

# Narrative Topoi in the Digital Age

Zahr K. Said and Jessica Silbey

In fall 2014, the nation was obsessed with *Serial*, Sarah Koenig's National Public Radio podcast about the murder of Hae Min Lee, allegedly committed by her high school boyfriend Adnan Syed, who is currently serving a life sentence for the crime.<sup>1</sup> The podcast took the form of long-form journalism serialized over twelve weeks. At the time, it was the most downloaded podcast, at over 175 million listens.<sup>2</sup> The serialized podcast, resembling a documentary murder mystery, preoccupied its audience with unraveling and debating evidence as we waited every Thursday for the next episode, in what felt like both a throwback to nineteenth-century serialized narratives and a glimpse at the future of twenty-first-century storytelling. In Koenig's own words: ". . . This is not an original idea. Maybe in podcast form it is, and trying to do it as a documentary story is really, really hard. But trying to do it as a serial, this is as old as Dickens."<sup>3</sup> *Serial*'s airing was one of many moments in recent popular culture that got us wondering, as literature-trained law professors: How do digital technologies shape narrative, what popular narrative experiences might be new versus iterations of the old, and what does all this have to do with law?

Decades of thoughtful law and humanities scholarship have made the case for using humanistic texts and methods in the legal classroom. We build on that scholarship by identifying and describing three "narrative topoi" of the twenty-first century. We use the term "topos" (from the Greek meaning "place") and its plural, "topoi," to mean "a literary commonplace" and "general setting for discussion" in the context of literary forms.<sup>4</sup> Like an identifiable genre,

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1. Season 1 of *Serial* told the story of a man accused of killing his high school girlfriend. The prosecution and trial were riddled with errors and inconsistencies, which the program explores. *Serial*'s reporting ultimately contributed to an investigation and a new trial after Adnan had served eighteen years in prison. For more, see: <https://serialpodcast.org>
2. AFP, 'Serial' Hero Adnan Syed Gets Second Chance in US Court, EXPRESS TRIBUNE (JUNE 10, 2017), <https://tribune.com.pk/story/1432230/serial-hero-adnan-syed-gets-second-chance-us-court>.
3. Lilah Raptopoulos, *This American Life's First Spinoff Podcast: 'I Don't Know Where It Will End.'* THE GUARDIAN, (OCT. 10, 2014), <https://www.theguardian.com/tv-and-radio/2014/oct/10/serial-this-american-life-sarah-koening>.
4. DAVID MIKICS, A NEW HANDBOOK OF LITERARY TERMS 156, 297 (2007) ("A topos is a literary commonplace or . . . *locus communis*, a recognizable spot. Topos implies literal location: we

narrative topoi are familiar story paths for audiences to travel. These narrative topoi live in contemporary popular culture and are products of digital technology's capacity to share and shape communication in new ways that draw on older narrative conventions and forms.

In a law school, drawing on new narrative topoi can reorient legal analysis through inquiry into twenty-first-century problems of language, narrative form, authenticity, and audiences. Legal educators may also highlight historical continuity between cultural and legal history and today's forms and experiences, foregrounding issues central to legal skills, such as analogic reasoning, advocacy, counseling, and factual analysis.

Multiple factors combine to make twenty-first-century topoi innovative story landscapes to be investigated narratively and socio-politically. We provide examples of three topoi below: serialized and binge-able entertainment content; Twitter; and fake news. These topoi encompass a range of platforms and narrative modes; they have in common a blend of new and old. These narrative topoi are "new" because of their speedy dissemination and consumption; the disintegrated and rapid derivative spinoffs each produces; the simultaneously fragmented and networked connections of their reading audiences; and the powerful ability to measure reader engagement and tailor personalized responses accordingly. Twenty-first-century narrative topoi simultaneously provide anonymity and connection, offering local testimony that travels through instantaneous global internet networks. These topoi are "old" in the sense that they rely on venerable tools, and they speak to readers' desire for intimacy, immediacy, coherence, and authenticity. Each topos presents law professors with opportunities for critical inquiry into legal doctrines, practice, and ethics. Formed from popular cultural content, they are also fun frameworks through which to discuss formidable issues of power, language, identity, and democracy.

