"Fake News," No News, and the Needs of Local Communities

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"Fake News," No News, and the Needs of Local Communities

CAROL PAULI*

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INTRODUCTION

Speaking truth to power requires having some truth to speak. But those with less power face barriers in accessing truth – at least at the everyday level of accurate information about their own communities. Local newsrooms keep downsizing and closing, and public trust in local reporting is at risk of being weakened by a President who repeatedly calls the media "fake news." Although people have increasing Internet access, what they find online is a raucous marketplace where accuracy vies with accusation and reason competes against unprocessed data and disinformation. Ironically, citizens trying to track down something true may not know that their own tracks

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are being recorded, followed, and measured, their own data captured and compiled for the use of others, largely unseen.

The phrase, “speak truth to power,” is often credited to a Quaker booklet by that name, which was published during the “Red Scare” of the 1950s, when the national conversation was dominated by accusations and suspicions. In today’s politically heated climate, its warnings are worth reading. The authors wrote that the country, in response to its own fear, was adopting tyrannical measures that undermined its democracy at home and its moral leadership in the world. The authors decried “the shocking extent to which the appeal to hatred has become commercially and legislatively profitable in America.”

The Quaker authors had in mind an ancient truth – that “love endures and overcomes” – and they were convinced that this truth is accessible to all. This article addresses truth at a more immediate and mundane level. It is concerned with the accurate information that local communities need in order to thrive.

The article proceeds in three steps. Part I reviews one way community needs were addressed when the first large-scale electronic communication technology entered individual homes in the form of radio and television. In those days, broadcasters had an affirmative duty to ascertain the problems of the communities they served and to provide programming that would address those problems. Part II reviews the current, growing gap in community information caused by uneven access to the Internet and by the misinformation and distrust that have arisen online in the current polarized political climate. Part III proposes exploring two avenues to help ground communities in factual information: harness the data-gathering done by Internet service providers, creating a new way to ascertain local community needs, and enlist community colleges in initiatives to report local news.

1. Stephen G. Cary et al., Speak Truth to Power: A Quaker Search for an Alternative to Violence (1955), https://www.afsc.org/sites/afsc.civicactions.net/files/documents/Speak_Truth_to_Power.pdf. Although this publication is sometimes cited as the origin of the phrase, the document, itself, cites an earlier use among Quakers, formally known as members of the Religious Society of Friends: “Our title, Speak Truth to Power, taken from a charge given to Eighteenth Century Friends suggests the effort that is made to speak from the deepest insight of the Quaker faith, as this faith is understood by those who prepared this study.” Id. at iv.
2. Id. at 8.
3. Id. at 17.
I. BROADCAST: ASCERTAINMENT OF COMMUNITY NEEDS

From its early years, broadcasting technology required government regulation. Broadcast signals, traveling on the electromagnetic spectrum, can reach audiences effectively only if they are free of interference from nearby signals. Because the spectrum is limited, potential broadcast frequencies are scarce, so a broadcaster has to license a frequency in a particular community and keep the range of the broadcast signal within a limited geographic radius. Licensing imposes a prior restraint on a broadcaster's speech, but in this context, the First Amendment was interpreted as protecting, not the broadcaster's right to free speech, but the "collective right" of the audience to receive information. "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." Obtaining a broadcast license required serving the public interest.

Broadcasters were to operate as trustees for "the public interest, convenience, and necessity." Reflecting that interest in its licensing and renewal process, the Federal Communications Commission ("FCC") adopted a policy of favoring stations whose programming aired more than one viewpoint. Eventually, this policy became codified under what came to be known as the "Fairness Doctrine." It required licensees to devote air time to controversial public issues and to seek out and broadcast contrasting viewpoints. A station that failed to meet this requirement might be required to broadcast a viewpoint that it had excluded previously, and it risked losing its license.

In addition, FCC regulations appealed to the values of communities and civic engagement by imposing an affirmative obligation on each broadcast license applicant to determine the problems of its com-

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7. Id. at 390.
9. See, e.g., 47 U.S.C. § 309 (2012) (providing that the FCC shall examine each broadcast license application and, "if the Commission . . . shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.").
11. Id.
13. RUANE, supra note 10, at 3.
munity. The FCC prescribed a process in guidelines that it adopted in 1971. The broadcaster had to gather data to determine the minority, racial, or ethnic composition of the community. Then high-level members of the broadcast enterprise had to consult, in a dialogue, with leaders of the significant community groups.

Talks with community leaders were not sufficient, however. The broadcaster also had to survey a random sampling of the general public. As the FCC noted, "Groups with the greatest problems and needs may be the least organized and have the fewest recognized spokesmen. Therefore, additional efforts may be necessary to identify their leaders so as to better establish dialogue with such groups and better ascertain their problems." Problems were presumed to exist, and if they were not uncovered, the broadcaster was expected to craft "more imaginative, searching or more precise questioning."

