

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROY COCKRUM, et al.,

Plaintiffs,

v.

DONALD J. TRUMP FOR PRESIDENT,
INC., et al.,

Defendants.

Case No. 1:17-cv-1370-ESH

Date: December 8, 2017

**BRIEF OF FORMER NATIONAL SECURITY OFFICIALS
AS AMICI CURIAE IN SUPPORT OF NEITHER PARTY**

Harold Hongju Koh
RULE OF LAW CLINIC
Yale Law School
127 Wall Street, P.O. Box 208215
New Haven, CT 06520-8215
203-432-4932
harold.koh@ylsclinics.org

Phillip Spector (D.C. Bar No. 479121)
MESSING & SPECTOR LLP
1200 Steuart St. #2112
Baltimore MD 21230
202-277-8173
ps@messingspector.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3
INTEREST OF AMICI CURIAE 4
ARGUMENT 4
CONCLUSION 10
APPENDIX: List of *Amici Curiae* 10

TABLE OF AUTHORITIES

Other Authorities

Steve Abrams, *Beyond Propaganda: Soviet Active Measures in Putin’s Russia*, *Connections* Q.J. 15, 5 (2016). 4

Dir. of Cent. Intelligence, National Intelligence Estimate, *The USSR and the Third World* (Sept. 19, 1984)..... 5

Intelligence Community Assessment, *Assessing Russian Activities and Intentions in Recent U.S. Elections* (Jan. 6, 2017) 8

Mark Galeotti, *The ‘Trump Dossier,’ or How Russia Helped America Break Itself*, *Tablet*, June 13, 2017..... 7

Mark Galeotti, *Controlling Chaos: How Russia Manages Its Political War in Europe*, European Council on Foreign Relations (Aug. 2017) 8

U.S. Dep’t of State, Bureau of Pub. Affairs, *Soviet ‘Active Measures’: Forgery, Disinformation, Political Operations* (Oct. 1981)..... 5, 6

Soviet Active Measures in the United States, 1986-87, Prepared by the Federal Bureau of Investigation, Cong. Rec. E4717 6

Soviet Active Measures: Hearings before the Permanent Select Committee on Intelligence House of Representatives, 97th Cong., 2nd Session (July 13-14, 1983))..... 6

INTEREST OF AMICI CURIAE¹

Amici submit this brief on behalf of neither party. Amici are former national security, foreign policy and intelligence officials with decades of experience in Russian security and intelligence practices. They have served at senior levels in the administrations of Presidents of both parties, including in senior roles in the intelligence agencies of the United States. They have devoted decades to combating the threats the United States faces in a dynamic and dangerous world. Amici do not take a position on the specific allegations in the Complaint in this case. Nor can or would they disclose the details of operations for which information is still classified. They write instead to offer the Court their broad perspective, informed by careers spent working inside the U.S. government on foreign policy and intelligence matters, on a specific question of national security that may bear on the Court’s consideration of this case—whether and how Russia uses local actors inside a country to facilitate disinformation campaigns.

ARGUMENT

One of the central elements of Russian foreign policy for decades has been a category of activities known as “active measures.” Oleg Kalugin, former major general of the KGB, described active measures as the “heart and soul of Soviet intelligence—not intelligence collection, but subversion.”² Active measures campaigns encompass a range of activities that include written or spoken disinformation, the spreading of conspiracy theories, efforts to control

¹ Amici affirm that no counsel for any party authored this brief in whole or in part; no party or party’s counsel contributed money intended to fund preparing or submitting the brief; and no person, other than amici, their members, and counsel, contributed money that was intended to fund preparing or submitting this brief. The views expressed by Yale Law School’s legal clinics are not necessarily those of the Yale Law School.

² Steve Abrams, *Beyond Propaganda: Soviet Active Measures in Putin’s Russia*, *Connections* Q.J. 15, 5 (2016).

the media, the use of forgeries, political influence campaigns, the funding of extremist and opposition groups, and cyberattacks. Across history, the Russians have adapted their strategy as technology and circumstances have changed. The geopolitical landscape has shifted over the years, but the overarching objectives largely have been the same—to undermine confidence in democratic leaders and institutions; sow discord between the United States and its allies; discredit candidates for office perceived as hostile to the Kremlin; influence public opinion against U.S. military, economic and political programs; and create distrust or confusion over sources of information.

