

## **Linguistics and Terrorism Cases**

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Of the ten priorities listed by the FBI on its website, the **first three** say that this federal agency will protect the US from terrorist attack, from foreign intelligence efforts at espionage, and from cyber-based, high technology crimes. The bureau's remaining priorities include combating public corruption, criminal organizations, white-collar crime, and crimes of violence, and protecting citizens' civil rights, supporting other crime-fighting organizations, and upgrading the bureau's current technology. Note that protecting against terrorist attack is the top priority.

Successful investigations of terrorism throughout the world share the same criteria:

(1) An operation needs to have good reason to suspect that some kind of terrorist activity is happening or likely to happen. Simply trolling for possible suspects is not an acceptable procedure in any kind of law enforcement activity.

(2) Once good evidence uncovers good reasons to suspect terrorism, the plan for catching the suspects is conceived. Such a plan often involves doing undercover work, including tape-recording conversations that will lead to a conviction. This process can be tricky, because often there are potentially guilty suspects who interact with those who have no intention of committing a terrorist act, so the operation needs to take special care in sorting out the potentially guilty from the innocent.

(3) Next, the agent doing the tape-recording needs to elicit irrefutable evidence on tape that the target or targets are actually guilty of specific illegal acts of terrorism or have a clear intention to do so. This task is even trickier, because such evidence depends on the skills of the undercover agent to avoid creating the crime, to elicit inculpatory language that will stand up at trial, and to avoid putting words into the targets' mouths.

(4) Finally, after the undercover agents have gathered the data needed as evidence, the prosecutor must assess it carefully and with integrity, making use of it when it satisfies the legal requirements for prosecution and not using it when it doesn't or when its evidentiary value is doubtful.

When law enforcement agencies follow these four criteria, they can produce effective results that benefit the nation and keep its citizens safe from terrorist activities. But when they fail to ensure that any or all of these four major criteria are followed, the result can

be disastrous, because the operation can ruin the lives of innocent people, deplete budget resources, misuse personnel, and, in the end, waste huge amounts of the taxpayer's money.

There is no question that law enforcement agencies often follow the above criteria and bring true terrorists to justice, but there is reason to believe that sometimes there can be serious problems in the way federal law enforcement agencies go about their business as they try to protect citizens from terrorists. These problems grow out of weaknesses in following these criteria, including locating the right suspects in the first place, deciding who actually committed or planned such terrorist activities, accurately determining what the suspected terrorists were doing or planning, and carrying out an ineffective intelligence analysis of the evidence data they have actually collected.

A recent month-long conference on Terrorism and Security Studies was held at the George C. Marshall Center in Germany for government representatives and terrorism experts from 40 countries. The major topics included defining terrorism, the function of international tools and laws found useful in combating it, global financing, and the use of diplomacy and cooperation (Airy 2009). Unfortunately, nothing was reported about the linguistic issues related to terrorism discussed in this chapter.

Linguistic analysis of the conversations in terrorism cases is essentially the same analysis that is used in any other kind of case, such as bribery or solicitation to murder, in which tape recordings constitute the major evidence. This chapter highlights some of the problems that law enforcement (including anti-terrorism units) has had with language evidence in investigations of terrorism, and then illustrates these problems with a recent terrorism case in Toledo, Ohio.

### **Problem 1: Finding the right suspects**

One recent representative example is an 18-month undercover surveillance project in Maryland between March 2005 and May 2006 (Washington Post, February 17, 2009). [AJ1]Homeland Security headed this investigation and its terrorism goals are pretty much the same as the FBI's. The Maryland targets were peace activists and death penalty opponents, who, for unspecified reasons, were suspected of being terrorists. The agents spent 288 hours investigating them. Results? Nothing, even though the agency's reports revealed that they were investigating such "threats to public safety" as a poetry reading ceremony held on the anniversary of the World War II bombing of Nagasaki.

The first problem with some terrorism investigations, then, is that government agencies can be overly suspicious of the wrong people, apparently including some 40% of the U.S. population who oppose the death penalty and an even larger number of those who think the Iraq war was a bad idea and should be ended.

A related problem is hard to prove, but it would seem that undercover agents sometimes focus their efforts on uneducated, gullible, less than perceptive, preoccupied suspects who are likely to be easier to catch and convict. In many cases, these suspects are foreign

newcomers to the country, often with limited English speaking ability, sometimes rendering them unaware of the nuances and meaning of the language used around them.

## **Problem 2: Determining who created the alleged crime**

Another continuing problem for law enforcement agencies can be illustrated in some of their recent investigations of suspected terrorists, where the alleged crime scenario was created and encouraged by the undercover agents themselves. When this has happened in recent years, juries have not always agreed with the prosecution's accusations. Acquittals of defendants, most of whom are Middle Eastern males (including many who had become US citizens), have taken place in Miami, Dallas, and other U.S. jurisdictions. In the Dallas "Holy Land case," the jurors at the first trial (which ended in a mistrial) reported that they felt that the undercover FBI agent encouraged the defendants to perform acts that they otherwise would be unlikely to have carried out. In short, the idea of committing the alleged crime was created by the investigators and not by the defendants (New York Sun, July 16, 2007).

A similar example was the "Liberty City" case in Miami, where the criminal conspiracy was also generated by the government's own informant (Miami Herald, May 16, 2009). He created what he termed an "al-Qaeda oath," and led the relatively uneducated defendants in reading it aloud on tape. They were soon arrested and charged with terrorism against the U.S. As it turned out, they claimed that they read the oath aloud at the agent's request, only to endear themselves to that agent in order to eventually bilk him into giving them the money that he planned to get in support of his goals. Some jurors believed, perhaps with considerable justification, that this act was at least two steps away from any intent to plan or carry out terrorist activities.

A related problem arises when not all of the suspected terrorists are in on or agree to the scheme. Some are innocent of that purpose but they nonetheless may appear to the investigators to be actively involved. This gives rise to the next problem, determining the agendas of the suspects.

