

## **Disinformation, Democracy, and the Rule of Law**

*Asha Rangappa's Luncheon Keynote Address*

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Thank you to the Connecticut Bar Association for having me here today. I had a chance to speak on this topic at the CBA's Rule of Law Conference this past December. It is, I believe, one of the greatest threats to democracy we face today, and I am pleased to have the opportunity to elaborate on those thoughts to this group.

Much of the public discussion on Russia's disinformation operations in the U.S. has focused on their impact on the 2016 election and how they might affect elections in the future. But the damage that Russia seeks to inflict through its disinformation campaign isn't limited to electoral contests. Rather, its long-term strategy has been to erode faith in the primary pillars upon which our democracy is based—including the rule of law and the institutions that support it. For now, its efforts seem to be working, and the legal profession may be both the first and last line of defense. Let me explain why.

### **I.**

Although Russia utilized relatively recent technology like social media platforms in its assault on the 2016 election, its overarching tactics and goals were not new. "Active measures"—as the full panoply of Russia's subversive measures, including disinformation and propaganda, are known—were a central component of the KGB's intelligence operations in the U.S. during the Cold War. Yuri Bezmenov, a KGB officer who defected to the United States, [explained](#) in 1984 that the central focus of the KGB's active measures were to "subvert anything of value in [its] enemy's country," and to do so by pitting groups against each other and creating internal chaos within the enemy state.<sup>1</sup> The idea is to destroy your enemy without ever having to fire a shot.

In the United States, of course, a central value established by the Constitution is the rule of law. The idea that any individual can have their voice heard, and be treated as an equal in a court of law, is a building block of a democratic society: Courts are the guardians of individual rights, and having faith in their legitimacy is a necessary prerequisite for having faith in fundamental democratic ideals like equality, due process, and freedom. Not surprisingly, Bezmenov notes that [fostering mistrust in the justice system](#) was one of the primary objectives for the KGB's active measures, since undermining the legitimacy of courts and law enforcement would ultimately undermine Americans' belief in the rights they protect.<sup>2</sup>

Fortunately for America, the KGB had limited success in its attempts to subvert the rule of law during the Cold War. In 1982, the House Select Committee on Intelligence [held hearings](#) to examine the Soviet's use of active measures. (Yes, this isn't Congress's first rodeo on the topic, believe it or not.) It found that the Soviet Union's operations suffered from several weaknesses,

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<sup>1</sup> Awakening 3648, *Yuri Bezmenov, Explains the Communist 'Smart War,'* YOUTUBE (July 12, 2014), <https://www.youtube.com/watch?v=YM2YqYGUPTc&feature=youtu.be>.

<sup>2</sup> TOMAS D. SCHUMAN, LOVE LETTER TO AMERICA 35-36 (1984), *available at* <https://www.economicstvoodoo.com/wp-content/uploads/Yuri-Bezmenov-Love-Letter-To-America.pdf>.

the most notable one of which was its ideology.<sup>3</sup> The House Committee determined that the KGB had the most success with groups in which it could find a common cause with marginalized groups—in that era, that was mostly individuals and organizations on the political left, who were already challenging the political and legal status quo in the realm of civil rights, racial justice, and Vietnam.<sup>4</sup> But as a nation-state that was, ultimately, seeking to spread communism—and notably, had a political philosophy that was explicitly atheistic—the Soviet Union made little headway in recruiting agents in the political mainstream, particularly on the right.<sup>5</sup>

Fast forward almost three decades and the same does not hold true. Russia is no longer constrained by a political ideology, giving it more flexibility to appeal to a broader swath of the political spectrum. Indeed, not having to offer an alternative to the U.S. capitalist model has left Russia free to focus simply on division. As a result, Russia, for the first time, has made headway in undermining the rule of law from both sides of the political spectrum, particularly through politicians who amplify this message: calls to “abolish ICE” from the left, or attacking the FBI, Justice Department, and “so called judges” from the right, has “mainstreamed” an objective that was once only on the political fringe.