The purpose of ascertainment was not to gather program suggestions from the public; that was the broadcaster's area of expertise. Instead, the broadcaster was expected to evaluate the importance of a problem and the number of people affected by it. Then the broadcaster was charged with making a good-faith effort to use programming to address those problems. Factual news broadcasts were seen as a contribution, but they were not enough to meet the requirement of serving the public.

The ascertainment requirement gave audience members leverage in getting the attention and cooperation of broadcasters, allowing organized groups to intervene in licensing decisions by presenting

16. Id. (Question & Answer 9).
17. Id. (Question & Answer 11(a)).
18. Id. (Question & Answer 12).
19. Id. (Question & Answer 4).
20. Id. (Question & Answer 13(b)).
21. Id. (Question & Answer 13(a)).
22. Id. (Question & Answer 19).
24. Primer on Ascertainment, supra note 15, at app. b (Question & Answer 27) (pointing out, for example, that a hospital inadequacy affecting only a small percentage of a community might still be more important than a beautification program affecting almost everyone).
26. Id. (Question & Answer 33).
evidence against a broadcaster for the FCC to investigate in the public interest.\textsuperscript{29} A broadcast applicant could not merely assume, for example, that a New Jersey community's need for FM broadcasting was just like the need in other states the broadcaster served.\textsuperscript{30} An applicant could not meet the ascertainment obligation by merely talking with friends,\textsuperscript{31} overlooking the needs of poor people who made up twenty percent of the population,\textsuperscript{32} or failing to interview leaders of the black community where the entire community was more than half black.\textsuperscript{33}

As cable and other communication systems advanced, they weakened the technological "scarcity" rationale for regulation, broadcasters pressed for independence from government rules. The FCC re-examined the Fairness Doctrine in the 1980s, amid President Ronald Reagan's program of deregulation, and it agreed with the broadcasters.\textsuperscript{34} FCC Chairman Mark Fowler went so far as to paint the Fairness Doctrine as an Orwellian kind of government repression: "Put simply, I believe we are at the end of regulating broadcasting under the trusteeship model. . . . [I]t is 'Big Brother,' and it must cease."\textsuperscript{35} The FCC began to favor letting the marketplace determine broadcast content.\textsuperscript{36} In 1987, the FCC repealed most of its Fairness Doctrine regulations.\textsuperscript{37} Instead of formal ascertainment, stations must explain in their license application how they will determine their communities' problems.\textsuperscript{38}

With this change, broadcast audience members lost their ability to petition for a voice in a local station's planning. In the eyes of opponents, rather than being a consumer of information, the audience member became "simply a product sold to the advertiser."\textsuperscript{39} Critics of

\begin{itemize}
\item \textsuperscript{29} \textit{Id.} at 546.
\item \textsuperscript{30} Henry v. FCC, 302 F.2d 191, 193 (D.C. Cir. 1961) ("The instant program proposals were drawn up on the basis of the principals' apparent belief — unsubstantiated by inquiry, insofar as the record shows — that Elizabeth's needs duplicated those of Alameda, California, and Berwyn, Illinois . . .").
\item \textsuperscript{31} In re Cowles, 37 F.C.C.2d 405, 406, 407 (1972).
\item \textsuperscript{32} Bamford v. FCC, 535 F.2d 78, 83 (1976).
\item \textsuperscript{33} In re Town & Country Radio, Inc. 53 F.C.C.2d 401, 404 (1975).
\item \textsuperscript{34} Rosel H. Hyde, \textit{FCC Action Repealing the Fairness Doctrine: A Revolution in Broadcast Regulation}, 38 \textit{Syracuse L. Rev.} 1175, 1185 (1987).
\item \textsuperscript{36} Ruane, \textit{supra} note 13, at 6.
\item \textsuperscript{37} Hyde, \textit{supra} note 34, at 1175.
\end{itemize}
deregulation warned that advertisers would especially court the affluent, especially the "young, white, high-income demographic." Even though minorities would consume more television, the market would exclude them because of their lack of "monetary clout." Over the next decade, informational broadcast programming increased but its quality, especially on radio, declined.

II. A GROWING INFORMATION GAP

Despite the skyrocketing growth of information technology today, a large segment of society is "information poor." Information inequality has been defined as a "multifaceted disparity between individuals, communities, or nations in mobilizing society's information resources for the benefit of their lives and development." Beginning in the 1990s, its study has been "one of the fastest growing areas of research." Scholars in diverse fields have examined such factors as: the characteristics of low-income communities, the economics of the news media, and disparities in the uptake and use of information by high- and low-income segments of the population.

Concerns about the needs of low-income communities are heightened by the growing income disparity in the United States. The gap between wealthy families and lower- and middle-income families is higher than ever, as poor Americans slide into severe poverty.

