ARTICLE

#MeToo as Legal Storytelling

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I. Introduction

The #MeToo movement, begun on MySpace by activist Tarana Burke,[1] went viral on Twitter[2] on October 15, 2017 after actress Alyssa Milano tweeted a request that anyone who had been sexually assaulted or harassed write "me too" in response.[3] Within twenty-four hours, that message had received over 55,000 replies.[4] Within the next 45 days, it had reached other social media platforms and had been posted over 85 million times on Facebook.[5] These numbers did not slow down over the next year. According to the Pew Research Center, the hashtag had been used over 19 million times by September 30, 2018, with an average of 55,319 uses per day.[6]

The sheer volume of women[7] who stated that they were survivors of sexual assault or harassment, as well as the details they provided about who had committed the assaults (often a friend or acquaintance), took the

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1 *See infra* note 108 and accompanying text.

2 Although Twitter has now been rebranded as "X," this article will continue to refer to it as Twitter because that is how it was referred to when #MeToo went viral in 2017, and also because "X" is silly.

3 Mary Pflum, *A Year Ago, Alyssa Milano Started a Conversation About #MeToo. These Women Replied*, NBC News (Oct. 18, 2018, 5:59 PM), https://www.nbcnews.com/news/us-news/year-ago-alyssa-milano-started-conversation-about-metoo-these-women-n920246.

4 Nadja Sayej, *Alyssa Milano on the #MeToo Movement: 'We're Not Going to Stand for it Anymore,'* Guardian (Dec. 1, 2017, 7:00 AM), https://www.theguardian.com/culture/2017/dec/01/lyssa-milano-mee-too-sexual-harassment-abuse.

5 *Id.*

6 Monica Anderson & Skye Toor, *How Social Media Users Have Discussed Sexual Harassment Since #MeToo Went Viral*, Pew Rsch. Ctr. (Oct. 11, 2018), https://www.pewresearch.org/short-reads/2018/10/11/how-social-media-users-have-discussed-sexual-harassment-since-metoo-went-viral/.

7 Although sexual assault and sexual harassment are predominantly committed by men against women, there are many examples of men and gender nonconforming people suffering these abuses as well. The intent of this article is not to minimize their experiences by using the word "women" to describe #MeToo participants, but merely to create simpler prose.

media by storm and led to a new dialogue about what rape actually is, who is likely to commit it, and how often it happens.[8] As noted by legal scholars, "gendered violence has largely been represented and responded to as an individual problem for both perpetrators and victims. . . . [which] has worked along axes of gender, race, class, and sexual hierarchies to silence and normalize violence in a variety of contexts."[9]

#MeToo changed that dynamic. A 2022 Pew Research Center study showed that seventy percent of those surveyed believe that, post #MeToo, "people who commit sexual harassment or assault in the workplace are now more likely to be held responsible for their actions."[10] According to the same study, sixty percent of people surveyed believe that people who report sexual assault or harassment are now more likely to be believed. A majority of people who also indicated that they oppose #MeToo believed that these changes had taken place.[11] Similarly, a 2022 survey of rape victim advocates showed that several of the advocates surveyed also believe that #MeToo has increased societal awareness of how prevalent sexual assault is.[12] Several other surveys have shown that, for good or bad, #MeToo has forced men to reexamine their daily interactions with women because they were suddenly aware that sexual misconduct could include a lot more behavior than they had previously anticipated.[13]

Empirical work also shows that #MeToo has changed people's perceptions of sexual assault. A 2020 longitudinal study that asked participants to indicate their agreement with statements that said that women lie about being sexually assaulted showed that participants' views regarding false reporting of sexual assault changed during #MeToo.[14] The first measure took place in November 2016, the second in January 2017, the third in November 2017, and the fourth in May 2018.[15] There was a

8 *See* Nadia Khomami, *#MeToo: How a Hashtag Became a Rallying Cry Against Sexual Harassment*, Guardian (Oct. 20, 2017, 1:13 PM), https://www.theguardian.com/world/2017/oct/20/women-worldwide-use-hashtag-metoo-against-sexual-harassment.

9 Sarah J. Jackson et al., *Women Tweet on Violence: From #YesAllWomen to #MeToo*, 15 Ada: J. Gender, New Media, & Tech. 1, 1 (2019) (internal citations omitted).

10 Anna Brown, *More Than Twice as Many Americans Support Than Oppose the #MeToo Movement*, Pew Rsch. Ctr. (Sept. 29, 2022), https://www.pewresearch.org/social-trends/2022/09/29/more-than-twice-as-many-americans-support-than-oppose-the-metoo-movement/.

11 *Id.*

12 Shana L. Maier, *Rape Victim Advocates' Perceptions of the #MeToo Movement: Opportunities, Challenges, and Sustainability*, 38 J. Interpersonal Violence 336, 348 (2023).

13 *See* Elizabeth L. Jeglic, *#MeToo is Changing Attitudes and Behaviors*, Psych. Today (July 31, 2019), https://www.psychologytoday.com/us/blog/protecting-children-from-sexual-abuse/201907/metoo-is-changing-attitudes-and-behaviors; Tim Bower, *The #MeToo Backlash*, Harv. Bus. Rev., Sept.–Oct. 2019, at 19, 22; Julie Zeilinger, *The #MeToo Movement Is Affecting Men Too*, MTV (Jan. 29, 2018), https://www.mtv.com/news/vd2dkk/mtv-survey-men-metoo.

14 Hanna Szekers, Eric Shuman & Tamar Saguy, *Views of Sexual Assault Following #MeToo: The Role of Gender and Individual Differences*, 166 Personality & Individual Differences 1, 3 (2020).

15 *Id.* at 2.

significant decrease in agreement with the statement that women lie about sexual assault and this decrease persisted through 2018.[16] Another longitudinal study showed that, after #MeToo had begun, participants (college students) were more likely to label "their most upsetting unwanted sexual experience" as sexual assault, which shows that #MeToo had an impact on how they viewed their own past experiences.[17]

However, the information presented by #MeToo is not new. Feminist scholars and activists have been trying to convey the scope of the problem—as well as the common misperceptions about it—since at least the 1970s. The first victory in this area was the creation of rape shield laws, which limited sexual assault defendants' ability to use a woman's sexual history against them.[18] In 1980, the term "rape myth" was coined, which allowed for greater study into existing prevalent (and pernicious) "false beliefs about rape, rape victims, and rapists."[19] The cultural impact of rape myths cannot be overstated. As noted by feminist scholars, "'no other criminal offence . . . is as intimately related to broader social attitudes and evaluations of the victim's conduct as sexual assault.'"[20] Unfortunately for women, rape myth-fueled social attitudes work to "'trivialize . . . sexual assault or suggest that a sexual assault did not actually occur.'"[21]

Put simply, when the public hears the word "rape," they think of a deranged maniac hiding in an alley who grabs a woman off the street and physically forces himself upon her despite her loud and vigorous protests.[22] Any sexual assault that does not meet those characteristics—the woman knew her accuser, she did not scream, etc.—is therefore not a "real rape." And yet, these myths are, as implied by the term itself, patently untrue.

Into the late 1980s, researchers had conducted empirical research that definitively showed that, contrary to popular opinion, the vast majority

16 *Id.* at 3. These results were consistent across all demographics but were more pronounced for men who also scored low on the "social dominance orientation" scale. *Id.*

17 Anna E. Jaffe, Ian Cero & David DiLillo, *The #MeToo Movement and Perceptions of Sexual Assault: College Students' Recognition of Sexual Assault Experiences Over Time*, 11 Psych. Violence 209, 215 (2021).

18 *See* Michelle J. Anderson, *From Chastity Requirement to Sexuality License: Sexual Consent and a New Rape Shield Law*, 70 Geo. Wash. L. Rev. 51, 80 (2002). A lot can be said about the overall effectiveness of these laws, but that mantle will have to be taken up by another author.

19 Martha R. Burt, *Cultural Myths and Supports for Rape*, 38 J. Personality & Soc. Psych. 217, 217 (1980).

20 Joanne Conaghan & Yvette Russell, *Rape Myths, Law, and Feminist Research: 'Myths About Myths'?*, 22 Fem. Leg. Stud. 25, 26 (2014) (quoting Jennifer Temkin & Barbara Krahé, Sexual Assault and the Justice Gap: A Question of Attitude (2008)).

21 Holly Jeanine Boux, *Sexual Assault Jurisprudence: Rape Myth Usage in State Appellate Courts* 6, 24 (Apr. 19, 2016) (Ph.D. dissertation, Georgetown University), http://hdl.handle.net/10822/1040722 (quoting Renae Franiuk et al., *Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case,* 14 Violence Against Women 287–309, 288 (2008)).

22 Lynne Henderson, *Rape and Responsibility*, 11 L. & PHIL. 127, 132–33 (2002); Aviva Orenstein, *No Bad Men!: A Feminist Analysis of Character Evidence in Rape Trials*, 49 Hastings L.J. 663, 677–78 (1998).

of sexual assaults are committed by someone the woman knows.[23] These statistics were also reported in the popular media; in 1991, *Time* magazine ran a story discussing the same sobering reality.[24] Around the same time, studies conducted by nonprofits and government agencies were consistently showing that rape is extremely common: a 1989 Worldwatch Institute report stated that "the most common crime worldwide was violence against women"[25] and an FBI report estimated that by 1990, twelve women were raped every hour that year, an increase from the 1989 report that ten women were raped every hour.[26]

Another common rape myth is that women lie about rape, typically to punish a man who "scorned" them or to cover for their own sexual indiscretions.[27] As early as the 1970s, FBI statistics have shown that false claims of sexual assault are just as common as other felonies and, considering how skeptical police are of rape accusations, the official statistics probably overestimate how often women lie about being sexually assaulted.[28] This information has also been publicly reported for decades.[29]

All of this is to say that the information contained in the #MeToo stories has been public knowledge for decades. Which begs the question, what made #MeToo change the public's perception where data-driven research and government reports could not? The answer may lie in #MeToo's format: personal narratives, which made use of rhetorical and storytelling techniques. As this article shows, the stories that make up the #MeToo movement have been effective in changing people's perceptions because of the inherent credibility of these personal narratives and the way these shorter "microstories" combined into a larger narrative that was able to combat the existing public misperceptions about rape culture.

This article examines the persuasiveness of #MeToo through the two lenses of traditional rhetoric and storytelling techniques. More specifically, this article examines how these two lenses explain #MeToo's

23 Kimberly A. Lonsway, *Preventing Acquaintance Rape Through Education: What Do We Know?*, 20 Psych. Women Q. 229, 230 (1996).