## **Problem 3: Accurately determining the agendas of the targets**

The FBI and Homeland Security express pride that no new successful terrorist attacks have taken place in the U.S. since 9-11. But from these and other on-going U.S. terrorist cases, a pattern emerges that begs for linguistic analysis. Some of the accused may indeed be guilty of planning or attempting terrorist acts and others may seem to be doing so but, as in the Dallas and Miami cases, are actually led into this activity by an undercover agent. Still others believe that what some alleged terrorist say and do with the undercover agents could not possibly have indicated that they were terrorists. Careful analysis of the tape-recorded evidence can determine whether or not they had very different agendas.

By agendas, I mean the topics that are foremost on their minds. Topic analysis should be carried out on all evidentiary conversations, in order to determine clues to intentions and agendas. No science can get into the minds of suspects (or anyone else, for that matter),

but the topics that people introduce, recycle, and omit give the clearest clues to their intentions that can be found (Shuy 1982, 1990, 1993, 1998, 2001, 2005). When law enforcement agencies fail to examine the speakers' topics and agendas that provide the best available clues to their intentions in conversations, the result becomes the fourth problem--that of failing to carry out an adequate intelligence analysis.

#### **Problem 4: Lack of careful intelligence analysis before suspects are indicted**

In many terrorism cases, undercover agents covertly tape record hundreds of hours of conversations. When the evidence is tape-recorded speech, law enforcement and later listeners, such as juries, are tempted, even inclined, to assume guilt simply because the targets were present during the taping (Shuy 1993). In analyses of conversations linguists can contribute by:

1. using their skills in phonetics, morphology and syntax to correct the government's transcripts;
2. using their discourse analysis, semantics and pragmatics skills to identify and keep track of the topics, themes, schemas, and agendas of the speakers;
3. using their speech act skills to identify and accurately distinguish between various crucial speakers who request, promise, agree, deny, etc.; and,
4. using their organizational skills to put all this together in a form that jurors can easily understand and remember--usually as charts and visual aids<sup>[AJ3]</sup>.

These linguistic analyses <sup>[AJ4]</sup>are parallel to what law enforcement specialists call intelligence analysis (Godrey and Harris, 1976, 30) The primary goal of intelligence analysis is first to obtain accurate records of what was said by whom (based on intelligence data gathering), put all of this evidence together in context, identify and distinguish between such speech acts as agreements and denials, and determine when the targets have either not heard or not attended to what was said to them (Harris 1976, 30,-34). The latter is often clarified in videotaped evidence where it is clear that a target is not present or not within hearing range of inculpatory statements made by others. Using the intelligence that has been gathered, the intelligence analyst then formulates multiple hypotheses, not just the hypothesis of guilt. If the prosecutor (intelligence analyst) does not formulate multiple hypotheses and does not make use of the available linguistic tools for analyzing the conversation, the prosecution can easily go awry, as was evidenced in the famous case of *U.S. v John DeLorean* (Shuy 1993, 68-85).

#### **Terrorist Case Example:**

All four of these prosecutorial problems were manifested in the 2008 Toledo, Ohio terrorism case of *US v. Mohammad Amawi, Marwan El-Hindi, and Wassim Masloum*,

all of whom were convicted of terrorism in June 2008. The case provides examples of several different aspects of typical terrorist prosecutions in the U.S.

I spent seven months consulting with the attorneys for one of the defendants in this case, Marwan El-Hindi. Linguistic analysis of the language evidence showed clearly that El-Hindi's agenda was very different from that for which he was accused. It also showed that the undercover agent created the evidence of El-Hindi's alleged illegal intent and capitalized on El-Hindi's inability to listen carefully and interpret the agent's ambiguity, indirectness and hints. Finally, it showed that eventually the agent became discouraged by El-Hindi's failure to follow his encouragement to set up a terrorist training cell, after which the agent abandoned that scenario and created a new scenario in which he asked El-Hindi to download certain videotapes and internet transmissions from the Middle East and email them to him, an act that led to all three men being convicted of the terrorist activity of abetting the enemy.

## **Background:**

Although all three defendants were Muslims living in Toledo, they did not know each other and had not even met until they were brought together briefly by the agent. Amawi, 28, was a dual citizen of the U.S. and Jordan. El-Hindi, 44, was a naturalized U.S. citizen from Jordan. Mazloun, 26, an immigrant from Lebanon, was a legal permanent U.S. resident. Amawi worked in a travel agency, El-Hindi was a self-employed businessman, and Mazloun was a college student.

The FBI had recruited Darren Griffin, an ex-Army Special Forces member and a former drug user with unspecified money problems, who had previously worked a very brief time for the FBI as a federal drug agent before accepting a three-year assignment to try to discover unspecified terrorist activities in the Toledo community. For this work, Griffin testified at trial that he was paid some \$350,000.

Claiming to have his own private security business, Griffin's technique was to hang around Toledo mosques, telling people that he was a recent convert to Islam and pretending to be disenchanted with U.S. foreign policy. He also told selected people (not the defendants) that he'd like to do violence to the U.S. government. He grew a beard, wore Arabic clothing and took on the role of what he thought to be an Islamic extremist. He told various people at the mosque that he hated the president and wanted to train Muslims to do violent jihad. He made little or no progress with these people and, ironically, several American Muslims at the mosque actually reported him to the FBI.

Finally, he met the three defendants individually and he eventually brought them together and tape-recorded their conversations. They had no previous criminal records and their alleged conspiracy was orchestrated and implemented by the agent himself. In February 2006 the defendants were charged with conspiring to kill or injure people in the Middle East, including U.S. troops serving in Iraq, and with providing the support and resources to do so. Amawi was also charged with threatening President Bush (based on his severe

verbal criticisms) and with distributing bomb-making information (downloading and emailing videotapes that the agent requested). El-Hindi was accused of sharing information (the videotapes) about terrorist training activities, including plastic explosives, rockets, and bombs (the videotapes were downloaded on his computer in his home). Mazloum, who was present in only a couple of the tapes, was charged with requesting the agent to train him to carry out violent jihad in the Middle East (as will be noted later, Mazloum was very overweight and wanted physical training because he was about to be drafted in the Lebanese army and he wanted to be physically fit<sup>[AJ5]</sup>).

