



## FISA COMMENTARY SERIES

## DISINFORMATION IN CROSSFIRE HURRICANE

**Ronald J. Rychlak\***

The emergence of social media has greatly extended the ability of disinformation to influence news cycles and public perception. Disinformation counts on creating a story that develops its own “legs” over time. The seeds are planted in what Yuri Andropov called a “petri dish,” and before long people unassociated with creation of the story begin spreading it.<sup>1</sup> That is when disinformation is at its strongest.

In the past, efforts would be directed toward influencing smaller newspapers, journals, and similar news sources. Some of these publications might be regular, reliable outlets for disinformation but others would be cultivated for a particular project. If a story could be placed in several smaller journals, it might be picked up by other, larger publications. The problem for those spreading disinformation was that their regular outlets would eventually develop reputations, and the better reporters and writers would not rely on them for long. Thus, there was a continual need to develop new outlets, and that would often take time and money.

With social media, those who manufacture disinformation stories can control large numbers of outlets—each webpage, Twitter account, etc. being an outlet. Of course, it takes lots of these very small

---

\* Ronald J. Rychlak is Distinguished Professor of Law and the Jamie L. Whitten Chair of Law and Government at the University of Mississippi School of Law. Prior to joining the faculty at the University of Mississippi, Professor Rychlak practiced law with Jenner & Block in Chicago, and served as law clerk to Hon. Harry W. Wellford of the U.S. Sixth Circuit Court of Appeals. Professor Rychlak is author or editor of twelve books, including *Disinformation*, which he co-authored with Ion Mihai Pacepa, a former three-star general in the Romanian Securitate, and the highest ranking defector from the Soviet Bloc.

<sup>1</sup> RONALD J. RYCHLAK & ION MIHAI PACEPA, *DISINFORMATION* (2013).

outlets to promote a story, but by using bots, that can be done. Moreover, in the past, reporters, writers, and editors had to evaluate a story before it was repeated. Today there is no such editorial limitation. Anyone who is intrigued by a story can forward, re-tweet, or re-post it. This creates a tremendous opportunity to manufacture disinformation.

It is not surprising that the Russians are at the forefront of these efforts, though their lead may be diminishing. Soviet intelligence was deeply involved with disinformation throughout the Cold War.<sup>2</sup> There were more people in the Soviet bloc working on disinformation than serving in the armed forces and the defense industry throughout that period.<sup>3</sup> When the Soviet Union fell, there was no effort to remove communists from power (as happened with the Nazis in Germany after WWII). When Putin came to power, he surrounded himself with former Soviet intelligence officers, all (or virtually all) of whom had experience with disinformation.<sup>4</sup>

It has been disconcerting to study the FBI's behavior as it pursued FISA surveillance against the Trump campaign. The disinformation that was provided by Christopher Steele aligned with the beliefs of at least some FBI personnel who were involved in the investigation. Because they trusted the story that fit with their preconceived beliefs, they did not run down the details as well as they would have done had they doubted the story. Thus, they inappropriately credited news accounts that seemed to corroborate Steele rather than tracing them to their original sources.

The same inclination could have caused agents to ignore concerns that they had with the Steele dossier when they applied for FISA warrants, based on the dossier, to surveil Trump adviser Carter

---

<sup>2</sup> See Ashley Deeks et al., *Addressing Russian Influence: What Can We Learn From U.S. Cold War Counter-Propaganda Efforts*, LAWFARE (Oct. 25, 2017, 7:00 AM), <http://www.lawfareblog.com/addressing-russian-influence-what-can-we-learn-us-cold-war-counter-propaganda-efforts>.

<sup>3</sup> DIANA WEST, *AMERICAN BETRAYAL: THE SECRET ASSAULT ON OUR NATION'S CHARACTER 101* (St. Martin's Press, 2013) (quoting Ion Mihai Pacepa).

<sup>4</sup> See John Sipher, *Putin's One Weapon: The 'Intelligence State'*, N.Y. TIMES (Feb. 24, 2019), <http://www.nytimes.com/2019/02/24/opinion/putin-russia-security-services.html>.

Page in the runup to the 2016 presidential election.<sup>5</sup> The doubt that should have existed about Steele's information seemed unjustified because it confirmed what the agents already believed. As such, well-intended agents could have considered doubts to be illogical. Of course, these scenarios assume good faith. That assumption may not be warranted.

It now appears that the FBI was warned, perhaps multiple times, that the Steele dossier, the central piece of evidence in seeking the FISA warrant targeting the Trump campaign, was tainted with Russian disinformation.<sup>6</sup> Declassified footnotes from DOJ Inspector General Michael Horowitz's report show that the FBI ignored numerous warnings, kept that information from the FISA court, and ultimately hid it from the public and others.<sup>7</sup> As Attorney General Barr said, the evidence shows "that we're not dealing with just mistakes or sloppiness."<sup>8</sup> He spoke of an actual effort "to sabotage the presidency."<sup>9</sup>

What this means for the future is less than clear. Corruption in these recent episodes must be rooted out and justice served. Going forward, the trust that Americans once placed in institutions like the FBI will need to be re-earned. Everyone will need to be extra-cautious about sources of information. Courts (FISA and others) will need to ask more questions about sources, doubts, etc. Officers may need to "over-report" their concerns about weaknesses. Judges should make them do so. Political actors have been willing to press the limits for their advantage. Regardless of whether that becomes an actual factor in a legal balancing test, judges and advocates need to be aware and

---

<sup>5</sup> See generally OFF. OF THE INSPECTOR GEN., U.S. DEP'T OF JUSTICE, REVIEW OF FOUR FISA APPLICATIONS AND OTHER ASPECTS OF THE FBI'S CROSSFIRE HURRICANE INVESTIGATION (2019).

<sup>6</sup> See John Solomon, *FBI Repeatedly Warned Steele Dossier Fed by Russian Misinformation, Clinton Supporter*, JUST THE NEWS (Apr. 15, 2020), <https://justthenews.com/accountability/russia-and-ukraine-scandals/fbi-received-repeated-warnings-about-steele-informant>.

<sup>7</sup> *Id.*

<sup>8</sup> *Barr Claims Trump-Russia Investigation Was FBI Attempt to 'Sabotage' the President*, THE GUARDIAN (Apr. 10, 2020), <http://theguardian.com/us-news/2020/apr/william-barr-donald-trump-russia-investigation-fbi-sabotage>.

<sup>9</sup> *Id.*

prepared for that possibility, especially in cases that have political overtones.

Disinformation as a political tool is just coming into widespread use. It will continue to be a factor, but I expect that people will learn to adapt, ask the right questions, and ultimately be less trusting.