In the 21st century, Russia also no longer suffers from another shortcoming the House Committee identified in 1982: Technological weakness.<sup>6</sup> Once, a disinformation campaign would have once taken two years of methodical planning, using human sources, to enter into mainstream media, as the Soviet Union’s planting of a rumor that the United States military created the AIDS virus did. Through cheap, accessible, and viral social media platforms, Russia has the capacity to artificially amplify divisive messages it wants to spread—including those [that color the U.S. legal system as biased and corrupt](#)—within hours, and to hundreds of millions of people.<sup>7</sup> The old adage that “a lie can get halfway around the world, before the truth can get its boots on,” has never been more true than today.

## II.

Partly because social media has been the big game-changer in terms of the effectiveness of Russia’s disinformation efforts, it’s tempting to believe that the answer lies purely in changing, or at least tweaking, the social media platforms themselves and strengthening our cyber defenses. But this approach standing alone doesn’t address the core vulnerabilities which allowed Russian disinformation to take root.

For that purpose, social capital theory provides a useful framework.

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<sup>3</sup> *Soviet Active Measures: Hearing Before the Permanent Select Comm. on Intelligence*, 97th Cong. 49 (1982), available at <https://play.google.com/books/reader?id=yWDHhvlvNZoC&printsec=frontcover&output=reader&hl=en&pg=GBS.PAI> [hereinafter *Soviet Active Measures Hearing*].

<sup>4</sup> *See id.* at 48; *see also id.* at 151-52 (statement of Stanislav Levchenko, Former KGB Major) (describing “Soviet exploitation of . . . U.S. deserters from the Vietnam war”).

<sup>5</sup> *See id.* at 49.

<sup>6</sup> *Soviet Active Measures Hearing*, *supra* note 3, at 49.

<sup>7</sup> Molly K. McKew, *How Twitter Bots and Trump Fans Made #ReleaseTheMemo Go Viral*, POLITICO (Feb. 4, 2018), <https://www.politico.com/magazine/story/2018/02/04/trump-twitter-russians-release-the-memo-216935>.

Social capital, as defined by Harvard Professor Robert Putnam in his book *Bowling Alone*, refers to the way we create value from social relationships.<sup>8</sup> According to Putnam, social capital is an important indicator of a society's health, because it reflects, in part, the level of social trust among individuals.<sup>9</sup> In a society with high social capital, there will also be a high level of "generalized" social trust. That trust is expressed as a willingness to believe in the goodwill of fellow citizens, even those we do not know, and give them the benefit of the doubt. High levels of social trust, in turn, are related to civic values. Putnam notes that "people who trust their fellow citizens volunteer more often, contribute more to charity, participate more often in politics and community organizations, serve more readily on juries, give blood more frequently, comply more fully with their tax obligations, are more tolerant of minority views, and display many other forms of civic virtue."<sup>10</sup>

That's not all. Putnam writes that social capital is formed in one of two ways: Through bonding, and through bridging.<sup>11</sup> Bonding is when individuals create relationships with others based on shared characteristics—race, or religion, for example. Bridging, by contrast, is when relationships are formed across social cleavages, among diverse groups of people. Both are necessary for a healthy society: bonding offers a social safety net, and can leverage shared strengths (think of ethnic enclaves that provide communities for newly-arrived immigrants), and bridging allows new ideas to travel, fostering innovation (universities aspire to do this).

Importantly, however, Putnam observes that there are more negative externalities associated with bonding than with bridging: Specifically, too much bonding can lead to factionalism, exclusive groups, and policies based on mistrust.<sup>12</sup> In a word, it can lead to tribalism.

Alarming, however, social capital, and its accompanying levels of civic engagement, has dropped precipitously since World War II in the US. Putnam notes that compared to Americans born before 1945, each successive generation has been less likely to participate in civic life. Relatedly, levels of social trust are at an all-time low. The last poll from the [General Social Survey](#), which asks Americans whether they believe "most people can be trusted," is at 30%, its lowest point since they began asking the question in 1972.<sup>13</sup>

Putnam found that technology contributed significantly to the decline in social capital and social trust over the last half century.<sup>14</sup> Putnam was writing in 2000, after the dotcom boom but before the explosion of wireless broadband Internet and the smartphone era. But there's reason to believe that social media has continued this trend, and perhaps even made it worse. This is because of the intersection between social capital theory and how social media operates.

