Defending Rule of Law Norms: A Conversation with Rod Rosenstein

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INTRODUCTION

John J. Hamre
President and CEO, CSIS

FEATURING

Rod Rosenstein
Deputy Attorney General

CSIS EXPERTS

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Good afternoon, everybody. Welcome. We’re delighted to have you here. My name is John Hamre. I’m the president of CSIS and wanted to have a chance to greet all of you.

Suzanne Spaulding is going to introduce the deputy attorney general. I just wanted to say words of welcome. I know why you’re all here. It’s the same reason I’m here. It’s to listen to a remarkable man who has dedicated his life to the foundations of the health of American democracy and rule of law. He’s consistently been on the forefront of ensuring that America had a reliable, trustworthy, and credible legal system for all of us, for our wellbeing. And we’re here to celebrate that today, and to say thank you to him, and to listen to him because he’s going to have some very important and interesting things to tell all of us.

When we have outside groups, we always start with a little safety announcement. I’m not worried about the deputy attorney general. He’s got a lot of guys here that are going to take care of him. But I am worried about all of you. So if we hear an announcement – and we haven’t had this in five years – but if we do hear an announcement, please follow my directions. We’re going to go through these exits right back here. There’s a stairs that will take us right down to the alley. We’ll take two left-hand turns, a right-hand turn, we’re going over to National Geographic. And I’ll pay for everybody’s tickets to see the Titanic exhibit. (Laughter.) It’s really great. It’s really a great show.

Suzanne, why don’t you get – come up here and let’s get this program started for you. I just wanted to say, Deputy Attorney General, thank you for everything you’ve done. (Applause.)

Thank you very much, Dr. Hamre, for those welcoming remarks. It’s wonderful that you could be with us here today.

I am Suzanne Spaulding. I’m a senior advisor at CSIS, where I lead a project on defending democratic institutions. And I have the great privilege today of introducing Deputy Attorney General Rod Rosenstein. After he makes his initial remarks, he and I are going to move to the chairs here and have a little bit of a conversation. And then we’re going to take your questions. You all have notecards on your chairs. And I would encourage you to be thinking, you know, as the – as the remarks are given and our conversation proceeds, about questions that you’d like asked. And when you’ve written them on the card, just lift it up in the air and our team will collect those cards and bring them up to me. All right?

The deputy attorney general today is going to speak with us about the importance of defending the rule of law, and what that means, and particularly as contrasted with authoritarian regimes such as those in China and Russia. Few are better suited to address these issues. Rod Rosenstein has spent 29 years in the Justice Department, working to uphold the rule of law under five administrations and at least 10 confirmed attorneys general. (Laughter.) He has the distinction of having been the longest-serving U.S. attorney in American history.

It seems appropriate today to spend a few minutes describing the deputy’s distinguished career with the Justice Department, given that his tenure is soon drawing to a close, at least for now. (Laughter.) Rod Rosenstein graduated summa cum laude from the Wharton School of Business at the University of Pennsylvania,
and then went onto Harvard Law School, where he was an editor of the Law Review. On his way to being a successful lawyer at a big law firm, he then changed his plans after an internship with the U.S. attorney’s office in Massachusetts. The acting U.S. attorney at the time was Robert Mueller. That experience, working with colleagues of, in his words, great intellect and integrity, set him on a different path.

Suzanne Spaulding: After serving as a law clerk to justice – to Judge Douglas H. Ginsberg on the prestigious U.S. Court of Appeals for the District of Columbia Circuit, he joined the Justice Department in 1990 as a public corruption prosecutor in the criminal division. Again, under the leadership of Robert Mueller. He later served as counsel to the deputy attorney general during the Clinton administration, and special assistant to – assistant attorney general in the criminal division. From 1995 to 1997, he was detailed to Independent Counsel Ken Starr, assisting with the Whitewater investigation. He then became assistant U.S. attorney in Maryland from 1997 to 2001 when he went back to main Justice in the Bush administration, serving as principal deputy to the assistant attorney general for the tax division.

Suzanne Spaulding: In 2005, George W. Bush appointed Rod Rosenstein to be the U.S. attorney for the district of Maryland. He was the only U.S. attorney in the country appointed by Bush who was later kept on by President Obama, and he was again held over by President Trump.

Suzanne Spaulding: Rod Rosenstein’s long tenure as U.S. attorney was marked by dramatic declines in murders and other violent offenses, attributed both to effective enforcement and prosecution, but also to robust collaboration between prosecutors, police and the community focused on crime prevention. Equally impressive, he demonstrated his strong commitment to preserving public trust in the justice system by going after corrupt police officers, correctional officers and even elected officials as doggedly as he pursued violent repeat offenders and largescale drug dealers.

Suzanne Spaulding: In 2017, he was appointed by President Trump to be the 37th deputy attorney general of the United States where his responsibilities include advising and assisting the attorney general in formulating and implementing departmental policies and programs and in providing overall supervision to all of the organizational units of the Department of Justice. Most famously, of course, he appointed Robert Mueller as special prosecutor to ensure an independent and impartial investigation, and until recently was the DOJ official responsible for supervising that investigation.

Suzanne Spaulding: At his confirmation hearing, Rod Rosenstein pledged to, quote, “work to defend the integrity and independence of the Justice Department, to protect public safety, to preserve civil rights, to seek justice, to advance the rule of law and to promote public confidence.”

Suzanne Spaulding: Deputy Attorney General Rod Rosenstein knows firsthand what it means to be bound by the rule of law, how important it is to earn and sustain public trust in the principle of a justice system that is fair and impartial and what happens in a country that fails to respect the rule of law.

Suzanne Spaulding: We are fortunate that he has chosen to take time today to talk about these issues with us. And I ask you to join me in welcoming him to the podium. (Applause.)
Thank you. Thank you, Suzanne, for that lengthy introduction.

I regret that we’ve exhausted all the time for audience questions. (Laughter.) You can put your pens and papers down.