In terrorism cases the prosecution tries to determine motivation, develop scenarios in which they can record criminal action or intent and use conversational strategies that will encourage the targets to inculcate themselves.

### **Alleged Motivations of the targets:**

Since motives are often at the root of criminal cases, agent Griffin worked hard to show that the defendants were primarily concerned with training that would lead to violent jihad. This was not easy for him to do.

Amawi, the Toledo travel agent and devout Muslim, had recently visited his native Jordan, where he learned much about what his friends and relatives thought about the Iraq war. Clearly the brightest of the three, he was technologically competent enough to access television programs and internet resources from the Middle East. The prosecution claimed that Amawi's motive was his desire to return to the Middle East and to personally engage in extremist jihad.

El-Hindi, also a devout Muslim, was a bumbling business entrepreneur, whose only income at that time came from recruiting future medical students to attend European medical schools, for which he received commissions. He was constantly attracted to other possible business ventures, none of which succeeded. A father of five children, he was in the process of a bitter and complicated divorce, probably an important reason for his lack of attention to what the agent was saying (or hinting) to him. On tape, over and over again El-Hindi shows his deep concerns about the educational problems of Muslim poor people in the Middle East and of Muslim children in the US schools. Among his other half-baked projects, he said he'd like to buy or rent a property and build a religiously oriented school on it. At trial, Griffin called El-Hindi the "money man" in the alleged conspiracy, although none of El-Hindi's schemes to obtain grants ever even got to the proposal stage.

Masloum was an overweight college student who believed that he still had a six-month military obligation to fulfill in Lebanon. His interest was to get ahead of the curve and be prepared for this future military service. The prosecution claimed that Mazloum wanted military training from Griffin in order to commit violent jihad<sup>[AJ6]</sup>.

### **The agent's two scenarios**

As is common in covert operations like this, the government had to create a believable scenario in which a possible terrorist crime might be committed. After agent Griffin began trolling for prospects at the mosque and was rebuffed by several members, he turned his attention first to Amawi, who was vocal about how he hated the Iraq war. In fact, most of the 300 hours of taped conversations were with Amawi. After Griffin ran into El-Hindi at the mosque, he was intrigued by El-Hindi's puffing about his business capabilities. Any potential terrorist act would need to be financed somehow and El-Hindi appeared to be a promising participant. Mazloun was more an accidental afterthought, participating in very few of the conversations.

### **(1) form a local training cell**

The agent's first scenario was to get El-Hindi to recruit other Muslims to form a cell, allegedly a terrorist cell, although he never said this explicitly to El-Hindi. The agent talked about training people but he was very vague about what kind of training he would provide. The word, "training," [A7]as will become clear, was a key ambiguous word in this prosecution.

Both El-Hindi and Mazloun were overweight and out of shape. There is considerable evidence from the taped conversations that whenever they agreed with Griffin's offer of training, it was for physical training from this former Special Ops soldier who claimed to be an expert in physical fitness. El-Hindi mentioned some names of friends and colleagues as possible recruits for such training but no matter how many times Griffin reminded him of this, El-Hindi never got around to inviting anyone and the alleged terrorist cell never developed.

### **(2) create an electronic jihad**

After a year or so of failing to create a terrorist cell, it became clear to Griffin and his handlers that the initial scenario of starting such a cell was going nowhere, so they changed their scenario to what the prosecution referred to as "electronic jihad." Griffin arranged for the three men to meet for the first time at El-Hindi's home for dinner, discussion, and to watch videotapes from the war in Afghanistan. Since the targets knew that Griffin was a new convert to Islam, they spent a large portion of that time talking about religious matters. The videotape of this meeting shows clearly that El-Hindi, the host, cook, and meal-server, spent a great deal of his time in the kitchen, missing much of the ongoing conversations around the table in the living room.

Like most immigrants, the defendants were anxious to hear news about their native part of the world, so they often watched Middle East television news programs and scoured the internet for matters familiar to them. Much of the evidence used by the government at trial was collected when Griffin asked the men to download specific programs and internet information for him. Some of it included scenes that allegedly depicted military tactics used by U.S. and foreign armies in the Afghan and Iraqi war zones, evidence that the government said had provided Griffin with his "training" materials. It was from such evidence that the prosecutor claimed that the suspects had participated in "electronic

jihad.” The terrorist charge against El-Hindi came when the agent subsequently had him email some of the videos to him at his home computer.

### **Agent’s conversational strategies used to implement his two scenarios**

Undercover agents are encouraged to follow a three-step process in their efforts to elicit and record evidence of criminal activity or intentions (Shuy 2006, 7-9):

1. Let the suspects talk freely, thereby self-generating their own guilt. If this doesn’t produce guilty statements, go to step two.
2. Drop hints and indirectness that the suspects might pick up on and expose their own culpability. If the suspects still don’t say anything that suggests guilty involvement, go to step three.
3. Represent the illegality of the enterprise clearly and unambiguously, a requirement of the FBI’s own guidelines for agents during undercover operations (Heymann 1984).

Griffin’s undercover strategy never got beyond step 2 in his conversations with El-Hindi, who talked freely on a multitude of topics (step 1), none related to the subject of the investigation. Over half of the topics El-Hindi introduced concerned his personal problems with his divorce, his attempt to remarry, and the welfare<sup>[AJ8]</sup>, health, and education of his five young children. Less frequent topics were about his various efforts at starting business ventures, his desire to establish a school for Muslim children and to help Muslim poor people in the U.S. and Middle East, his many complaints about various people that he thought were cheating him in past business ventures, his discourses on religion, and his concerns that local Muslims become safe from home intrusions and harassment. In the tape-recorded evidence he gave no indication of recognizing or being aware of Griffin’s many hints of illegality. To El-Hindi, at least, Griffin never made a single clear and unambiguous representation of the illegality of his enterprise.

