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# Rudolph Giuliani and the Ethics of Bullshit

Bennett L. Gershman\*

*“Truth isn’t truth.”*

– Rudolph Giuliani, NBC’s *“Meet the Press,”* August 19, 2018.

## I. INTRODUCTION

Lawyers are communicators. They communicate with clients, courts, adversaries, juries, witnesses, and the public. Lawyers have a special responsibility for the quality of justice. Their communications, therefore, are hedged by various ethical rules to ensure that their statements are knowledgeable, truthful, respectful, and not prejudicial to the administration of justice. But lawyers are not always knowledgeable of the facts. In fact, they sometimes behave disrespectfully, and stray from the truth. False statements by lawyers may be made unwittingly, sometimes intentionally, and sometimes with an indifference, even a contempt for the truth. Discourse of the latter kind may be characterized as bullshit.<sup>1</sup>

Bullshit is more prevalent in our culture than ever. Expanded forms of electronic communication and the ability of everybody to be an expert on almost everything probably accounts for so much more bullshit. The proliferation of bullshit in our culture generally is also reflected in an increase in bullshit by lawyers. Indeed, the investigation of President Donald Trump by Special Counsel Robert Mueller produced a dizzying array of unusual public statements by his personal lawyer Rudolph Giuliani that may be regarded as bullshit.<sup>2</sup> Giuliani’s statements invite consideration of the following questions: Do the rules of professional ethics cover attorney bullshit? If so, how much bullshit may a lawyer utter before crossing an ethical line? Assuming the ethics rules apply, are professional disciplinary bodies capable of exposing lawyer bullshit?

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1. HARRY G. FRANKFURT, ON BULLSHIT 33-34 (2005) (the “essence of bullshit” is “[a] lack of connection to a concern with truth . . . [and] [an] indifference to how things really are.”).

2. See Addendum for a compilation of many of Giuliani’s notable statements.

## II. WHAT IS BULLSHIT?

First, I will explore the meaning of bullshit. The Merriam Webster Dictionary defines bullshit as “to talk nonsense to especially with the intention of deceiving or misleading.”<sup>3</sup> The Cambridge Dictionary defines bullshit as “complete nonsense or something that is not true,” including “cheating” and “trickery,” and “to try to persuade someone . . . by saying things that are not true.”<sup>4</sup> These definitions suggest that bullshit is not the telling of a lie, but something less than lying.<sup>5</sup> Bullshit in one sense involves a biased interpretation of facts in order to persuade someone to support the speaker’s position. Bullshit involves fakery and bluffing—claims of excuse, mistake, and accident—in order to deceive and mislead.

The bullshitter has no regard for the truth or for facts. The bullshitter is indifferent to whether a statement is accurate or not. The bullshitter’s purpose is to persuade someone in a manner that appears to be more morally acceptable than telling a lie. Thus, I am not surprised at hearing one student tell another student: “Don’t lie to the professor, just try to bullshit him.” The student is neither indifferent to the truth nor indifferent to lying. She is simply trying to avoid being caught telling a lie by crafting an excuse that is neither a lie nor the truth. The student is being insincere; the student is a phony. But she has not told a lie.

Lawyers engage in bullshit. They say things that are nonsensical, misleading, and with indifference to the truth. Lawyers for the big tobacco companies were likely engaged in bullshit when they repeatedly argued that smoking does not cause cancer, belittled the surgeon general’s report, and extolled the testimony of experts that there is no link between smoking and cancer.<sup>6</sup> Prosecutors also engage in bullshit when they remove minority jurors for nonsensical reasons.<sup>7</sup> Lawyers who make ridiculous arguments extolling the virtues of their nefarious clients also may be engaging in bullshit.<sup>8</sup>

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3. *Bullshit*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/bullshit> (last visited Mar. 4, 2019).

4. *Bullshit*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/bullshit?q=Bullshit> (last visited Mar. 4, 2019).

