

## THE MEDIA'S DEFINITION OF FAKE NEWS VS. DONALD TRUMP'S

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When PolitiFact fact-checks fake news, we are calling out fabricated content that intentionally masquerades as news coverage of actual events.

When President Donald Trump talks about fake news, he means something else entirely.

Instead of referring to fabricated content, Trump uses the term to describe news coverage that is unsympathetic to his administration and his performance, even when the news reports are accurate.

Trump is so taken with the phrase "fake news," that he's mentioned it at least 153 separate times between January and October, 2017, in interviews, on Twitter, and in speeches, according to a count compiled by PolitiFact.<sup>1</sup>

Recently, Trump even took credit for inventing the term. "Look, the media is fake," Trump said in an interview with conservative pundit and former Arkansas Governor Mike Huckabee.<sup>2</sup> "The media is—really, the word, I think one of the greatest of all terms I've come up with—is fake. I guess other people have used it perhaps over the years, but I've never noticed it."<sup>3</sup>

In ten years of fact-checking, we here at PolitiFact have not seen such a yawning chasm between the meaning of words.

PolitiFact has devoted many hours to knocking down fake news: accounts of events that never happened, from the frightening to the frivolous.

We've fact-checked whether NASA said the earth would be plunged into darkness for fifteen days in November. (Pants on Fire).<sup>4</sup> We've looked at whether HIV had been detected in

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<sup>1</sup> Angie Drobnic Holan, *The Media's Definition of Fake News vs. Donald Trump's*, POLITIFACT (Oct. 18, 2017, 2:11 PM), <http://www.politifact.com/truth-o-meter/article/2017/oct/18/deciding-whats-fake-medias-definition-fake-news-vs/>.

<sup>2</sup> Huckabee, *Gov. Mike Huckabee's Full Interview with President Trump | TBN*, YOUTUBE (Oct. 7, 2017), <https://www.youtube.com/watch?v=hVQPVGPAUtc&feature=youtu.be&t=8m48s>.

<sup>3</sup> *Id.*

<sup>4</sup> Joshua Gillin, *It's Fake! NASA Never Said the Earth Will Go Dark for 15 Days in November 2017*, POLITIFACT (June 14, 2017, 12:33 PM),

bananas sold at Wal-Mart. (Pants on Fire.)<sup>5</sup> And we looked at whether passers-by came to the aid of comedian Bill Murray when his car broke down in Rochester, N.H.—or Marion, Ohio; or Shakopee, Minn.; or many other cities. (All Pants on Fire.)<sup>6</sup>

We think it's worth diving into the differing definitions of fake news between the fact-checkers and the president. Our reporting found that it's a distinction that has solidified over the months of President Trump's tenure. And it has specific implications for language, for a free press, and for the First Amendment.

## I. THE FACT-CHECKERS AND FAKE NEWS

If you define fake news as fabricated content, then 2016 was the year fake news came into its own. False reports ran rampant on social media sites, such as Facebook and Twitter, and they landed at the top of search results on Google and others.<sup>7</sup> PolitiFact named fake news its Lie of the Year for 2016, citing fictitious Web posts that were the ultimate election-year clickbait, such as claims that Pope Francis endorsed Donald Trump, or that Hillary Clinton sold weapons to ISIS.<sup>8</sup> (Neither of those things is true.)

Since the election, fact-checkers and the public have learned more about fake news. Some people create fake news to make a quick buck off automated advertising in a simple cash-for-clicks formula.<sup>9</sup> Others use fake news for political mischief, such as liberal blogger Christopher Blair, who told PolitiFact he writes fake news to “mess with conservatives.”<sup>10</sup> (A typical

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<http://www.politifact.com/punditfact/statements/2017/jun/14/blog-posting/its-fake-nasa-never-said-earth-will-go-dark-15-day/>.

<sup>5</sup> Joshua Gillin, *Fake News Claims that Walmart Bananas Have HIV Virus are Fruitless*, POLITIFACT (Feb. 6, 2017, 4:24 PM),

<http://www.politifact.com/punditfact/statements/2017/feb/06/cnnews3com/fake-news-claims-walmart-bananas-have-hiv-virus-ar/>.