40. Id. at 465.
41. Id. at 475.
43. Id.
44. Liangzhi Yu, How Poor Informationally Are the Information Poor?, 66 J. DOCUMENTATION 906, 907 (2010) [hereinafter Information Poor].
45. Liangzhi Yu, The Divided Views of the Information and Digital Divides: A Call for Integrative Theories of Information Inequality, 37 J. INFO. SCI. 660, 661 (2011) [hereinafter Divided Views].
46. Yu, Information Poor, supra note 44, at 908.
47. See generally Yu, Information Poor, supra note 44 (surveying the findings of various researchers); Alistair S. Duff, Needing NoDI (Normal Democratic Information)? The Problem of Information Poverty in Post-Industrial Society, 18 INFO. COMM. & SOC. 63 (2015) (discussing academia and theoretical perspectives).
49. Kristin Bialik, Americans Deepest in Poverty Lost More Ground in 2016, PEW RES. CTR. (Oct. 6, 2017), http://www.pewresearch.org/fact-tank/2017/10/06/americans-deepest-in-poverty-lost-more-ground-in-2016/ (showing that 45.6% of poor individuals have incomes below half of the poverty threshold, the highest level in twenty years, even while the overall poverty rate recovered to nearly the level seen before the 2008 recession).
Some researchers have proposed that poor communities lack information because residents, often distrustful of those outside their small social networks, avoid the discomfort of asking for the information they most need.\textsuperscript{50} They would rather forego available information than to risk revealing their critical need for it.\textsuperscript{51}

Information poverty may result in missed opportunities that may come to light only when the needed information is supplied. For example, many high-achieving low-income high school students appear to be unaware of generous scholarships they could get from top colleges.\textsuperscript{52} Researchers in one project learned this when they intervened. They located qualifying students by combining data on top-scoring students on the SAT and ACT college assessments with their high schools and neighborhoods.\textsuperscript{53} The students they targeted scored in the top ten percent of test takers and had estimated family income in the bottom third.\textsuperscript{54} Researchers supplied them with information about the actual expenses of top colleges, where financial aid can bring the final cost down below the level at the lower-tier schools to which these students had applied.\textsuperscript{55} As a result, these students were fifty-six percent more likely than a control group to apply to a college that was better, as measured by graduation rates and instructional spending.\textsuperscript{56} Before this intervention, students had not realized their opportunities. In fact, surveys revealed that some students had not realized that a liberal arts college taught more than art and more than liberals.\textsuperscript{57}

A. Lagging Internet Access

To the extent that low-income people may conceal their information needs in order to avoid the risk of asking embarrassing questions,
the Internet would seem to be an excellent remedy. But Internet access remains limited, especially in low-income communities. Broadband access at home seemed to reach a plateau from 2013 to 2015, when the number of adults with access declined, but the drop was offset by a slight increase in “smartphone-only” adults, who access the Internet only via phone and do not have traditional broadband service.\(^{58}\)

This plateau contrasts with broadcasting. Within twenty years of their arrivals in the marketplace, radio and television were nearly universally adopted by poor and wealthy households alike.\(^ {59}\) One reason is that both technologies required only a one-time expense for the purchase of a receiver. High-speed Internet service, or “broadband,” however, represents an ongoing expense. Adoption has been slower, especially among those already marginalized by poverty, old age, disability, language barrier, or recent immigration.\(^ {60}\)

A Pew survey found that roughly half of the adults surveyed said their decision-making would be helped “a lot” if they had unlimited data plans for their cellphones or more reliable Internet service at home.\(^ {61}\) However, even consumers who are highly motivated to get Internet service may find it beyond their means.\(^ {62}\) For example, an estimated five million households with school-age children lack broadband access, even though it is increasingly essential for success in school.\(^ {63}\) The rate of non-connection is highest among low-income families, especially those that are black or Hispanic.\(^ {64}\) This means that children in these households, to keep up with peers, must get to librar-


\(^{59}\) Mark Lloyd et al., Understanding a Diverse America’s Critical Information Needs, in THE COMMUNICATION CRISIS IN AMERICA, AND HOW TO FIX IT 53–54 (Mark Lloyd & Lewis A. Friedland eds., 2016).

\(^{60}\) Id. at 57.


\(^{64}\) Id. (showing that the average rate of broadband access among families with school-age children is 82.5%, and that the lowest rates are 53.6% and 54.8% among black and Hispanic households, respectively, with annual incomes under $25,000).
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ies, use WiFi on school buses, or linger in wireless hot spots long into the evening in order to read homework materials and upload assignments throughout their school years.65

B. Lack of Community Reporting

Access to the Internet can help, but it does not guarantee access to information.66 A 2011 survey found that Americans used the Internet as their main source of local information when they were checking on businesses and restaurants, for example.67 When checking on local government, however, they may find information scant.68 Many of the community newspaper reporters who once made their living attending meetings and conducting interviews have seen their newspapers close. Despite the expanding number of news outlets on the Internet, there is not much original reporting. For example, a week-long study of local news in Baltimore—which included everything from blogs to radio talk shows—found that ninety-five percent of the news was based on stories from the traditional news media, primarily the Baltimore Sun.69