#### **(1) Agent’s strategy in scenario one: using “training” ambiguously**

As I mentioned earlier, the prosecution claimed that when Griffin talked about “training,” he conveyed the meaning of training people to carry out violent jihad. To be sure, in the 13 taped conversations in which El-Hindi was a participant during this three-year period, agent Griffin brought up “training” 122 times. Of these, 111 are vague, ambiguous, or said nothing at all about the purpose of the training. Griffin’s 11 specific<sup>[AJ9]</sup>, non-ambiguous references to training were self-defined as training in security protection, training neighborhood kids to shoot air rifles, handgun training for home self-protection, and training for physical fitness. He was never specific or explicit to El-Hindi that his “training” meant training to do violent jihad anywhere.

In these same 13 conversations, El-Hindi mentions “training” 42 times, only 5 of which are contextually vague or ambiguous. If a target with less than competent use of English could be clear in his meaning about training, it is curious that the agent was not equally



clear. El-Hindi's 36 specific references to "training" were: training in the Koran, training in physical fitness for himself and others, training American Muslims for self-protection against those who attack them on the streets or in their homes, training in recreation, training for horses, training for getting grants, and training to be a certified Arabic/English translator. El-Hindi never talked about training for extremist jihad. In fact, he argued against violent jihad by others several times<sup>[AJ10]</sup>.

It is important to remember that agent Griffin not even once told El-Hindi explicitly that the training program he wanted to start was to prepare him and others for extremist jihad. Instead, he took advantage of his vague and unspecified mentions of "training" so that later listeners to the tapes would think he meant training to carry out extremist jihad violence.

The English system of referencing requires a defined reference to which later vague or potentially ambiguous references relate. For example, unless pronouns such as "he" or "it" have previously defined references, their meaning remains unclear. Based on El-Hindi's responses to Griffin's vague or ambiguous references to "training," and based on El-Hindi's own uses of the word, "training," it is clear that El-Hindi never caught on to Griffin's hints or even understood Griffin's general hints.

In contrast, in a tape-recorded conversation between Griffin and two other men who were not indicted in this case, Griffin was very clear that his "training" was for handguns and other weapons to be used in violent jihad. If Griffin could be that clear to *others* when El-Hindi was not present, it is curious that his grammatical referencing was never clear and unambiguous to El-Hindi himself.

In *Creating Language Crimes* (2006) I describe eleven conversational strategies commonly used by undercover agents. The most frequent of these strategies is for a speaker to employ ambiguity to make the taped conversation appear to be about something that the target does not comprehend. Griffin used this strategy very commonly in his conversations with El-Hindi. Since my only role in this case was to analyze the conversations involving El-Hindi, I cannot vouch for the way agent Griffin used "training" to Amawi and Mazloum during the times when El-Hindi was not also present. But it is clear that to El-Hindi he was ambiguous in his intended meaning of "training" every time except for the few occasions when he defined his training on benign topics. And, since there was no other reported contact between the three defendants, there also is no evidence that El-Hindi could have learned Griffin's intended meaning of "training" from them.

The ambiguity strategy works well even on native English speakers, especially on those who tend to be so absorbed in their own agendas that they pay little attention to what other speakers are saying. El-Hindi had this problem as well, making Griffin's ambiguity strategy doubly difficult. The following examples<sup>[AJ11]</sup>, taken from the tape-recorded evidence, are illustrative. Although the prosecution claimed that Griffin had been clear and unambiguous about his meaning of training for terrorist purposes, his actual strategy was to suggest at least six quite different meanings of that word: training Muslims in

techniques of personal security, physical fitness training for adults and children, training in life skills, training in education and religion, training horses, and training to be a certified translator. The following are examples of each:

**(a) Training for personal security**

Griffin talked about security throughout these conversations, allegedly to indicate that Muslims must be careful to avoid being caught doing any training for extremist jihad. But El-Hindi's own very different definition of "security" was evident from his several descriptions of the way he and other Muslim Americans had been detained at airports and had even been attacked on the streets. After El-Hindi described his own experience being mugged, Griffin continues:

Griffin: The biggest thing is security, you know.

El-Hindi: That's what I'm saying.

Griffin: We have to be extra careful because...they're after Muslims.

Although it would appear here that El-Hindi is agreeing with Griffin on his definition of security, the overall context of their conversations shows that they had very different schemas.

Even when Griffin bravely dips his toe in the water and tries to be a bit clearer about his goal for weapons training, El-Hindi still doesn't get it:

Griffin: There's definitely stuff to teach kids. You know, it's basic stuff, as far as weapons training. Weapons training is basic.

El-Hindi: I was in good relation with Ji'atan Academy and he trained in...

The on-going topic here is the possibility that they could rent or buy a private school building that was about to be sold. The Ji'atan Academy teaches karate to children. El-Hindi appears to interpret Griffin's use of "weapons" as karate instruction.

Up to this point in their conversations, Griffin's use of the words, "train" and "training," without indicating a kind or purpose of training, continues to mean military-type training to Griffin while El-Hindi continues to consider it training for the purpose of self-protection. Next, Griffin adds "VIP" to the equation:

Griffin: I'm gonna train some other guys...so we'll, and uh, basically how we're gonna do it, uh, I found out too is they could be my VIP protection team.

El-Hindi: This is something I want to get into too.

It flatters El-Hindi to be considered a VIP, because he is vain enough to consider himself one of the important businessmen who would participate in the physical training Griffin would offer.

### **(b) Training for physical fitness**

Next, Griffin takes the meaning of “training” in another direction.

El-Hindi: I lost about twenty pounds since I came back.

Griffin: It’s like you’re gonna be in training too.

El-Hindi: I am. I am. I have to. I have to.

El-Hindi is very aware that his middle-aged body is terribly out of shape. This opportunity to sneak in “training” again is not lost on Griffin.

### **(c) Training for life skills**

Even when Griffin gets a bit bolder with his hints about “training,” El-Hindi’s responses show that he just doesn’t get it. A few months earlier a close Arab friend of El-Hindi’s asked him to fly to Egypt to find and bring home his two sons, who had squandered their college tuition money to fly to Cairo. Their parents feared that the boys were going to get involved politically, possibly even to join in jihad. Since El-Hindi’s brother, a physician, lived in Egypt, El-Hindi agreed to go there and try to find the young men. After a short time, he and his brother located the boys and El-Hindi brought them home safely. Griffin doubted his reasons for the trip, of course, and reported to his handlers that El-Hindi went to Egypt to organize a jihadist cell.