### **1. Serial Podcasting and Binge Television**

Serial podcasting and binge-watching television series are both nostalgic and new. Podcasts, in particular, combine radio format with the portable and personalized digital device, their content resembling magazines (e.g., long-form investigative journalism/editorial). And yet their form is intimate, with hosts in your ear, talking only to you at that moment. Radio and television are now more "on demand" than scheduled, the digital age having made recording, saving, and time-shifting the primary consumptive pattern for content. In fact, podcasts are rarely listened to at particular times. The "RSS" feed ("rich site summary") built into podcasts enables delivery and storage of changing web content so podcasts can be delivered to portable devices and listened to on demand. Television shows similarly can be watched whenever

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come upon certain familiar literary themes or subjects just as a traveler might discover a bend in the road or a broad meadow . . . . A literary topos is a place, but also an issue or argument.").

audiences choose, and often all at once (usually for a small fee or bundled cable package), the “binge-worthiness” of a television series being the new gold standard and popular cultural experience.<sup>5</sup> Binge television relies on watching habits derived from beloved series of decades past (e.g., *The Twilight Zone*, *M\*A\*S\*H*, *Star Trek*, *Hill Street Blues*, *Twin Peaks*) from which we expect rich characters and protracted plots. With radio serials or magazine serials (dating to the Victorian era), audiences congregated around the radio after dinner, or crowded newsstands, anticipating the next installment.

To be sure, we can binge only after all the episodes are produced and aired. Some television serials release all episodes simultaneously, such as *Making of a Murderer*.<sup>6</sup> Others, such as HBO’s *The Jinx: The Life and Deaths of Robert Durst*, released one episode per week.<sup>7</sup> Yet the ability for audiences to control consumption and engage for hours if not days with the story and characters is an intensely immersive and private experience. Key to the new narrative topos is the contradictory experience of unmediated and personalized access to the audio-visual content combined with its cultural pervasiveness, a new combination of private/public narrative consumption and circulation. Audiences experience control and access to the story on their own terms; yet it is also addictive and everywhere discussed, debated, and disclosed.

Many recent serialized narratives concern true law and crime. *Serial* does (as does its sequel *Undisclosed* and recent “hits” such as *Crimetown* and *Up and Vanished*). Many more are detective stories or mysteries, such as *S-Town*, the newest serial podcast from the makers of *Serial*, which after its release on March 28, 2017, was downloaded a record 10 million times in four days.<sup>8</sup> Consider also the television shows *Homeland*, *Breaking Bad*, *24*, *The Wire*, *True Detective*, *Scandal*, *Damages*, *The Good Wife* and *Goliath*, all compelling crime stories or legal dramas. There is a curious feature of narratives about law and order, especially those based on true stories: at once compelling with presumably satisfying endings, the stories they tell are rife with indeterminacy. If the narrative process is “about discovery and the creation of a meaningful sequence,”<sup>9</sup> *Serial* is an antinarrative, resisting order and judgment even as it repeatedly presents readers with new discoveries, facts, and theories.

5. Emanuella Grinberg, *The Best TV Shows to Binge Watch*, CNN (June 22, 2017) <http://www.cnn.com/2014/11/09/showbiz/gallery/binge-worthy-tv/index.html>.
6. Netflix 2015 original true crime television series about a wrongful conviction.
7. A miniseries investigating three unsolved murders for which Robert Durst is presumed responsible.
8. Rob Moran, *New Podcast from Serial Makers, S-Town, Breaks Download Records*, THE SYDNEY MORNING HERALD (Apr. 3, 2017), <https://www.smh.com.au/entertainment/tv-and-radio/new-podcast-from-serial-makers-stown-breaks-download-records-20170403-gvc412.html>. For a description of the program, see Spencer Kornhaber, *S-Town Is a Well-Crafted Monument to Empathy*, THE ATLANTIC (Mar. 30, 2017), <https://www.theatlantic.com/entertainment/archive/2017/03/s-town-podcast-review-empathy-cultural-divides/521325/>.
9. Peter Brooks, *Clues Evidence, Detection: Law Stories*, 25 NARRATIVE 1, 2 (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2894732](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2894732).