Increasingly, small communities have no daily news coverage, a trend that prompted the Columbia Journalism Review to create a growing online map of “news deserts.”70 Lack of local newspapers is correlated with a lower rate of voting,71 and the loss of a newspaper may herald a falling off of other forms of civic engagement.72 Local radio has also declined from fifty all-news stations in the 1980s to 30 in

65. See, e.g., Kang, supra note 62.
68. Peter M. Shane, Democratic Information Communities, 6 J. L. & Pol'y for Info. Soc'y 95, 98 (2010) ("Many Americans would undoubtedly find it easier to track developments in the U.S. Environmental Protection Agency (EPA) than in their own city council, or to learn the facts of a salmonella outbreak across the country, as compared to finding out the health inspection results for local restaurants.").
69. Waldman et al., supra note 38, at 123.
72. Lee Shaker, Dead Newspapers and Citizens' Civic Engagement, 31 Pol. Comm. 131, 142 (pointing to an above-normal decline in civic engagement indicators in both Denver and Seattle following closures of the cities' newspapers, the Rocky Mountain News and Post-Intelligencer).
Howard Law Journal

2010. Local television reporting has weakened as well. Reporters once developed a "beat," cultivated sources, and became familiar with the issues and terminology of a segment of the community. Now, due to newsroom cutbacks, the "beat" reporter may simply be the person who receives a government press release and must quickly rewrite it as a story. More than 500 local stations broadcast no local news at all. The shortage of local, professional reporting "is likely to lead to more government waste, more local corruption, worse schools, a less-informed electorate, and other serious problems in communities." 

The loss of local news has also created a gulf between small communities and the national news media. When people have no experience with a hometown reporter, who knows their streets and covers the schools and puts their children's achievements in the paper, then it's easier to believe that the news media make up an alien force, possibly treacherous and arrogant. As one columnist put it, "far too many Americans don't have a local press that understands them, and thus all their news comes with a heap of condescension."

Where local reporting exists, low-income communities are likely to get less news coverage because residents are less able to afford the subscriptions or attract the advertising interest that the newsroom needs to support itself. People with low buying power get less content – both in terms of the amount of information prepared for them and the quality of information. When journalists do endeavor to cover low-income communities, most do not know what kinds of information poor people need. One venerable sociologist of the news media, Herbert Gans, made an effort:

Need would suggest stories about available work at decent wages; crime-free areas with vacant housing; stores selling high-quality goods at low prices; and helpful services that are not punitive. Those still on welfare have to find out which welfare offices are useful in helping recipients obtain jobs, which clinics and emergency rooms

73. WALDMAN ET AL., supra note 38, at 10.
74. Id. at 86.
75. Id. at 100.
76. Id. at 345.
78. James T. Hamilton & Fiona Morgan, Bridging the Content Gap in Low-Income Communities, in THE COMMUNICATION CRISIS IN AMERICA AND HOW TO FIX IT 185 (Mark Lloyd & Lewis A. Friedland eds., 2016).
79. Id. at 183.
supply the best medical care, and more generally, which agencies serving the poor humiliate them the least.\footnote{Id. at 103–04.}

Another scholar proposes that "the information-poor – the dispossessed of the information land – are short of certain kinds of democracy-pertaining information."\footnote{Alistair S. Duff, Needing NoDI (Normal Democratic Information)? The Problem of Information Poverty in Post-Industrial Society, 18 INFO., COMM. & SOC. 63, 68 (2015).} He includes voter registration and election procedures, names of public officials, and the platforms and philosophies of political parties.\footnote{Id. at 68–69.} The Knight Foundation lists information that is needed "to coordinate collective activity, to achieve public accountability, to solve problems, and to create connectedness."\footnote{Shane, supra note 68, at 99.}

But some of the information that low-income people need may be the same information that government and business have incentives to withhold. They may lose money if they publicize programs or benefits that low-income people can participate in.\footnote{Hamilton & Morgan, supra note 78, at 184.} Simply put, it doesn’t pay to serve the poor – and it may pay not to.