Shortly after their return, the two young men met Griffin at an Arab convention held in a Chicago hotel. El-Hindi had a table there to promote his business of enrolling students for European medical schools. Griffin met and talked with the two young men privately about weapons training and pro-Arab topics, videotaping the conversation with a miniature microphone hidden in his watch. El-Hindi was at the same convention, but was not present as this conversation took place. Later the same day, Griffin talked to El-Hindi about the boys and they agreed that they were headstrong and stupid, much in need of instruction about many things, including ways to protect themselves. This was captured on tape as well:

El-Hindi: Listen, before we do anything, brother, you give them like a small thing and see if they hang onto it.

Griffin: They can’t because we’re talkin’ security here. We’re talkin’ my livelihood and everything...I’m puttin’ together a training program and I’ve

already started training some of these brothers that are going, that, that need it. And they gotta protect themselves. We have to stay in communication though because this is serious, you know.

El-Hindi: Help the needy. Help the needy.

The prosecution used this exchange [AJ12] to try to show that El-Hindi wanted the boys to join the still unformed cell for training in violent jihad. In contrast, El-Hindi was warning Griffin to take whatever life-skill training he might provide them slowly, one step at a time. From what Griffin previously had said about training for security, El-Hindi could easily understand this to mean that they were in need of self-protection training.

#### **(d) Training for education and religion**

Throughout their 13 conversations, El-Hindi's often spoke about finding a suitable location to build a school for Muslim children to learn the Koran, to have suitable recreation, and possibly also to serve as a Muslim mosque. Griffin volunteers to do the physical education part but he is impatient with El-Hindi's slow pace in bringing it all about. El-Hindi is not a careful listener, here or anywhere else in the tapes. On two separate occasions, a month apart, Griffin raised the ante a bit by indicating that they could *mask* his training by making it look like something else.

Griffin's first reference was on November 23, very near the end of his conversations with El-Hindi:

El-Hindi (talking about the school they could buy or rent): The first floor make it like a prayer area, mosque and—

Griffin: And everything else training.

El-Hindi: Oh yeah.

Griffin: 'Cause that's how we could **mask** it.

El-Hindi: You will fall in love with that place. Two floors.

Griffin: You know, like you were sayin' before, we'll do the daycare and use the rest of the money for, you know, the training and everything.

El-Hindi: I got to get in shape quick.

It is difficult to know what El-Hindi understood by Griffin's "mask it," but if Griffin had wanted to be more explicit, he certainly could have used a word that might be more clearly understood by a non-native English speaker, such as "disguise," or "hide[AJ13]," "conceal," "cover up" or even the more commonly used military word, "camouflage." El-Hindi's lack of reaction to Griffin's effort to indicate illegality is shown by the fact that

he continues his on-going excitement about finding a building that will contain a school with a recreational facility for Muslim children with a mosque attached. His “oh yeah” in response to Griffin’s use of “training” is consistent with El-Hindi’s desire to have a school that trains children in the Koran, regular education curriculum, recreation, and physical education.

Griffin’s second use of “mask” came almost a month later:

Griffin: My training and everything, it’s in the millions of dollars. You know who I work for so I’m getting in shape and getting ready and everything too.

El: Hindi: I need to get in shape too. Are we gonna have something for kids and adults or—

Griffin: If we **mask** it with uh, you know, the training.

El Hindi: For the kids?

Griffin: We can automatically do **it** for the adults too. We’ll cater it toward the kids and then, you know, we can always bring the uh, the adults along.

Here Griffin recycles his use of “training” to indicate physical training and El-Hindi immediately understands it that way, saying once again that he himself needs to get in shape. Then Griffin repeats his “mask it,” with his proposed training program. El-Hindi clearly doesn’t get Griffin’s meaning, asking if the training would be for the kids. It goes without saying that weapons-training for children was not a reasonable idea. Griffin’s use of “it” is vague, as usual.

#### **(e) Training Horses**<sup>[AJ14]</sup>

One of El-Hindi’s futile and unwise <sup>[AJ15]</sup>business ideas was to bid on a request for proposal sent out by an Egyptian police department that wanted to build a camp where their officers could train. Part of this request for proposal was for someone to supply horses, horse-trailers, trucks and other equipment for the Egyptian police. El-Hindi subsequently contacted several Michigan vehicle manufacturers about their price for trucks and called various breeders for the cost of horses.

El-Hindi: They will establish a whole program training for shooting, training for horses...a whole camp. Training for everything, even for swimming... It’s going to be a huge camp to train for horses, you know, horses, camels, martial arts and weapons.

This, of course, was taken by the government’s intelligence analysts as El-Hindi’s willingness to agree with Griffin’s weapons training ideas. Despite the fact that this was an Egyptian police-training project, El-Hindi’s reference to it as a “camp” where the police would practice shooting furthered the government’s highly doubtful claim that he

really wanted to set up a camp in Egypt for violent jihad. The prosecution claimed that “camp” was just another word for “cell.”

### **(f) Training to become a certified translator**

Another of El-Hindi’s many, never-completed business ideas was to become a certified translator of English and Arabic. He saw an advertisement, liked the idea, and reported it to Griffin:

El-Hindi: They are offering six weeks training here... They want you to represent them in the United States for unlimited access, uh, translation from English to Arabic and from Arabic to English. They want to make contracts for Arab people.

There are many more examples of the way “training” was used by both Griffin and El-Hindi, but these are representative and typical.

## **2. The agent’s conversational strategy of fishing<sup>[AJ16]</sup> fails**

I mentioned earlier that undercover agents follow three steps in their operations (let the target talk himself into guilt, then drop hints of illegality, and finally, be specific about the illegality). Griffin’s entire undercover effort with El-Hindi was to drop hints of illegality as bait, which El-Hindi gave no evidence of understanding, but the agent never reached the important step (required by FBI Guidelines: Heymann 1984) of being explicit, clear, and unambiguous about that illegality. The above discussion of his ambiguity strategy provides some examples of Griffin’s hinting style. For the defense attorneys I produced a chart citing 47 such hints in the 13 conversations, which I refer to as fishing. Notably, all of Griffin’s fishing effort hints fail to achieve his goal, largely because the two men had very different schemas throughout their conversations. The following are representative examples.