5. FRANKFURT, *supra* note 1, at 9.

6. DAVID A. KESSLER, A QUESTION OF INTENT: A GREAT AMERICAN BATTLE WITH A DEADLY INDUSTRY 367 (2001).

7. BENNETT L. GERSHMAN, CRIMINAL TRIAL ERROR AND MISCONDUCT § 4-4(c)(2)(ii)-(iii) 348-50 (Lexis Law Publishing 3d ed. 2015) (noting that prosecutors may challenge jurors for failing to make eye contact, appearing “uncooperative,” “sinister,” uptight, disinterested, “inattentive,” “a gut feeling,” “didn’t seem sincere,” “the way they answer questions,” and “a hunch.”).

8. For example, in a recent high profile criminal trial, the defendant was charged with orchestrating a Ponzi scheme by duping investors into putting money into failing hedge

### III. ETHICS RULES RELATING TO BULLSHIT

Initially, let me try to position Giuliani's public statements within an ethical framework relating to bullshit. As a general matter, a lawyer's ethical responsibilities are quite different and more profound than that of an ordinary citizen.<sup>9</sup> A lawyer must exemplify high standards of honesty,<sup>10</sup> diligence,<sup>11</sup> competence,<sup>12</sup> and trustworthiness.<sup>13</sup> A lawyer has a "special responsibility for the quality of justice"<sup>14</sup> and a "duty to uphold legal process."<sup>15</sup> As a public citizen "a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority."<sup>16</sup>

The American Bar Association Model Rules of Professional Conduct address public statements by lawyers in several places. For example, Model Rule 3.3 addresses conduct by lawyers during adjudicative proceedings that undermine the integrity of the proceedings.<sup>17</sup> Thus, a lawyer is forbidden to make knowingly false statements to a tribunal,<sup>18</sup> and to offer evidence that the lawyer knows is false.<sup>19</sup> Moreover, a lawyer is required to alert the tribunal if he

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funds, misleading them about the miserable performance of those funds, and secretly siphoning the cash into a new company. His lawyer's defense, however, bordered on the ridiculous. His lawyer argued that his client was not a Ponzi-schemer, but rather an "oddball genius" who was trying to build a successful drug company to repay his hedge-fund investors. His lawyer also argued that nobody who invested with him was defrauded or suffered any economic harm, and that the investors got their money back and more. See Dan Mangan & Rachel Pak, *Martin Shkreli's Lawyer Uses Potato Chips, Borscht Belt Jokes and Jibes of 'Rich People B.S.' to Blast Criminal Case Against 'Pharma Bro'*, CNBC (July 27, 2017, 7:06 PM), <https://www.cnbc.com/2017/07/27/martin-shkreli-lawyer-blasts-criminal-case-against-pharma-bro.html>.

9. See e.g., MODEL RULES OF PROF'L CONDUCT Preamble: A Lawyer's Responsibilities (AM. BAR ASS'N 2018).

10. See generally *id.* at r. 8.4(b).

11. *Id.* at r. 1.3.

12. *Id.* at r. 1.1.

13. *Id.* at r. 8.4(b).

14. *Id.* at Preamble: A Lawyer's Responsibilities.

15. *Id.*

16. *Id.*

17. *Id.* at r. 3.3.

18. See *id.* at r. 3.3(a)(1) ("A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal.").

19. *Id.* at r. 3.3(a)(3) ("A lawyer shall not knowingly . . . offer evidence that the lawyer knows to be false.").

or she knows that a person intends to engage in fraudulent conduct.<sup>20</sup> None of Giuliani's statements were made during formal legal proceedings and therefore this rule would not apply to him.

Model Rule 3.6 prohibits a lawyer from making public statements which the lawyer knows or should know will materially prejudice a legal proceeding.<sup>21</sup> There are presently several ongoing legal proceedings involving the Special Counsel's investigation. Lawyers involved in the investigation and representing clients connected to the investigation, as is Giuliani, have to be extremely careful about making public statements that could seriously prejudice any potential adjudicative proceeding.

Model Rule 4.1 deals with truthfulness by lawyers generally.<sup>22</sup> It forbids a lawyer from knowingly making a material false statement to any third person.<sup>23</sup> The commentary notes that misrepresentations, partially false statements, and omissions may constitute false statements.<sup>24</sup> But the statement must refer to a material fact.<sup>25</sup> This rule might apply to some of Giuliani's statements that may be viewed as assertions of fact.<sup>26</sup> However, whether a statement does make a factual assertion will depend on the circumstances.<sup>27</sup>

Model Rule 8.4 addresses misconduct by lawyers.<sup>28</sup> According to subsection (c) of this rule, it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."<sup>29</sup> According to subsection (d) of this rule, it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice."<sup>30</sup> These provisions are applicable to a lawyer's conduct that specifically relates to the lawyer's

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20. *Id.* at r. 3.3(b) ("A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.").