C. Polarization

Large broadcast media companies once reduced political polarization in the United States,\footnote{Yphtach Lelkes et al., The Hostile Audience: The Effect of Access to Broadband Internet on Partisan Affect, 61 AM. J. POL. SCI. 5, 17 (2017).} but they have lost their influence.\footnote{Robert Faris et al., Berkman Klein Ctr. for Internet & Soc’y at Harv. Univ., Partisanship, Propaganda, and Disinformation: Online Media and the 2016 U.S. Presidential Election 25 (2017), http://nrs.harvard.edu/urn-3:HUL.InstRepos:33759251.} As the Internet has lowered the cost of distributing an idea, more speakers have crowded more varied ideas into the marketplace, just as predicted,\footnote{Eugene Volokh, Cheap Speech and What It Will Do, 104 YALE L.J. 1805, 1826 (1995).} and audiences can more easily focus on whatever agrees with their prejudices,\footnote{Id. at 1835.} even the most inaccurate\footnote{Id. at 1838.} and alarming voices.\footnote{Id. at 1837.} Republicans and Democrats have intensely negative views – not only of each other’s parties – but also of each other, so that close friendships tend to form within each political party rather than across party
Scholars wondered twenty years ago, "What will happen when the KKK becomes able to conveniently send its views to hundreds of thousands of supporters throughout the country . . . ?" Today, we are beginning to find out.

The change in the political conversation has been asymmetrical: an evolving, "discrete and relatively insular right-wing media ecosystem," which has hollowed out the political center-right and replaced it with more extreme voices, seemingly impervious to traditional demands for accountability from media critics and fact checkers. In contrast to professional news organizations, striving to abide by objectivity standards, readers encounter fringe sites characterized by sensationalistic and misleading reporting, which is especially pronounced among the far-right newcomers to the media scene.

The polarizing impact of the Internet in this regard has been documented by researchers at a state level. States differ in their approaches to broadband. Although the 1996 Communications Act encouraged the growth of telecommunication, it allows state and local governments to require "fair and reasonable compensation" for the use of public rights of way. So local regulations vary in the restrictiveness they impose on broadband development, ranging from those who charge fees for rights-of-way to those who offer tax incentives, instead. These policy choices appear to be independent of the educational levels, wealth, and political leanings of the voters. Political scientists compared the variations in broadband access to voting patterns, and they concluded that "access to broadband Internet heightens partisan animus by increasing partisans' exposure to imbalanced partisan rhetoric."

93. Volokh, supra note 88, at 1848.
94. Pew Research Center, supra note 92, at 37 (describing the asymmetry of the political polarization as having deeper roots and an earlier start than the Trump candidacy).
95. Id. at 17.
96. Id. at 18.
97. Id. at 16.
98. Id. at 69.
99. Id. at 68.
102. Lelkes et al., supra note 86, at 7–8.
103. Id. at 17.
D. Misinformation

An ongoing exchange of opposing rhetoric is arguably the stuff of democracy, but the same cannot be said about intentional disinformation – or “fake news.” The fact that anyone can post content on the Internet allows for “the rapid dissemination of unsubstantiated rumors and conspiracy theories that often elicit rapid, large, but naive social responses.”104 The problem is so pervasive that the World Economic Forum has listed it as a threat to human society.105

“Fake news” exists, not in the errors of journalists striving to abide by objectivity standards,106 but in the exaggerated headlines of disinformation and clickbait. During the 2016 presidential election, falsehoods were found on both sides of the political divide, but especially on such right-wing sites as Breitbart, the Daily Caller, and Fox News,107 where mixtures of facts and falsehoods echoed and sowed confusion.108 Then, when faced with overwhelmingly negative coverage in the media,109 President Trump appropriated the term and labeled the mainstream stories “fake news.”110

The President’s war with the press has been good for the bottom line of big, national news organizations, increasing subscriptions for the New York Times and Washington Post, for example.111 But the press war hurts local news organizations, already weak financially, when state and local officials attack them by picking up the “fake news” cry.112

104. Michela Del Vicario et al., The Spreading of Misinformation Online, 113 PROC. NAT’L ACAD. SCI. 554, 554 (2016).
105. Id.
106. FARIS, supra note 87, at 69.
107. Id. at 21.
109. Thomas E. Patterson, News Coverage of Donald Trump’s First 100 Days, HARVARD KENNEDY SCHOOL SHORENSTEIN CENTER ON MEDIA, POLITICS AND PUBLIC POLICY (May 2017) (finding that, among stories that had a clear positive or negative tone, 80 percent were negative toward the President during his first one hundred days in office) https://shorensteincenter.org/wp-content/uploads/2017/05/News-Coverage-of-Trump-100-Days-5-2017.pdf?x78124.
112. Id. (recounting two incidents: (1) a Tennessee state representative who used the term against a CBS affiliate that reported his unpaid traffic tickets and his bill to shield the names of
In realm of disinformation, the already marginalized again are especially vulnerable. Lower-income people use the Internet primarily for socializing and entertainment,\textsuperscript{113} and they often use Facebook, where a disproportionate amount of attention is directed to blatantly false reporting.\textsuperscript{114} During the election campaign, an analysis by Buzzfeed found that the top fraudulent news stories on Facebook got more engagement than the top stories from professional news outlets such as the Washington Post and the New York Times.\textsuperscript{115} In addition, low-income people are often targeted for false stories exactly because their lower level of information makes them more susceptible to believing and relaying them.\textsuperscript{116}

