialogue with the South and the U.S., the DPRK will continue testing weapons and making threats in a measure to use this to leverage concessions, "like the easing of U.N. sanctions."⁵²

Finally, the DPRK was responsible for numerous recent cyber attacks, including the 2014 Sony Pictures hack, attacks on South Korean banks, and numerous denial-of-service attacks.⁵³ Given the success of these attacks, until the regime feels confident with its nuclear weapons capabilities, it will continue using cyber attacks as a deterrent and propaganda tool to show the international community that it is capable of using asymmetric means to achieve its goals.⁵⁴

Conclusion

Despite the perceived increase in hostilities between the U.S. and the DPRK over the past nine months, the DPRK is no more likely to attack the U.S. or its allies than it has been over the past twenty years. While Kim Jong Un is considerably more aggressive than his father or grandfather, the DPRK's primary strategic long-term objective is ensuring the Kim regime's survival for eternity, and given the fact that the DPRK's aging conventional military is not capable of defending the country or protecting the regime, Pyongyang recognizes that any preemptive attack against the U.S. or its allies would ensure the regime's demise. Therefore, the regime must rely on a more formidable deterrence mechanism to guarantee its survivability, and Kim Jong Un perceives that a nuclear weapons arsenal capable of reaching the continental U.S. meets this requirement. Despite regime claims however, the DPRK does not have the viable nuclear weapons arsenal it requires to deter its enemies; therefore, regardless of rhetoric, the DPRK is unlikely to jeopardize regime survivability by offensively striking the U.S. or its allies in the midterm. Instead, the regime will continue perfecting its nuclear weapons and ICBM technology, while continuing to use propaganda,

TIMES (Dec. 31, 2017), <https://www.nytimes.com/2017/12/31/world/asia/north-korea-kim-jong-un-olympics.html>; Scott Snyder, *Kim Jong Un's Trap For South Korea*, ATLANTIC (Jan. 2, 2018), <https://www.theatlantic.com/international/archive/2018/01/kim-jong-uns-trap-for-south-korea/549470/>.

49 Snyder, *supra* note 49.

50 Jordan Fabian, *Trump Button Tweet Sparks Backlash*, HILL (Jan. 3, 2018), <http://thehill.com/home-news/administration/367232-trump-button-tweet-sparks-backlash/>.

51 Julia Manchester & Olivia Beavers, *Trump and North Korea: A Timeline on Escalating Tensions*, HILL (Sept. 3, 2017), <http://thehill.com/homenews/administration/349088-timeline-trumps-relationship-with-north-korea/>.

52 Sang-Hun, *supra* note 49.

53 Albert, *supra* note 5; OFFICE OF THE SEC'Y OF DEF, *supra* note 2.

54 Albert, *supra* note 5.

weapons tests, and cyber attacks to threaten and deter its enemies. Pyongyang will also use these threats and tests as leverage for concessions in any future dialogue with South Korea, the U.S., or international organizations.

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