21. *Id.* at r. 3.6(a) ("A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.").

22. *Id.* at r. 4.1.

23. *Id.* at r. 4.1(a) ("In the course of representing a client a lawyer shall not knowingly . . . make a false statement of material fact or law to a third person.").

24. *Id.* at r. 4.1 cmt. 1.

25. *Id.* at r. 4.1(a).

26. *Id.* at r. 4.1 cmt. 2 ("This Rule refers to statements of fact.").

27. *Id.* ("Whether a particular statement should be regarded as one of fact can depend on the circumstances.").

28. *Id.* at r. 8.4.

29. *Id.* at r. 8.4(c) ("It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.").

30. *Id.* at r. 8.4(d) ("It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice.").

practice of law. One type of conduct for which a lawyer would be professionally answerable is dishonesty.<sup>31</sup>

#### IV. DISCUSSION

Giuliani's public statements in representing President Trump have attracted considerable attention. His principal task appears to be less legal and more political, to push back on Mueller's investigation and sow confusion. To some observers Giuliani has behaved like a fool. He has been described as "Trump's clown,"<sup>32</sup> a "fool for our time,"<sup>33</sup> a "big dumb idiot,"<sup>34</sup> "weird,"<sup>35</sup> "dopey,"<sup>36</sup> and a "bumbling idiot."<sup>37</sup> Although his representation has been zealous, Giuliani's public statements reveal a deficient understanding of the facts relating to his client's legal case, a failure to appreciate the significance of critical facts in order to render appropriate legal advice, and an inability to communicate effectively on behalf of his client. In order to cover up his deficiencies, or to deliberately sow confusion, Giuliani has resorted to bullshit.

In examining Giuliani's statements, I will assume that one of the elements of bullshit is a requirement that the speaker know that he or she is saying something that may be perceived as false, deceptive, confusing, misleading, or nonsensical. In considering Giuliani's statements, I recognize that if he really is a fool, this assumption may be incorrect and may complicate my analysis. Many of Giuliani's statements, at least to a rational observer, are logically and rhetorically incomprehensible. There are simply too many instances in which Giuliani appears to contradict one statement with

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31. *Id.* at r. 8.4 cmt. 2 ("dishonesty" is one of the "offenses that indicate lack of those characteristics relevant to law practice").

32. Jeffrey Toobin, *How Rudy Giuliani Turned Into Trump's Clown*, NEW YORKER (Sept. 10, 2018), <https://www.newyorker.com/magazine/2018/09/10/how-rudy-giuliani-turned-into-trumps-clown>.

33. Dana Milbank, *Rudy Giuliani Is the Fool for Our Time*, WASH. POST (Dec. 19, 2018), [https://www.washingtonpost.com/opinions/rudy-giuliani-is-the-fool-for-our-time/2018/12/19/0a9f4a92-03b8-11e9-b5df-5d3874f1ac36\\_story.html?utm\\_term=.1beabd87cd28](https://www.washingtonpost.com/opinions/rudy-giuliani-is-the-fool-for-our-time/2018/12/19/0a9f4a92-03b8-11e9-b5df-5d3874f1ac36_story.html?utm_term=.1beabd87cd28).

34. Rafi Schwartz, *Rudy You Big Dumb Idiot*, SPLINTER (Dec. 19, 2018, 10:31 AM), <https://splinternews.com/rudy-you-big-dumb-idiot-1831199867>.

35. *Rudy Giuliani's Weird Faces of the Week*, DAILY BEAST (Aug. 2018), <https://www.thedailybeast.com/rudy-giulianis-weird-faces-of-the-week>.

