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Digital Literacy: Detecting Fake News in a Post-Truth Era

Carol A. Watson
University of Georgia School of Law Library, cwatson@uga.edu

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Detecting Fake News in a Post Truth Era

Carol A. Watson
Director, Alexander Campbell King Law Library
University of Georgia School of Law
Athens GA 30606
cwatson@uga.edu

Introduction

Hardly a day passes without someone making a reference to fake news, but what exactly is fake news? Why should lawyers care? What can and should we do about it?

Fake news is defined as deliberately false information spread via print, broadcast, or online social media. Aside from reporting errors, in general, fake news does not come from established news sources. It is written with the intent to mislead in order to gain financially or politically. It is factually incorrect and usually has sensational with headlines designed to grab attention. The shocking headlines and emotion-invoking text are deliberately composed to generate broad popular appeal and to encourage widespread sharing.

One of the problems with discussing fake news is that it appears in multiple forms. It is authored for a variety of motives by an assortment of diverse individuals. To further complicate the definition, the term fake news has been usurped and is sometimes improperly used by individuals to disagree with or choose not to recognize the facts of a news story.

There are many ways to categorize fake news stories, but the four main types are:

1. 100% false stories – These stories are completely and intentionally false. They are formulated to be disseminated widely and quickly.
2. Propaganda - Usually these stories have a partisan point of view that may include some real facts that serve to draw readers in and mislead them to form false conclusions. Propaganda often cherry picks facts in order to present a slanted point of view.
3. Satire – Satire, such as *The Colbert Report*, *Saturday Night Live*, or *The Onion* is not meant to be taken seriously. They are written as jokes but unfortunately they sometimes get mistaken as serious or real.
4. Hoaxes – Pranks such as Big Foot, the Loch Ness Monster, or crop circles are designed for humor, attention, or financial gains. It's often difficult to know the intention of a prankster, but trickery and mischief are among the defining characteristics of a prank.

For purposes of our discussion, we'll focus on the first category, entirely false stories. Common characteristics of these types of stories include sensationalism and deliberate deception. The stories are desired to stir emotions especially anger, surprise, and fear. Images or photographs accompanying this type of news may also be manipulated or photo shopped. Bona fide fake news is often designed to look like credible news stories. For example, instead of abcnews.com, a fake news article might use the web address abcnews.com.co. A reader who is scanning headlines quickly might not notice the subtle distinction.

Who Authors? Why?

You might wonder who authors these fake news stories and what is their motivation? The two primary motivations are generally financial gain or political influence. Website creators who convince visitors to "click thru" advertisements on the stories receive financial remuneration based upon the number of clicks they can convince readers to follow. In February 2017, *Wired* magazine published a profile story about a group of impoverished teenagers in Macedonia who established an elaborate cottage industry creating fake news articles and websites. They made substantial profits from their endeavors. In fact, the teens discovered that the more sensational their headlines and content, the higher profits they were able to reap.

The other motivation for authoring fake news is to influence public opinion. By now, we've all read the stories about whether Russian hackers are creating fake stories to influence voting in U.S. elections.

The History of Fake News

Finally, it's important to realize that fake news is not a new concept. P.S. the term "fake news" was not invented by President Trump. It has been in use for approximately 125 years now. Merriam Webster has traced the first use of the term to around the late 1890s. Prior to

the 1890s, the phenomenon was referred to as false news. There have been many instances of fake news used successfully throughout history.

One of the first prominent examples of fake news that is often discussed by historians is the use of mistruths in the Octavian and Marcus Antony rivalry. Octavian used fake news to successfully destroy Antony's political reputation. Instead of tweets, Octavian spread coins with derogatory slogans about Antony portraying him as an alcoholic and a puppet of Cleopatra. Octavian even brought a will of Antony's to the Senate and read it aloud. He proclaimed that Antony wanted to be buried in Egypt with the pharaohs. The fake will inflamed the passions of the senators who were anti-Egyptian at the time. The Senate agreed that Marc Antony was a traitor and they declared war on Cleopatra. Historians believe that this fake news campaign, coupled with Antony's loss in the battle of Actium, lead to his suicide.

One of the most significant enablers of fake news was the printing press. The invention of the printing press in 1440 was a major turning point in the history of fake news. As soon as the press was in wide use, pamphlets with falsehoods began appearing almost immediately. This trend continued for hundreds of years. History is littered with examples of fake news such as George Washington's tale of chopping down the cherry tree. The penny press which produced newspapers for a penny further contributed to the creation of sensational (and often false) headlines in order to sell newspapers. Newspapers were big business. It's no accident that at the turn of the century, the tallest buildings in New York City and San Francisco were owned by newspapers.

In the twentieth century, Adolph Ochs' purchase of the *New York Times* was a significant milestone in the development of journalistic ethics and standards. Although tabloids and penny presses continued to churn out attention-grabbing false stories, the vast majority of readers began seeking reliable, fact-based sources of news.

Fast forward to current times, the advent of social media created seriously new challenges for ensuring the integrity of information. As stories could be published by anyone and easily shared with a single click, fake news reached a fever pitch. The massive sea change probably peaked with the scandalous "pizzagate" story. When a social media reader became

convinced that Hillary Clinton was coordinating a child trafficking ring from a Washington D.C. pizzeria and showed up intending to provoke an armed confrontation, the U.S. society woke up. Readers, voters, and average citizens began asking, "How did this happen?" As reporters and academics began to study the issue, it was discovered that the top 20 fake news stories about the 2016 election received more engagement and were shared often than the top 20 stories from reliable, established media.