Griffin: You were saying that you were going to set up an organization over there and all that.

El-Hindi: Orphanages. Not only orphans but very poor, way below poverty.

Griffin fishes for the reason why El-Hindi wants to set up a program in Egypt, recycling El-Hindi’s word, “organization,” and trying to associate it with his own agenda of creating a terrorist cell. El-Hindi, following his own schema, explains that his interest overseas is in working with orphanages and poor people there.

Later, Griffin wants El-Hindi to find a location where he could “train.”

Griffin: I’m actually looking for like a farm to buy because then you could have goats, train, do everything there.

El-Hindi: That’s what you need. Farming.

El-Hindi was always thinking about his own schema, ways to make money, in this case by farming.

Griffin tries hard to get El-Hindi to let him “train” the two young men that El-Hindi had searched for and located in Egypt, and then brought back to the U.S. to their parents.

Griffin: They don't have any training so what we gotta get across to them is you just goin' over there to commit suicide. That's not jihad. So we have to reel those guys in.

El-Hindi: I told them, “listen, you have some money. You really wanna benefit the people here?” They said, “yes.” I said, “let's slaughter some animals and give to the poor people. And then you are helping a lot of people.” So he gave me money, probably a thousand. And I want to slaughter a lot of, thanks be to God, amen, I wanna give to the poor people. They get the reward. We are going on a mission of change.

Here El-Hindi interprets Griffin's “jihad” in his own schema of helping local poor people by slaughtering animals for them to eat, part of his “mission for change.” In any case, the agent used “jihad” in the context of what the boys might have planned to do, not what he and El-Hindi might do.

As his fishing efforts continue to fail to get El-Hindi to understand his ambiguous goals, Griffin begins to get impatient:

Griffin: I like to go forward. I wanna do my project.

El-Hindi: This European Medical, if we get ten students, that's fifty thousand dollars brother.

Griffin wants to do his own training project. El-Hindi also wants to do his own school project, but it's far from clear to El-Hindi that their two projects are different, because the school could include physical training. They continue on their separate schemas.

On one of the occasions while they are watching videos from the Middle East, Griffin fishes again:

Griffin: What else are they taking applications for? For actual fighters?

El-Hindi: No, no. I didn't see that... The way I understand it, they don't need fighters. All they need is some push from the outside to educate people.

This passage shows that El-Hindi's focus on the videotapes reflected his own education schema, something very different from Griffin's schema about violent jihad.

## **El-Hindi stayed firmly on his own legal agendas**

Analysis of conversations includes not only a linguistic analysis of the targets' responses to the agents' topics (a defensive strategy), as illustrated above, but it also includes the benign and legal topics generated by the targets (an offensive strategy). El-Hindi's conversation was notable in that he self-generated no inculpatory evidence and he stayed firmly with his own agendas of raising money for charitable work and building a school for local Arabic children.

### **(1) El-Hindi self-generated no inculpatory statements**

In most undercover criminal operations investigators hit the jackpot when the targets say something indicating their illegal intentions. In all of the tapes in this case, El-Hindi never introduced a topic that could be interpreted as favoring violent jihad and he made no direct or indirect statements that could be considered inculpatory in his responses to Griffin's topics, neither when he responded to Griffin's vague and ambiguous hints that he would be training people for violent jihad nor as a result of Griffin's fishing efforts to get El-Hindi to respond with some kind of illegal answer.

The only other way that El-Hindi might implicate himself would be through his own voluntary statements about his ideas and plans. Griffin tried to modify three of El-Hindi's own agendas toward this end: (1) setting up a corporation that would get grants to make money to be used to support his training, (2) using the school El-Hindi wanted to buy or rent to house his training, and (3) their interest in watching videos and internet programs from their original homes in the Middle East, which he converted into the government's electronic jihad scenario. Throughout the tapes, Griffin pushed El-Hindi and the other two men very hard to get busy on these plans. Although there are many instances of each of the following, space permits only a representative sample.

### **(2) El-Hindi planned to set up an official non-profit organization to get grant money**

Griffin considered El-Hindi the "money man," as he phrased it in his trial testimony, and he kept trying to get El-Hindi to set up a corporation so that it could provide resources for the training programs he wanted to create. The prosecution made much of this "organization," attempting to make it look like a syndicate or cell operation. So when El-Hindi reported that he had gone to a lawyer to set up a perfectly legal non-profit organization, Griffin was shocked:

El-Hindi: Before I check on the grants, we have to establish the, uh, non-profit organization. I will call it in, God willing, and see what they, I will tell the lawyer what exactly we need for the non-profit organization that we planning.

Griffin: What lawyer?

El-Hindi: There's a lawyer, the one who does my corporation.



Griffin: (changes the subject)

Two months passed before they talked about this again:

El-Hindi: You have to submit all tax papers then. Before, it was only you submit the federal ID number and that's it.

Griffin: You have to submit your taxes?

El-Hindi: You have to submit the actual paper, the certificate and everything. Now you have to submit; before, just the tax number and they would tell us. I think you have at least three officers for a small organization.

Despite Griffin's attempts to divert the idea, El-Hindi's plan is to apply for a legal non-profit organization to do legal charity work, following the legal procedures required.

### **(3) El-Hindi planned to set up a school and mosque**

Another of El-Hindi's commonly recurring topics was to build a school for Muslim children. Griffin, of course, kept trying to convert the idea into a place where he could conduct weapons training. El-Hindi seemed oblivious to Griffin's concerns and he stayed firmly with the idea of a school for kids with part of it serving as a mosque. This reflected his agenda from the very beginning of his conversations with Griffin:

El-Hindi (talking about a Maumee school that was closing and soon to be for sale): I took Ameer with me to see if, if we can uh, close a deal on buying the building and convert it into a mosque over there... We could get grants to teach the children how to swim, right?... So this building we could get, God be praised, even for day care.