<sup>6</sup> Joshua Gillin, *No, a Celebrity's Car Didn't Break Down in Your Hometown*, POLITIFACT (Jan. 6, 2017, 2:30 PM),

<http://www.politifact.com/punditfact/statements/2017/jan/06/blog-posting/celebrity-praise-helpful-locals-are-fake-stories-c/>.

<sup>7</sup> Angie Holan, *2016 Lie of the Year: Fake News*, POLITIFACT, (Dec. 13, 2016, 5:30 PM), <http://www.politifact.com/truth-o-meter/article/2016/dec/13/2016-lie-year-fake-news/>.

<sup>8</sup> *Id.*

<sup>9</sup> Joshua Gillin, *The More Outrageous the Better: How Clickbait Ads Make Money for Fake News Sites*, POLITIFACT (Oct. 4, 2017, 11:34 AM),

<http://www.politifact.com/punditfact/article/2017/oct/04/more-outrageous-better-how-clickbait-ads-make-mone/>.

<sup>10</sup> Joshua Gillin, *If You're Fooled by Fake News, This Man Probably Wrote It*, POLITIFACT (May. 31, 2017, 5:00 PM),

<http://www.politifact.com/punditfact/article/2017/may/31/If-youre-fooled-by-fake-news-this-man-probably-wro/>.

report: pop star Lady Gaga was arrested for criticizing first lady Melania Trump. Pants on Fire.)<sup>11</sup>

Federal investigators, though, have been looking into whether people working on behalf of the Russian government have published or promoted fake news via U.S.-based social media as part of an effort to sow division and undermine democracy.<sup>12</sup>

We don't know much about the specifics of these investigations, and it may be that investigators are looking at actions on social media that include but are not limited to fake news, especially political advertising.

Without discussing details, the Republican and Democratic leaders of the Senate Intelligence Committee held a press conference recently to warn that Russia had sought to undermine U.S. elections in 2016 and would likely try again.<sup>13</sup>

"What I will confirm is that the Russian Intelligence Service is determined, clever, and I recommend that every campaign and every election official take this very seriously as we move into this November's election. And as we move into preparation for the 2018 election," said Senator Richard Burr (R-N.C.) on October 4th.<sup>14</sup>

Burr and his Democratic counterpart, Senator Mark Warner of Virginia, said they intended to have a public hearing in November with representatives of the major platforms—Google, Facebook, and Twitter.<sup>15</sup>

Meanwhile, Facebook has engaged with independent fact-checkers—including PolitiFact—since December 2016 to fact-check content that users flag as suspicious.<sup>16</sup>

Facebook published its own report in April noting that the term "fake news" has come to refer to a wide variety of factually incorrect content, from inaccurate news to opinion

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<sup>11</sup> John Kruzel, *No, Lady Gaga Was Not Arrested for Criticizing Melania Trump. That's Fake News*, POLITIFACT (Sep. 6, 2017, 3:20 PM)

<http://www.politifact.com/punditfact/statements/2017/sep/06/blog-posting/no-lady-gaga-was-not-arrested-criticizing-melania/>.

<sup>12</sup> Tom McCarthy, *How Russia used social media to divide Americans*, THE GUARDIAN (Oct. 14, 2017, 9:47 AM), <https://www.theguardian.com/us-news/2017/oct/14/russia-us-politics-social-media-facebook>.