But it is a great honor for me to be here. I had the opportunity to meet with Suzanne and with Dr. Hamre before we began this event today and one of the issues we talked about was fake news.

I think I am the longest serving in this century, which is not all that long so far. (Laughter.) But in fact, in my home state of Maryland there was a U.S. attorney who served for 19 years and I served for only 12, so I am far from achieving that distinction.

But my career in the department does go back so far that I remember when Bill Barr was the attorney general of the United States. (Laughter.) He was actually deputy attorney general when I began my job and then ascended to the attorney general position thereafter. And we are very grateful and very fortunate to have him back. And I think that is yet another example of a superb appointment that President Trump has made, which I believe does demonstrate a commitment to the rule of law.

And I’m grateful to the Center for Strategic and International Studies for giving me the opportunity today to talk about my perspective on the rule of law and some of the things that I think that we’re doing to accomplish that.

A prosperous and safe society needs to vest some people with the power to govern, the ability to set enforceable rules, to punish violations and to act on behalf of the people. The question is how that governing power should be exercised and controlled.

One of our nation’s founders, John Adams, advocated a government of laws, not of men. The goal is for the people who exercise government power to act in accordance with neutral principles and fair processes while respecting individual rights. The idea dates at least to the 4th century B.C. when the Greek philosopher Aristotle wrote it is more proper that the law should govern than any one of the citizens.

Last year President Trump issued a proclamation explaining that we govern ourselves in accordance with the rule of law rather than the whims of an elite few or the dictates of collective will. Through law, we have ensured liberty. As the president recognized, law provides a framework for freedom.

At its best, law reflects moral choices, principled decisions that promote society’s best interests and protect citizens’ fundamental rights. John MacArthur Maguire described law as a system of “wise restraints that make men free.” The restraints preserve liberty because they are prescribed in advance, and they apply to everyone without regard to rank or status.

The rule of law is indispensable to a prosperous and thriving society. It allows businesses to enter into contracts. It gives innovators protection for their
discoveries. It keeps people safe from dangerous criminals. And it allows us to resolve our differences peacefully through reason and logic.

Rod Rosenstein: Justice Anthony Kennedy explained it this way: “In a rule of law system, when you apply to a government clerk for a permit and you meet the criteria, you’re not asking for a favor. You have a right to the permit, and that clerk has an obligation to give it to you.” In many countries, that concept of government officials bound by law to serve the people simply does not exist.

Rod Rosenstein: Now, a society can achieve the appearance of the rule of law without accomplishing it in fact. In Shakespeare’s play “Henry the IV,” a prince brags about his connections to the devil. He proudly proclaims: “I can summon spirits from the vasty deep.” A skeptical friend mockingly replies: Well, so can I; the question is, will they come when you call them? (Laughter.)

Rod Rosenstein: An agreed-upon set of rules is a necessary condition for a system that operates under the rule of law, but it is not a sufficient condition. The rule of law is not just about written precepts. It’s not just about the words. It depends on the vigilance and character of the individual men and women who faithfully implement it. The enforcement mechanism is crucial, as James Madison recognized in Federalist 51, because you must first enable the government to control the governed, and in the next place oblige it to control itself.

Rod Rosenstein: The founders of our nation well understood that challenge. First they fought a war on their own soil to break free from rule by a foreign monarch. Then they operated for a decade under the Articles of Confederation with a weak central government that proved incapable of fulfilling its obligations.

Rod Rosenstein: So, in 1787, the Constitutional Convention met in Philadelphia to establish the foundational rules for a new form of government. The founders agreed on a written Constitution establishing a system that divides government power among the legislative, executive, and judicial branches. The system protects against the concentration of power by allowing each branch to check and balance the others.

Rod Rosenstein: Sometimes it’s a messy system, as we see played out from time to time not far from here on Capitol Hill. The founders recognized that. When Benjamin Franklin was walking home from the Constitutional Convention, a woman named Elizabeth Powell stopped him and asked him what type of government the founders had created. Franklin replied with these words: “A republic, if you can keep it.” Some people think that politicians are responsible for keeping the republic, but Franklin spoke to an ordinary citizen, a woman who at the time did not even have the right to vote. But he said it was her responsibility, not his, to keep the republic.

Rod Rosenstein: The lesson is that a constitutional republic’s success depends on people, on citizens conscientiously applying and respecting the rules. And one indicator that we are faithfully enforcing the rule of law is when we accept a result even though we personally dislike the outcome. We respect it because it’s the result of a fair process, an objective analysis of the facts, and a rational application of the predetermined rules.

Rod Rosenstein: An independent judiciary is a central pillar of our system. Our federal judges by design do not defer to the popular will. They do not run for election. They do not
answer to the executive branch, nor are they beholden to the legislature. Their duty is to say what the law is, independently and impartially. They take an oath to administer justice without respect to persons and to impartially perform their duties. The judicial branch is independent because we accept its final rulings even when we disagree with them. The judiciary serves as a check on the other branches, not a subordinate.

Rod Rosenstein: Now, American institutions and the people who compose them often fall short of our ideals. No system is infallible. But at its core our society fundamentally respects the rule of law, by which we mean a system that is just and is protective of human freedoms.

Rod Rosenstein: Not all nations share that concept. As we seek to build bridges with foreign adversaries, it’s important for us to understand the differing visions that underlay their legal systems.

Rod Rosenstein: In China, for example, the Supreme Court urged government officials to resist Western-style judicial independence, deriding it as erroneous and mistaken. The Chinese Communist Party sits above the government. In January, a party directive instructed the country’s courts to protect the party’s political security. Instead of maintaining independence from the executive branch, the Chinese judiciary’s duty is to further Communist Party goals. The party controls the appointment of judges and even dictates some of their rulings.

Rod Rosenstein: Daily practice in the courts is also a study in contrast. In our courts, the presumption of innocence is perhaps the most important safeguard of individual liberty. When our government makes an allegation of wrongdoing, we need to prove it. We must present evidence that satisfies the rules governing admissibility. We need to call witnesses who remain credible when subjected to vigorous cross-examination. That’s one of the reasons why it’s important for government officials to refrain from making allegations of wrongdoing when they’re not backed by charges that we are prepared to prove in court.