36. Letters to the Editor, *Giuliani May Be 'Dopey,' but He's No Royal Fool*, WASH. POST (Dec. 25, 2018), [https://www.washingtonpost.com/opinions/giuliani-may-be-dopey-but-hes-no-royal-fool/2018/12/25/0fa89626-0541-11e9-958c-0a601226ff6b\\_story.html?utm\\_term=.e75fce40fd0d](https://www.washingtonpost.com/opinions/giuliani-may-be-dopey-but-hes-no-royal-fool/2018/12/25/0fa89626-0541-11e9-958c-0a601226ff6b_story.html?utm_term=.e75fce40fd0d).

37. Jared Yates Sexton, *Is Rudy Giuliani Truly a Bumbling Idiot? Maybe—Or He's an Effective Agent of Chaos*, SALON (Aug. 1, 2018, 5:40 PM), <https://www.salon.com/2018/08/01/is-rudy-giuliani-truly-a-bumbling-idiot-maybe-or-hes-an-effective-agent-of-chaos/>.

another,<sup>38</sup> claim that he never made a statement which he clearly made,<sup>39</sup> or made statements that are clearly untrue.<sup>40</sup> It is therefore uncertain whether Giuliani really knows or remembers anything he once said, comprehends what he is presently saying, or even cares about whether anything he says is true.<sup>41</sup>

Salient features of bullshit include misstating, deceiving, misrepresenting, and misleading. What distinguishes bullshit from knowingly making false factual statements is the speaker's indifference to the truth and disregard whether his statement is factually correct. To constitute bullshit the speaker has no interest in the truth or the ascertainment of the truth. So, for example, Giuliani may not have been deliberately lying when he stated that no one signed a letter of intent to build the Trump Tower in Moscow;<sup>42</sup> that he never said there was no collusion between the Trump campaign and

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38. See Chris Cillizza, *Rudy Giuliani Just Totally Contradicted 18 Months of 'No Collusion' Talk From Donald Trump*, CNN POL. (Jan. 17, 2019, 2:20 PM), <https://www.cnn.com/2019/01/17/politics/donald-trump-rudy-giuliani-collusion/index.html>.

39. See Allyson Chiu & Lindsey Bever, *Rudy Giuliani: 'I Never Said There Was No Collusion' Between Trump Campaign and Russia*, WASH. POST (Jan. 17, 2019), [https://www.washingtonpost.com/nation/2019/01/17/rudy-giuliani-says-i-never-said-there-was-no-collusion-between-trump-campaign-russia/?utm\\_term=.6f40659479e6](https://www.washingtonpost.com/nation/2019/01/17/rudy-giuliani-says-i-never-said-there-was-no-collusion-between-trump-campaign-russia/?utm_term=.6f40659479e6).

40. See Elliot Williams, *Trump and Giuliani's Lies About the Mueller Investigation Aren't Believable. But They Are Important*, NBC (Sept. 1, 2018, 4:46 AM), <https://www.nbcnews.com/think/opinion/trump-giuliani-s-lies-about-mueller-investigation-aren-t-believable-ncna905531>.

41. See Chris Cillizza, *21 Head-Scratching Lines from A(nother) Disastrous Rudy Giuliani Interview*, CNN (May 7, 2018, 11:58 AM), <https://www.cnn.com/2018/05/07/politics/rudy-giuliani-trump-abc/index.html>. Although the dictionary definition of bullshit, noted above, includes statements that are ridiculous and nonsensical, I will put aside from my analysis some of Giuliani's statements that are simply foolish. I include here, Giuliani's response to an interview question asking whether President Trump would sit down one-on-one with Special Counsel Mueller. Giuliani's response, "Over my dead body. But, you know, I could be dead." Gregg Re, *Giuliani on Whether Trump Will Sit Down With Mueller: 'Good luck—Over My Dead Body'*, FOX NEWS (Dec. 16, 2018), <https://www.foxnews.com/politics/giuliani-on-whether-trump-will-sit-down-with-mueller-good-luck-over-my-dead-body>. Or his embarrassing comment that there were no terrorist attacks during Republican administrations, only Democratic ones, somehow forgetting the 9/11 attacks during the administration of George W. Bush. Linda Qiu, *Aside From 9/11, Rudy Giuliani Is Wrong About No Terrorist Attacks Before Obama*, POLITIFACT (Aug. 16, 2016, 5:21 PM), <https://www.politifact.com/truth-o-meter/statements/2016/aug/16/rudy-giuliani/aside-from-911-rudy-giuliani-wrong-about-no-terr/>. Or his derogatory comments about Joe Biden. Quint Forgey, *Giuliani Calls Biden a 'Mentally Deficient Idiot'*, POLITICO (June 15, 2018, 1:42 PM), <https://www.politico.com/story/2018/06/15/giuliani-biden-is-mentally-deficient-idiot-649397>.