<sup>13</sup> Richard Burr & Mark Warner, Senate Select Intelligence Committee, Press Conference on Status of Russia Probe (Oct. 4, 2017), *reprinted in* Vanessa Sauter, *Video and Transcript: Press Conference by Senators Richard Burr and Mark Warner of SSCI on the Russia Probe*, LAWFARE (Oct. 4, 2017), <https://www.lawfareblog.com/video-and-transcript-press-conference-senators-richard-burr-and-mark-warner-ssci-russia-probe>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Aaron Sharockman, *We Started Fact-Checking in Partnership with Facebook a Year Ago Today. Here's What We've Learned*, POLITIFACT (Dec. 15, 2017, 12:07 PM), <http://www.politifact.com/truth-o-meter/article/2017/dec/15/we-started-fact-checking-partnership-facebook-year/>.

pieces, parodies, hoaxes, rumors, and simple misstatements.<sup>17</sup> Facebook prefers the terms "false news" and "disinformation" for inaccurate content that is spread with intent to deceive.<sup>18</sup>

"In brief, we have had to expand our security focus from traditional abusive behavior, such as account hacking, malware, spam and financial scams, to include more subtle and insidious forms of misuse, including attempts to manipulate civic discourse and deceive people," the report concluded.<sup>19</sup>

## II. DONALD TRUMP AND FAKE NEWS

Between January and October 2017, President Trump invoked the phrase "fake news" on 153 separate occasions.<sup>20</sup> Virtually every instance has been in response to critical news coverage.<sup>21</sup>

Trump has used it when he felt he wasn't getting enough credit for positive actions, such as helping Puerto Rico recover from Hurricane Maria. "We have done a great job with the almost impossible situation in Puerto Rico. Outside of the Fake News or politically motivated ingrates," he said on Twitter.<sup>22</sup>

He's used the term after news channels simply reported what he said, such as his comments about white supremacists in Charlottesville, Virginia. "The only people giving a platform to these hate groups is the media itself, and the fake news," Trump said at a campaign-style rally in Phoenix.<sup>23</sup>

And he's used the term repeatedly when news organizations have covered basic facts about the government's own investigations into Russia's influence on the 2016 election. "It is the same Fake News Media that said there is 'no path to victory for Trump' that is now pushing the phony Russia story. A total scam!" Trump said on Twitter.<sup>24</sup>

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<sup>17</sup> Jen Weedon, William Nuland, & Alex Stamos, *Information Operations and Facebook*, FACEBOOK 2, 5 (Apr. 27, 2017), <https://fbnewsroomus.files.wordpress.com/2017/04/facebook-and-information-operations-v1.pdf>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 3.

<sup>20</sup> @PolitiFact, TWITTER (Oct. 19, 2017, 7:45 AM), <https://twitter.com/PolitiFact/status/921024391458230273>.

<sup>21</sup> Steve Coll, *Donald Trump's "Fake News" Tactics*, NEW YORKER (Dec. 11, 2017), <https://www.newyorker.com/magazine/2017/12/11/donald-trumps-fake-news-tactics>.

<sup>22</sup> Donald Trump (@realDonaldTrump), TWITTER (Oct. 7, 2017, 5:22 AM), <https://twitter.com/realDonaldTrump/status/914465475777695744>.

<sup>23</sup> *President Trump Rally in Pheonix, Arizona*, C-SPAN (Aug. 11, 2017), <https://www.c-span.org/video/?432748-1/president-trump-criticizes-dishonest-media-defends-charlottesville-remarks-rally-phoenix&start=3351>.

<sup>24</sup> Donald Trump (@realDonaldTrump), Twitter (Apr. 1, 2017, 6:02 AM), <https://twitter.com/realDonaldTrump/status/848158641056362496>.

Most often, PolitiFact found, his targets have been CNN (twenty-three mentions in 2017) and NBC (nineteen mentions), followed by the *New York Times* (twelve mentions) and the *Washington Post* (eight mentions).<sup>25</sup> We found only one news outlet that had been singled out for praise during his discussions of fake news: Fox News.