So where are we now? The Information Age now has a new name, the Post Truth Era. *Oxford Dictionary's* Word of the Year for 2016 was post truth. Post truth is defined as an adjective…in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief. Sharing unbiased information is no longer valued. Social media users primarily prefer to share news that displays allegiance to a cultural community or political ideology. As a result, it is critical to develop news literacy skills. Your digital literacy skills must now be honed to use critical thinking skills to judge the reliability and credibility of news reports, whether they come via print, television or the Internet.

How to Detect Fake News

- **Maintain a healthy skepticism.** Always be on guard when you are reading information from nontraditional sources, especially on social media. Remember the old adage, if it sounds too good to be true, it probably is.
  - o Gauge your emotion. If you feel irate, incredulous, or gleeful about an article, a red flag should go off in your brain.
  - o Be aware of your own confirmation biases.
- **Evaluate the author.** Who is the author? Do a quick search on the author. Is the author a real person? What authority does the author have? Is the author an expert in the topic?
  - o Is there a byline? Articles without bylines should raise your suspicion, especially if you are on a website that lacks an About Us page. The About Us page is often in the header or footer of the website.

- **Note the URL or web address.** What is the web address of the online publisher? Do you recognize the domain name?
  - Be sure there are no extraneous characters in the web address. Don't mistake Bloomberg.ma for Bloomberg.com (a real example).
  - What other types of articles have been posted at this web address?
  - Look for the term wordpress in a publisher's web address. Wordpress is a popular tool for bloggers and can alert you that the items is more akin to a blog post.
  - Use the Whois domain name checker, https://whois.icann.org/en to identify who owns a site.
- **Check the supporting sources.** Lack of evidence or named sources might indicate the story is false. Does the author cite legitimate sources such as experts, academic articles, or government reports?
  - Does the article include links? Follow them. Fake stories often link to more fake stories.
  - Does the information cited actually support the propositions of the article?
- **Verify the content.** When in doubt, check reputable fact-checking sites such as Snopes.com, PolitiFact, Washington Post Fact Checker, or Factcheck.org.
  - Are other news outlets reporting similar stories?
- **Seeing is not believing.** You cannot always trust what you see. It is simple to take a photo out of context or alter its content.
  - You can conduct a reverse image search in Google, images.google.com or TinEye, www.tineye.com, to locate other websites that include the image.
- **Look for visual cues.** Screaming headlines, all caps, multiple pop up ads, as well as grammar or spelling errors are all signs that the website you are visiting may not be credible.

Why Does It Matter?

There are many reasons the prevention of the spread of fake news is important. Society needs accurate information in order to make rational decisions, particularly about our government and political processes. The spread of fake news erodes the public's trust in trusted traditional, reliable sources and furthers the deep partisan divide we are currently experiencing.

More importantly, why does fake news matter to lawyers? Fake news on social media stymied the presidential campaign of Hillary Clinton. Now, businesses are wondering what they should do if they are targeted. If you (or your client) are mentioned in a fake news story, it can damage your credibility and business reputation. Pepsi CEO Indra Nooyi found this out the hard way when a misconstrued quote in a fake news stories riled up Trump supporters who advocated boycotting Pepsi products.

What should lawyers do?

First, do no harm. Check all sources carefully. Think before you click and share news articles, especially those that raise your suspicions. When in doubt, DON'T share.

Stay above the fray. Check your law firm website, social media accounts, and blog posts to make sure they do not contain suspicious content. Always provide attribution to the sources of your content. When possible, validate your assertions with links to reputable reports and other sources. Your goal is for your firm to establish and maintain a reputation as a reliable and credible source of information.

Monitor your firm's online reputation. Set up Google alerts or use more sophisticated monitoring software to track mentions of your name, your firm, and your clients. If you are the victim of a fake news scam on Facebook, be sure to report it. Click the … (three dots) next to the post, you'll have an option to report the post as fake news.

Familiarize yourself with the ABA's Legal Fact Checking service, LegalFactCheck.com - https://abalegalfactcheck.com/   In August 2017, the ABA rolled out its new website to "use case and statutory law and other legal precedents to help set the record straight by providing the real facts about the law." The aim of the site is to cover recent legal news and the law behind it.   Examples of questions that have been discussed include:

- On what grounds can a broadcast license be successfully challenged?
- What is the legality of owning automatic weapons?
- What are the limits on presidential executive orders?

These are just a few of the questions related to issues that have been in recent news that require legal analysis to answer.

Another tactic is to take the success of fake news to heart and use its appeal for good rather than evil. For example, emotional appeal can be more influential than facts. Include stories in your business' website that appeal to emotions that your clients value such as trust, public service, and honest. Emphasize the real-world impact of your work rather than providing dry facts and statistics. Make an effort to create marketing material that clients might wish to share such as pro bono or community service work that you are undertaking. Finally, be sure to create powerful and engaging headlines for your marketing. Remember, most readers just browse headlines for items of interest.

Suppose your client is the victim of fake news and asks if they can sue? Currently, there are no easy solutions. The primary cause of action is a defamation suit, but since most targets of fake news are public figures, the standards are high. "Actual malice" must be proven. Although defamation liability also extends to anyone who republishes or shares the information, as might be expected…the question is not can your client sue, but rather should you client sue. Locating the source of a fake news article can be downright impossible. Moreover, the likelihood that the defendant has any assets are even slimmer.

What should lawyers ultimately do? Unfortunately, legal actions will not prevent the spread of fake news. The best remedy is to use your sleuthing skills and apply the tactics

described above. When you identify fake news, point it out and back up your assertions. We can only purge this scourge if we insist upon honesty and integrity in our news sources.