24 Nancy Gibbs, *When Is It RAPE?*, Time, June 3, 1991, at 48.

25 Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths: In Review*, 18 Psych. Women Q. 133, 133 (1994).

26 Staff of S. Comm. on the Judiciary, 102d Cong., Report on Violence Against Women: the Increase of Rape in America 1990, at 2 (Comm. Print 1991).

27 Orenstein, *supra* note 22, at 680.

28 Lonsway & Fitzgerald, *supra* note 25, at 135; Lindsay Orchowski et al., *False Reporting of Sexual Victimization: Prevalence, Definitions, and Public Perceptions*, Handbook of Interpersonal Violence and Abuse Across the Lifespan: A project of the National Partnership to End Interpersonal Violence Across the Lifespan (NPEIV) 2–3 (2021).

29 Polly Poskin, *A Brief History of the Anti-Rape Movement*, Resource Sharing Project, https://resourcesharingproject.org/ resources/a-brief-history-of-the-anti-rape-movement/ (last visited Mar. 8, 2024); Leora Tanenbaum, *Women Don't 'Cry Rape': Why it's so Unlikely any Woman Would Lie About Being Raped*, U.S. News (Jan. 10, 2018, 7:00 A.M.), https://www.usnews.com/opinion/civil-wars/articles/2018-01-10/women-dont-lie-about-being-raped.

persuasiveness, with a particular emphasis on #MeToo's digital format and its implication for legal communication.

II. Traditional rhetoric

Rhetoric is broadly defined as "the function of adjusting ideas to people and people to ideas."[30] Classical rhetoric goes back to Aristotle who conceptualized it in terms of "three modes of proof": ethos, pathos, and logos.[31] When these general concepts are applied to a specific situation, Aristotle also incorporates the concept of kairos.[32] Combined, these four rhetorical concepts show how words, whether spoken or written, can persuade.

A. Classical definitions

1. Ethos

Under classical rhetoric, ethos is defined as the "charisma and credibility of the speaker."[33] Credibility is the perceived believability of the speaker and is established through the speaker's expertise and trustworthiness.[34] Some scholars have further broken down the concept of ethos into two categories: situated ethos, which relies more on the speaker's existing reputation, and invented ethos, which is the credibility the speaker "actively constructs" with their speech.[35] In the invented or "constructionist" model of ethos, the speaker's appearance, demeanor and inflections are also part of a speaker's effort to gain the audience's trust. [36]

2. Pathos

Pathos focuses on emotions by appealing to the "passions or the will of the audience"[37] and "putting the audience in the appropriate mood, by

30 John Rodden, *How Do Stories Convince Us? Notes Towards a Rhetoric of Narrative*, 35 Coll. Literature 148, 154 (2008) (internal quotation marks and citation omitted).

31 Krista C. McCormack, *Ethos, Pathos, and Logos: The Benefits of Aristotelian Rhetoric in the Courtroom*, 7 Wash. U. Juris. Rev. 131, 132 (2014). As discussed further below, some scholars also include the concepts of kairos (exigence) and mythos (storytelling) in this list.

32 James L. Kinneavy & Catherine R. Eskin, *Kairos in Aristotle's Rhetoric*, 17 Written Comm. 432, 434–35 (2000).

33 Ülkü D. Demirdöğen, *The Roots of Research in (Political) Persuasion: Ethos, Pathos, Logos and the Yale Studies of Persuasive Communications*, 3 Int'l J. Soc. Inquiry 189, 191 (2010).

34 *Id.* at 194.

35 Julie Nelson Christoph, *"Let Yourself Shine": Looking at and Through Students' Invention of Ethos*, 25 J. Teaching Writing 177, 180 (2009).

36 James S. Baumlin & Craig A. Meyer, *Positioning Ethos in/for the Twenty-First Century: An Introduction to Histories of Ethos*, 7 Human. 1, 11 (2018).

37 Demirdöğen, *supra* note 33, at 192.

playing on its feelings."[38] To effectively use pathos, a speaker must accurately "assess the emotional state of the audience."[39] Doing so requires that the speaker be aware of the values of the community so that the speaker can use those values to effectively persuade through emotion.[40]

According to Aristotle, an audience's emotional state can be altered by looking at three things: what condition can trigger the desired emotion (e.g., an event or quality of the audience members that the speaker can focus on), the persons about whom the audience can feel the desired emotion, and the motive for the emotion that connects the first two parts.[41] For example, a speaker can provoke anger in an audience who has recently lived through unseasonably bad weather and direct that anger at a local politician by pointing out that that politician recently blocked legislation that would address climate change.

By changing the audience's mood, according to Aristotle, the speaker can more easily induce the audience to agree with the speaker's arguments.[42] Emotions change the way people see the world in general so that, "[d]epending on how an audience feels, a certain action may appear as a threat or as behavior that should be pitied, or as some other challenge."[43] By understanding this emotional impact, a speaker can use it to their advantage. For example, a happy audience will be more likely to agree with a speaker that an upcoming event or situation will have a positive impact.

3. Logos

Logos is the argument being advanced using "appeals to the intellect or reason."[44] In contrast to pathos, logos focuses on the rational side of the audience. However, logos does not simply mean using data and facts; it instead focuses on "[w]ord choices, logic choices, and readable sentence structures."[45] Although classical rhetoric emphasizes formal logical proofs such as syllogisms, logos can encompass many different styles of word choice, including narrative.[46]

38 Martine Courant Rife, *Ethos, Pathos, Logos, Kairos: Using a Rhetorical Heuristic to Mediate Digital-Survey Recruitment Strategies*, 53 IEEE Transactions on Pro. Commc'n. 260, 261 (2010).

39 Demirdöğen, *supra* note 33, at 192.

40 Rife, *supra* note 38, at 261.

41 Antoine C. Braet, *Ethos, Pathos and Logos in Aristotle's Rhetoric: A Re-examination*, 6 Argumentation 307, 314 (1992).

42 Barbara Emanuel et al., *Rhetoric of Interaction: Analysis of Pathos*, *in* Design, User Experience, and Usability: Design Discourse: 4th International Conference, DUXU 2015 418–19 (2015) (conference paper offered as part of HCI International 2015, Los Angeles, CA, USA, August 2–7, 2015).

43 James L. Kastely, *Pathos: Rhetoric and Emotion*, *in* A Companion to Rhetoric and Rhetorical Criticism 221, 225 (2004).

44 Demirdöğen, *supra* note 33, at 192.

45 Rife, *supra* note 38, at 261.

4. Kairos

In simple terms, kairos can be defined as "saying the right thing at the right time."[47] Kairos focuses on the context of the speech, specifically the "rhetorical importance of time, place, speaker, and audience, the proper and knowledgeable analysis of these factors, and the faculty of using the proper means in a particular context to arrive at belief."[48] Kairos has three components: opportune timing, the right situation for the speech, and the appropriate speech for that time and situation.[49]

In contrast to chronos, which "expresses the fundamental conception of time as measure," kairos "points to a *qualitative* character of time, to the special position an event or action occupies in a series, to a season when something appropriately happens that cannot happen at 'any' time, but only at 'that time.'"[50] Accordingly, with regard to timing, kairos is all about seizing the moment and finding the right time to act.[51] Similarly, it has been framed as a speaker identifying a critical moment where the speaker feels they "must finally act."[52] Accordingly, it is the "moment that directs the orator to talk."[53]

Instead of kairos, some scholars discuss the concept of exigence, or a situation that "functions as the organizing principle: it specifies the audience to be addressed and the change to be effected."[54] Similarly, the concept of the "rhetorical situation" is concerned with the external circumstances that cause the speaker to speak.[55] According to other scholars, kairos incorporates these concepts but is broad enough to also include both the speaker's perception of a situation as providing an opportunity to speak and "the roles of changeability, indeterminacy, and uncertainty that form the precondition for rhetorical communication" in general.[56] To these scholars, the rhetorical situation emphasizes exigencies

46 Colin Starger, *The DNA of an Argument: A Case Study in Legal Logos*, 99 J. Crim. L. & Criminology 1045, 1055 (2008–2009).

47 Michael Harker, *The Ethics of Argument: Rereading Kairos and Making Sense in a Timely Fashion*, 59 Coll. Composition & Commc'n. 77, 78 (2007).

48 *Id.*

49 Linda L. Berger, *Creating Kairos at the Supreme Court: Shelby County, Citizens United, Hobby Lobby, and the Judicial Construction of Right Moments*, 16 J. App. Prac. & Process 147, 157 (2015).

50 John E. Smith, *Time, Times, and the 'Right Time';* Chronos *and* Kairos, 53 Monist 1, 1 (1969).

51 Jens E. Kjeldsen, *Reconceptualizing Kairos*, *in* Paradeigmata: Studies in Honour of Øivind Andersen 249, 250 (2014).

52 Harker, *supra* note 47, at 84.

53 Kjeldsen, *supra* note 51, at 252.

54 Lloyd F. Bitzer, *The Rhetorical Situation*, 1 Phil. & rhetoric 1, 7 (1968).

55 Kjeldsen, *supra* note 51, at 252.

56 *Id.* at 251.

and the constraints it imposes on speakers to speak in particular rhetorical spaces, whereas kairos sees these rhetorical spaces as opportunities.[57]

In other words, kairos "is the very source of rhetoric's power to adapt to circumstances."[58] A speaker using kairos will look at whether "the circumstances, and the intellectual ideological climate are right."[59] "The nuanced sense of timeliness afforded by the concept of kairos helps make an argument 'more sensible, more rightful, and ultimately more persuasive.'"[60] As noted by Linda Berger, kairos is also related to the concept of metonymy where seizing the right moment involves speech that "evokes a larger context, picture, or story."[61] It is not just the literal time the speech happens but the larger context, or zeitgeist, that is happening at the moment the speaker chooses to speak.