III. ASCERTAINMENT 2.0

At one time, to determine community needs, broadcasters had to ask their communities. This meant acknowledging the existence of various groups within a broadcast radius, meeting with the leaders, and becoming familiar with the existing, sometimes informal, lines of organization. This was a worthwhile endeavor, as one news director remembers:

You listened to what people were talking about and hearing, what they wanted to discuss. That gave you an idea of what the stories were. The problem with newsrooms today is that we live in a bubble . . . . Local stations as a whole can do a better job of being in touch with their communities. The ascertainment requirement forced them to do so.\textsuperscript{117}

Still, even first-hand conversations may leave unanswered questions. When asked, people do not always know what they need, or they may not express it in the same ways as those who are asking the question or those who are able to answer. For example, legal aid workers have learned that people may know very well that they have trouble with a landlord or that they have stopped getting government

\textsuperscript{113} Katherine Ognyanova, \textit{Researching Community Information Needs, in The Communication Crisis in Am. & How to Fix It} 31, 36 (Mark Lloyd & Lewis A. Friedland eds. 2016).

\textsuperscript{114} Faris, \textit{supra} note 87, at 15.


\textsuperscript{116} Hamilton & Morgan, \textit{supra} note 78, at 184.

\textsuperscript{117} Waldman et al., \textit{supra} note 38, at 282.
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benefits, but they may not see their problems as legal ones. Thus, when asked, they may say that they do not need a lawyer.\textsuperscript{118}

Nowadays, technology offers new insights into people’s needs. As marketers know, people reveal what they need in other ways as they go about their daily lives, doing such common tasks as making phone calls, using social media or searching the Internet.\textsuperscript{119} Websites and search engines quietly gather, store, process, and sell data amassed from cell phone locations, Internet browsing, social media posting, and more.\textsuperscript{120} Some third-party information may even be accessed, without a warrant, by the government, reversing the basic premise of democracy: Rather than a transparent government, accountable to its citizens, the citizen is rendered transparent.\textsuperscript{121}

Among those gathering information are Internet service providers, or ISPs. Consumers may be aware that the sites they access online are tracking their visits and preferences, but they are unlikely to associate Internet content with their ISP any more than they blame the content of a letter on the Post Office.\textsuperscript{122} In the last days of the Obama administration, the FCC adopted a rule to extend privacy protections to broadband Internet access service; the protections would be similar to those that had applied to telephone calls under the 1934 Communications Act.\textsuperscript{123} As then-FCC Chairman Tom Wheeler argued,

\begin{quote}
Seldom do we stop to realize that our Internet Service Provider – or ISP – is collecting information about us every time we go online. Your ISP handles all of your network traffic. That means it has a broad view of all of your unencrypted online activity – when you are online, the websites you visit, and the apps you use.\textsuperscript{124}
\end{quote}

\begin{thebibliography}{99}
\bibitem{118} Latonia Haney Keith, \textit{Poverty, the Great Unequalizer: Improving the Delivery System for Civil Legal Aid}, 66 \textit{CATH. U. L. REV.} 55, 100 (2016).
\bibitem{120} Joel R. Reidenberg, \textit{The Transparent Citizen}, 47 \textit{LOY. U. CHI. L.J.} 436, 440–44 (2015) (summarizing dozens of examples of everyday exposure of a person’s data, ranging from parking tickets to house value and floor plan to DNA to the location of the person’s blue jeans bearing a factory-inserted radio-frequency chip.).
\bibitem{121} \textit{Id.} at 452 (“The transparent citizen makes it possible for government to act ‘sub rosa’ through private intermediaries. Instead of seeking to collect information itself, government agencies buy data inexpensively from the commercial marketplace.”).
\bibitem{122} \textit{Id.} at 387.
\bibitem{123} Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, 81 Fed. Reg. 87,274 (Dec. 2, 2016) (to be codified at 47 C.F.R. pt. 64).
\end{thebibliography}
But the new rule was short lived. It was struck down by a joint U.S. House and Senate resolution, passed along party lines under the Congressional Review Act, and signed by President Trump.\textsuperscript{125} Supporters of the repeal argued that ISPs already are blocked from viewing encrypted matter, which is the norm for email and commercial transactions. In addition, supporters said, Internet users can protect their privacy by transmitting material through a virtual public network (VPN).\textsuperscript{126} But technology scholar Nick Feamster at Princeton University questioned those assurances by pointing out that many messages are not encrypted and that even encryption can expose portions of a transmission, such as its initial connection to a domain. In addition, VPN requires the proper configuration in order to protect privacy, and mobile devices generally don't support VPNs.\textsuperscript{127} Wheeler had accounted for these objections earlier:

If you have a mobile device, your provider can track your physical location throughout the day in real time. Even when data is encrypted, your broadband provider can piece together significant amounts of information about you — including private information such as a chronic medical condition or financial problems — based on your online activity.\textsuperscript{128}