Rod Rosenstein: In a trial, a defendant a right, an opportunity to present his own evidence and present his own witnesses. And that presumption of innocence is overcome only if we prove our case to the unanimous satisfaction of a judge and 12 random citizens. If even one juror is unconvinced, the defendant prevails. Government officials may sincerely believe a defendant is guilty, but their belief is irrelevant. Investigators and prosecutors in America do not get to decree which facts are true.

Rod Rosenstein: In contrast, the Chinese system effectively presumes guilt when a defendant stands accused of a crime. Moreover, that presumption is all but irrebuttable. Chinese judges receive the government’s evidence before trial, without opportunity for comment or cross-examination by the defense. Live testimony is offered only rarely. There’s little to no opportunity to impeach witnesses. Prosecutors, as a result, rarely lose.

Rod Rosenstein: There are also substantial differences in our criminal arrest and detention practices. In the United States a criminal defendant arrested by police without a warrant has a right to appear before a neutral judge within 48 hours. If police satisfy the judge in advance through a sworn allegation of wrongdoing and obtain a warrant before making the arrest, the defendant still has a right to review by a
judge without unnecessary delay. A criminal defendant may be detained in the United States only if there is a judicial finding that there’s probable cause to believe that he committed a crime, not simply based upon the assertion of a government official. In addition, federal law still requires release before trial unless a judge finds by clear and convincing evidence that the defendant would pose a risk of flight or a danger to the community if he were released while awaiting an adjudication at trial.

Rod Rosenstein: In China, forms of extrajudicial pretrial detention are enshrined in law. Last September the former president of Interpol, Meng Hongwei, was forcibly detained by his own government without explanation. In China that’s not a violation of the rule of law; that’s what the law permits. Now, Meng has reportedly been detained under a new form of custody known as liuzhi, or retention in custody. Under that form of custody a suspect is held incommunicado at an undisclosed location, and denied access to legal counsel and family for as long as six months without charges.

Rod Rosenstein: And in Xinjiang province, Chinese law allows the extrajudicial mass detention of citizens who are ethnic Uighurs, a minority population native to the province. Today, more than 1 million Uighurs and other minorities reportedly are detained in internment camps. They’re forced to renounce their culture and religion, and they face political reeducation. That’s today in the modern era. The province’s law authorizes the arrest of anyone for violations that include expressing allegiance to Uighur culture and reading prohibited religious books. Many people have been arrested and detained for long periods of time without charge, trial, or due process.

Rod Rosenstein: Citizens of countries that operate in that way are subjected to rule through law, rather than rule of law. The law does not charge anyone with serving as an independent guarantor of liberties or a check on political influence, as in the American system. Instead the law is an instrument of state power, a mechanism for rulers to maintain control and to quash dissent. In the absence of a culture that respects the rule of law, written protections are routinely violated and seldom enforced, and victims are bereft of any legal remedy. In those nations, law may be used instrumentally as either a weapon or a shield, not merely against their domestic populations but also beyond their borders.

Rod Rosenstein: They direct their transactional approach to the law outward, with far-reaching effects. China, for example, appears to detain foreign citizens as a means of retaliating or inflicting political pressure on other countries. In 2014, Canadian authorities arrested a Chinese national named Su Bin at the request of the United States to face serious charges. We sought his extradition for hacking-related offenses and the theft of sensitive military and export controlled-data, that was sent to China.

Rod Rosenstein: In an apparent act of reprisal, Chinese authorities apprehended a Canadian couple who had lived in China for 30 years without incident. They were accused of spying and threatened with execution. The wife ultimately was detained for six months before being released on conditions. The husband did not meet with a lawyer for almost a year. He was held for more than two years. Meanwhile, Su Bin, the defendant charged in the United States, consented to his transport here, retained a lawyer of his choice, and received all the protections afforded a criminal defendant in our system, including the right to a fair and open trial.
Rod Rosenstein: In some cases, China, Russia, and other authoritarian nations overtly shield their nationals from the fair administration of justice. For example, they refuse, in some cases, to provide mutual legal assistance in response to justified requests from the United States and other countries for evidence necessary to criminal investigations and prosecutions. As transnational crime increases in scope and complexity, we increasingly face cross-border criminal investigations with defendants, witnesses and evidence that span the globe.

Rod Rosenstein: Countries depend heavily on the expeditious international cooperation to build cases and to locate, arrest, and extradite fugitives, to hold them to account for their crimes. If we don’t cooperate, we’ll all be vulnerable to criminal activity by persons operating in other countries. Providing those sort of safe havens for criminals is a violation of the rule of law. Some countries also undermine the law by using extralegal means to forcibly repatriate fugitives. China sends agents known as fox hunt teams to the United States and elsewhere to track down Chinese nationals accused of political or corruption crimes. Those squads enter foreign countries under false pretenses, track down fugitives, and employ intimidation tactics to try to coerce them to return to China.

Rod Rosenstein: Inside China, government officials possess authority to impose exit bans, prohibiting some foreigners from leaving the country without judicial approval. They sometimes use bans as a form of coercion to compel a victim’s relative or friend suspected of wrongdoing to return to China. One American teenager, a college sophomore enrolled not far from here, is now trapped in China, being used effectively as a hostage in an effort to coerce his father to return to China. China’s abuse of foreign visitors as political pawns caused the State Department to issue a travel advisory last month.

Rod Rosenstein: Now, in the United States we strive to faithfully and responsibly discharge our responsibilities to assist foreign law enforcement, providing due process, holding criminals accountable and respecting individual rights. When Chinese citizens who commit crimes in other countries remain in China, China neither extradites them nor holds them accountable there. In contrast, the United States, extradites its own citizens as well as foreign nationals when the law warrants it. Over the past five years, we have extradited 95 Americans.