Koenig suspects that Adnan Syed was wrongfully convicted of murder. Week after week, Koenig interviews witnesses, scrutinizes physical and forensic evidence, and tests hypotheses. Syed himself is part of the podcast, as Koenig talks to him on the phone from prison. With each week's new discoveries and revised theories of what happened, the listener uncomfortably oscillates between believing in Syed's innocence and his guilt. We hear his kind voice and wonder: Are we being duped, or is this guy to be believed? Each episode develops cliffhangers, promising revelations and clarity, and yet, like an afternoon soap opera keeping audiences dangling, each episode withholds certainty, and the podcast ultimately resists resolving the mystery of who killed Hae Min Lee. After twelve episodes and mountains of new evidence and possible explanations, the central question of criminal responsibility remains. After four months of hearing the voices of people involved in the investigation, picturing with obsessive detail the landscapes around the crime scene, and participating in debates with other listeners, the audience is devastatingly, and yet fittingly, left with reasonable doubt about the fairness of the trial and Syed's guilt. The very nature of the serialized podcast is to forbear from concluding, even though this podcast's initial *raison d'être* was to render conclusive judgment on Adnan Syed's culpability.

*Serial's* challenge to both narrative and law is epistemic.<sup>10</sup> As Sarah Larson wrote for *The New Yorker*, "From the start, intentionally or not, the show was about doubt."<sup>11</sup> Koenig foreshadows this when in the first episode she proves that everyone's memory is faulty. She asks multiple people to recount where they were six weeks ago on a particular day and none can answer with any certainty. How, then, can a criminal case hang on the suspiciousness of exactly this kind of *aporia* for which the defendant is eventually convicted?

It is one thing to understand that other plausible stories exist—this is how criminal lawyers generate reasonable doubt. But it is another thing to experience the amorphous story form shaping its meaning and message in the context of law. Because the podcast is serialized, it contains cliffhangers and intense binge capacity, crowd participation and crowd-sourced conjectures and interpretations, intimate and personal delivery mechanisms that undermine omniscient authority while also rendering more authentic and faithful the story being told. The form produces an intense desire for knowledge, yet instead we get an abundance of facts with competing theories of their coherence, none of which is sufficient to reveal the truth. In the context of a legal system that promises justice and judgment after a fair weighing of all relevant facts, this is a scary, even nihilistic, realization. Through this narrative topos, "Just the facts ma'am" becomes a question of narrative rationale: Why this story form and not another to investigate a murder? How do serial podcasts (or

10. Peter Siegelman et al., *Symposium: A Law Faculty Listens to Serial*, 48 *CONN. L. R.* 1593, 1596 (2016).

11. Sarah Larson, *What Serial Really Taught Us*, *THE NEW YORKER* (Dec. 18, 2014), <https://www.newyorker.com/culture/sarah-larson/serial-really-taught-us>.

television series) shape and reveal true events differently from other forms? These are important questions as this narrative form grows in dominance, given how it produces an existential combination of indeterminacy and desire, unraveling on the fluid and fragmented internet terrain. Not all television series that similarly induce rapid and compulsive consumption, such as *Making of a Murderer* or *Homeland*, comment, as *Serial* does, on the law's complicity with narrative to exploit desire for coherence without a promise of justice. Yet many do. Questioning the reason for and function of desire for closure in law and its pursuit of justice, connected with its role as popular entertainment, enriches classroom discussions about the common law, jurisprudence, ethical advocacy, legal storytelling, and legal institutional competencies.

## 2. Twitter + Storify

What can you say in 280 characters? You may attempt to govern, or at least hold a nation in rapt attention. But before Donald Trump, Twitter was just a social media platform of user-generated headlines constructed of then 140-character missives to followers. Less haiku and more descriptive and direct, tweets may link to one another in a haphazard correspondence or resemble a personalized Associated Press news service curated for idiosyncratic tastes. It mimics an “epistolary mission log style” combined with a news bulletin of the essential headlines of the moment.<sup>12</sup>

But 280 characters is a tease. Journalists and others with something to say quickly learned how to link the tweets and entice readers to follow—to tell a story in a series of tweets. Linking tweets and reporting from a place—or “live-tweeting”—became a form of witnessing and reporting specific to our internet age. It is immediate, intimate, and interactive (because followers can respond, retweet, or quote to add to the conversation). Twitter creates networks with nodes from the original tweeter, growing in relevance and size as retweets spawn others. It connects strangers and links places and speech previously disconnected and dispersed. A rambling stream of consciousness, it feels real, unmediated, and unrestrained even as it may be anonymous, distant, and unmoored; call it free or chaotic, it is experienced as life unfolding with a central narrator depending on who tweets and who follows. Although tweeting may not produce premeditated plots and characters, the tweeters intend to construct a narrative to build an audience and convey a point. Journalists live-tweet protests and riots as well as major court decisions. Fans live-tweet concerts and tournaments. Journalism schools teach the art of live-tweeting, its risks and rewards, including the “importance of setting the scene and the atmosphere.”<sup>13</sup> Hashtags enable following and aggregating simultaneous

12. Amber Schroeder, *Breaking Open the Black Box: Jennifer Egan's Entry into Twitter Fiction*, THE HALFWAY TREE (June 10, 2016), <https://thehalfwaytree.wordpress.com/page/2/>.