42. See Aaron Rupar, *Rudy Giuliani Lied About a Trump Tower Moscow Letter of Intent. CNN Has Receipts*, VOX (Dec. 19, 2018 9:30 AM), <https://www.vox.com/2018/12/19/18148110/trump-tower-moscow-letter-of-intent-signature>.

Russia;<sup>43</sup> that Roger Stone never alerted Trump to WikiLeaks concerning Hillary Clinton;<sup>44</sup> that paying Stormy Daniels was not a crime;<sup>45</sup> and that the big October “surprise” that would turn the election to Trump’s favor, had nothing to do with FBI director James Comey’s announcement of a new email investigation of Hillary Clinton.<sup>46</sup> Although these statements are false, it does not appear that making factually inaccurate statements was Giuliani’s purpose or that he even cared whether his statements were factually accurate or not. Giuliani’s principal purpose in making these statements was likely not to hide the truth but to obfuscate the truth, to attack the conduct of Mueller’s investigation, and to protect his client’s reputation. These statements reflect not a conscious design to lie but an indifference and even contempt for the truth, in a word, to engage in bullshit.

In any event, there is an overlap between telling a lie and bullshit. Bullshit often includes telling lies, but bullshit appears more benign than lying. Moreover, from a legal standpoint, a lie is more objectionable than bullshit; it may be a crime. However, from an ethical standpoint, bullshit by a lawyer may be more morally objectionable than lying. A lie is a discrete event. A lie typically relates to a particular occurrence. When Giuliani stated that he never claimed that anybody in the Trump campaign had any dealings with Russia, he lied.<sup>47</sup> He had in fact made that claim often. But bullshit is much more “panoramic,” more comprehensive.<sup>48</sup> Giuliani’s many statements attempting to distance and gloss over con-

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43. See Aaron Blake, *Rudy Giuliani Just Contradicted Nearly All the Trump Team’s Past Collusion Denials*, WASH. POST, (Jan. 17, 2019), [https://www.washingtonpost.com/politics/2019/01/17/rudy-giuliani-just-contradicted-nearly-all-trump-teams-past-collusion-denials/?utm\\_term=.febdf035aee6](https://www.washingtonpost.com/politics/2019/01/17/rudy-giuliani-just-contradicted-nearly-all-trump-teams-past-collusion-denials/?utm_term=.febdf035aee6).

44. See Steve Benen, *Rudy Giuliani Isn’t Doing His Client in the White House Any Favors*, MSNBC (Dec. 17, 2018, 9:43 AM), <http://www.msnbc.com/rachel-maddow-show/rudy-giuliani-isnt-doing-his-client-the-white-house-any-favors>.

45. See Tim Hains, *Rudy Giuliani: Paying Stormy Daniels Was Not a Crime*, REALCLEAR POL. (Dec. 16, 2018), [https://www.realclearpolitics.com/video/2018/12/16/rudy\\_giuliani\\_paying\\_stormy\\_daniels\\_is\\_not\\_a\\_crime.html](https://www.realclearpolitics.com/video/2018/12/16/rudy_giuliani_paying_stormy_daniels_is_not_a_crime.html).

46. See Jim Dwyer, *Giuliani Promised a Surprise Before the Election. Comey Delivered One*, N.Y. TIMES (June 19, 2018), <https://www.nytimes.com/2018/06/19/nyregion/giuliani-fbi-comey-clinton.html>.

47. Christal Hayes, *Trump Attorney Rudy Giuliani: ‘I Never Said There Was No Collusion Between the Campaign’ and Russia*, USA TODAY (Jan. 17, 2019, 10:34 AM), <https://www.usatoday.com/story/news/politics/2019/01/16/rudy-giuliani-i-never-said-no-collusion-between-trump-campaign-russia/2600268002/>.