Rod Rosenstein: We also cooperate with other countries’ requests for neutral legal assistance and for assistance in their investigations and prosecutions. We do so based on a fair-minded assessment of the evidence. Last year, for instance, the United States removed a Chinese fugitive, Xu Chaofan, who allegedly embezzled $485 million from the Bank of China. Combating transnational crime requires foreign partners to act reciprocally, transparently and in good faith. When a fair-minded assessment of the evidence establishes significant crimes, nations should not shield citizens from the fair administration of justice or otherwise subvert legal process.

Rod Rosenstein: Some countries also seek to achieve their ends by changing global criminal justice norms. For instance, Russia and China seek to replace the Budapest Convention on Cybercrime. That convention is approved and now in effect by 60 nations, including the United States. It harmonizes national interests and enhances the flow of electronic evidence among nations in order to facilitate the investigation of cybercrimes while balancing civil liberties and privacy interests.
Rod Rosenstein: Russia rejects the Budapest convention complaining that it allows individual owners of data to control it. In its place, Russia seeks to allow a new convention that would enhance the ability of regimes to control communication, limit information systems – pardon me, limit information sharing between nations and impede efforts to investigation cybercrime. We reject that effort to undermine the goal of an open internet governed by the rule of law and protected by international cooperation.

Rod Rosenstein: I want to emphasize that the people of China, Russia and other nations that do not share our respect for individual rights are not our enemies. It’s good for us to seek common ground with their leaders. President Trump describes our relationship as a new era of competition. He extends an open hand to rival powers that seek to challenge American influence, values and wealth. We will attempt to build a great partnership with those in other countries, but, the president says, in a manner that always protects our national interests.

Rod Rosenstein: The rule of law is central to our national interests, but we cannot expect any system to be flawless in execution. The key issue is whether the government establishes fair rules, respects individual rights and punishes violations. Consider the murder of Jamal Khashoggi. There may be factual disputes about who is responsible for an extrajudicial killing, but our allies must agree on the principle that each culpable person should be held accountable, because a government that operates under the rule of law cannot condone the coldblooded murder of nonviolent dissidents.

Rod Rosenstein: Let me conclude with an observation. I’m proud to serve in the Department of Justice with 115,000 colleagues who promote the rule of law, a goal held jointly by our partners in state and local law enforcement. We share a noble calling to pursue justice, a calling enforced by the additional safeguard of independent judiciary. Now, we work regularly with our law enforcement partners in China, Russia and other nations to advance our interests, but always with a cleareyed understanding of our responsibility to serve as vigilant custodians of the rule of law.

Rod Rosenstein: Our Constitution aspires to secure the blessings of liberty to ourselves and our posterity. In order to sustain it in an interconnected world, we should defend, cherish and champion neutral legal principles and processes. And we should do so in practice and not just on paper.

Rod Rosenstein: Thank you very much. (Applause.)

Suzanne Spaulding: Deputy Attorney General, thank you for those terrific remarks and excellent discussion about the difference between the rule of law and rule through law, and the competing visions around the importance of an independent judiciary.

Suzanne Spaulding: I certainly recall well when I was traveling frequently to Beijing when I was the undersecretary at the Department of Homeland Security, often with your colleague, Bruce Swartz, and others from the Justice Department and we would have conversations with his counterparts in Beijing where we would try to explain that – why we could not, as political leaders, in my case, simply direct our law enforcement folks or Justice Department or courts to take a certain action.

Suzanne Spaulding: And I had a sense after, you know, lots of these conversations that we were maybe making progress in enhancing mutual understanding about our systems. But do
you see any prospect for change? What is the prospect that those competing visions in China and in Russia are likely to change in terms of moving from rule through law to rule of law and what do you think is the role of international organizations in promoting a global consensus around the rule of law – organizations like Interpol?

Rod Rosenstein: So I think Suzanne makes a really important point, which is something – this is a pretty sophisticated audience. You probably appreciate this but I'm not sure all Americans appreciate the extent to which we do engage with countries that are our rivals, including China and Russia. I have visited China myself as part of an Interpol conference about a year and a half ago and we have positive working relationships with law enforcement officials in all of these countries.

Rod Rosenstein: But the point – the underlying point – which I emphasize in my remarks is we need to understand that they're coming from a different culture. They're coming from a system that has different values, and what we need to do is find a way to engage, promote American interests and American values, while recognizing the limitations that our partners – that is, our law enforcement colleagues – in other countries have as a result of the system under which they operate.

Rod Rosenstein: And so we do have folks in our government who understand that well and then the people who Suzanne and I have traveled with and who participate when we meet with representatives of foreign countries, and I think it's important for us to understand that our goal is to advance American interests. Changing values in foreign countries is a pretty big task and I think that our primary goal ought to be finding a way to ensure that our values are enforced. A part of that, as I discussed, means that when foreign nationals are violating American laws we need to make sure they're held accountable. When evidence or witnesses are in foreign countries, we need a mechanism to return those folks here to hold them accountable under the rule of law and that's why organizations like Interpol, which I've been involved in, are really critical and it's critical to make sure that organizations like Interpol share and operate under our values.

Rod Rosenstein: There was some publicity about Interpol a few months back – a contest for the presidency, which was ultimately won by a career law enforcement officer from South Korea – because tools like that, the Interpol red notices, for example, which allow fugitives to be stopped and foreign countries are subject to abuse. They can be abused if the people who are seeking them are not appropriately enforcing the rule of law norms.

Rod Rosenstein: So I think organizations like Interpol are an opportunity for us to ensure that our values are respected, to promote our own interests, and in addition to that – and the point that Suzanne raises – it gives us an opportunity to communicate our values and principles to leaders of other countries, which may have an impact on the way that they view their legal system and, potentially, drive reforms. But I think we need to be realistic about the limitations and our ability to dictate how other countries are going to operate their legal systems.

Suzanne Spaulding: So you made the point in your remarks that – you talked very eloquently about our aspirations for an independent and impartial justice system and operating through the rule of law, that we're not always perfect, and, certainly, there's legitimate
criticism when we fail to reach our aspirations and very constructive work on behalf of judicial reform or justice reform advocates.