Active measures date back to the Soviet era, when they were a major weapon in the country's foreign policy arsenal. Active measures campaigns were made and controlled by the Politburo and the Secretariat of the Communist Party, and were executed by a bureaucracy that included not only the KGB but “virtually every element of the Soviet party and state structure.”³ The leading active measures campaigns of the era included operations to undermine the Strategic Defense Initiative, frustrate NATO nuclear weapon modernization efforts, and harm the U.S.-Egypt relationship and the Camp David process.⁴ The techniques the Soviets used in these campaigns reflected a mix of so-called “white” (or overt measures, for instance through official Soviet news channels), “gray” (or semi-covert measures, carried out by various front organizations or proxies), and “black” operations (or covert measures, entirely concealing the Soviet role).

³ Dir. of Cent. Intelligence, National Intelligence Estimate, *The USSR and the Third World* (Sept. 19, 1984), https://www.cia.gov/library/readingroom/docs/DOC_0000518056.pdf.

⁴ *See, e.g.*, U.S. Dep't of State, Bureau of Pub. Affairs, *Soviet “Active Measures”*: Forgery, Disinformation, Political Operations (Oct. 1981).

One frequent Soviet tactic in this era involved the production and circulation of forged documents, including a number of fake letters from U.S. officials designed to drive a wedge between the United States and Middle Eastern nations, and materials that sought to discredit President Ronald Reagan (seen as hostile to Soviet interests) during the 1984 U.S. presidential election by presenting him as having worked in collusion with the FBI in the McCarthy era. Another favored technique was to manipulate and spread disinformation in newspapers and through other means around the world. These ranged from rumors that the United States was behind the 1979 seizure of the Grand Mosque in Mecca (feeding the unrest that led to the storming of the U.S. embassy in Islamabad and the death of U.S. diplomats) to efforts to fan the flames of anti-U.S. and Israeli sentiment in the Arab world, to an operation to create a global conspiracy that the United States had created HIV/AIDS. And the Kremlin undertook a wide range of operations in which they cultivated relationships and agents with political, media and economic actors inside countries around the world to shape decision-making on a range of foreign policy goals.⁵

Some of these campaigns were more successful than others. And over time, they may have been blunted by the U.S. government's coordinated efforts to raise awareness of and neutralize the threat. But they served as a major element of Soviet foreign policy and were exceptionally well resourced and staffed. The practices seemed to subside in the West for a period immediately after the dissolution of the Soviet Union. However, reports of active measure campaigns were prevalent in the countries along Russia's periphery even in the 1990s.

⁵ See, e.g., *id.*; Soviet Active Measures in the United States, 1986-87, Prepared by the Federal Bureau of Investigation, Cong. Rec. E4717, http://americasurvival.org/wp-content/uploads/2014/04/FBI_Rprt_Active_Measures.pdf; *Soviet Active Measures: Hearings before the Permanent Select Committee on Intelligence House of Representatives, 97th Cong., 2nd Session (July 13-14, 1983)*.

Such campaigns expanded once Vladimir Putin took power, with a significant increase in intelligence activities in Eastern European countries in the early years of his presidency.

In the last several years in particular, Putin has invested in active measures with considerable success. One change in these activities under Putin—compared to the Soviet precedent—is that although they continue to receive specific direction from state authorities, they are now executed through decentralized networks, creating what one expert has described as a “multidirectional brush-fire-information-warfare campaign.”⁶ However, easily the most significant change in these operations in the Putin era has been Russia’s capitalization on the emergence of social media platforms, which has unleashed a new, virulent strain of these influence campaigns.