In addition, kairos is not just seeing a moment (both temporal and situational) and choosing that time to speak, but using the right communication to properly seize that moment.[62] Kairos "delimits choices and sets the boundaries of action by supplying the circumstantial (although often assumed universal) criteria or 'codes'—conventions, values, ethics, customs—that guide and confirm decisions and actions."[63] It is more than finding the right time; the speaker must also take the "right measure" when acting, "what is fitting or appropriate to this particular time and space."[64] Kairos is therefore particularly grounded in context and anticipates that a speaker will both influence and be influenced by the situation around them.[65]

Accordingly, as with the other Aristotelian proofs, kairos focuses on the relationship between the speaker and their audience, requiring that the speaker chooses the right time and place as well as "the delivery the audience expects at that time and place."[66] In other words, kairos "draws attention to the connection between occasion and audience,"[67]

57 *Id.*

58 Cynthia Miecznikowski Sheard, *Kairos and Kenneth Burke's Psychology of Policial and Social Communication*, 55 Coll. Eng. 291, 293 (1993).

59 Harker, *supra* note 47, at 81 (internal quotation omitted).

60 Berger, *supra* note 49, at 154.

61 *Id.* at 155.

62 *Id.* at 152 (citing John Poutakos, *Toward a Sophistic Definition of Rhetoric*, *in* Contemporary Rhetorical Theory: A Reader 29 (John Louis Lucaites et al. eds., 1989)).

63 Sheard, *supra* note 58, at 292.

64 Berger, *supra* note 49, at 154.

65 *See* Debra Hawhee, *Kairotic Encounters*, *in* Perspectives on Rhetorical Invention (Janet M. Atwill & Janice M. Lauer eds., 2002).

66 Nicole Basaraba et al., *New Media Ecology and Theoretical Foundations for Nonfiction Digital Narrative Creative Practice*, 29 Narrative 374, 383 (2021).

67 *Id.* at 384.

and it requires that the audience be receptive to the message.[68] Whether something is timely and appropriate is entirely dependent on the audience and requires that the speaker have a profound sense of both timing and empathy.

B. Rhetoric and legal communication

Traditional rhetoric is easily applied to a legal context. Indeed, Ancient Roman treatises, which borrowed heavily from Aristotle, originally "were written for inexperienced advocates or for anyone who might sometime argue a case in court."[69] These treatises, which were early practice manuals for lawyers and the educated public generally, consisted of analyses of speeches made in famous court cases. They also explicitly used the three Aristotelian proofs of ethos, pathos, and logos.[70]

Ethos certainly applies to legal communication. In the legal world, credibility is important for witnesses, but likeability is also important for attorneys.[71] In trial, for example, it behooves an attorney to attempt to create a sympathetic bond between the jury and their client but also between themselves and the jury, which can be done not only with the attorney's credentials but by choosing language that is familiar to the jury.[72]

Historically, pathos was analyzed in the legal context in terms of arousing the sympathy of the judge towards one's client.[73] In more modern legal scholarship, pathos is often undervalued in favor of logos's objective presentations of the law and facts with an emphasis on the rationality and objectivity of judges and juries.[74] However, some scholars have noted that pathos is important to help the decisionmaker understand the client's perspective and the stakes of the litigation for the client.[75] When dealing with policy and broader concepts of justice, an appeal to emotion may be advisable and, indeed, inevitable.[76]

Moreover, emotion, some have argued, combines with logic to allow the audience to be able to analogize and see the connections between prior cases and the case at hand.[77] Ethos, logos and pathos therefore work

68 Harker, *supra* note 47, at 82.

69 Michael Frost, *Ethos, Pathos and Legal Audience*, 99 Dick. L. Rev. 85, 86 (1994).

70 *Id.*

71 McCormack, *supra* note 31, at 137–39.

72 *Id.* at 138–39.

73 Braet, *supra* note 41, at 314.

74 McCormack, *supra* note 31, at 134–35.

75 *Id.* at 140.

76 *Id.* at 152.

77 *Id.* at 140.

together to create "a more comprehensive form of argument in which the emotions and tendency of the judge and jury to trust what an advocate is saying are considered."[78] Finally, kairos is also relevant to legal communication because it incorporates the context-heavy concept of equity into legal proceedings.[79] Court cases, in contrast to legislation, are fact specific and often bring forth situations that lawmakers did not anticipate. In these cases, kairos allows for creativity and sensitivity so that more just solutions can be crafted.[80]

C. Rhetoric and digital communication

With regard to digital communications, classical rhetoric techniques still apply but the unique features of online communication change the importance of certain aspects of each of the rhetorical proofs. One of the most important features of digital or social media communication is the speed and accessibility of speech on those networks:

> Hashtags, consisting of the "#" symbol followed by a text phrase, function as linked conversation anchors on Twitter, enabling users from across different networks to participate in a conversation around a particular topic by tweeting using the hashtag. Notably, public tweets from individual users containing a hashtagged phrase can be easily aggregated and retweeted, circulating messages to people outside of the original tweeter's personal network and allowing for virality.[81]

These features create new ways for ethos, pathos, logos, and kairos to be expressed and combine into new rhetorical techniques.

"*Ethos* in a digital context is established or broken through the source (e.g., expertise, skills, motives)."[82] However, some scholars have noted that the uniquely discursive nature of social media communities may impact ethos because digital communities can be quite insular with their own vernacular and inside references.[83] These communities are also highly participatory, which means that statements made online are likely to be actively discussed, which may alter the original speech's meaning.[84] In such

78 *Id.* at 135.

79 Kinneavy & Eskin, *supra* note 32, at 436.

80 *Id.*

81 S. J. Jackson & S. Banaszczyk, *Digital Standpoints: Debating Gendered Violence and Racial Exclusions in the Feminist Counterpublic*, 40 J. Commc'n. Inquiry, 391, 395 (2016) (internal citations omitted).

82 Basaraba et al., *supra* note 66, at 381.

83 Michael Middleton et al., Participatory Critical Rhetoric: Theoretical and Methodological Foundations for Studying Rhetoric in Situ 13 (2015).

84 Basaraba et al., *supra* note 66, at 381.

situations, the credibility of the original speaker may change over time or even become irrelevant as their words are taken over and transformed by the digital community. In fact, a study has shown that comments on social media stories may be more persuasive than the stories themselves, and even an anonymous comment containing false information can change the reader's perception of the original post.[85]

The typically short and quick messages sent out on social media also impact the effectiveness of pathos. For example, speakers using digital technologies may break up their messages so that each part uses the type of digital communication that will have the most emotional impact.[86]

Logos is also affected by the digital medium because digital communication typically does not follow the traditional model of one-way communication from storyteller to audience. Instead,

> [t]he rhetoric around a narrative can completely change as a result of participatory culture and the multiple perspectives and opinions available in digital media. What is communicated in the paratext can change the rhetorical impact of the original narrative source for better or for worse and, thus, the public has influence in determining the *logos*.[87]

Accordingly, original narratives may be "remixed" by the author or the public into new narratives. The logos will, therefore, evolve as new perspectives are added. For example, a woman posted about how her eyeliner remained intact even after she was in a car accident, which quickly took over the narrative of any prior social media marketing of that product.[88]

Finally, kairos is a large part of digital and social media communication. Algorithms drive content to audiences based on a wide variety of factors such as the popularity of a post or hashtag, or the social network connections of the speaker and audience members.[89] Consequently, the popularity of a social media post is highly dependent on kairos conditions such as "how appropriately the piece was timed for the specific platform,

85 Sarah Freeman, *Social Media Comments Can Impact Perceptions*, UGA Today (Feb. 26, 2020), https://news.uga.edu/social-media-comments-impact-perceptions/ #:~:text=New%20research%20from%20the%20University,Communication%20and%20the%20study's%20author.

86 Basaraba et al., *supra* note 66, at 382.

87 *Id.* at 383.

88 Daniel Boan, *A Woman Said Her $20 Eyeliner Still Looked Flawless After a Car Crash — and People Can't Stop Talking About Her Review*, Bus. Insider (Apr. 25, 2018, 3:04 PM EDT), https://www.businessinsider.com/woman-review-kat-von-d-tattoo-liner-car-accident-viral-2018-4.

89 John R. Gallagher, *Machine Time: Unifying Chronos and Kairos in an Era of Ubiquitous Technologies*, 39 Rhetoric Rev. 522, 529 (2020).

who ended up seeing it when it was posted, etc."[90] For example, the most viral hashtags are typically made in response to a current event, sometimes one that is quite local and not reported widely in the media. #RIPHarambe quickly comes to mind.[91]

These four rhetorical proofs—ethos, pathos, logos, and kairos—often work together to persuade an audience even in a digital context. And, as seen below, #MeToo stories, although brief and often anonymous, made use of all of these proofs.

D. Rhetoric and #MeToo

#MeToo is a social media movement that typifies the interplay between traditional rhetoric and digital communication, though it also has some unique traits. With regard to #MeToo posts, many of the indicators of situated ethos are missing. Most Twitter users do not display their real names or identities in their accounts so the speaker's existing reputation or credibility is difficult to ascertain. Moreover, the audience also is deprived of some of the indicators of invented ethos because the speech is done online with no images or video of the speaker, making it impossible for the audience to judge body language or be swayed by the speaker's physical or vocal attractiveness.[92] Instead, it is the poster's words alone that must persuade.

However, other indicators of trustworthiness may still be present. As noted by one scholar:

> In the case of first-person testimonials like #MeToo, where individuals are recounting an aspect of their own lives, the question of competence usually takes a back seat to the question of sincerity. That is, the issue is not typically "how did you come to know that?" but rather, "why should we believe you?" [93]

When it comes to stories of sexual assault and harassment, women are accustomed to not being believed. Indeed, rape is an extremely underreported crime because women do not think that the police will believe

90 Sara West & Adam Pope, *Corporate Kairos and the Impossibility of the Anonymous Ephemeral Messaging Dream*, 6 Present Tense: J. Rhetoric in Soc'y 1, 1 (2018), http://www.presenttensejournal.org/wp-content/uploads/2018/06/West_Pope.pdf.

91 Sam Judah, *How a Dead Gorilla Became the Meme of 2016*, BBC (Jan. 1, 2017), https://www.bbc.com/news/blogs-trending-38383126. Harambe was a gorilla at the Cincinnati Zoo who was killed by handlers when a young boy fell into his enclosure. The entire incident was captured on video and posted on YouTube where it led to viral memes and even public vigils.

92 The availability of anonymous posting has been linked to greater participation but also to greater incidence of harassment, threats, and other offensive speech. Maria Konnikova, *The Psychology of Online Comments*, New Yorker (Oct. 23, 2013), https://www.newyorker.com/tech/annals-of-technology/the-psychology-of-online-comments.