13. Jonas Redemann, *Tip: Learn How to Live-Tweet Breaking News Stories*, JOURNALISM.CO.UK (Sept. 10, 2015), <https://www.journalism.co.uk/tip-of-the-day/tip-learn-how-to-live-tweet-breaking-news-stories-/s419/a566400/>; see also Kelly Fincham, *What Every Young Journalist Should Know About Using Twitter*, POYNTER (Sept. 21, 2012), <https://www.poynter.org/2012/>

conversations around nodal themes. Although only 280 characters, stories (characters, places, plots) irresistibly emerge from Twitter feeds connecting and captivating immense and global audiences.

Some of those stories are by design. Take, for example, the live-tweeting by journalist Sarah Jeong, then writing for Motherboard Vice, reporting on the scene during spring 2016 from a California courtroom where the *Oracle v. Google* trial unfolded. For those interested in software copyright, Jeong's tweeting was riveting. Jeong live-tweeted nine trial days, posting many tweets an hour, such as "I'm in court for #googacle again today and I see that fucking filing cabinet lurking in the back again" or "[Eric] Schmidt being asked about another email. Says he doesn't know who this guy is. 'His email is crazybob.'" Peeling away from the phone or computer screen was hard when following Jeong's tweets. They were humorous and insightful, and the case itself was consequential.

On the last day before jury deliberation, Jeong first tweeted: "Closing arguments feel bit like a wedding, lots of family: one side 4 Google, one Oracle. Two nervous people waiting for ceremony. #googacle." She ended on the day before postverdict motions with capital letter tweets: "JURY HAS A VERDICT" and "GOOGLE'S USE OF THE DECLARING CODE AND SSO OF APIS IS FAIR USE." The feeling of personally witnessing a monumental moment was inescapable, and yet it was with only then 140 characters and filtered through Jeong's distinctive perspective. Holding the tweets in our hand or reading them on our desktop connects us intimately with the sender and the content, like the podcasts whispering in our ears or the television shows tuning in precisely when we want. Twitter's personalization and adaptability make its stories all the more cogent, convincing, and familiar.

The fragmentation of tweets, like stream of consciousness, may accentuate the experience of ordinariness. But even when linked intentionally, Twitter retains its authenticity. For example, at the end of the *Oracle v. Google* trial, Jeong uploaded her tweets to Storify, a platform that links social media posts forming an unraveling story to "freeze in time an online conversation" and serve as a "digital documentarian of new media interaction."<sup>14</sup> Storify allows for "chapter" captions, such as Jeong's Day Seven teaser: "A witness gets impeached with his LinkedIn page. [Judge] Alsup gives a cough drop to a lawyer in the gallery . . ." Reading the tweets as one complete story from beginning to end confirms the pull of the chronicle and its certain ending, despite its spontaneous and fragmented generation. Two hundred eighty characters is a moment; read together as streaming tweets, they form an entrancing monologue. Storify's coherent linking creates an internet narrative

what-every-young-journalist-should-know-about-using-twitter/188408/.

14. HATCH FOR GOOD, <https://www.hatchforgood.org/explore/11/a-guide-to-storify> ("Storify can create a coherent narrative from content spread across different social media channels.").

with an audience of 328 million people that resembles an eyewitness account from the trenches.