48. See FRANKFURT, *supra* note 1, at 51-52 (to invent a lie a speaker “must think he knows what is true” whereas a person who undertakes bullshit “has much more freedom [since] [h]is focus is panoramic rather than particular.”).



tacts between Trump and his campaign officials and Russian operatives are contradictory, confusing, and deceptive. Giuliani may have been bluffing, a key feature of bullshit.

In the same connection, a quintessential feature of bullshit, noted above, is to make false or deceptive statements in order to sow confusion, obscure the truth, or bluff through a difficult situation. It is here as well that Giuliani is adept at engaging in bullshit. Immediately after the BuzzFeed report that Trump directed his lawyer, Michael Cohen, to lie to Congress about Trump's plans to build a skyscraper in Moscow and the quick correction by Special Counsel Mueller as to the accuracy of that report, Giuliani made several contradictory remarks that appeared to be made to distract from the story, inject confusion as to the details of the plan, and possibly set the stage for a defense.<sup>49</sup> Giuliani's pre-textual defense of the Muslim travel ban by claiming that it was not based on religion but on national security was a deliberate misrepresentation, an obvious attempt to provide an innocent spin to an amoral and unconstitutional act.<sup>50</sup> Additionally, Giuliani's contradictory statements about the timing of Trump's skyscraper deal with Russia demonstrated not only Giuliani's apparent ignorance of the facts, but his apparent indifference to the facts, which is a hallmark of bullshit.<sup>51</sup>

A lawyer who displays an indifference to the truth, as Giuliani has shown, may be a more insidious threat to the rule of law and the public's confidence in the justice system than a lawyer who tells a lie. Giuliani's stunning pronouncement that "truth isn't truth" does far more to destroy the bedrock principle in any legal system, namely, that truth matters, than a lawyer telling a lie.<sup>52</sup> Whatever the context, Giuliani's statement is nonsensical, anarchic, and very dangerous. Additionally, Giuliani's effort to explain his statement by trying to provide an excuse for Trump to refuse to be interviewed by the Special Counsel's office is perverse, and clearly bullshit.

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49. See John Haltiwanger, *Giuliani Alludes to 'Tapes' in a Perplexing Interview on BuzzFeed News' Report, Immediately Walks It Back*, BUS. INSIDER (Jan. 22, 2019, 4:22 PM), <https://www.businessinsider.com/giuliani-tapes-new-yorker-interview-trump-cohen-russia-2019-1>.

50. See Amy B. Wang, *Trump Asked for a 'Muslim ban,' Giuliani Says—And Ordered a Commission to Do It 'Legally'*, WASH. POST (Jan. 29, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally/?utm\\_term=.cdd9f636207f](https://www.washingtonpost.com/news/the-fix/wp/2017/01/29/trump-asked-for-a-muslim-ban-giuliani-says-and-ordered-a-commission-to-do-it-legally/?utm_term=.cdd9f636207f).

51. See Mark Mazzetti et al., *Moscow Skyscraper Talks Continued Through 'the Day I Won,' Trump Is Said to Acknowledge*, N.Y. TIMES (Jan. 20, 2019), <https://www.nytimes.com/2019/01/20/us/politics/trump-tower-moscow-cohen-giuliani.html>.

52. See Caroline Kenny, *Rudy Giuliani Says 'Truth Isn't Truth'*, CNN (Aug. 19, 2018, 4:50 PM), <https://www.cnn.com/2018/08/19/politics/rudy-giuliani-truth-isnt-truth/index.html>.

Too, a lie can be corrected; bullshit is not susceptible of correction. Bullshit embraces not facts but opinions, perceptions, and biases. It fits neatly into the current mainstream view of alternative facts and the inherent ambiguity of truth.<sup>53</sup> Since bullshit does not require knowledge of facts and knowingly making an assertion that contradicts the facts, bullshit is much easier to create than a lie and much easier to get away with. It allows a speaker to say anything about any subject regardless of whether the speaker knows anything about the subject. The statement is disconnected from the facts and from reality. Understood in this sense, a statement by a lawyer that demonstrates a failure to make a conscientious effort to ascertain the truth has a much greater capacity to contaminate the legal system and the public perception of lawyers.