93 Karyn L. Freedman, *The Epistemic Significance of #MeToo*, 6 Feminist Phil. Q. 1, 16–17 (2020).

them.[94] Studies have shown that they are, unfortunately, correct. Sexual assaults are under-investigated by police,[95] and surveys of police officers have revealed that police officers typically estimate that 33 to 53 percent of all rape complaints they receive are false,[96] even though the actual false reporting rate is between 2 and 10 percent.[97]

But something different happened when women began telling their stories publicly using the #MeToo hashtag: they were believed and supported. Ethos may explain how these first-person testimonial stories contained an inherent trustworthiness, particularly when combined with the related concept of "mythos." Mythos has been described as "a mode of 'narrative ethos'" where the personal story of the speaker contributes "to the self-expressive aim of ethical/ethotic discourse."[98] According to mythos, first-person stories are a form of self-expression that are necessarily intertwined with the speaker's sense of identity as the speaker relays something that happened to them and their response to it.[99] Such personal stories make the speaker appear vulnerable and relatable, thereby increasing the speaker's credibility with the audience.

Specific #MeToo posts show that, though they may be scant on details, they are still obviously meaningful to the person telling them. For example, one post states: "The #MeToo movement has opened some wounds and allowed me to reflect. I was sexually assaulted on the night of my senior prom, by my date. I am not ashamed to tell my story, because I know I am not alone."[100] In addition to personal details, this

94 *See* Jeffrey S. Jones et al., *Why Women Don't Report Sexual Assault to the Police: The Influence of Psychosocial Variables and Traumatic Injury*, 36 J. Emergency Med. 417, 420 (2009); Denise-Marie Ordway, *Why Many Sexual Assault Survivors May Not Come Forward for Years*, Journalist's Resource (Oct. 5, 2018), https://journalistsresource.org/health/sexual-assault-report-why-research/ [https://perma.cc/7KAT-J4F3].

95 Moira Donegan, *'Who will protect you from rape without police?' Here's my answer to that question*, Guardian (June 17, 2020, 8:50 ET), https://www.theguardian.com/commentisfree/2020/jun/17/abolish-police-sexual-assault-violence. https://www.theguardian.com/commentisfree/2020/jun/17/abolish-police-sexual-assault-violence.

96 Rachel M. Venema, *Police Officers' Rape Myth Acceptance: Examining the Role of Officer Characteristics, Estimates of False Reporting, and Social Desirability Bias*, 33 Violence & Victims 176, 187 (2018); Lisa R. Avalos, *Policing Rape Complainants: When Reporting Rape Becomes a Crime*, 20 J. Gender Race & Just. 459, 467 (2017); Lesley McMilan, *Police Officers' Perceptions of False Allegations of Rape*, 27 J. Gender Stud. 9, 11–12 (2018). Both the McMilan and Avalos studies included officers who indicated that as high as 90 percent of women falsely report. McMilan, *supra*, at 11–12; Avalos, *supra*, at 497.

97 Kimberly A. Lonsway, *Trying to Move the Elephant in the Living Room: Responding to the Challenge of False Rape Reports*, 16 Violence Against Women 1356, 1358, 1366 (2010); Avalos, *supra* note 96, at 468. The police are more likely to disbelieve a claim of sexual assault if the victim knew (or was in a relationship with) her assailant, was intoxicated, or delayed reporting, even though research shows that these kinds of sexual assault are the most common. Kimberly A. Lonsway et al., *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-stranger Sexual Assault*, 16 Violence Against Women 1318, 1321–22 (2010).

98 Baumlin & Meyer, *supra* note 36, at 15–16.

99 *Id.* at 16.

100 Rachel AO (@iamrachelao), Twitter (Nov. 19, 2017, 7:23 PM), https://twitter.com/iamrachelao/status/932403898329042945?s=20.

post emphasizes the author's feelings about what happened to them in a very vulnerable way. Using phrases such as "opened some wounds," "not ashamed," and "I am not alone," the reader cannot help but feel sympathy.

Moreover, the credibility of #MeToo posts is manifest in how the public responded to them. Although there are plenty of people who have accused #MeToo of going "too far,"[101] and a few high-profile defamation cases where powerful men have alleged that the accusations against them are false,[102] no one has argued that #MeToo stories are generally false or not to be believed. These stories simply read as true, which, as discussed more fully below, is likely due in part to the inherent believability of all stories and particularly first-person narratives.

#MeToo's digital format has also had an impact on its credibility. Although each participant's story has not been altered by the digital community, they are often commented on, either with words of support or similar stories. Commenters will often praise the storyteller for their bravery: "Thank you for sharing your story. I passed it on to raise awareness. I agree, you are very brave for putting yourself out there like that and I admire you so much for it. I hope I can be so brave! #MeToo."[103] Other comments showed hope that the movement itself would change the status quo: "#HappyNewYear friends, #RESIST-ers and beloveds seeking to change the world. Dear #SusanBAnthony, #MeToo is a thing now, thanks to courageous trailblazers like you. But there is more work to be done. 2019 is a new day. #TimesUp 2018!"[104]

The hashtag itself makes it easy to search for similar stories and the sheer volume of #MeToo posts undoubtedly adds to the credibility of each story; it is hard to disbelieve one #MeToo post when there are millions just like it.

Further, although #MeToo posts typically do not contain logical appeals or data, logos is still a part of #MeToo. Alyssa Milano's original Tweet asking others to join the chorus of "me too," used the interactive

101 Tovia Smith, *On #MeToo, Americans More Divided By Party Than Gender*, NPR (Oct. 31, 2018, 5:00 AM), https://www.npr.org/2018/10/31/662178315/on-metoo-americans-more-divided-by-party-than-gender.

102 *E.g.*, Elahe Izadi & Sarah Ellison, *Why Johnny Depp Lost His Libel Case in the U.K. but Won in the U.S.*, Wash. Post (June 1, 2022), https://www.washingtonpost.com/media/2022/06/01/johnny-depp-libel-law-uk-us/; Doha Madani & Diana Dasrath, *Marilyn Manson Files Defamation Lawsuit Against Evan Rachel Wood over Rape and Abuse Allegations*, NBC News (Mar. 3, 2022, 11:25 AM), https://www.nbcnews.com/pop-culture/pop-culture-news/marilyn-manson-files-defamation-lawsuit-evan-rachel-wood-rape-abuse-al-rcna18436; Madison Pauly, *She Said, He Sued*, Mother Jones, Mar.–Apr. 2020, at 28; Ashley Cullins, *Brett Ratner Defamation Settlement Signals End of First Major Time's Up Legal Battle*, Hollywood Rep. (Oct. 2, 2018, 1:50 PM), https://www.hollywoodreporter.com/business/business-news/brett-ratner-defamation-settlement-signals-end-first-major-times-up-legal-battle-1148735/.

103 April Hardy (@aprilhardy01), Twitter (May 1, 2018, 1:26 AM), https://x.com/aprilhardy01/status/991186965474267137?s=20.

104 Christine Beswick (@bychristinebswk), Twitter (Dec. 31, 2018, 6:19 PM), https://x.com/bychristinebswk/status/1079879798565027840?s=20.

power of digital communication by combining a vast array of responses to create a powerfully cohesive impression of how vast the problem is. The reach of #MeToo cannot be overstated. Within one year, there were over 19 million tweets with that hashtag in 85 countries.[105] The movement also spilled over into Facebook where "about 4.7 million users shared 12 million posts in fewer than 24 hours."[106] Though certainly only anecdotal evidence, the number of posts do provide data, which some scholars have studied empirically.[107]

Finally, the viral nature of #MeToo is the product of kairos and relies on several prior hashtag movements and real-life events. #MeToo began as a social media movement on MySpace in 2006 as a result of Tarana Burke's counselling of a girl who was a victim of sexual assault.[108] Years later, several other hashtag movements arose, each of them responding to a single event or trend. In 2013, four years before the Harvey Weinstein scandal was made public, social media erupted with satirical memes, comics and online commentary regarding the habit of men insisting that "not all men" are bad actors.[109] In May of 2014, the satire had transformed into the #YesAllWomen hashtag on Twitter, which was used to both mock the "not all men" argument "to re-center women's shared experiences of sexism and misogyny." [110] The #YesAllWomen network quickly became a space for women to candidly discuss experiences with sexism and find solidarity in others' tweets.[111] The hashtag had over one million Tweets after four days.[112]

#YesAllWomen has a lot in common with #MeToo. Its primary purpose was to show the world how pervasive sexual assault and harassment are and it did so by allowing women to share their personal stories of the abuse they experienced.[113] Many of the Tweets also used the phrasing "we," showing a solidarity among all women.[114]

105 *MeToo Movement: Five Years On, How A Hashtag Shook the World*, NDTV.COM (last updated on Sept. 29, 2022, 10:48 AM), https://www.ndtv.com/world-news/metoo-movement-five-years-on-how-a-hashtag-shook-the-world-3387462.

106 Sherri Gordon, *The #MeToo Movement: History, Sexual Assault Statistics, Impact*, VERYWELL MIND (Apr. 28, 2023), https://www.verywellmind.com/what-is-the-metoo-movement-4774817.

107 *See, e.g.*, Sepideh Modrek & Bozhidar Chakalov, *The #MeToo Movement in the United States: Text Analysis of Early Twitter Conversations*, 2019 J. MED. INTERNET RSCH. 1, 6 (2019).

108 Elena Nicolaou & Courtney E. Smith, *A #MeToo Timeline To Show How Far We've Come—& How Far We Need To Go*, REFINERY29 (last updated Oct. 5, 2019, 12:55 PM), https://www.refinery29.com/en-us/2018/10/212801/me-too-movement-history-timeline-year-weinstein.

109 Jess Zimmerman, *Not All Men: A Brief History of Every Dude's Favorite Argument*, TIME (Apr. 28, 2014, 11:49 AM), https://time.com/79357/not-all-men-a-brief-history-of-every-dudes-favorite-argument/.

110 Jackson et al., *supra* note 9, at 3.

111 *Id.* at 4.

112 *Id.* at 3.