What does any of this have to do with legal education, aside from live-tweeting trials? Our students read news on Twitter; relevant facts and popular culture are delivered more frequently on Twitter than through television or radio (or daily newspapers). And yet Twitter typifies the randomness of facts and the desire for narrative coherence. As feeds spawn connections and conversations, as they link to embody an event or a cohesive experience, however haphazardly and without intentionality, individual moments develop excess significance depending on who retweets, links, or likes. Similarly, in legal disputes or transactions, certain facts convey oversized or unexpected meaning depending on the arbitrariness of lived experience. Strung together, facts transform a winning case into an uncertain one, a copacetic deal into a disaster. Facts never stand alone; they emerge from life's mess and must be situated by narrators (lawyers) to achieve clients' goals. And if Twitter is proof, the person with the most coherent story, congruent facts, and the most eyeballs controls the ending (a feat Storify enables but whose efficient narrative function is spreading in Twitterverse's chaos). Facts may be king, but the most credible chronicler of those facts is the last monarch/storyteller standing. Twitter teaches that credibility is about personalized attention, connections, and short sentences. Twitter's brevity invites the interpellation and imagination of readers that encourages familiarity and attachment, both important for successful advocacy. Moreover, as Twitter becomes part of more people's everyday life, its unfolding narrative topoi shape expectations of jurors, clients, lawyers, and judges regarding what counts as persuasiveness and authenticity today. Attending to Twitter's particular affordances will be critical to effective communication in our digital age.

### 3. Fake News and Clickbait

Journalism is a genre distinct from fiction, satire, or propaganda; based on reporting confirmable facts and following transparent methods, the "news" aims for truth. Journalistic conventions and professional ethics constrain and discipline the news. For instance, news gathering typically relies on multiple corroborating sources to establish the veracity of its reports; news reports facts rather than fabricating them; news, while never free from bias, seeks to tell a story that is "true" in the sense of being subject to verification, even if cast in a polemical, unkind, or deceptively partial light.<sup>15</sup> Fake news, by contrast, can be described as the "publication of intentionally or knowingly false statements of fact."<sup>16</sup> Fake news doesn't happen by accident. Like poetry, which is poetry

15. To reward those trying to report news accurately, journalists are immunized when they make mistakes. Since the landmark case of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), journalists facing libel suits are constitutionally protected from errors based on sloppy work; most plaintiffs need to show "actual malice," a standard that requires intent to deceive, knowledge of falsity, or reckless disregard for the truth.

16. David O. Klein and Joshua R. Weller, *Fake News: A Legal Perspective*, 20 DLA PIPER

because it says so, fake news is “news” only by declaring itself so. Luring readers with tantalizing headlines, fake news camouflages itself in journalistic garb while rejecting journalistic conventions. Unable to identify the source of fake news accurately, readers often fail to form the proper expectations about its likely truth or falsity.

Fake news has a long, ugly history.<sup>17</sup> Hoaxes, misinformation, rumors, gossip, and outright lies—passed off as facts, often for profit or political motive—are older than the diverse mass communication used to disseminate untruths in the modern era, from print publications and broadcast radio and television, to social media platforms such as Twitter, Snapchat, and Facebook. But even though fake news has been around and messing with democracy awhile, its prominence today, and one current instantiation, “alternative facts,” create ongoing, baffling epistemic dissonance that has heightened the sense of something new about its role in the political landscape.<sup>18</sup> Attitudes toward truth, as well as the role of the press, are historically and culturally contingent, as are the forms and delivery mechanisms through which truths are produced, whether agitprop of Soviet Russia, the radio broadcasts of the Nazi regime, or the alt-right fables of the United States in 2017. Unpacking the narrative forms (genres and tropes) and narrative modes (voice, tone, point of view) through which fake news travels helps us understand how and why it lands as powerfully as it does, and makes greater sense of its connection to political power. Connecting fake news to political power is vital, especially in a law classroom concerned with the accuracy, persuasiveness, and equity of statements and stories.

Despite its presence throughout history, the impact of fake news is considerable in the digital age.<sup>19</sup> Its resilience, rather than its existence, makes it a twenty-first-century topos. News shared through digital technologies has legs.<sup>20</sup> It travels fast and wide, with near total anonymity. Fake news has broad

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JOURNAL OF INTERNET LAW 5 (Apr. 26, 2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2958790](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2958790).

17. Robert Darnton, *The True History of Fake News*, THE NEW YORK REVIEW OF BOOKS (Feb. 13, 2017) <http://www.nybooks.com/daily/2017/02/13/the-true-history-of-fake-news/>.
18. Alan Greenblatt, *Challenges from An “Alternative Facts” Era*, AMERICAN PRESS INSTITUTE (Apr. 4, 2017), <https://www.americanpressinstitute.org/publications/reports/white-papers/alternative-facts-era-challenges/>.
19. Hunt Allcott & Matthew Gentzkow, *Social Media and Fake News in the 2016 Election*, 31 J. ECON. PERSPECTIVES, 211, 211-13 (2016), <https://web.stanford.edu/~gentzkow/research/fakenews.pdf>.
20. Michael C. Dorf & Sidney Tarrow, *Stings and Scams, “Fake News,” the First Amendment, and the New Activist Journalism*, at 26-27 (March 31, 2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2906444](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906444) (arguing that what’s new about today’s fake news is the way it travels through “nodes of information transmission that authoritatively diffuse information which—on its own—might have little resilience and even less persistence.” They identify a “network of radio talk shows, blogs, printed publications, and foundations” that serve