Bullshit is propaganda. It involves disseminating ideas and images to the public to influence public opinion by the selection of certain information, deceptive portrayals of that information, and misrepresentation of reality. Bullshit ignores facts, reality, and truth. It assumes that facts are fungible and truth is whatever the speaker says is the truth. Since the speaker has no interest or belief in the truth, and that facts and truth have no inherent value, then whatever the speaker says cannot be regarded as lying. Thus, “Big Brother,” in George Orwell’s *1984*,<sup>54</sup> was not lying about any particular facts; he was engaged in pervasive deceit and misinformation, or in a word, bullshit.

## V. AFTERTHOUGHTS

Bullshit is ubiquitous in the current culture of chaos, tribalism, and noise. Bullshit is counter-factual; it is the spinning of facts to persuade. The most persuasive bullshit is carefully crafted by a skilled communicator. That is why we call a person who excels at bullshit a bullshit “artist.” The question this essay addresses is whether an attorney— not a politician, pundit, or used car salesman—who is a skilled communicator subject to various ethics rules that protect the public from false, deceptive, and misleading bullshit violates those rules when he engages in bullshit.<sup>55</sup>

Is Rudolph Giuliani a bullshit artist? Or is he a fool? He has zealously crafted a false and confusing narrative to protect his client, the President of the United States. Many of his statements are

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53. See David B. Feldman, *Does Truth Still Exist, Or Are There Just Alternative Facts?*, PSYCHOL. TODAY (Jan. 26, 2017), <https://www.psychologytoday.com/us/blog/supersurvivors/201701/does-truth-still-exist-or-are-there-just-alternative-facts>.

54. GEORGE ORWELL, *1984* (Houghton Mifflin Harcourt 2017).

55. See generally MODEL RULES OF PROF’L CONDUCT r. 8.4 (AM. BAR ASS’N 2018).

simply untrue. However, even if they are untrue, his statements reflect an ignorance of facts, a skewed appreciation of facts, and an indifference to whether his statements are true.

Do Giuliani's statements constitute bullshit? As I have construed bullshit in this article, they do. Do his statements violate the ethics rules? Do they impair the administration of justice to the extent they undermine public confidence in the legal system and respect for the conduct of lawyers? My purpose in this essay is not to answer these questions, but to raise them for further discussion.

#### ADDENDUM: PUBLIC STATEMENTS BY GIULIANI

##### *James Comey's "Big Surprise":*

Three days before FBI director James Comey's announcement two weeks before the 2016 election that the FBI discovered a new unexamined laptop in the investigation of Hillary Clinton's emails, Giuliani appeared on Fox morning news and stated: "We got a couple of surprises left . . . I think it'll be enormously effective."<sup>56</sup> Two days later Giuliani again appeared on Fox News and said he was talking about "pretty big surprises."<sup>57</sup> He also stated that "We've got a couple of things up our sleeve that should turn this thing around."<sup>58</sup> As it turned out, the emails on the laptop were meaningless.<sup>59</sup> Giuliani stated that the surprise he was talking about had nothing to do with the emails, but with a speech Trump was going to give attacking Clinton.<sup>60</sup> However, on the day of Comey's announcement Giuliani was so pleased he blurted out a description of his sources for inside information on the email case.<sup>61</sup> He claimed that the F.B.I.'s original conclusion was "completely unjustified, and almost a slap in the face of the F.B.I.'s integrity."<sup>62</sup> Giuliani said he knew that "from former agents" and "a few active agents who obviously don't want to identify themselves."<sup>63</sup> Giuliani's new version was that his prediction was just speculation.<sup>64</sup> "We knew just by instinct . . . that the New York office was enraged."<sup>65</sup>

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56. Dwyer, *supra* note 46.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

*Muslim Ban:*

According to Giuliani, President Trump wanted a “Muslim ban” and asked Giuliani to convene a commission to figure out “the right way to do it legally.”<sup>66</sup> So, “instead of religion, [we focused on] *danger*—the areas of the world that create danger for us.”<sup>67</sup> “Which is a *factual* basis, not a religious basis. Perfectly legal, perfectly sensible. And that’s what the ban is based on. It’s not based on religion. It’s based on places where there are substantial evidence that people are sending terrorists into our country.”<sup>68</sup>

*Roger Stone and WikiLeaks:*

Giuliani’s exchange with journalist, George Stephenopoulos:

STEPHENPOULOS: Did Roger Stone ever give the president a heads-up on WikiLeaks’ leaks concerning Hillary Clinton, the DNC?