Suzanne Spaulding: But in the project that I lead here at CSIS, we are looking at and have gathered abundant evidence that Russia specifically has chosen to enter that debate in ways that are pernicious and designed not to make us better but, in fact, to weaken support for the institution of our justice system. And we have seen this in social media, where they pour gasoline on the flames of division that engulf social media, when those divisive issues, particularly around immigration, racial justice, bump up against the justice system, you know, accusing judges and prosecutors of being really puppets of the establishment, tools of political leaders. And we see this quite pervasively.

Suzanne Spaulding: And my – and what I’m wondering is do you have a sense that Americans realize that these information operations, these propaganda campaigns, are not just about elections, which is where most of the public attention seems to be focused? You spoke in Aspen about elections being one tree in the forest. Do you have a sense that there’s a growing awareness of these broader campaigns to undermine the pillars of democracy, whether it’s media or the justice system or –

Rod Rosenstein: Well, I hope that there’s growing awareness. This is a good opportunity to expand it, perhaps. And, yes, it is important for people to understand that, that there are efforts by foreign countries, Russia in particular, to exacerbate tensions in America, to fuel social tensions. And we see that played out through the scheme alleged in the indictment we returned last year, charging particular Russian nationals with fomenting controversies surrounding the 2016 presidential election.

Rod Rosenstein: But as Suzanne mentioned, that’s just one example. It isn’t as if some body woke up in 2016 and decided let’s try to influence an election, and let’s just do this one thing. You know, we are involved in relationships with rivals who have international aims that conflict with ours and who seek to gain influence in America.

Rod Rosenstein: And so my role in this is really twofold: First of all, working with the FBI and with our intelligence agencies to combat foreign-influence efforts, not just about elections but efforts to exfiltrate technology; for example, steal secrets from American companies to compete unfairly. We combat this through counterespionage operations. We also combat it through criminal prosecutions, which involve our federal prosecutors.

Rod Rosenstein: And also another aspect of my role is to make the public aware and make targets aware – companies and educational institutions that may be targeted by foreign nationals, and average Americans who need to understand that, you know, what they’re reading on the internet may not be what it appears to be.

Rod Rosenstein: And that’s not, obviously, a challenge unique to foreign-influence campaigns. There are efforts, obviously, to deceive people all the time through the internet and through advertising. But the particular threat that we’ve faced with regard to foreign governments is the ability to bring a significant amount of resources to bear and concentrate them on particular issues where they believe they can have an impact.
Rod Rosenstein: So I think all the efforts that we are taking, I think, will be successful both in combating them and minimizing the foreign efforts, but also in immunizing Americans by warning them about the challenges they may face.

Suzanne Spaulding: So one of the themes, narratives, that we see in the evidence that we've gathered in the data that we're looking at that Russia is particularly pushing is precisely the notion that you raised about competing visions of the justice system and of law as simply a tool of political leaders, and that, in fact, that is the narrative they are trying to push and convince Americans that, in fact, our justice system, our legal system, is just a tool of political leaders.

Suzanne Spaulding: And we saw it most recently – we've seen it across social media in many contexts, but we saw it laid out very clearly in the criminal complaint last September against the Russians' Project Lakhta, the Russians who were engaging with the backing of the Kremlin in propaganda efforts, where there were specific instructions given to portray special prosecutor Mueller as a tool – as a puppet – quote/unquote, "puppet of the establishment," and lots of efforts around attacking both that investigation but also DOJ and FBI, including yourself. And I wonder –

Rod Rosenstein: I hadn't noticed. (Laughter.)

Suzanne Spaulding: We'll share the tweets with you. I'm sure you'd love to read them. (Laughter.)

Rod Rosenstein: No, I don't want to read them. (Laughter.)

Suzanne Spaulding: But I wonder if you are concerned about the impact that these kinds of narratives might have, for example, on the public’s willingness to accept the outcome of the special prosecutor's investigation.

Rod Rosenstein: Well, you may be disappointed to know I'm actually not going to answer that question directly, because I don't comment on open investigations. But I actually – I'm more optimistic than your question suggests maybe that you are about the American people. I think that you can be misled if you just follow the internet or cable TV about what American people think and how appropriately skeptical they are of information – that is, that they don't simply believe everything that they see on TV or read on the internet. So, you know, my experience, in terms of the people that I deal with in my daily life outside the beltway, but even inside, is that I think people are appropriately able to balance different considerations.

Rod Rosenstein: And so I am relatively optimistic about it. But I think it is important that we continue to highlight the threat, not just about that particular case or criticism of me, or any particular government official. Because frankly, you know, when you go into government you have to recognize that you're going to be subject to criticism. That's part of the job. But I think people are able to step back and look at a wider range of information, and evaluate how the government is doing, and hopefully not be unduly distracted by critiques like that one.

Suzanne Spaulding: So as we've looked at these influence operations – and they're coming from not just China but other adversary nations – and how to counter them, one of the key elements, it seems to us, is building public resilience against the messaging. Not just taking down messaging and working on other kinds of ways of deterring the messaging, but really building the public's ability to be resilient in the face of
disinformation campaigns. And it’s one of the reasons that I was so grateful that you were willing to take today to come and talk about the importance of our system and of understanding and cherishing that system. You know, what’s your sense about the value of continuing to do that, and the importance of civic education and re-instilling civic engagement in this country, as a way of strengthening our resilience against these kinds of pernicious information operations?

Rod Rosenstein: I think it’s critically important. I speak frequently, as I did today, about the founding era and the Constitution, because I think the further we get from the founding era the more people take freedom and liberty for granted, and the less they recognize how much it depends on the governmental structures we have in place and the culture that supports it. And so I make it part of my mission wherever I speak, and I occasionally speak to student groups as well as lawyers and general audiences, I try to make a point of educating them about our constitutional system. I’ve seen it in my own children. My kids were still in high school when I was nominated for this position. And they went through the confirmation process with me. And it was eye-opening for them, you know, to see the separation of powers and the tension between the branches play out. I’m talking about the confirmation hearing before I got really controversial. (Laughter.) Even then.