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<sup>8</sup> ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 19 (2000).

<sup>9</sup> *Id.* at 20-21.

<sup>10</sup> *Id.* at 136-37.

<sup>11</sup> *Id.* at 22-24.

<sup>12</sup> *Id.* at 23, 358; *see also* Sabina Panth, *Bonding vs. Bridging*, WORLD BANK (June 3, 2010), <https://blogs.worldbank.org/publicsphere/bonding-and-bridging> ("[B]onding in disenfranchised societies can have negative consequences . . . [such as] exclusionary practices based on distrust, intolerance and hate.").

<sup>13</sup> Chris Cillizza, *Watch Americans' Trust in Each Other Erode Over the Last Four Decades*, WASH. POST (May 31, 2014), <https://www.washingtonpost.com/news/the-fix/wp/2014/05/31/watch-americans-trust-in-each-other-erode-over-the-last-three-decades/>.

<sup>14</sup> PUTNAM, *supra* note 8, at 216-46.

Social media, which emphasizes connectivity based on people who share our preferences, encourages bonding, at the expense of bridging—studies of “red feeds” and “blue feeds” on social media illustrate how ideas can ricochet within a political social media “bubble” without ever crossing over into another, separate bubble.<sup>15</sup> Further, Putnam underscores that virtual media doesn’t allow for the exchange of important social cues—like facial expressions, emotions, and other nonverbal behavior—which are indispensable for creating trust among individuals who interact in person.<sup>16</sup> We now have tribes: political tribes.

How does all of this relate to the rule of law? With Americans spending an average of six and a half hours a day online—about a third on social media—virtual bubbles, rather than real relationships formed with real people, can become their factual reality.<sup>17</sup> This tribalism can impact how individuals perceive our civic institutions, which include those that uphold the rule of law. As noted previously, decreased civic engagement is associated with low social trust—which offers a fertile mindset for believing that public servants, judges, and law enforcement are untrustworthy, biased, and even corrupt.

In fact, recent statistics suggest that Americans’ commitment to rule of law values has in fact eroded significantly. Professor Austin Sarat at Amherst College [notes](#) that 38 percent of people surveyed in 2017 trust the president, more than judges, to make the right decision for the United States.<sup>18</sup> The statistics are even more alarming when broken down by generation: Another study found that less than 33 percent of millennials agreed with the idea that it “is essential to live in a democracy,” compared with 72 percent of Americans born before World War II.<sup>19</sup> And only 19 percent of millennials believe that a military takeover of the government would be illegitimate, compared to 43 percent of older generations.<sup>20</sup>

In short, as Americans have become less civically engaged over the last five decades, they have essentially made Russia’s job to foment division among Americans and sow mistrust in our institutions that much easier. We are, in effect, all primed to become unwitting Russian assets.

### III.

The challenge we face as we regroup from the Russia’s disinformation campaign in 2016 is how to revitalize civic engagement in a digital world.

At one point in time, voluntary associations like the Scouts, Rotary Clubs, local PTAs, and churches were essentially “schools for democracy” and inculcated their members with civic skills such as “how to run meetings, speak in public, write letters, organize projects, and debate

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<sup>15</sup> *Blue Feed, Red Feed: See Liberal Facebook and Conservative Facebook, Side By Side*, WALL ST. J., <http://graphics.wsj.com/blue-feed-red-feed/>.

<sup>16</sup> PUTNAM, *supra* note 8, at 175.

<sup>17</sup> See Jason Mander, *Daily Time Spent on Social Networks Rises to Over 2 Hours*, GLOBALWEBINDEX (May 16, 2017), <https://blog.globalwebindex.com/chart-of-the-day/daily-time-spent-on-social-networks/>.

<sup>18</sup> See Austin Sarat, *Americans Aren’t as Attached to Democracy as You Might Think*, GUARDIAN (Feb. 11, 2017, 9:39 AM), <https://www.theguardian.com/commentisfree/2017/feb/11/americans-arent-attached-democracy-rule-law>.