appeal because it exploits human biases, existing beliefs, and base instincts, and it has specific appeal for particular readers because it can target them based on personalized information derived from data collected from them. Once falsehoods circulate, they're remarkably difficult to retract or correct. Current defamation laws seem an ineffective response in light of changes in the media landscape that challenge the definition of falsity and opinion along with the readers' ability to identify and verify accurate information. As readers toggle among papers, blogs, social media feeds, and websites in one sitting, journalists share scarce airtime with other voices that may dispense with standard journalistic rules and often cannot be identified, or haled into American courts. Indeed, many producers of fake news are fly-by-night sources with no investment in familiar spurs to accuracy, such as reputation, repeat readership, or advertising revenues based on circulation size.<sup>21</sup> From Macedonian teenagers looking to make a few denar to bloggers for hire and content farms, a vibrant ecosystem of publishers is able and willing to produce content that resembles the news but consists of lies, not facts.<sup>22</sup> Some create spoof sites (such as the Denver Guardian, a fake source) causing readers to think they are reading reputable news sites (such as the Denver Post, the real-world corollary in this case).<sup>23</sup> Print publications have always carried incredible news stories; think of the carnivalesque covers of tabloids with their stories of alien sightings and raucous celebrity gossip. But online today, readers can't rely on tawdry covers to distinguish among sources. "Publications such as the National Enquirer . . . have long bent the truth, often shamelessly. But now, a fake story can much more easily masquerade as real because in Facebook's walled garden all the posts look largely the same."<sup>24</sup>

Journalists today compete for readers' attention in the form of clicks rather than loyal subscriptions. And contemporary fake news thrives in this visual environment (on mobile devices or otherwise) whose user interface and medium enhance its deceptive potential through a kind of camouflage designed to catch clicks by the unwary. Many websites, including reputable newspaper sites, contain "content widgets" linking to sponsored content or "clickbait," and it can be difficult to spot the moment one leaves a reputable

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as intermediate platforms between citizen journalists and readers, allowing news to travel through what appear to be sources of authority).

21. Scott Shane, *From Headline to Photograph, a Fake News Masterpiece*, N.Y. TIMES (Jan. 18, 2017), [https://www.nytimes.com/2017/01/18/us/fake-news-hillary-clinton-cameron-harris.html?\\_r=0](https://www.nytimes.com/2017/01/18/us/fake-news-hillary-clinton-cameron-harris.html?_r=0).
22. *The Rise and Rise of Fake News*, BBC (Nov. 6, 2016), <http://www.bbc.com/news/blogs-trending-37846860>.
23. Eric Lubbers, *There Is No Such Thing as the Denver Guardian, Despite That Facebook Post You Saw*, DENVER POST (Nov. 5, 2016), <http://www.denverpost.com/2016/11/05/there-is-no-such-thing-as-the-denver-guardian/>.
24. Nicky Woolf, *As Fake News Takes Over Facebook Feeds, Many are Taking Satire as Fact*, THE GUARDIAN (Nov. 17, 2016), <https://www.theguardian.com/media/2016/nov/17/facebook-fake-news-satire>.

site.<sup>25</sup> As readers travel from the original website to the clickbait's mise-en-abîme, context and perspective vanish, weakening readers' ability to judge content through context. False content flourishes in these environments, as does its compulsive consumption.

Fake stories are often absurd, beggaring the imagination with contorted connections and implausible accounts. Yet the more sensational and fantastic, the more traffic click-through websites generate. Some may be so exaggerated that they resemble parody (a feebly but nonetheless asserted defense),<sup>26</sup> while *The Onion*, a self-proclaimed satirical news site, may sound reasonable in comparison, scrambling readers' expectations about generic conventions and authorial authenticity. But these fake stories may start with irresistibly tempting narrative hooks prompting readers to discover how the sentence ends, or they may sport flashy invitations and warnings: "learn more about this one little trick" and "5 foods you should never eat again" (both common tropes of seduction in the click-based courtship of readers).<sup>27</sup> Clickbait generates narrative desire with an outré opening line that is false, yet perversely induces a reader to learn more.<sup>28</sup> Advertisers have used this narrative tool for decades—it can be analyzed like poetry, in terms of short phrases and hanging couplets—and fake news is nothing if not sophisticated in deploying the infrastructure and insights of modern advertising in the digital era. In the digital age, critical contextual clues shift rapidly, scrambling readers' inner lie detectors, exploiting social media platforms to convey the "likes" and endorsement of fellow readers, and preying on readers' desire for coherence, immediacy, and intimacy.