Trump is particularly quick to label coverage "fake news" when the reports have unnamed sources, and unnamed sources seem to make Trump the most irate.<sup>26</sup>

It's understandable that public figures get angry when they're accused of something but they don't know who the source is, said Aly Colón, the John S. and James L. Knight Professor of Media Ethics at Washington and Lee University.<sup>27</sup>

"If President Trump doesn't believe what is said, then he would believe it is fake, because it doesn't fit into the reality that he accepts," Colón said.<sup>28</sup>

When the media uses anonymous sources and Trump labels the stories as fake news, the public doesn't have much recourse for evaluating the evidence for themselves, Colón said.<sup>29</sup> That typically means they'll side with whomever they have the most sympathy with anyway.<sup>30</sup>

"What becomes most prevalent is people are inclined to believe whoever they came to the dance with," Colón said.<sup>31</sup> "Until something very obvious and visible contradicts that, they're not going to have a very strong basis for accepting things from people they don't trust."<sup>32</sup>

Andrew Seaman, ethics chair for the Society of Professional Journalists, agreed that the use of unnamed sources "allows for people—from the president to the public—to sometimes easily wave away the information."<sup>33</sup>

Nevertheless, that doesn't make the stories "fake."<sup>34</sup>

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<sup>25</sup> Holan, *supra* note 2.

<sup>26</sup> Jessica Estepa, *Trump Hates Anonymous Sources, Unless They're in Stories Favorable to Him*, USA TODAY (May 30, 2017, 12:01 PM), <https://www.usatoday.com/story/news/politics/onpolitics/2017/05/30/trump-hates-anonymous-sources-unless-theyre-stories-favorable-him/102309400/>.

<sup>27</sup> Interview with Aly Colón, John S. and James L. Knight Professor of Media Ethics, Wash. & Lee Univ. (Oct. 17, 2017).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Interview with Andrew Seaman, Ethics Chair, Soc'y of Prof'l Journalists (Oct. 17, 2017).

<sup>34</sup> Perry Bacon Jr., *When To Trust A Story That Uses Unnamed Sources*, FIVETHIRTYEIGHT (July 18, 2017), <https://fivethirtyeight.com/features/when-to-trust-a-story-that-uses-unnamed-sources/>.

"While I don't like the overuse of anonymous sources, I do have confidence in stories based on those sources from most large news organizations," Seaman said.<sup>35</sup> "My advice to the public is to always consider a news organization's history and track record. The *New York Times*, *Washington Post* and others all have scandals in their pasts, but the overwhelming weight of evidence shows their journalism to be reliable and trustworthy."<sup>36</sup>

At times, Trump has seemed to advocate outright censorship in response to negative coverage,<sup>37</sup> as when he reacted to an NBC report based on anonymous sources that said Trump had wanted an unprecedented and likely impractical increase to the U.S. nuclear arsenal.<sup>38</sup> According to the report, Trump backed off when his advisers told him it was a bad idea.<sup>39</sup> (It was this incident that allegedly spurred Secretary of State Rex Tillerson to call Trump a moron—again, a report based on unnamed sources.)<sup>40</sup>

The NBC report on the nuclear arsenal enraged Trump enough to threaten the network.<sup>41</sup>

"With all of the Fake News coming out of NBC and the Networks, at what point is it appropriate to challenge their License? Bad for country!" he tweeted the morning of October 11th.<sup>42</sup>

Later that day, when asked about the report on the nuclear arsenal at a press conference, Trump said, "No, I never discussed increasing it. I want it in perfect shape. That was just fake news by NBC, which gives a lot of fake news, lately . . . . It's frankly disgusting the way the press is able to write whatever they want to write. And people should look into it."<sup>43</sup>

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<sup>35</sup> Interview with Andrew Seaman, *supra* note 33.

<sup>36</sup> *Id.*

<sup>37</sup> Peter Baker & Cecilia King, *Trump Threatens NBC Over Nuclear Weapons Report*, N.Y. TIMES (Oct. 11, 2017), <https://www.nytimes.com/2017/10/11/us/politics/trump-nbc-fcc-broadcast-license.html>.

<sup>38</sup> Courtney Kube, et al., *Trump Wanted Tenfold Increase in Nuclear Arsenal, Surprising Military*, NBC NEWS (Oct. 11, 2017, 7:23 AM), <https://www.nbcnews.com/news/all/trump-wanted-dramatic-increase-nuclear-arsenal-meeting-military-leaders-n809701>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Donald Trump (@realDonaldTrump), TWITTER (Oct. 11, 2017, 6:55 AM), <https://twitter.com/realdonaldtrump/status/918112884630093825?lang=en>.