113 Jackson & Banaszczyk, *supra* note 81, at 397.

114 *Id.*

The next viral hashtag appeared in 2015 after a *New York Magazine* cover showed a picture of several women sitting next to each other in chairs, all of whom had accused Bill Cosby of sexual assault.[115] The last chair on the cover, however, was left empty to symbolize the eleven women who had accused Cosby but did not feel comfortable coming forward publicly, as well as the women who did not feel comfortable coming forward at all.[116] The #TheEmptyChair hashtag was created in response to this image by journalist Elon James White who then tweeted over 150 stories from women who had messaged him with their personal experiences and wanted them published but did not want to do so using their own accounts.[117] As with #YesAllWomen, #TheEmptyChair showed the large scale of sexual violence against women but also emphasized why the problem can be invisible as well as why women do not want to publicly disclose their trauma.[118]

#MeToo was built on the backs of these and other prior movements. Without the "digital labor, consciousness-raising, alternative storytelling, and organizing" of #YesAllWomen and #TheEmptyChair, #MeToo would likely not have found its footing as easily.[119] Though they did not reach nearly as broad an audience,[120] these prior movements showed that the mode of communication—short stories on Twitter—was a viable way of quickly reaching across the country and around the world.[121]

These movements also showed that the timing of #MeToo was appropriate, and that timing was bolstered by a series of national events that made #MeToo's reemergence in 2017 seem almost inevitable. In October 2016, a 2005 video recording became public, showing that then-Republican nominee for President, Donald Trump, had said some incredibly vulgar things about women to the host of *Access Hollywood*.[122] Despite public outcry, Trump won the election and women responded by staging one of the largest marches in history the day after his inauguration

115 *#TheEmptyChair Amplifies Conversation About Sexual Assault*, NPR (July 30, 2015, 5:07 AM), *https*://www.npr.org/2015/07/30/427458729/-theemptychair-amplifies-conversation-about-sexual-assault.

116 Ella Ceron & Lainna Fader, *35 Women and #TheEmptyChair*, Cut (July 28, 2015), *https*://www.thecut.com/2015/07/35-women-and-theemptychair.html.

117 *Id.*

118 Jackson et al., *supra* note 9, at 15.

119 *Id.* at 18.

120 Sarah J. Jackson, Moya Bailey & Brooke Foucault Welles, *Women Tweet on Violence: From #YesAllWomen to #MeToo*, Ms. Mag. (Mar. 5, 2020), https://msmagazine.com/2020/03/05/women-tweet-on-violence-from-yesallwomen-to-metoo/; Lindsey Bever, *#TheEmptyChair on NY's Magazine's Cosby Cover Takes on a Life of Its Own*, Wash. Post (July 28, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2015/07/28/theemptychair-on-ny-magazines-cosby-takes-on-a-life-of-its-own/.

121 Jackson et al., *supra* note 9, at 18.

122 Mark Makela, *Transcript: Donald Trump's Taped Comments About Women*, N.Y. Times (Oct. 8, 2016), https://www.nytimes.com/2016/10/08/us/donald-trump-tape-transcript.html.

in January 2017.[123] The Women's March spanned the entire world, including Antarctica.[124] In October 2017, the final match was struck: the *New Yorker Magazine* story about Harvey Weinstein's pattern of sexual harassment and assault.[125] It was that very story that prompted Alyssa Milano to write the Tweet that made #MeToo go viral in 2017.[126]

The kairos-inspired interplay between media stories and #MeToo stories is also an essential part of #MeToo's impact. Back in 2017, traditional media's reporting on the Weinstein scandal caused people to post on social media and then the traditional media highlighted both the content of some of those early posts and emphasized the viral scope of the social media response, which incentivized more people to participate on social media. Traditional media's early reporting of #MeToo combined all of these small stories into a larger theme and gave it context for the public at large. In fact, traditional media labeled the hashtag a "movement" in the first place. This interplay remains strong; the number of #MeToo Tweets continue to spike when there is a news story involving a high-profile man accused of sexual misconduct.[127]

The persuasiveness of #MeToo can be easily traced to all four of Aristotle's rhetorical proofs. However, there is another aspect of #MeToo that has yet to be fully explored: #MeToo's narrative structure.

III. Storytelling

At its heart, #MeToo is a series of stories and stories have their own unique persuasive power. Although they have many things in common, it is worth noting that a story is distinct from a mere narrative. A narrative is defined as a "forgiving, flexible cognitive frame for constructing, communicating, and reconstructing mentally projected worlds."[128] Likewise, "[a] story is not information itself, but a construct, a way of structuring information that creates context and relevance and that engages the audience."[129]

123 *See* Lyric Lewin, *Moments from a Historic Day of Worldwide Protests*, CNN (Jan. 2017), https://www.cnn.com/interactive/2017/01/politics/womens-march-photos/.

124 *Id.*

125 Ken Auletta, *Harvey Weinstein's Last Campaign*, New Yorker (May 30, 2022), https://www.newyorker.com/magazine/2022/06/06/harvey-weinsteins-last-campaign.

126 Joyce Chen, *Alyssa Milano Wants Her 'Me Too' Campaign to Elevate Harvey Weinstein Discussion*, Rolling Stone (Oct. 17, 2017), https://www.rollingstone.com/tv-movies/tv-movie-news/alyssa-milano-wants-her-me-too-campaign-to-elevate-harvey-weinstein-discussion-123610/.

127 *See* Anderson & Toor, *supra* note 6.

128 David Herman, Story Logic: Problems and Possibilities of Narrative 49 (2002).

129 Ruth Anne Robbins, *Fiction 102: Create a Portal for Story Immersion*, 18 Legal Comm. & Rhetoric 27, 29 (2021).

At its most basic, a story is distinct from mere narrative because it has three characteristics, "character, goal, and obstacles."[130] These three additional characteristics can be expanded to include "the elements of character, conflict, plot, setting, theme, point of view, tone, and style."[131] An even more detailed definition of a story requires that the story contain the following parts: an initial steady state, a disruption of that state, the protagonist's efforts to redress that disruption, a resulting restoration of the original state or a transformation of that state, and a conclusion that connects the circumstances of the story to the circumstances of the storyteller and audience.[132]

In addition to these substantive elements, stories must also properly use the structural aspects of organization and descriptions.[133] These more technical aspects of a story include "timing, framing, pace, language, when the story begins, when it ends, what gets described fully, what gets left out, [and] setting."[134] The structure of a story is just as important as its contents because the structure makes "the story what it is, delivering it to the reader or listener in a form that he recognizes and responds to."[135]

That stories persuade seems to have been axiomatic to ancient scholars, who focused their scholarship on simply understanding why they are persuasive. As noted above, the ancient Greeks referred to storytelling as mythos and later contrasted it with logos; one being fiction and the other being fact.[136] In contrast to logical appeals, stories focus on "characters, their goals, and their struggles to achieve their goals."[137] However, although some scholars see storytelling as distinct from logos,[138] storytelling does connect to Aristotle's other proofs. More specifically, storytelling or narrative is considered a form of emotion-based appeal (pathos) that persuades an audience not through logic but by allowing an audience to identify with the protagonist.[139] Moreover, the characteristics

130 Steven J. Johansen, *Was Colonel Sanders a Terrorist: An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 J. ALWD 63, 65 (2010).

131 Robbins, *supra* note 129, at 29.

132 Anne E. Ralph, *Not the Same Old Story: Using Narrative Theory to Understand and Overcome the Plausibility Pleading Standard*, 26 Yale J.L. & Human. 1, 31 (2014).

133 Robbins, *supra* note 129, at 29.

134 Carolyn Grose, *Storytelling Across the Curriculum: From Margin to Center, from Clinic to Classroom*, 7 J. ALWD 37, 43 (2010).

135 *Id.*

136 Chiara Bottici, *Mythos and Logos: A Genealogical Approach*, 13 Epoché 1, 2 (2008).

137 Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ALWD 1, 9 (2010).

138 At least one philosopher has argued that mythos and logos were once synonymous and should be seen that way again. Bottici, *supra* note 136, at 2.

139 *See* Chestek, *supra* note 137, at 2.

of the storyteller (ethos) are often an intrinsic part of storytelling as the speaker adjusts to the reaction of the audience as they tell the story.[140]

Stories persuade because they tap into the way people see the world, other people, and even themselves.[141] Stories are how we make meaning[142] and, therefore, people innately "organize experience into narrative form."[143] This familiarity of format leads to persuasiveness as does the story's centering of a protagonist that the audience can identify with.[144] For that reason, giving information through a story causes the audience to use an entirely different cognitive process than they would use if they were presented with facts "as a list, as a straight chronology, or as a syllogism."[145]

But not all stories are created equal in terms of their persuasiveness. For a story to be persuasive, it must have three characteristics: narrative coherence, narrative correspondence, and narrative fidelity.[146] Narrative coherence consists of internal consistency, or how the parts of a story fit together, and completeness, or whether the story has gaps that make it hard to follow or believe.[147] "The key phrase in terms of internal coherence is 'causally connected,'" which means that "the events must bear a relationship to one another, not just be adjacent to each other or be randomly ordered."[148]

Consistency is essential because it implicates an audience's expectations. Because storytelling is such an innate part of human experience, an audience will have intuitive expectations of what is necessary for a story to feel complete or even make logical sense.[149] Accordingly, stories that rely heavily on context must still provide enough information for the audience to understand the characters and their motivations.[150] Although an audience will make some inferences to fill in gaps or bridge possible inconsistencies, they will only go so far. A story with too many gaps or pieces that do not make intuitive sense to an audience will cease to be credible or persuasive.

140 Rodden, *supra* note 30, at 153–54.

141 Paul Ricoeur, *Narrative Identity*, 35 Phil. Today 73, 77 (1991).

142 *See* Patrick J. Lewis, *Storytelling as Research/Research as Storytelling*, 17 Qualitative Inquiry 505, 505 (2011).

143 Ralph, *supra* note 132, at 26 (internal quotation and citation omitted); *see also* J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 Legal Writing 53, 57 (2008).

144 Rodden, *supra* note 30, at 167.

145 Robbins, *supra* note 129, at 29.

146 Ralph, *supra* note 132, at 27.

147 *Id.* at 27–28.

148 J. Christopher Rideout, *A Twice-Told Tale: Plausibility and Narrative Coherence in Judicial Storytelling*, 10 Legal Comm. & Rhetoric 67, 75 (2013).