Aside from piquing readers' disbelief or interest, fake news stories may resonate because they reinforce what readers already believe.<sup>29</sup> Consider "pizzagate," the baseless 2016 story linking presidential candidate Hillary Clinton and her former campaign manager, John Podesta, to a child sex-slave ring purportedly run out of a neighborhood pizzeria basement in Washington,

25. Companies like Taboola, Outbrain, or AddThis produce these interactive widgets, which may contain video, flashy pictures, or lurid themes. BuzzFeed used to be in this camp, making a name for itself with sponsored "listicles" (articles consisting of Top Ten-type lists, often commissioned or sponsored by a brand), but through producing serious journalism as well, it has transitioned into a more reputable source of content.
26. Woolf, *supra* note 24 ("[The author] said that it was "worrisome" to him when people take the satire written on Real News Right Now as fact. "I don't take any joy out of that. I wish people would factcheck me." He said that he tries to embed links into his stories to take people to true information about the stories he is satirizing.")
27. Michael Reid Roberts, *Life Sentences: The Grammar of Clickbait!*, THE AMERICAN READER <http://theamericanreader.com/life-sentences-the-grammar-of-clickbait/>.
28. *Id.* (describing "the defining characteristic of clickbait as a genre: titles that manipulate or coerce readers into visiting the site.").
29. Dave Davies, *Fake News Expert on How False Stories Spread and Why People Believe Them*, NPR (Dec. 14, 2016), <http://www.npr.org/2016/12/14/505547295/fake-news-expert-on-how-false-stories-spread-and-why-people-believe-them>.

D.C.<sup>30</sup> In mistaken reliance on this story, a man carrying an assault rifle attacked the pizzeria to save children he believed were imprisoned there.<sup>31</sup> Narratively, what makes a story like this resonate and endure in internet echoes? Why is it a punchline for some, and rapidly forgotten, but a rallying cry for others? It draws on pathos (defenseless children!), reinscribes a misogynistic theme of Clinton's unscrupulousness (will she stop at nothing?!), and provides an exposé of an unexpected, innocent-seeming locale (neighborhood pizza joint is more than meets the eye!). Most important, it is a call to action, an opportunity for muscular rescue at a time when a female presidential candidate upset social norms through contention for the nation's highest office. The narrative appeal of fake news requires attention to these fairy tale-like tropes.

Like fairy tales, fake-news narratives carry disproportionate weight. Norms and business interests created incentives for accurate reporting and provided support for laws that police truth and falsity. Like superbugs that defy existing antibiotics, fake news "goes viral," even in the face of attempts to contain or quash it, even when verifiable contrary evidence exists. News in the twenty-first century has particular features and pressures, and fake news needs stronger medicine; we need a vaccine. Here's where educators can help. In the words of information science professors at the University of Washington, "The world is awash in bullshit."<sup>32</sup> In their class "Calling Bullshit," they teach students how to detect it and respond. Fake news offers legal education the opportunity to impart the skills to help students in their epistemic detective work, to get down to interpretive business, peel back layers of narrative, and expose falsity in the information sources we encounter daily. Good lawyers are excellent bullshit-callers, and it's our work to develop that skill.