Others argued that basic privacy should not require so much sophistication and effort by Internet users,\textsuperscript{129} and they called on Congress to take some action to provide legal privacy protection as the default for consumers.\textsuperscript{130}

Lost in the debate over individual privacy is a discussion about the economic value of the data that the ISP gathers,\textsuperscript{131} above its

\textsuperscript{125} S.J. Res. 34, 115th Cong. (2017) (enacted).
\textsuperscript{128} Wheeler, \textit{ supra} note 124.
\textsuperscript{129} Klint Finley, \textit{VPNs Won't Save You From Congress' Internet Privacy Giveaway}, \textit{WIRED} (Mar. 28, 2017, 7:00 AM), https://www.wired.com/2017/03/vpns-wont-save-congress-internet-privacy-giveaway/.
\textsuperscript{131} See, e.g., Michael P. Johnson, \textit{Data, Analytics and Community-Based Organizations: Transforming Data to Decisions for Community Development}, 11 I/S: J.L. \\& POL'Y FOR INFO. SOC'Y 49, 60 (2015) (citing a projected big-data market of more than $16 billion in 2015).
monthly charge to customers. Also lost is the potential social value of that data to the local government that granted the license or franchise for the ISP to use public lands and rights-of-way. Some of that data might be useful in ascertaining the needs of the community members who, often unwittingly, provided it. Besides being sold to advertisers, some of that data could be returned to the community.

A. Community Data

Although the Internet is worldwide, it is carried on wires and cables, or transmitted from towers, that are physically located in a community. Over these lines, data—the gold of the Internet age—flows from individual consumers to advertisers and such intermediaries as data brokers and analytic firms, who monetize it. Federal regulation bars state and local governments from imposing burdens on ISPs that might discourage the nationwide deployment of broadband. But the FCC should allow localities to harvest some public benefit from broadband's presence. For example, the FCC could allow local governments to use their authority over rights of way to require that selected ISP-gathered data be made available through an intermediary, such as state university researchers. To safeguard individual privacy, the data would be aggregated and anonymized and handled according to the protocols of the university institutional review boards, which are already experienced in meeting privacy and ethics standards.

The usefulness of data in the public interest is already being demonstrated by large cities that are posting sets of their own records. For instance, the District of Columbia allows citizens to search city databases for such information as doctors' licenses, available library books, meeting facilities, and grant opportunities. Philadelphia's school district publishes data sets on demographics, student perform-


133. Olivier Sylvain, Broadband Localism, 73 OHIO ST. L.J. 795, 802 (2012).


135. Id. at 471–72.

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ance, and teacher pay. This information can help parents make decisions about schooling their children.137 For the city of Boston, Harvard University and the University of Massachusetts have created an interactive map that can display layers of spatial data about neighborhoods, including tax assessments, 911 calls, ethnicity, and measures of social cohesion. The map uses open-source software, so it can be adapted by other communities.

Some cities gather data to enhance their own performance. Seattle used its crime data to forecast which neighborhoods were most at risk of gun violence on a given day so police could arrange their patrolling to be cost efficient.138 New Orleans used U.S. Census data139 to map the homes most at risk for fire deaths, so the city could focus on those households in a door-to-door program installing free smoke alarms.140 Baltimore saw its infant mortality rate fall twenty-eight percent in three years after the state used available data to target areas with the most trouble and tailor programs of prenatal care and education to residents there.141

Consumer data from ISPs might do more, perhaps even allowing communities to anticipate the needs of residents. This is what marketers do,142 as in the legendary example of the Target store that was sending ads for maternity products to a high school student. Her father was irate, but then he learned what the Target algorithm had already deduced from her shopping habits: she was pregnant.143 Other

137. CASTRO, supra note 119, at 5.
143. Kashmir Hill, How Target Figured Out a Teen Girl Was Pregnant Before Her Father Did, FORBES (Feb. 16, 2012, 11:02 AM), https://www.forbes.com/sites/kashmirhill/2012/02/16/how-target-figured-out-a-teen-girl-was-pregnant-before-her-father-did/#3fb63d116668 (reporting that pregnant women tend to buy such products as unscented lotions and vitamin supplements at specific points in their pregnancies).
researchers analyzing the sentiments expressed in more than 180,000 tweets found a way to predict the prevalence of asthma in a given region in the United States.144 Still others used Google searches related to flu symptoms in order to predict the peak of flu outbreaks seven weeks in advance.145 "Google Flu Trends" continues to share data with academic institutions.146 Accurately anticipating other community health needs would have obvious benefits.

New data could further expand the kinds of needs that a university's researchers might forecast. The researchers could publicize what they learned through local public libraries and public media – the institutions most trusted for "creating, organizing, analyzing, and disseminating information for reasons other than short-term economic gain."147 Based on their ongoing experiences with interpreting and using community data, local governments could specify and periodically review the kinds of data most needed to serve the public interest.