Social media offers the Russian active measure operation a number of amplifying advantages, including misattribution, direct access to an audience, rapid and targeted dissemination, all at a relatively low cost. They can effortlessly assume the appearance of a U.S. speaker, target disinformation to particular audiences, quickly test the effectiveness of the messages, and use social “bots” and other modes of automation to multiply their reach dramatically. These features have helped the Kremlin to seamlessly combine white, gray and black operations as never before—for instance, by hacking information from private accounts and then pushing the information in real and altered form into disinformation campaigns that rapidly spread across the world. This new generation of active measure activities is deliberate, well-funded, and wide ranging, and represents a massive escalation of previous initiatives in scope and effect.

⁶ Mark Galeotti, *The ‘Trump Dossier,’ or How Russia Helped America Break Itself*, Tablet, June 13, 2017.

Over the last several years, evidence has emerged that Moscow has launched an aggressive series of active measure campaigns to interfere in elections and destabilize politics in Montenegro, Ukraine, Moldova, France, Germany, the Netherlands, Estonia, Sweden, Austria, Italy, Poland and Hungary, to name just a few.⁷ They sought to inflame the issues of Catalanian independence and the Brexit vote in the United Kingdom. And they have stoked fear of immigrants or false claims of refugee criminality in order to catalyze uprisings and promote far-right wing groups. They shifted their attention in the last two or three years aggressively to the United States, where they actively spread disinformation online in order to exploit racial, cultural and political divisions across the country. And according to an official U.S. intelligence assessment, Russia conducted cyber espionage operations against targets associated with the 2016 presidential election starting during the Republican primaries, and distributed information obtained through those operations—as well as a wide range of propaganda and disinformation—to undermine faith in the U.S. democratic process and, in the general election, influence the results against Secretary Hillary Clinton.⁸

Throughout, a hallmark of Russian active measure operations has been its reliance on intermediaries or ‘cut outs’ inside a country to facilitate active measure campaigns. These actors include political organizers and activists, academics, journalists, web operators, shell companies, nationalists and militant groups, and prominent pro-Russian businessmen. They range from the unwitting accomplice who is manipulated to act in what he believes is his best interest, to the ideological or economic ally who broadly shares Russian interests, to the knowing agent of

⁷ See, e.g., Mark Galeotti, *Controlling Chaos: How Russia Manages Its Political War in Europe*, European Council on Foreign Relations (Aug. 2017).

⁸ Intelligence Community Assessment, *Assessing Russian Activities and Intentions in Recent U.S. Elections* (Jan. 6, 2017), https://www.dni.gov/files/documents/ICA_2017_01.pdf.

influence who is recruited or coerced to directly advance Russian operations and objectives. The use of these intermediaries is designed to amplify the scope and reach of Russian influence efforts, while hiding their involvement and preserving a degree of deniability.

Although we cannot disclose the details of operations for which the information is still classified, we can attest that the Russian government continues to use local actors in a number of ways. They cultivate relationships with internal political actors—nationalists and populists, political activists and Russian sympathizers—and seek to use them to corrode democratic institutions from within. They develop lucrative business relationships with influential businesspeople to become vocal advocates for Russian economic and political interests. They use local agents to get closer to a target (especially one who would be hesitant to offer assistance to Russian operatives directly), or manipulate a target to suit their needs. They use these agents to probe potential targets to see if they might be open to relationships or blackmail. And they recruit individuals within a country to help them understand how to appeal to U.S. populations and target and shape the contours of disinformation campaigns. In sum, Russia has a practice of using local actors inside a country as a key tool in its “active measures” operations.

The threat posed to our democracy by Russian active measures campaigns is serious, ongoing and will require vigilance on the part of the U.S. government and people. Part of that vigilance involves raising awareness across the U.S. legislative, executive and judicial branches, as well as the media and civil society, about how Russia engages in sophisticated influence campaigns—ones that are willfully designed to obfuscate and hide from view—so that these governmental and nongovernmental actors can make decisions with a full appreciation of the nature and scope of these activities, and the threats they pose. It is to promote that interest that amici submit this brief today.

CONCLUSION

For these reasons, amici respectfully submit this brief for the Court's consideration.