149 Rideout, *supra* note 143, at 65.

150 Chestek, *supra* note 137, at 9.

Coherence requires that a story fit with what its audience "understands could happen in the ordinary course of the world." [151] This understanding comes from previously accepted stories that make up the audience's culture and broad understanding of how the world works. [152] In other words, a story must be within what an audience believes could have happened or what typically happens in similar situations.[153] Fidelity is a related concept that requires a story to conform to the audience's expectations of how the world works, not based on prior stories or cultural understanding, but based on the audience's own personal experience of the world. [154]

Once a story has satisfied these requirements, its persuasiveness lies in its ability to immerse its audience in the narrative, thereby "priming" an audience to accept the information contained in the story.[155] In short, stories can change people's minds by overcoming their resistance to the information or message contained therein. Research has shown that, particularly for fictional stories, "people usually have little motivation and sometimes are unable to discredit information" presented in those stories.[156]

When told using a digital medium, a story's persuasiveness can be enhanced. "Digital storytelling" is defined as "the art and craft of exploring different media and software applications to communicate stories in new and powerful ways using digital media."[157] The art of digital storytelling includes decisions about the format of the story, including the mode and genre, because these decisions have "consequences for how a text will be received and used by its intended audience."[158]

As noted above, communication on social media is an extremely "dialectic process" whereby communication is interactive and iterative as an audience can both respond to a social media post, share it with new audiences and, ultimately, transform it, either with or without the original speaker's participation.[159] This process of "circulation, production and interpretation of media content" both "effects—and is effected by—social

151 Ralph, *supra* note 132, at 29.

152 *Id.*

153 *See id.* at 30; Rideout, *supra* note 148, at 72.

154 Ralph, *supra* note 132, at 30.

155 Xiaoxia Cao, *The Influence of Fiction Versus Nonfiction on Political Attitudes*, 32 Commc'n. Rsch. Rep. 83, 84 (2015).

156 *Id.*

157 Hilary McLellan, *Digital Storytelling in Higher Education*, 19 J. Computing Higher Educ. 65, 66 (2007).

158 Basaraba et al., *supra* note 66, at 382.

159 Gino Canella, *Social Movement Documentary Practices: Digital Storytelling, Social Media and Organizing*, 28 Digit. Creativity 24, 25 (2017).

and cultural institutions."[160] People create discussions on social media in response to events they personally experienced or that were reported in the mainstream media, which generate comments and conversations. Modern mainstream media is actively involved in this process by using social media to source articles, including their authors' social media handles in the story, including comments sections with their articles, and even reading social media comments on the air.

For example, when an orthodontist posted on his tumblr account that he had to repair a teenaged patient's retainer after she clenched her jaw too hard while watching Michael B. Jordan in "Black Panther," the teenager tweeted about finding her orthodontist's post.[161] Teen Vogue magazine then found the teenager and interviewed her. The teenager then tweeted about being interviewed, Michael B. Jordan found out and tweeted to her that he would buy her a new retainer,[162] and, eventually, the whole affair was discussed by Michael B. Jordan on *The Graham Norton Show*.[163] A rather whimsical example, but one that shows how a story can travel back and forth between social media and mainstream media using multiple social platforms and media outlets, all the while evolving as different actors became involved. Without the accessibility and interactivity of social media, this story would never have been told beyond water cooler talk at an orthodontist's office.

Perhaps this accessibility and dialectic process explains why social media has been used so much to create digital campaigns and movements by "construct[ing] inclusive narratives, highlight[ing] marginalized histories, and empower[ing] users."[164] More specifically, "[t]his digital space provides an alternative structure for citizen voices and minority viewpoints as well as highlights stories and sources based on relevance and credibility."[165] The #BlackLives Matter and #SayHerName social media campaigns, both created by Black women, gave a space to Black women to

160 *Id.*

161 Lauren Rearick, *Michael B. Jordan in "Black Panther" Leads Girl to Break Her Retainer*, Teen Vogue (Mar. 6, 2018), https://www.teenvogue.com/story/michael-b-jordan-black-panther-girl-retainer.

162 Dan Neilan, *Michael B. Jordan Buys Teen a New Retainer After She Bit Through it During His Shirtless* Black Panther *Scene*, AV Club (Mar. 7, 2018), https://www.avclub.com/michael-b-jordan-buys-teen-a-new-retainer-after-she-bi-1823581527.

163 Brian Lloyd, *Michael B. Jordan Reads Your Thirst Tweets on 'Graham Norton,'* entertainment.ie, https://entertainment.ie/tv/tv-news/michael-b-jordan-reads-your-thirst-tweets-on-graham-norton-385866/ (last visited Mar. 8, 2024).

164 Jessica Marie Johnson, *Social Stories: Digital Storytelling and Social Media*, 32 Forum J. 39, 40 (2018); *see also* Sarah J. Jackson & Brooke Foucault Welles, *#Ferguson is Everywhere: Initiators in Emerging Counterpublic Networks*, 19 Info. Commc'n. & Soc'y 397, 398 (2016). Twitter has been especially useful for this kind of mobilization. Johnson, *supra*, at 39–40. ("As a global public platform—accessible to anyone with a cell phone—Twitter offers users across the political spectrum opportunities to raise awareness of pressing issues; turn the spotlight on social protest; and challenge the narratives presented by major media outlets, government officials, and law enforcement.").

165 Jackson & Foucault Welles, *supra* note 164, at 399 (internal quotation omitted).

discuss institutional racism and police brutality without being criticized for "speaking too loudly and/or aggressively."[166] These hashtags also give space for these women to discuss these issues using the intersectionality lenses of gender and sexual identity. Before these hashtags were created, there was simply no place for these conversations to happen because these women lacked meaningful access to traditional media and, as the hashtags themselves indicate, mainstream media had been erasing the deaths of Black women in police custody for decades.[167]

The uniquely accessible nature of social media also makes digital storytelling "highly personal and at the same time, universal."[168] Social media allows users to connect their own personal stories to larger trends or highly publicized events and, in so doing, these users shape "the surrounding cultural narrative in profound ways."[169]

Finally, digital storytelling often consists of "micro-narratives" that can be combined to create "broader, more macro-oriented narratives."[170] This macronarrative is essential for digital storytelling to create social change. When digital storytellers see their micronarrative in the context of the macronarrative, their experience is contextualized, "thereby reframing these phenomena not as personal problems—something that happened to me, for instance, because of what I was wearing, who I was with, or how much I had to drink—but rather as widespread sociological phenomena."[171]

A. #MeToo as storytelling

Although #MeToo posts are widely referred to as "stories," a majority of the posts consist solely of the words "me too." A study of the first week of #MeToo posts in October 2017 showed that only nineteen percent of those posts included a first-person story describing sexual assault or abuse.[172] Even the longer posts on Twitter, which can be no more than

166 Gabrielle Reed, *#SayHerName: Putting the "I" in Intersectionality in Black Female Social Movements*, 13 McNair Scholars Rsch. J. 103, 110—11 (2020).

167 Marianne Schnall, *'Begin With The Story': Kimberlé Crenshaw On #SayHerName, Her New Book And Working Toward Gender Inclusive Racial Justice*, Forbes (Dec. 15, 2023, 01:19pm EST), https://www.forbes.com/sites/marianneschnall/2023/12/15/begin-with-the-story-kimberl-crenshaw-on-sayhername-her-new-book-and-working-toward-gender-inclusive-racial-justice/?sh=7e1b20ac21b9.

168 McLellan, *supra* note 157, at 66; *see also* Gino Canella, *supra* note 159, at 25 (noting the personal nature of digital storytelling).

169 Johnson, *supra* note 164, at 41.

170 Maria Grafström & Lena Lid Falkman, *Everyday Narratives: CEO Rhetoric on Twitter*, 30 J. Organizational Change Mgmt. 312, 314 (2017).

171 Karyn L. Freedman, *supra* note 93, at 6.

172 Modrek & Chakalov, *supra* note 107, at 6 (2019).

280 characters, do not have all of the elements of a traditional story. For example, one Tweet states:

> #metoo tell my story. Well at age 11.6 years old. I was attacked behind my elementary school, by my best friend? Jimmy Cullen. Within 24 hour, I was again violently raped for hours by Bill Roberts. My sisters disowned me instead of offering me help.[173]

This story has characters and conflict but no stated goal or conclusion. However, despite the lack of details in #MeToo stories, such as no description of setting, minimal character description, and little sense of cause and effect, these stories are deeply moving. Their power lies in their ability to tap into preexisting "stock stories"[174] about sexual assault. The reader, unfortunately, does not need a lot of explicit detail to imagine what the writer means when they say "attacked behind my elementary school." For women in particular, these stories are sadly familiar.

Other familiar themes emerge when examining #MeToo stories, many of which have been discussed by scholars for decades. For example, the abuser is typically known to the victim and has a relationship of trust, often a friend or family member:

> Amen! I'm going to speak out about sexual abuse & I'll tell my story until I can't talk anymore, then I'll write! I was Sexually abused by my Dr in his office and the parking garage while I was on crutches! I waited too long to speak up bc I'm a #CSA. Law's need to change.#MeToo[175]
>
> My story is different. Dad was a sexual predator, confronted him multiple times and got beaten black & blue. Feel angry, that I couldn't stop him or help others #MeToo #IPromise[176]
>
> This happened to me in college. One of my male friends attacked me in my bedroom, and my other friends continued to be friends with him as though nothing had happened. They believed my story, they just didn't believe my trauma. #MeToo #CollegeYears[177]

173 Sandra Armstrong (@SandraA51466276), Twitter (Nov. 20, 2017, 12:17 PM), https://twitter.com/SandraA51466276/status/932659199833714689?s=20.

174 Rideout, *supra* note 148, at 72.

175 SumWhtGirl (@SumWht), Twitter (May 27, 2018, 1:16 PM), https://x.com/SumWht/status/1000787839854886913?s=20. The acronym "CSA" stands for "child sexual abuse." *What is Child Sexual Abuse?*, Joshua Center, https://uwjoshuacenter.org/what-child-sexual-abuse (last accessed Apr. 4, 2024).

176 Crystal Homer (@CrystalHomer), Twitter (Nov. 9, 2017, 5:36 PM), https://x.com/CrystalHomer/status/928753090395860992?s=20.

177 LiberalLucy (@noiwillnotbe), Twitter (June 6, 2018, 8:49 PM), https://x.com/noiwillnotbe/status/1004525614412517382?s=20.

In combination with the victim knowing her abuser, many women reported that their sexual assault happened when they were young:

> So I'm going to share my story because I can't seem to get people to understand. When I was 12 I was molested by my grandfather. When I tried to tell my own mom she said I was a liar and a slut, that there was no way her father was capable of that. And even if he did it #MeToo[178]
>
> #MeToo 14 year old James Harris of the 1100 block of Wallis Ave Farrell, Pa when I was only 8 years old. . .[179]

And because sexual assault starts at a young age, women are often abused repeatedly throughout their lives:

> As is true for many survivors, I've been sexually abused multiple times in my life by multiple people, beginning in childhood. Here is one part of my story.[180]
>
> #MeToo 1) I know this coming late but I wanted to share my story. I was assaulted multiple times by a certain person among my family. I finally reported it to the police and had rape kit done and gave my statement. It was humiliating.[181]

As shown in the sample of #MeToo stories above, another theme often reported is that when the victim told her story—to a family member, friend, or even the police—they were not believed and the perpetrator faced no consequences. When told as part of the #MeToo movement, however, these stories are now met with support and sympathy, but never surprise; women understand these "stock stories" all too well.