<sup>43</sup> Tim Hains, *Trump: NBC Prints "A Lot Of Fake News Lately"*, REAL CLEAR POLITICS (Oct. 11, 2017), [https://www.realclearpolitics.com/video/2017/10/11/trump\\_nbc\\_gives\\_a\\_lot\\_of\\_fake\\_news\\_lately.html](https://www.realclearpolitics.com/video/2017/10/11/trump_nbc_gives_a_lot_of_fake_news_lately.html).

### A. First Amendment Implications

Trump's comments on revoking licenses prompted one member of Trump's own party to question his commitment to the Constitution's First Amendment.

"Mr. President: Words spoken by the President of the United States matter," said Senator Ben Sasse (R-Neb.), in a prepared statement.<sup>44</sup> "Are you tonight recanting of the oath you took on January 20th to preserve, protect, and defend the First Amendment?"<sup>45</sup>

Other First Amendment advocates described Trump's use of the term "fake news" as Orwellian, because it uses words to mean the opposite of their literal definition, as in George Orwell's dystopian novel *1984*.<sup>46</sup>

"It is a characteristic of authoritarian leaders, whether Communist or Nazi, to appropriate ordinary words and declare them to mean the opposite," said Bruce Johnson, a Seattle-based media lawyer.<sup>47</sup> "Repressive regimes hold power by depriving their population of independent thinking and making the masses believe lies."<sup>48</sup>

Trump's threats are "simply unprecedented," said Sonja R. West, the Otis Brumby Distinguished Professor of First Amendment Law at the University of Georgia School of Law.<sup>49</sup>

"While other presidents have certainly had their disagreements with particular stories or journalists, they still showed a basic level respect to the press as an institution and acknowledged the important role it plays," West said.<sup>50</sup> "Having the president openly wage war on the press by trying to delegitimize it is extremely concerning."<sup>51</sup>

Finally, Trump's "fake news" attacks confuse ideas about what is accurate and what is newsworthy, said RonNell Andersen Jones, a professor of law at the University of Utah who studies the First Amendment and media law.<sup>52</sup>

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<sup>44</sup> Press Release, Ben Sasse, U.S. Senator for Neb., Sasse to Trump: Are You Recanting of Your Oath? (Oct. 12, 2017), <https://www.sasse.senate.gov/public/index.cfm/press-releases?ID=A90374B7-44A6-4BC8-82E2-CE01A9418D6E>.

<sup>45</sup> *Id.*

<sup>46</sup> Brian Klass, *Trump Owes Orwell for '1984.' Big Brother is His Role Model*, USA TODAY (Oct. 9, 2017, 4:26 PM), <https://www.usatoday.com/story/opinion/2017/10/09/donald-trump-owes-george-orwell-for-1984-memory-hole-brian-klaas-column/746119001/>.

<sup>47</sup> Interview with Bruce Johnson, Partner, Davis Wright Tremaine LLP (Oct. 13, 2017).

<sup>48</sup> *Id.*

<sup>49</sup> Interview with Sonya West, Distinguished Professor of Law, Univ. of Ga. Sch. of Law (Oct. 16, 2017).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Interview with RonNell Anderson Jones, Professor of Law, Univ. of Utah S.J. Quinney Coll. of Law (Oct. 14, 2017).

Trump's complaints tend to focus only on labeling the press as fake, rather than offering evidence to the contrary.<sup>53</sup> This flies in the face of norms that assume that political leaders will rebut incorrect news reports with better facts and evidence, she said.<sup>54</sup>

"If mistakes are made, the president of the United States is better positioned than anyone in the world to clarify and correct the errors—to counter misinformation with actual, correct information," Jones said.<sup>55</sup> "Cases from the Supreme Court about media freedom envision that this will happen, and they protect the press even when it makes mistakes because of the expectation that government officials will counter any false information with clear, truthful information. Striking out at the press with nothing more than a bald label—'fake news'—undercuts this central feature of our democracy and places the larger First Amendment framework at risk."<sup>56</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*