Fake news shapes political outcomes and alters history by influencing attitudes toward politicians and journalists, miseducating voters on key issues. For educators concerned this topos is too contentious to investigate in class, consider that understanding facts and triaging accounts for verifiability and bias are critical skills for lawyers and citizens in the digital era. Thus framed, this is not only about politics, but about advocacy and justice. Moreover, teaching fake news as a topos invites reflection about language, truth, and power and allows teachers to illuminate how the topos has been co-opted to undercut critiques of it.<sup>33</sup> The phrase "fake news" operates as a keening threnody for better days, a nostalgic song for "true" (or perhaps "truer")

30. Marc Fisher, John Woodrow Cox & Peter Hermann, *Pizzagate: From Rumor, to Hashtag, to Gunfire in D.C.*, WASHINGTON POST (Dec. 6, 2016), [https://www.washingtonpost.com/local/pizzagate-from-rumor-to-hashtag-to-gunfire-in-dc/2016/12/06/4c7def50-bbd4-11e6-94ac-3d324840106c\\_story.html?utm\\_term=.1d405e5521fo](https://www.washingtonpost.com/local/pizzagate-from-rumor-to-hashtag-to-gunfire-in-dc/2016/12/06/4c7def50-bbd4-11e6-94ac-3d324840106c_story.html?utm_term=.1d405e5521fo).

31. While the story was per se defamatory of Clinton and Podesta, the critical interest is not the legal case as much as the impact on the public sphere: how readers embraced, rejected, or decried the falsehood's circulation.

32. CALLING BULLSHIT, <http://callingbullshit.org>.

33. Sydney Ember, *This Is Not Fake News (But Don't Go by the Headline)*, N.Y. TIMES (Apr. 3, 2017), <https://www.nytimes.com/2017/04/03/education/edlife/fake-news-and-media-literacy.html>.

news. When Trump uses the phrase “fake news” to decry stories he dislikes, he inverts its accepted meaning and obliterates its impact and associations. This is a defiant act of “semiotic disobedience,” but one without a hero.<sup>34</sup> It is a lie imbued with symbolic violence given full effect in the meme titled “Fake News Network,” depicting Trump physically attacking a CNN reporter.<sup>35</sup> It is easy to read Trump’s attack on fake news as an attack on the body politic, the journalists who report on it, and on language itself.<sup>36</sup> Legal educators can use fake news—and Trump’s funhouse-mirror version of it—to explain the power of seizing an adversary’s argument or theory and using it against the adversary. Law professors can help students spot this legal aikido as a function of narrative and prepare them with ethical and powerful parrying strategies and countermoves.

### Conclusion

What can legal educators do with these narrative topoi? First, contextualize them. Provide history and invite interpretation of cultural and aesthetic factors that increase their comprehensibility and sharing. Highlight what is new, and consider technological and socio-political factors that are at work. Second, draw on students’ experiences of these topoi as cultural forms. Use narrative analysis to explore how the story unfolds, as one might guide students through a poem or a court opinion. Third, link that formal analysis to psychology and the phenomenology of reading. Why does this rhetoric work well? How are the stories encountered? Who is reading along? How do interactions among readers happen? Fourth, use these topoi to deepen understanding of various doctrines, and investigate the philosophical underpinnings that undergird and define them. Many substantive areas of law can be profitably illuminated: defamation; the First Amendment; election law; media law; evidence; criminal law; copyright law; privacy law and the Communications Decency Act; the right of publicity; torts and secondary liability; anti-SLAPP laws; choice of law and jurisdictional issues; and finally, the jurisprudence of an informational ecosystem that imparts order and fairness to democratic design.

These digital narrative topoi draw on both established communicative conventions rooted in literary and media history and the new speed, reach, and accessibility of digital technologies. The Internet is vast. Its capacity for quick, broad impact is new. But narratives that capitalize on human desire for coherence, intimacy, connection and authenticity are ancient. Narrative analysis is usually a task for humanistic scholars. But it rewards legal educators because language, rhetorical forms, and popular stories shape social relations and structures of power. The ways stories are told define and shape the events they describe. Insofar as law and politics are battles for the most compelling story, told to as many people as possible, teaching law students about the power of narrative topoi is fundamental for justice—and also fun.

34. Sonia K. Katyal, *Semiotic Disobedience*, 84 WASH. U. L. REV. 489, 493 (2006).

35. Kevin Roose, *How a CNN Investigation Set Off an Internet Meme War*, N.Y. TIMES (July 5, 2017), [https://www.nytimes.com/2017/07/05/business/how-a-cnn-investigation-set-off-an-internet-meme-war.html?\\_r=0](https://www.nytimes.com/2017/07/05/business/how-a-cnn-investigation-set-off-an-internet-meme-war.html?_r=0).

36. Daniel Victor, *Trump, Calling Journalists ‘Sick People,’ Puts Media on Edge*, N.Y. TIMES (Aug. 23, 2017), <https://www.nytimes.com/2017/08/23/business/media/trump-rally-media-attack.html>.