Griffin: If we had a building, it'd be perfect because we could do it at night. There's no prying eyes and all that good stuff, so we'll see.

El-Hindi: It's a private building, I mean. They're going to come and search?

Griffin: No, no. That's not it.

El-Hindi: And we're not gonna be doing something illegal anyway.

Griffin: No, no. We can't shoot or any of that other good stuff.

El-Hindi: Well, it's just training.

Despite Griffin's many efforts to the contrary, El-Hindi said he believed what they are planning was perfectly legal and Griffin's notion of training would be physical education. A month later, in their next recorded conversation, El-Hindi recycled the school topic:

El-Hindi: I would like to set up a salafi school over here, for the kids, Koran memorization and Hadith memorization. You can bring your kids to it. It's going to be one of the best in the United States. I wanna get a school, God willing, we need a place.

El-Hindi's stayed with his plan to build a school for children to learn the Koran along with the regular school subjects. He remained deaf to whatever Griffin hinted about using it for other purposes. One of the important contributions a linguist can make in a case like this is to mark, organize, and keep track of the agendas of the speakers.

#### **(4) El-Hindi agreed to the agent's request to send him videos from the Middle East**

As noted earlier<sup>[AJ17]</sup>, the agent devised the "electronic jihad" scenario after it had become obvious that El-Hindi was never going to bring together a group of men to form a terrorist cell. Griffin videotaped the meeting with a camera hidden in his watch. The filming was of terrible quality but, along with the much better audio, it was usually possible to tell who was present and who was not during the evening's conversation. Some allegedly damaging statements were made when El-Hindi was out of earshot, but when he was present the conversation was mostly about Islamic religious practices and his own marriage and divorce problems.

After dinner, they moved to an adjoining room where they watched videotapes from the Middle East. It was here that the charges against El-Hindi were framed. At trial, the jury saw the videos, including some that showed very violent scenes of tanks being blown up and a U.S. marine being killed at a checkpoint in Iraq. These might be considered news films in some parts of the world, but for the jurors in this case, they were gruesome reminders of enemies of the U.S.

That it was Griffin who arranged this showing and who specifically asked the men to locate examples of military scenes did not seem to matter to the prosecution or, in fact, to the jury. The men dutifully located such examples, played them, and then downloaded them for Griffin when he asked them to do so. The act of downloading and then sending the tapes to Griffin became the cornerstone of the charge that they had engaged in "electronic jihad." This was the specific charge for which El-Hindi was convicted, because he agreed to Griffin's request to share the information with him.

#### **Evidence that the agent realizes his efforts are failing**

The issue of intelligence analysis, noted earlier, plays an important role in determining whether or not the data gathered is sufficient to indict the target. The direct evidence for or against indictment usually comes either from the target's own explicit, inculpatory statements or from the target's inculpatory responses to the agent's hints or fishing efforts. Neither of these gave the government much to work with in El-Hindi's case. But the agent's words can also provide clues to whether or not the undercover operation is working well for the government. In other unrelated cases I've worked on in the past,

such evidence appeared after the agent completed the conversation but let the recorder keep running as he returned to his base. On more than one instance I've heard the agent vent his disappointment to his fellow agents with words like, "I'm sorry but I just couldn't get him to admit anything." After several such experiences, agents have begun to learn not to say such things while the tape is still running.

The tapes in this case are not as dramatic as ones I've heard in other cases, but there are still some strong clues in them that indicate that Griffin felt his efforts were not working with El-Hindi. I prepared a chart of these for the defense to use when they cross-examined Griffin, including the following representative sample that occurred during the last month of his substantive conversations with El-Hindi:

Griffin: 'Cause we really gotta get things going 'cause we can easily tie them together.

Griffin: But I mean like it's like everything we have before, you know, we always say something, you know, we're gonna do it but we don't follow through. We got to stay focused. We have to move together.

Griffin: Just whatever grant stuff you got, if you say we gotta establish a organization, then fine, let's do it. We gotta start marching with that, you know. So let's do it, you know, 'cause the time for talking is over. We, we, I have to move forward, so I want you with me, you know, when we do our projects.

Griffin: The time for talking, we have to move forward 'cause we're, you know, in the sand. We're hardly moving.

Griffin: We all have to play our part. We can't sit and talk any more 'cause that's what too many Muslim brothers are doing right now. They're sitting and talking about it but they're not helping the nation at all.

After this recorded conversation, Griffin stopped pushing El-Hindi to get focused and move forward about setting up a training program. That tactic clearly didn't work because El-Hindi's schema and agenda of helping the poor and establishing a school for Muslim children continued to put him on a very different wave-length from Griffin's agenda. From that point until the indictment was made, Griffin's conversations with El-Hindi contained no more mentions of training, no more fishing, and Griffin even stopped urging El-Hindi to go forward. It was clear that his scenario of "electronic jihad" then became the government's only avenue to net El-Hindi as a terrorist.

### **What we can learn from the El-Hindi prosecution?**

This story does not have a happy ending for the defendants. The jury was unmoved by the defense's effort to point out the issues described here and they found El-Hindi guilty of terrorism. We can speculate about the effectiveness of the prosecution's attack or the ineffectiveness of El-Hindi's defense, but there seems to be much more to it than this. To

this day, the U.S. and much of the world remain in a state of fear, engendered originally from the tragic events of 9-11, and fed daily by politicians who thrive on such fear. Some are convinced that terrorist activity surrounds them daily, and in many countries, including the U.S., citizens of Middle Eastern descent remain the prime suspects. Unfortunately for El-Hindi, he fit that broad profile. Reviewing this case, we now ask whether the agent focused on the right suspects, whether the prosecutor examined the targets' agendas, and whether an effective intelligence analysis was made.

### **Did the government find the right suspects?**

Regardless of the outcome, this case illustrates many of the problems that law enforcement officers face when they charge suspects with terrorism. Rather than seeking out a situation where terrorism was happening or likely to happen, agent Griffin trolled for possible suspects in a place where American Muslims congregated, failed at this for a while, and then focused his attention on a suspect who seemed to fit his profile. From the language in evidence, however, El-Hindi was not the right suspect after all, but that didn't seem to matter because he appeared to fit the profile that the agent was looking for.