Clearly, these microstories do enough for readers to make the necessary inferences, particularly because they explicitly connect to each other with the use of the #MeToo hashtag, which readers can use to find other stories with the same hashtag. Even the phrase "me too," is well constructed, showing solidarity and personal connection with only two words. It presumes a rampant problem that women share; Alyssa Milano did not make her plea assuming that only a few women would be able to identify with Harvey Weinstein's victims. Indeed, multiple #MeToo posts

178 Not Mostly Jaded (@notmostlyjaded), Twitter (May 25, 2018, 1:27 PM), https://x.com/notmostlyjaded/status/1000065849498259457?s=20.

179 Keri D. (Smith)Rose (@Keri_D_Rose), Twitter (Nov. 29, 2019, 6:03 PM), https://x.com/Keri_D_Rose/status/1200550762671222784?s=20.

180 Cynthia Moon (@CynthiaMoonPoet), Twitter (Sept. 24, 2018, 10:29 PM), https://x.com/CynthiaMoonPoet/status/1044413625774080000?s=20.

181 Shaun (@steinshaun), Twitter (Jan. 23, 2018, 12:47 PM), https://x.com/steinshaun/status/955859534941110272?s=20.

emphasize that the other women who have told their stories are not alone and posts often speak positively about finally feeling like they can tell their own story and encourage others to do the same:

> As a victim of sexual assault, . . . I was not too weak to say no, because I did. I wasn't too weak to tell my story, because I did. The #metoo movement allowed me to speak freely about my experience instead of having to act like it never happened.[182]
>
> Because #WeMatter! #MeToo #Hopeful I know in my story I may change one person's life. I may never even know it but it fills my heart just thinking about it! #BecauseICan ♥ [183]
>
> Everyone has a story . Including me . What's yours ? #MeToo[184]

These posts show that #MeToo participants saw the macronarrative of shared experiences even as they added their own micronarratives to it. Accordingly, #MeToo is the epitome of how a collection of micronarratives can become a macronarrative with profound consequences. As one scholar has noted:

> The widely observed "#MeToo moment" is not so much a moment but a loud chorus of voices that has, for years, been using Twitter and other social networks to tell women's stories about violence in a way that challenges the simplistic frames relied on by mainstream media and politicians. In these networks women tell their own stories, women are believed, male and celebrity allies helped to elevate ordinary women's voices, and women—experts in their own lives—offer nuance to all too often oversimplified and inaccurately reported issues of violence and victimhood.[185]

#MeToo has offered not only a place for women to tell their stories, but a place where they will be believed, have their voices amplified, and ultimately see real-world effects from the macronarrative their story contributed to when powerful men began to be fired and even arrested.[186] This real-world impact encouraged even more women to come forward.[187]

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182 Baylee Pope (@bayleefork), Twitter (June 11, 2018, 10:44 PM), https://x.com/bayleefork/status/1006366523647291392?s=20.

183 Lee (@NJIvorygirl), Twitter (June 24, 2018, 10:27 PM), https://x.com/NJIvorygirl/status/1011073267774390273?s=20.

184 OrientalDoll (@Honeyy_Doll), Twitter (Apr. 30, 2018, 4:11 PM), https://x.com/Honeyy_Doll/status/991047406547431424?s=20.

185 Jackson et al., *supra* note 9, at 19.

186 Shelley Cavalieri, *On Amplification: Extralegal Acts of Feminist Resistance in the #MeToo Era*, 2019 Wis. L. Rev. 1489, 1491–93 (2019).

187 *See* Nicolaou & Smith, *supra* note 108.

It is no wonder then that the positive responses to and the real-world changes caused by #MeToo encouraged more and more women to come forward. Some told stories of what happened to them decades ago, and spoke out against very powerful men. E. Jean Carroll is a prime example of a women who credited #MeToo with her willingness to speak out after so many years.[188] This was a drastic change from the "whisper networks" women historically relied upon to learn about the potential abusers in their midst. Historically, women would warn others who came into their small, insular groups (typically at a specific company or in a certain industry) but did so privately and discreetly for fear of being targeted and punished for speaking out.[189]

By going public with their stories, women's micronarratives combined to become a macronarrative that was key to changing social perceptions. Instead of multiple women amplifying each other's stories by telling their stories about the same perpetrator,[190] the volume of #MeToo stories amplified every individual woman's claim so that "[s]urvivors' claims were believed not because they related to specific individual aggressors, but because the movement amplified ALL survivors' experiences of assault and harassment as credible."[191] As one scholar pointed out, by combining the large but silent group's voices, the narrative shifted from "he said, she said" to "he said vs. *they* said."[192]

The volume of responses was shocking to some men and forced them to reevaluate what they knew of how women are treated by society and what they can do about it.[193] This effect was enhanced as the women in their lives confirmed that they also had a #MeToo story, which brought the narrative closer to home.[194] The hashtag #HowIWillChange was created by Australian journalist Benjamin Law to encourage men to publicly commit to improving the existing culture of violence towards women.[195]

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188 E. Jean Carroll, *Hideous Men: Donald Trump Assaulted Me in a Bergdorf Goodman Dressing Room 23 Years Ago. But He's Not Alone on the List of Awful Men in My Life*, N.Y. Mag., June 24, 2019, at 28.

189 Deborah Tuerkheimer, *Unofficial Reporting in the #MeToo Era*, 2019 U. Chi. Legal F. 273, 278—79 (2019). Their fears were well founded as Moira Donnegan, creator of the "Shitty Media Men" spreadsheet, found out. Isabel Vincent, *Reporter Behind 'Sh—y Media Men' Headed to Trial for Defamation*, N.Y. Post (Apr. 2, 2022, 2:52 PM), https://nypost.com/2022/04/02/reporter-behind-sh-y-media-men-headed-to-trial/.

190 Though, of course, that did happen. *See, e.g.*, Joe Sommerlad & Ariana Baio, *Larry Nassar: A Timeline of the Sexual Abuse Allegations Against the Former USA Gymnastics Team Doctor*, Indep. (July 10, 2023, 18:14 BST), https://www.the-independent.com/news/world/americas/crime/larry-nassar-now-abuse-timeline-b1920783.html.

191 Cavalieri, *supra* note 186, at 1517.

192 *Id.*

193 *E.g.*, Somak Ghoshal, *Why the #MeToo Movement Left Me Overwhelmed, and Should Be a Wake-Up Call for Other Men Too*, Huffington Post (Oct. 17, 2017, 4:07 AM), https://www.huffpost.com/archive/in/entry/why-the-metoo-movement-left-me-overwhelmed-and-should-be-a-wake-up-call-for-other-men-too_in_5c10f443e4b085260ba76bc5.

194 *Id.*

That hashtag was retweeted by Alyssa Milano and had over ten thousand unique posts eight days later.[196]

The storytelling aspect of #MeToo may also have helped the public overcome its resistance to the message. As noted above, the ubiquity of sexual assault and harassment has been public knowledge for some time. According to the CDC, "[o]ver half of women and almost 1 in 3 men have experienced sexual violence involving physical contact during their lifetimes. . . . Additionally, 1 in 3 women and about 1 in 9 men experienced sexual harassment in a public place."[197] Since the late 1960s, scholars and researchers have been trying to reframe sexual assault as a social problem through conferences, workshops, and political demonstrations[198] with only limited success.

Despite their efforts, a true understanding of rape culture failed to take root in the public consciousness, likely because the truths inherent in #MeToo and the other hashtag campaigns that sought to raise awareness about sexual assault and harassment also come into direct conflict with longstanding rape myths. As noted above, rape myths are "prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists that trivialize the sexual assault or suggest that a sexual assault did not actually occur."[199] These beliefs are "deeply held"[200] and resistant to change because they "serve to comfort us that we live in a just world where people are not raped at random."[201] More cynically, men may continue to hold on to rape myths because doing so ultimately benefits them by allowing them to ignore how often people who do not look like them (because they are women or trans or gay or gender nonconforming) suffer from sexual violence at the hands of people who do look like them.[202]

195 Alanna Vagianos, *In Response to #MeToo, Men are Tweeting #HowIWillChange*, Huffington Post (last updated Oct. 19, 2017), https://www.huffpost.com/entry/in-response-to-metoo-men-are-tweeting-howiwillchange_n_59e79bd3e4b00905bdae455d.

196 Alyssa F. Harlow et al., *Bystander Prevention for Sexual Violence: #HowIWillChange and Gaps in Twitter Discourse*, 36 J. Interpersonal Violence NP5753, NP5756 (2021).

197 *Fast Facts: Preventing Sexual Violence*, Ctrs. for Disease Control & Prevention, https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html#:~:text=Sexual%20violence%20is%20common.&text=One%20in%204%20women%20and,harassment%20in%20a%20public%20place (last visited Mar. 8, 2024).

198 Vicki McNickle Rose, *Rape as a Social Problem: A Byproduct of the Feminist Movement,* 25 Soc. Problems 75, 76 (1977).

199 Dr. JoAnne Sweeny, *"Brock Turner Is Not a Rapist": The Danger of Rape Myths in Character Letters in Sexual Assault Cases*, 89 UMKC L. Rev. 121, 137 (2020) (internal quotation marks and citations omitted).

200 Lynn Hecht Schafran & Claudia Bayliff, *Judges Tell: What I Wish I Had Known Before I Presided in an Adult Victim Sexual Assault Case, The Challenges of Adult Victim Sexual Assault Cases*, Nat'l Jud. Educ. Program, Legal Momentum 1, 2 (2011), https://www.legalmomentum.org/library/judges-tell-what-i-wish-i-had-known-i-presided-adult-victim-sexual-assault-case.

201 Sweeny, *supra* note 199, at 138 (citing Kate Harding, Asking for it: The Alarming Rise of Rape Culture—and What We Can Do About it 23 (2015)).