Respectfully submitted,

Harold Hongju Koh
RULE OF LAW CLINIC
Yale Law School
127 Wall Street, P.O. Box 208215
New Haven, CT 06520-8215
203-432-4932
harold.koh@ylsclinics.org

_____/s/_____
Phillip Spector (D.C. Bar No. 479121)
MESSING & SPECTOR LLP
1200 Steuart Street #2112
Baltimore, MD 21230
202-277-8173
ps@messingspector.com

Counsel for Amici Curiae

APPENDIX: List of *Amici Curiae*

1. John O. Brennan served as Director of the Central Intelligence Agency from 2013 to 2017. He previously served as Deputy National Security Advisor for Homeland Security and Counterterrorism and Assistant to the President from 2009 to 2013.
2. William J. Burns served as Deputy Secretary of State from 2011 to 2014. He previously served as Under Secretary of State for Political Affairs from 2008 to 2011, and as U.S. Ambassador to Russia from 2005 to 2008.
3. Michael Carpenter served as Deputy Assistant Secretary of Defense for Russia, Ukraine, and Eurasia from 2015 to 2017. He previously served as a foreign policy advisor to Vice President Joe Biden and as Director for Russia at the National Security Council.
4. James Clapper served as U.S. Director of National Intelligence from 2010 to January 20, 2017.
5. Philip H. Gordon served as Assistant Secretary of State for European and Eurasian Affairs from 2009 to 2013. He also served as Special Assistant to the President and White House Coordinator for the Middle East, North Africa and the Gulf; and Director for European Affairs at the National Security Council.
6. Avril D. Haines served as Deputy National Security Advisor to the President of the United States from 2015 to January 20, 2017. From 2013 to 2015, she served as Deputy Director of the Central Intelligence Agency.
7. Steven L. Hall retired from the Central Intelligence Agency in 2015 after 30 years of running and managing intelligence operations in Eurasia and Latin America. Mr. Hall was responsible for CIA Russian operations, overseeing intelligence operations in the countries of the former Soviet Union and the former Warsaw Pact.
8. General (ret.) Michael V. Hayden, USAF, served as Director of the Central Intelligence Agency from 2006 to 2009. From 1995 to 2005, he served as Director of the National Security Agency.
9. Michael McFaul served as U.S. Ambassador to the Russian Federation from January 2012 to February 2014. Before becoming ambassador, he served for three years as a special assistant to the president and senior director for Russian and Eurasian Affairs at the National Security Council.
10. Michael J. Morell served as Acting Director of the Central Intelligence Agency in 2011 and from 2012 to 2013; as Deputy Director of the Central Intelligence Agency from 2010 to 2013; and as a career official from 1980 onward. His duties included briefing Presidents George W. Bush and Barack Obama.
11. Stephen Sestanovich served from 1997 to 2001 as ambassador-at-large and special

adviser to the Secretary of State for the new independent states (including Russia) of the former Soviet Union. Earlier, he served as senior director for policy development (from 1985 to 1987); director of political-military affairs from (1984 to 1985) at the National Security Council.

12. John Sipher retired in 2014 after a 28-year career in the Central Intelligence Agency's National Clandestine Service. John served multiple overseas tours as Chief of Station and Deputy Chief of Station in Europe, Asia, Southeast Asia, the Balkans, and South Asia.
13. Julianne Smith served as Deputy National Security Advisor to Vice President Joe Biden from 2012 to 2013. Before her post at the White House, she served for three years as the Principal Director for European and NATO Policy in the Office of the Secretary of Defense in the Pentagon.
14. Strobe Talbott served as Deputy Secretary of State from 1994 to 2001.

CERTIFICATE OF SERVICE

I, Phillip Spector, hereby certify that on December 8, 2017, the foregoing document was filed and served through the CM/ECF system.

Respectfully submitted,

_____/s/_____
Phillip Spector (D.C. Bar No. 479121)
MESSING & SPECTOR LLP
1200 Steuart Street #2112
Baltimore, MD 21230
202-277-8173
ps@messingspector.com
Counsel for Amici Curiae