In ascertaining community needs, this effort would still leave gaps. Because low-income communities have less Internet access, they would still be less represented in ISP-gathered data. Such communities may slip into what one analyst calls a "data desert," an area excluded from data gathering and, thereby, deprived of the social and economic benefits that could follow from more community self-knowledge.148 Political ads and calls to action may even be targeted to avoid them.149 The next recommendation would address at least some of these deficiencies.

B. Community Knowledge

A second measure would be to enlist community colleges in responding to the danger of rampant misinformation and the need for a shared, factual reality.150 Community colleges have demonstrated that

147. Shane, supra note 68, at 112.
148. CASTRO, supra note 119, at 2.
149. Hamilton & Morgan, supra note 78, at 185–86.
150. Nossel, supra note 115, at 4 ("If left unchecked, the continued spread of fraudulent news and the erosion of public trust in the news media pose a significant and multidimensional risk to American civic discourse and democracy . . .").
they can respond to national needs at a local level. After the events of September 11, 2001, community colleges expanded their training for first responders, adding programs in such areas as cybersecurity, terrorism, hazardous materials, and airport security.\textsuperscript{151} They now credential close to eighty percent of the country's police, eighty-six percent of firefighters, and eighty-four percent of emergency medical technicians.\textsuperscript{152}

A new community college initiative could respond to the critical need for accurate information. This move would augment current programs based at four-year institutions. For instance, the Knight Foundation has an initiative to rebuild trust in democratic institutions, primarily the press.\textsuperscript{153} Among its first projects is a Duke University program to expand the availability of fact-checking tools for journalists and the public.\textsuperscript{154} In addition, the FCC has recommended private funding of "residencies" for recent journalism graduates, so they can supervise current students in year-round, consistent coverage of their communities.\textsuperscript{155}

Community colleges offer a number of advantages over four-year institutions in covering local news, especially for low-income communities. Community colleges enroll low-income students at a higher rate than four-year colleges.\textsuperscript{156} These students often have jobs and dependents\textsuperscript{157} and already live in the community, so they have an investment in its future. A journalism course or program of courses would serve as a natural continuation of media literacy courses, which increasingly are required by state legislatures to help students sort accurate from inaccurate information online.\textsuperscript{158} It could build on


\textsuperscript{152} Id. at 1 (citing National Center for Education Statistics data from 2003).


\textsuperscript{154} Id. at 3.

\textsuperscript{155} WALDMAN ET AL., supra note 38-44, at 355.


courses that several universities have launched on debunking false information.\textsuperscript{159}

In part because of their role in training and supporting first-responders, many community colleges have excellent communication capabilities. Approximately twenty percent have radio and television broadcast facilities.\textsuperscript{160} Furthermore, interest in efforts like this appears to be high in historically underserved communities. The Pew Research Center, categorizing American attitudes toward information, found that those "eager and willing" to learn about news and information sources were predominantly people of color: thirty-one percent Hispanic and twenty-one percent black.\textsuperscript{161} While more than fifty-five percent of white adults said they would like training in finding trustworthy information online, and the number jumped to seventy percent among black adults and seventy-five percent among Hispanics.\textsuperscript{162}

Community college journalism initiatives would bolster news reporting in local communities. Although student reporting would not initially replace the expertise of seasoned beat reporters, it would still engage students in interviewing sources, accurately quoting sources, double-checking facts, acknowledging errors, and publishing corrections. It would give both students and the community a renewed first-hand experience with the routines of journalism and a re-acquaintance with its values. The experience would enable students and community members to better evaluate sources of information at the distant national level and determine whether "fake news" accusations are accurate and to what degree and where.

CONCLUSION

Local communities once had a way to ensure that the information transmitted on the public airwaves responded to their problems. Broadcasters had to listen to them and consider what they had to say. Today, a community’s problems may be detectable – and perhaps

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{160}] American Association of Community Colleges, \textit{supra} note 151 at 6.
\item[\textsuperscript{161}] Horrigan, \textit{supra} note 61, at 14.
\end{itemize}
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even predictable — through the data that is continuously available to Internet service providers. Information gathered in this way is used to target the marketing of advertisers and political parties. It could also serve the public good. This article has proposed ways for communities to have and develop more information at home. It has proposed opening more data to state universities for projects that would to serve community needs. It has also proposed enlisting community colleges in journalism projects to encourage ongoing original reporting and the development of community information.

"Speaking truth to power," at any level, evokes an image of a smaller party, armed only with a good grasp of reality, confronting a threatening force. Here, that force may be the anger and rumors that circulate in the teeming and disrupted marketplace of today's information age. Finding a foundation of facts is essential if people are to live together in communities. A shared reality is also a small start toward what the authors of *Speak Truth to Power* had in mind: a renewed trust among Americans, which they saw as essential to democracy.163

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163. Cary et al., supra note 1, at 16 ("[W]ithout trust a free society cannot exist.").