Rod Rosenstein: And, you know, of course, as a result of subsequent events you see it, you know, all the more so. And they understand, and I think as people pay attention to these issues, they understand that democracy is messy. It’s a messy system. But it’s designed to be that way. And it’s a product of the fact that people don’t have a knee-jerk tendency to believe what anybody tells them, to believe what the government tells them, or the media tells them. It results in a messy process. So I do think it’s important to communicate that the freedom we enjoy is a product of a unique constitutional system – unique in the world. That it’s a better system than the systems in place in other places. Which doesn’t mean it’s perfect. Doesn’t mean it can’t be improved upon.

Rod Rosenstein: But do I think it’s critically important to educate people about this so that they don’t take things for granted. Because I think as kids grow up today their world is more interconnected. When I grew up the world was pretty small. And you didn’t have communications with people from outside your neighborhood. Today, kids are growing up communicating daily with foreign nationals, reading things that are posted all over the world. And it’s important for us to make sure we communicate to them about what is unique in our system. And so I fully support those sort of civic education efforts. And I try to do my part.

Suzanne Spaulding: Well, you’re doing that today. So we’re grateful for that. I loved – along those lines – I loved your reference to Ben Franklin’s famous remark, or attributed to him: A republic, if you can keep it. And the way that you see in that an obligation on every one of us. I often remark about the fact that our national anthem not only starts with a question – oh, say, can you see – but it ends with a question. Does that star-spangled banner still wave over the land of the free and the home of the brave? I’m on a campaign to get stadiums and ballparks to put that question mark at the end. I’m going to work on that when I’m at spring training this weekend at the Nationals down in Florida.

Rod Rosenstein: Yes. You hit a couple of my favorite talking points.
Suzanne Spaulding: There you go. But I – but I do think, how do we get across to more Americans that that – that that is a question that is asked of them every day and that they have a role in answering it? It’s not just appreciate the wonderful system we have, but that we all – we will lose it if we don’t all understand that that system is there because of us and we have an obligation to sustain it.

Rod Rosenstein: So thank you for pointing out we don’t know exactly what Franklin said. The woman was not carrying a recording device – (laughter) – so we did not preserve the exact words, so it’s attributed to Franklin. And the star-spangled banner point, that’s actually a really insightful metaphor, I think, really. The “Star-Spangled Banner,” which we sing at ballgames, originally was a poem. The poem, written by Francis Scott Key, was a series of questions because he didn’t actually know when the sun rose whether the star-spangled banner was still waving. He had to find out. And I think it is a useful illustration of that point, that they were fighting for liberty, they did not take it for granted. And today, we shouldn’t take it for granted either. And so I think it’s important for us to engage in that kind of civic debate to talk about why our system is preferable to other systems and to continue to improve on it.

Suzanne Spaulding: So in your confirmation hearing to be the deputy attorney general, you talked about the values you learned growing up in your small hometown of Lower Moreland, Pennsylvania. And one of those values was to, quote, “try to leave things better than you found them.” And those of us who have been privileged to serve in leadership positions in government certainly share that objective and goal when we enter into office.

Suzanne Spaulding: So as you approach the end of your 29-year career in the Department of Justice and your time as deputy attorney general, how are you feeling both in terms of what you have been able to accomplish and about the place that you’re leaving and its well-being?

Rod Rosenstein: I have thought about that. Obviously, we’re in a politically challenging era, but a lot of eras are politically challenging, and so you need to recognize that when you take these jobs. I actually feel very confident about the Department of Justice, part of it is because of the people that I work with, the folks that we have appointed in this administration, which is really an outstanding group of political appointees who are working with our career folks to enforce the rule of law. Not everybody agrees with our policies, that’s what elections are about, changing policies, but the principles of the department are being enforced.

Rod Rosenstein: When we find people who – when there are credible allegations of wrongdoing, my department employees, we are taking action. It’s not always as quick as everybody would like because we do follow processes obviously, but we are taking appropriate action and we are promoting rule of law. And I think when you look back in the long run, it’s always hard when you’re caught up in any issue of significant public controversy to be objective about it, but I’m very confident that when we look back in the long run on this era of the Department of Justice, we will be proud of the way the department’s conducted itself and the president will deserve credit for the folks that he appointed to run the department, now Bill Barr. Jeff Rosen’s been nominated to replace me, Chris Wray at the FBI, these are folks we can count on to promote and preserve the rule of law.
Suzanne Spaulding: So along those lines, we got a question about what counsel you would give your daughters on public service, particularly in law enforcement and the Department of Justice. And I have a little sneak preview of what your answer might be having read your remarks that you gave last week at Wharton. I was telling the deputy attorney general at lunch that I thought about him last night while I watched a few minutes of the Academy Awards because he quoted in his Wharton remarks Rocky Balboa.

Rod Rosenstein: Philadelphia, my hometown. (Laughter.) Ben Franklin's from there, too, incidentally.

Suzanne Spaulding: Yeah, yeah.

Rod Rosenstein: But yeah, no, I encourage my kids to consider public service. I mean, you know, there are plenty of patriotic Americans who contribute without ever working in government, so I don't think it's essential. But their interest in public service actually has been enhanced as a result of my experience. You might think, oh, it's, you know, so unpleasant to be criticized in the media and the kids would be scared off. They're not at all. You know, they're actually inspired by it and inspired by the folks that I work with and the opportunity to come visit the Department of Justice and meet the people that I work with, the career folks in the department and the other members of the administration. So I encourage them, and I think that they do have an interest. One of my daughters is very eager, in fact, to intern on Capitol Hill. So I anticipate that they will spend some time in public service.

Suzanne Spaulding: So I'll explain the reference to the Academy Awards. The quote – of course, the Rocky Balboa quote that I had read the deputy attorney general, used in his Wharton remarks, was about, you know, it's not about how hard you get hit – or how hard you hit, but about your ability to get back up when you've been hit hard. And I – and I – if I recall correctly, I think Lady Gaga made very similar remarks last night at the awards. (Laughter.)