<sup>19</sup> Roberto Stephan Foa & Yascha Mounk, *The Democratic Disconnect*, 27 J. DEMOCRACY 5, 7-8 (2016).

<sup>20</sup> Amanda Taub, *How Stable Are Democracies? ‘Warning Signs Are Flashing Red,’* N.Y. TIMES (Nov. 29, 2016), <https://www.nytimes.com/2016/11/29/world/americas/western-liberal-democracy.html>.

public issues with civility.”<sup>21</sup> In the face of waning membership in such organizations, our schools have unfortunately [not picked up the slack](#): Only nine states and the District of Columbia currently require a minimum of one year of education in U.S. government or civics, and ten states have no civics requirement at all.<sup>22</sup> (Connecticut requires only half a year of civics education.)

One type of organization that can fill the gap is local, state, and national bar associations. Members of the legal profession are ideally suited to be educators and disseminators of civic values for two reasons. First, as a profession, they have remained strong, particularly in an organizational form—unlike many other types of voluntary organizations, associations like the American Bar Association have actually increased their membership over the last several decades. Second, and more importantly, lawyers are trained to put higher principles above emotional, personal, and political beliefs. Defense lawyers, for instance, are proud to uphold and zealously defend their clients’ rights to due process and a fair trial, regardless of whether they personally believe in their innocence or guilt. Supreme Court Justice John Roberts embodied this recently in pushing back against President Trump’s attacks on the judiciary, declaring, “We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.”<sup>23</sup>

Being able to articulate and appeal to these higher values is critical in today’s tribal politics. [Political scientists have found](#) that appealing to civic values can help loosen and even transcend tribal ties: “When such civic-minded motivations are primed...people [are] more willing to adjust important attitudes (including partisan identification) in response to new information.”<sup>24</sup> Members of the legal profession have the skills to utilize a variety of avenues to pass on these values: lectures on important court cases, conferences on topics like the free press or the presidential power, sponsoring civic and community debates on public issues, and hosting mock trial and moot court programs in schools.

## Conclusion

The intense public coverage of the investigation into Russian election interference and the politicization of the same has framed countering disinformation as a partisan issue. In fact, this very framing is what has encouraged U.S. pundits and politicians to attack law enforcement, the courts, and public servants—which only furthers Russia’s interests. Underscoring that the defending against disinformation is about preserving our democratic norms and principles, not about any particular political candidate or party, is a major obstacle to overcome.

The legal profession has both the training and responsibility to take the lead in this effort. Unless we reclaim democratic principles that transcend political differences, we are likely to see a dismantling of the values we as lawyers hold so dear. That dismantling need not involve

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<sup>21</sup> PUTNAM, *supra* note 8, at 338.

<sup>22</sup> Sarah Shapiro & Catherine Brown, *The State of Civics Education*, CTR. AM. PROGRESS (Feb. 21, 2018, 7:00 AM), <https://www.americanprogress.org/issues/education-k-12/reports/2018/02/21/446857/state-civics-education/>.

<sup>23</sup> See Mark Sherman, *Roberts, Trump Spar in Extraordinary Scrap Over Judges*, ASSOCIATED PRESS NEWS (Nov. 21, 2018), <https://www.apnews.com/c4b34f9639e141069c08cf1e3deb6b84>.

<sup>24</sup> D.J. Flynn, Brendan Nyhan & Jason Reifler, *The Nature and Origins of Misperceptions: Understanding False and Unsupported Beliefs About Politics*, 38 ADVANCES IN POL. PSYCH. 127, 137 (2018).

anything more than instilling apathy, cynicism, and mistrust when it comes to Americans' beliefs in the institutions and individuals who uphold the rule of law. Russia's attack on our democracy is an invitation for us to examine our relationship with fellow citizens, and how technology has affected the way we engage with them online and in real life. We still have time to promote and connect over our democratic principles, including the rule of law, and generate a long-term immunity against efforts to fragment our democratic social fabric from within.