202 Freedman, *supra* note 93, at 9.

The storytelling aspect of #MeToo has been able to more effectively overcome longstanding resistance to the truth about rape culture because #MeToo provides "epistemic friction" or an alternative story to the ones inherent in rape myths, which can "mitigate against the widespread resistance among dominantly situated knowers to acknowledge, in this case, the realities of sexual violence and sexual harassment against women."[203] The thousands of stories from women that coalesced into a larger story allowed men to "learn something about the world as experienced from social positions other than [their] own," which has been extremely hard for them to ignore.[204]

B. #MeToo as legal storytelling

Not only is #MeToo an example of digital storytelling, it is also an example of legal storytelling. Legal storytelling focuses on "the idea that the law is made up of stories that are constructed by lawyers, clients, and decision makers."[205] Legal storytelling scholars have identified the power of storytelling in the legal context as a way to go beyond pure logical appeals to persuade an audience.[206]

Legal storytelling takes existing storytelling concepts to examine how stories persuade in the legal world.[207] For example, in the legal world, stories must still have coherence, correspondence, and fidelity for them to be accepted by a judge or jury.[208] Indeed, narrative coherence is particularly important for legal storytelling because lawyers are limited in what facts they can present to a jury based on the rules of evidence.[209]

Legal storytelling scholarship often focuses on the lawyer as a storyteller who is charged with telling their client's story and must decide how to tell that story in a way that advances their client's goals.[210] This scholarship places the legal world in the center of the analysis and applies storytelling concepts to what lawyers do. In addition, legal storytelling scholarship also looks at how the legal world can impact (or be impacted by) extralegal stories.[211]

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203 *Id.*

204 *Id.* at 13 ("And perhaps unsurprisingly, the more we know about people, the harder it is to deny their humanity.").

205 Grose, *supra* note 134, at 41.

206 Chestek, *supra* note 137, at 4–5.

207 *See* Michael Gagarin, *Rational Argument in Early Athenian Oratory*, *in* Logos: Rational Argument in Classical Rhetoric 9, 17 (Jonathan Powell ed., 2007).

208 *See* Rideout, *supra* note 143, at 66–67.

209 *Id.* at 64.

210 Grose, *supra* note 134, at 44.

211 *See* Sherri Lee Keene, *Stories That Swim Upstream: Uncovering the Influence of Stereotypes and Stock Stories in Fourth Amendment Reasonable Suspicion Analysis*, 76 Md. L. Rev. 747, 758 (2016) (discussing how preexisting racial biases in the

The law is clearly invoked in many #MeToo stories. For example, Tweets often include a reference to the police:

> I was abused by the bishop of my Amish church. I went to the police and they did not seem to know what to do because we were Amish. My abuser escaped to Canada. Need more awareness about abuse in strict churches. Speak out!! It could save others from being hurt![212]
>
> I've been breaking the silence since I escaped child sex trafficking at 17, 30 years ago. But no-one was listening. I went to the police four times and they did nothing. Even my vaginal scars weren't enough proof for them.[213]

A spinoff hashtag #PoliceMeToo, has been created just for stories of police officers' abuse—either by failing to properly investigate sexual assault and domestic violence cases or by being perpetrators themselves.[214] In addition, even if not directly referenced, the criminal justice system's failure to punish sexual abusers is inherent in every #MeToo story because the women who post with the #MeToo hashtag have invariably not reported the crime for fear of not being believed.[215] #MeToo is about breaking silence and, if the criminal justice system was working the way it was supposed to, that silence would not be necessary.

#MeToo has also influenced the law. By alerting the public to the pervasiveness of sexual assault and harassment, actual legislative changes have been made such as extended statutes of limitations for harassment and sexual abuse claims,[216] laws that ban the use of nondisclosure agreements in sexual misconduct cases, [217] lower requirements for

form of "stock stories" can influence police behavior); Linda L. Berger, *How Embedded Knowledge Structures Affect Judicial Decision Making: An Analysis of Metaphor, Narrative, and Imagination in Child Custody Disputes*, 18 S. Cal. Interdisc. L.J. 259, 260 (2009) (discussing how "outmoded metaphors, simplistic images, and unexamined narratives" can interfere with judges' ability to apply the best interests of the child standard in child custody cases).

212 Misty Griffin (@Misty_E_Griffin), Twitter (Nov. 8, 2017, 1:43 PM), https://twitter.com/Misty_E_Griffin/status/928332199367020545

213 Charlotte הרופיצ Issyvoo (@CIssyvoo), Twitter (Dec. 8, 2017, 9:32 PM), https://twitter.com/CIssyvoo/status/939321842736566272.

214 A UK website has been created to compile these stories. *See* Police Me Too, https://police-me-too.co.uk/ (last visited Mar. 8, 2024).

215 *See* Deborah Tuerkheimer, *Beyond #MeToo*, 94 N.Y.U. L. Rev. 1146, 1150 (2019); Ronet Bachman & Raymond Paternoster, *A Contemporary Look at the Effects of Rape Law Reform: How Far Have We Really Come?*, 84 J. Crim. L. & Criminology 554, 560 (1994).

216 W. Jonathan Cardi & Martha Chamallas, *A Negligence Claim for Rape*, 101 Tex. L. Rev. 587, 650 (2023).

217 Lesley Wexler et al., *#MeToo, Time's Up, and Theories of Justice*, 2019 U. Ill. L. Rev. 45, 60 (2019); Anna North, *7 Positive Changes That Have Come From the #MeToo Movement*, Vox (Oct. 4, 2019, 7:00 AM), https://www.vox.com/identities/2019/10/4/20852639/me-too-movement-sexual-harassment-law-2019; Edward G. Phillips & Brandon L. Morrow, *Hush Hush Non-Disclosure Provisions in the Sexual Harassment Context*, 59 Tenn. Bar J. 38, 39 (Jan.–Feb. 2023).

the "severe and pervasive" standard,[218] and a federal law that limits the enforceability of agreements that prevent employees from disparaging their employer or speaking about their experience with workplace sexual assault or harassment if those agreements were signed before the sexual assault or harassment took place.[219] In other words, in certain contexts, employers cannot make employees sign these agreements as a regular part of their business in an effort to prevent their employees from later speaking out about their abuse. These legislative changes are widespread; since #MeToo began, 22 states and the District of Columbia have passed a total of more than 70 workplace anti-harassment bills, many with bipartisan support.[220]

There have also been changes to the law through the judicial system. Since #MeToo, attorneys have been more creative in their use of legal doctrine to get damages for their clients such as suing for defamation, RICO, and human trafficking.[221] In addition, there is evidence that, post-#MeToo, more sexual harassment cases are progressing past the summary judgment stage and, once they do, juries are awarding larger verdicts.[222] #MeToo is also increasingly referenced by courts in a wide variety of contexts such as anti-SLAPP lawsuits[223] and Title IX cases.[224] Though some of these changes may have come about organically, most likely trace their origin to the #TimesUp movement, which #MeToo inspired. In addition to the hashtag, #TimesUp is also the name of a legal defense fund founded by more than three hundred women in the entertainment industry that funds litigation and lobbying efforts.[225]

The law and #MeToo are therefore inextricably entwined. Although these stories did not begin in a courtroom and were not created by

218 Holly R. Lake, *#MeToo Movement's Impact on Law and Policy in Hollywood*, 42 L.A. Law. Mag. 52, 52 (May 2019).

219 Phillips & Morrow, *supra* note 217, at 39.

220 Andrea Johnson et al., *#MeToo Five Years Later: Progress & Pitfalls in State Workplace Anti-Harassment Laws*, Nat'l Women's L. Ctr. 2 (Oct. 2022), https://nwlc.org/wp-content/uploads/2022/10/final_2022_nwlcMeToo_Report-MM-edit-10.27.22.pdf.

221 Cardi & Chamallas, *supra* note 216, at 650.

222 Bobbi K. Dominick, *The Increasing Complexity of Workplace Harassment Investigations After #MeToo*, 62 Advoc. (Utah) 22, 22 (2019).

223 *E.g.*, Goldman v. Reddington, No. 18-CV-3662, 2021 U.S. Dist. LEXIS 78103 (E.D.N.Y. Apr. 21, 2021). "SLAPP" stands for "strategic litigation against public policy" and refers to defamation lawsuits brought against people to silence them. Anti-SLAPP laws are meant to give protection to defamation defendants if they can show that their statements are about a matter of public concern. Dr. JoAnne Sweeny, *Social Media Vigilantism*, 88 Brook. L. Rev. 1175, 1206 (2023).

224 *E.g.*, Doe v. Columbia Univ., 551 F. Supp. 3d 433 (S.D.N.Y. 2021); Simons v. Yale Univ., No. 19-cv-1547, 2020 U.S. Dist. LEXIS 180325 (D. Conn. 2020).

225 *TIME'S UP Was Born When Women Said "Enough Is Enough,"* Time's Up, (captured May 8, 2023), https://perma.cc/QS43-H2RH; *see* Jamillah Bowman Williams et al., *#MeToo as Catalyst: A Glimpse into 21st Century Activism*, 2019 U. Chi. Legal F. 371, 376 (2019).

lawyers (although, statistically speaking, some of the storytellers are likely to be lawyers) #MeToo, ultimately, is legal storytelling.

IV. Conclusion

#MeToo has a lot to teach us about what makes stories persuasive both in and out of the courtroom. If the goal in legal storytelling is to learn how to persuade on behalf of one's client, #MeToo shows us what truly matters in a story and what can be left to the audience to infer. Crucially, personal stories carry inherent credibility (ethos) and even short or incomplete stories are credible if they have a "stock story" to rely on. Additionally, #MeToo's power lies in its macronarrative structure. Any one of the more detailed #MeToo stories, though harrowing, would never have sparked so many social and legal changes if not combined with the overwhelming chorus of "me too." And it is that chorus that caused traditional media to report on the hashtag and amplify these stories further, turning that chorus into a movement. The movement in turn both created and benefitted from kairos, a feeling that the time to deal with this issue had finally come, which made people more interested and willing to listen. The related hashtag "#TimesUp" emphasizes the historic moment that was being captured. #TimesUp also was a major player in ensuring that the social media movement has had real-life impact on the law, transforming #MeToo into a prime example of legal storytelling.

#MeToo ultimately shows the importance of context and how a story can fit in with what a silenced group already knows to such an extent that it disrupts the public's longstanding beliefs about how the world works. In so doing, #MeToo shows how an audience's resistance to information can be effectively worn down, paving the way for a new worldview. Though most attorneys' goals may not be so lofty, #MeToo still provides valuable lessons that we should not ignore.