Rod Rosenstein: So I do not necessarily endorse the Lady Gaga interpretation – (laughter) – but I do invoke the original version, the Rocky Balboa version. "Keep moving forward" is the conclusion. That's our motto. And my daughter – Suzanne, actually, my daughter has clearly endorsed this because she surprised me, my 17-year-old daughter – almost 17-year-old daughter; for my birthday she actually had the quotation inscribed on a plaque that I now have hanging in my office. So I know she got the point. (Laughter.)

Suzanne Spaulding: Excellent. All right. So we have a question here about our educational opportunities that we provide. Over the past 20 years we've educated many Chinese national Ph.D.s. Most now go back to China. Do you think we should require service or curtail this education? How will we prevent a technological surprise and develop our own?

Rod Rosenstein: So I'm not sure what that "require service" reference means, but I fully support those kind of exchanges. I think that people who have the opportunity to see our system and understand how it operates, that will inspire them to make changes in their own system. And I think that underlies a lot of the president's approach to dealing with foreign countries, is we have such confidence in our system, and we believe that if we expose people to our way of life and if they understand the
Rod Rosenstein: I don’t mean to suggest – when I – we talk about, and Director Wray and I, talk a lot about the challenge we face by virtue of Chinese nationals who are seeking to exfiltrate secrets from the United States. That doesn’t mean we should stop inviting them here; it just means we should be alert to the risk and make sure that we’re not entrusting people with sensitive information who may betray us and provide it to our adversaries.

Suzanne Spaulding: So we have a question here that points out that the United States only ranked 19th out of 113 countries included in the 2018 Rule of Law Index. While the global rank is high, should the U.S. prioritize improving its rule of law to meet the standard set by those in its regional and income group? And what initiatives would you propose to further that?

Suzanne Spaulding: And then a related question is: Based on your tenure in the department, are there reforms to the department that you think might enhance its independence and public trust and confidence?

Rod Rosenstein: So, to take the first question, I don’t know who’s responsible for those ratings or what criteria they’re using, so I’m not in a position to comment on that.

Rod Rosenstein: Obviously, any system can be improved. I happen to believe that ours is one of the best, and so I’m skeptical of anybody who ranks us 19. I’d have to study the other 18. You just don’t know what criteria they’re using. But, you know, I have had now almost three decades of experience in our system, and seeing how it operates gives me great confidence. So that’s my view about that issue.

Rod Rosenstein: The Department of Justice, certainly there are always reforms that we can make. We’ve actually made some reforms in the department. We’re always modifying policies and we’re eager to look to, you know, things that have gone wrong and figure out how we can best address them.

Rod Rosenstein: One of the challenging issues we face in the department – and this is an issue that, you know, we’ll be discussing nationally – is the question of whether transparency is a good thing. You know, there’s a knee-jerk reaction that suggests that we should be transparent about what we do in government, but there are a lot of reasons not to be transparent about what we do in government. Judge Webster is sitting here in the front row. He’s been doing this work since long before I. You know, the government – just because the government collects information doesn’t mean that information is accurate, and it can be really misleading if you’re overly transparent about information that the government collects. So I think we do need to be really cautious about that.

Rod Rosenstein: And that’s, again, not to comment on any particular case. There may be legitimate reasons for making exceptions. But as a general principle, you know, my view is the Department of Justice is best served when people are confident that we’re going to operate – when we’re investigating American citizens in particular, we’re going to do it with appropriate sensitivity to the rights of uncharged people.
Rod Rosenstein: And as I mentioned in my remarks, when we charge somebody with a violation, we need to be prepared to prove it by evidence beyond any reasonable doubt. And, you know, the guidance I always gave my prosecutors and the agents that I worked with during my tenure on the front lines of law enforcement were if we aren’t prepared to prove our case beyond a reasonable doubt in court, then we have no business making allegations against American citizens.

Rod Rosenstein: So I know there’s tension there between the desire to be more transparent and let everybody know what we’re doing and the desire to ensure the government, through its work, is not unduly tainting anybody. But my own view about it is that we’re better off following the rules and ensuring that our employees respect their obligations to conduct their investigations in confidence.

Suzanne Spaulding: I think one of the ways to address the challenge between the benefits of transparency and circumstances in which, you know, transparency may not be possible or feasible is to at least help educate the public about the neutral principles that are being applied to make those decisions and determinations so that they don’t conclude that these are political.

Suzanne Spaulding: And certainly we’ve seen this, again, going back to the work that we’ve been doing here, looking at efforts to undermine public confidence in the justice system, instances where transparency is not possible because of policies around privacy. So cases involving juveniles, for example, are particularly attractive targets for Russian propaganda efforts, trying to sow false allegations and accuse prosecutors and judges of keeping secrets because they’re doing something wrong.

Suzanne Spaulding: And one of the things we’ve thought about and talked with some folks about is creating a core of particularly attorneys and judges in that instance who could help educate the public about process, to help them understand why, in a case involving juveniles, all of the details may not be able to be brought out. But this is the process that would be followed, and the importance of having voices in local communities.

Suzanne Spaulding: Is that something that the Justice Department has ever thought about in terms of, you know, the importance of educating folks about those instances in which you perhaps can’t be as transparent, but these are the detailed principles that guide those decisions, for example?

Rod Rosenstein: Yes. And that’s an invitation, really, for me to expand on my previous answer, which is one of the things that gives me great confidence in the Department of Justice is the processes that are in place, and it’s independent of who’s running it at any particular time.