This case had three targets who were recorded together only a few times but were recorded individually many other times. The extent to which Amari and Masloum were guilty or innocent was not pursued by the lawyers with whom I worked and they instructed me not to analyze the tapes in which these two defendants appeared together or separately. Therefore, I couldn't judge whether Amawi and Masloum were indeed guilty of some of the charges (but from all appearances, Masloum was considerably less likely). If Amawi was indeed guilty, there is a very good chance that his guilt contaminated the case against El-Hindi, since it is not unusual for all indicted defendants to be found guilty even if only one of them was. When this happens, the problem lies at least partially in the legal system's own intelligence gathering, intelligence analysis, and trial procedures. So it is not possible to say for sure that the government located all of the right suspects in this case but, based on the prosecution's own undercover recordings, it is clear that El-Hindi provided no evidence of being guilty of everything with which he was charged. It is highly likely that the prosecution pursued only one hypothesis--that of guilt. This would suggest that the prosecutor's intelligence analysis was inadequate.

### **Did the government investigate the agendas of the speakers?**

There is no evidence in the prosecutor's trial presentation that he had any concern for (or knowledge of) the conversational agendas of either El-Hindi or agent Griffin. To discourse analysts this seems very strange, since conversational agendas and schemas are the very foundation of what is being discussed.

In criminal court cases it is common for both the prosecution and the defense lawyers to focus only on small pieces of talk (words and sentences) and pay little or no attention to the significance of the important holistic information that could be provided if they would make an effort (or get linguistic help) to examine the speakers' topics, agendas, schemas, and the meaning of their responses. People do not commonly recognize the fact that

words and sentences extracted from their conversational context are capable of having a different meaning from that which they might otherwise seem to have.

One first step for prosecutions of any type, including terrorist cases, requires an analysis of the speakers' agendas and schemas, as revealed through the topics they introduce and recycle (Shuy 1996, 2005). Prosecutors and police make much of the notion of "motive," but they usually look for this motive *outside* of the language evidence. The language clues found *within* the recorded conversations are a fruitful evidence of motives, however, and this information is readily available, if lawyers would only look for it. This is a crucial contribution that linguists can provide to them.

### **Was a proper and effective intelligence analysis made?**

There are four essential steps in the process of intelligence analysis (Harris 1976, 30):

1. collecting data
2. evaluating the data for usefulness
3. analyzing the data for meaning
4. reporting findings

Undercover agent Griffin was responsible for collecting the data. No doubt his handlers reviewed his tapes throughout this two-year investigation and it is proper to give them credit for adequately evaluating, analyzing, and then deciding that their first scenario, that of trying to get El-Hindi to form a cell that Griffin could train for violent jihad, was a failure. The replacement scenario, however, was another matter. The prosecution's final analysis was that El-Hindi's *intent* was to select videotapes and internet programs that would help Griffin in his alleged but non-existent efforts to train people to commit violence against the U.S. A more careful evaluation of these conversations shows a distracted, naïve and gullible El-Hindi meekly complying with Griffin's request to forward these materials to Griffin's own computer. It is difficult to see how this shows his overall illegal intent. Perhaps if this meeting had taken place in Amawi's or Masloum's home, El-Hindi would be less likely to have been charged with this crime. Accurate intelligence analysis would also have shown that throughout Griffin's two scenarios, El-Hindi said nothing inculpatory about a violent jihad. In fact, El-Hindi's own words and actions evidenced that he was opposed to such actions.

There is every indication in the tapes that the prosecution's intelligence analysis was faulty in this scenario. The alleged offensive materials were found in El-Hindi's home when he hosted a dinner meeting that was orchestrated by the agent. Griffin also orchestrated El-Hindi's emailing the materials to his home computer. That's all the prosecution could factually claim about El-Hindi's involvement and apparently that's all they thought was needed.

Spoken language is more difficult to process than written language, which may be one reason that the government's intelligence analysis erred. Speech goes by the listener very quickly, making it necessary to listen and view it many times. The commonly used technique is to produce a written transcript of the speech, but a transcript can't reveal

important information such as head nodding, silent non-verbal communication signals, or whether the listeners were even present or responding with language that evidences attention to or understanding of the agent's allegedly inculpatory hints.

Because of the speed of oral speech, people who participate in conversations are often less able to determine all the inferences and nuances of what was being said than are later listeners who can listen to this evidence at their leisure and can replay the tapes as many times as they want. Jurors also assume that the defendants are guilty, not only because they were indicted and brought to trial, but also because the evidence is recorded on tape. Later listeners are highly disadvantaged when they hear a tape that had a specific context at the time it was made but which is much less clear when it is replayed later in the courtroom. Add to this the fact that the prosecution focuses on individual words and sentences rather than entire contextual indicators of meaning and intent, and the case against El-Hindi is made much easier for jurors. [AJ18]

## **Conclusions**

Many people in western nations still fear that anyone with Arabic appearance and an Arabic name is likely to be a terrorist, making prosecutions like El-Hindi's appear to be reasonable and necessary. In some cases, these fears are supported by irrefutable evidence--but not always. The clear danger remains that this strong fear can lead law enforcement officers to select the wrong suspects, to focus on the wrong person in a group under investigation, to neglect analyzing the discourse context in which the alleged criminality takes place, and to produce an inadequate intelligence analysis.

Such prosecutions can go astray by basing their claims of guilt on ambiguous representations made by undercover agents and by failing to understand when the agent's efforts to hint at or fish for inculpatory responses has actually netted nothing. And when they ignore or discount the target's statements of any intent to act legally, the prosecution distorts by omitting facts that should govern the outcome of justice. The case against El-Hindi illustrated all of these weaknesses in the government's effort to root out terrorism.

If the prosecutors had called on linguists to analyze these conversations before the case went to trial (intelligence analysis), El-Hindi might never have been indicted. When the prosecutors leave it to the defense to make use of linguistic analysis, there is always a very good possibility that the judge may not permit the linguist to offer such testimony at trial, which is exactly what happened in this case. El-Hindi is now serving a prison sentence of 14 years.

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