Rod Rosenstein: And specifically, at the Department of Justice we have internal watchdogs. I think many people are not aware of that. There are – for example, individual members of Congress have suggested that they need to be the reviewers of the work of the Department of Justice. And I’ve explained that’s already been accounted for. We have within the department an independent inspector general – actually presidentially appointed, Senate-confirmed – whose job it is to conduct independent reviews of the work of the Department of Justice when he determines it’s appropriate.
And those are fully independent reviews that result in detailed reports. Sometimes they're made public. Sometimes they're sensitive and they're not made public. But when they find wrongdoing or misconduct, which they do regularly, we take appropriate action. If there's potential criminal wrongdoing, we refer to a U.S. attorney for possible prosecution. If it's not criminal wrongdoing, we have the ability to impose administrative sanctions. If somebody has left the department but they've violated the rules, we can refer them for disciplinary action if they're a member, for example, of a state bar association.

We have also in the Department of Justice an Office of Professional Responsibility, which has a unique obligation and responsibility to review the compliance of federal prosecutors with ethical rules. We have designated ethics officers who evaluate whether or not we have conflicts of interest or reasons why we shouldn't participate in particular matters. Our law-enforcement agencies, including the Federal Bureau of Investigation, DEA, ATF, U.S. Marshals Service, also have their own internal Office of Professional Responsibility.

So, you know, my confidence in the integrity of law enforcement, it's not because I assume nobody will do wrong. To the contrary, I spent much of my career as a corruption prosecutor. I know that people in public office make mistakes and do wrong. My confidence is a product of the processes that exist and the folks who have responsibilities to review alleged wrongdoing, to make independent findings. And then I know, because I've seen over the course of years of experience, that they are aggressive in making those findings.

So I think it is important, as Suzanne said, to message that, to reassure people that we do have mechanisms of accountability. We're not going to jump just because somebody goes on cable TV and says there was wrongdoing. But if our independent professionals in the Office of Professional Responsibility or the inspector general make an assessment and they determine that either there is predication or even there's just concern about whether a process needs to be reviewed, they've got the manpower to do it. Our inspector general has about 475 employees. I once said 500 in a congressional hearing and he got angry with me; it's not that many.

He wishes he had 500.

I rounded up. But the point is we do have the capacity to do that. And we have demonstrated – and when I say we, I mean he – the inspector general has demonstrated his ability to do that. And so I think that that – I know that that's an appropriate mechanism to review these things because some of the things that we do just aren't appropriate to expose at a congressional hearing. It wouldn't be in the interests of America to do that kind of thing.

But it is in the interests of America to know that somebody is going to be able to do it. And fortunately, we do have a mechanism that accomplishes that.

So in the interests of transparency, I understand – and explaining process – I understand and certainly respect your general admonition that you're not going to talk about ongoing investigations. But I think it might be helpful for folks to understand if you can discuss kind of generally what the process is with respect to something like the special prosecutor's report. What is – what is the – what is the
process then that may not be completely visible to Americans, but that they ought to understand, you know, is taking place and is –

Rod Rosenstein: You're trying to make it worthwhile for the reporters who came all the way here hoping that I'd fall for that kind of question. (Laughter.) But the answer is, you know, I can't generalize about it because the special counsel regulation has only been invoked on a few occasions and so each one really is somewhat sui generis.

Rod Rosenstein: But it's important to understand the context. And I don't have time to give you the whole context here, but before this regulation was adopted in 1999, there were special counsels, there just wasn't a regulation that specified how they should operate. And for a couple of decades before the special counsel regulation, there were also what are called independent counsels. Now, most Americans do not know the difference between a special and independent counsel, but to me it's a critical difference. An independent counsel under the federal statute that existed up until 1999 – it was a post-Watergate reform – created a prosecutor who was independent of the Department of Justice, was appointed by the judiciary, not accountable to the executive branch.

Rod Rosenstein: And by 1999, there was a broad agreement among Democrats and Republicans that it was not a good idea, that the prosecutorial power should not be vested in somebody who is independent of the executive branch and is accountable only to judges. And so we returned to the traditional model and they codified it in the special counsel regulations to provide some guidance about what they believed – that is, the folks who wrote the regulations in 1999 – was the best way to operate. And so we are now operating under those rules. And under those rules, the special counsel is accountable to the Department of Justice.

Rod Rosenstein: There's a lot of confusion about this. There's no confusion by Bob Mueller or me or the people who are working with us about the accountability of the special counsel. And the responsibilities are set forth in the regulation. We're going to comply with those rules.

Rod Rosenstein: The question that Suzanne averts to, which has been a subject of much speculation, is, what's the attorney general going to do? You'll have to ask him that question. But we are – the special counsel regulation actually was put together in a very thoughtful way. And the goal of the special counsel regulation was to ensure that when the attorney general or the acting attorney general believed it was appropriate that was would establish a process whereby there would be some additional independence. And the structural independence really comes in in the fact that the special counsel – if the special counsel proposes to take an action and is overruled by the attorney general or the acting attorney general, we're required to report that to the Congress. That's the structural independence provided in the statute.

Rod Rosenstein: But the special counsel is a subordinate employee who reports to the attorney general or the acting attorney general and who complies with department policies, including the requirement to pursue – to obtain approval for certain actions, just like an acting United States attorney, for example, would need to do. So I can't answer your question because that's going to be a decision the attorney general makes as to what to do with whatever information is provided to him.
Rod Rosenstein: But I can tell you that I think the regulation was appropriately written to ensure that we can be confident that the investigation was conducted in an independent way and that if that special prosecutor believed something should be done and we prohibited him from doing it, there would be a report about that to Congress at the end. Beyond that, I think Attorney General Barr is going to make the right decision. We can trust him to do that. He has a lot of experience with this.

Rod Rosenstein: You know, Bill Barr, when he was attorney general the first go-around, in the course of his 14 months or so, he appointed a couple of special counsels in that era. They were not subject to this regulation, obviously. But I think we can – we can count on him to do the right thing.

Suzanne Spaulding: Well, it’s been terrific hearing from you today, and understanding, again, all of the ways in which you have worked for 29 years to do the right thing. And we are extremely grateful, both for your public service and for your having taken time out of what I know is an unbelievably busy schedule to spend so much time with us today. And we’re really grateful and wish you all the best.

Rod Rosenstein: Thank you very much. Thank you. (Applause.)

(END)