GIULIANI: No, he didn’t.

STEPHENPOULOS: Not at all?

GIULIANI: No. I don’t believe so. But again, if Roger Stone gave anybody a heads-up about WikiLeaks’ leaks, that’s not a crime.<sup>69</sup>

*Collusion With Russia:*

On the issue of whether there was any collusion between Trump or officials in his campaign and Russia, Giuliani stated that “I have no knowledge of any collusion by any of the thousands of people who worked on the campaign.”<sup>70</sup> Later, Giuliani stated: “I never said there was no collusion between the campaign, or people in the campaign.”<sup>71</sup> Giuliani previously stated that “no one in ‘the upper levels of the Trump campaign’ colluded with Russia, adding that he had

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66. Wang, *supra* note 50.

67. *Id.*

68. *Id.*

69. Benen, *supra* note 44.

70. Philip Rucker, *Giuliani Seeks to Clarify Comments on Trump Campaign and Russia, Saying He Has ‘No Knowledge of Any Collusion’*, WASH. POST (Jan. 17, 2019), [https://www.washingtonpost.com/.../0321b244-1a76-11e9-9ebf-c5fed1b7a081\\_story.html](https://www.washingtonpost.com/.../0321b244-1a76-11e9-9ebf-c5fed1b7a081_story.html).

71. Holly Rosenkrantz, *Giuliani: ‘I Never Said There Was No Collusion’ Between Trump Campaign and Russia*, CBS (Jan. 17, 2019, 4:28 PM), <https://www.cbsnews.com/news/giuliani-i-never-said-there-was-no-collusion-between-trump-campaign-and-russia/>.

‘no reason to believe anybody else did’ either.”<sup>72</sup> According to Giuliani, “the only knowledge I have in this regard is the collusion of the Clinton campaign with Russia, which has so far been ignored.”<sup>73</sup>

Giuliani stated that “collusion is not a crime”<sup>74</sup> because the term “collusion” appears nowhere in the federal criminal code.<sup>75</sup>

According to Giuliani, “There is not a single bit of evidence the president of the United States committed the only crime you can commit here, conspired with the Russians to hack the DNC.”<sup>76</sup>

According to Giuliani, “[c]ollusion is not a crime.”<sup>77</sup> “Hacking is the crime. The president didn’t hack. He didn’t pay for the hacking.”<sup>78</sup> In any event, there was no collusion between the Trump campaign and Russia. But even if meaningful information “comes from a Russian, or a German, or an American, it doesn’t matter. And they never used it, is the main thing. They never used it. They rejected it. If there was collusion with the Russians, they would have used it.”<sup>79</sup>

Giuliani, asked about revelations that Paul Manafort, Trump’s campaign chairman, shared Trump campaign polling data with a Russian linked to the nation’s intelligence services, Giuliani replied that it’s not collusion, because “polling data is given to everybody.”<sup>80</sup> In any event, Giuliani said, internal polling data “is cooked,” and “the most inaccurate stuff.”<sup>81</sup>

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72. Kristen Welker & Allan Smith, *In Sharp Reversal, Giuliani Now Claims: ‘I Never Said There Was No Collusion Between the Campaign’ and Russia*, NBC (Jan. 17, 2019, 12:32 PM), <https://www.nbcnews.com/politics/donald-trump/giuliani-now-claims-i-never-said-the-re-was-no-collusion-n959681>.

73. Eileen Sullivan & Maggie Haberman, *Rudy Giuliani Backs Off Remarks on Potential Collusion by Trump Aides*, N.Y. TIMES (Jan. 17, 2019), <https://www.nytimes.com/2019/01/17/us/politics/giuliani-collusion.html>.

74. Christina Zhao, *Trump’s Lawyer Rudy Giuliani Claims ‘Collusion is Not a Crime’: ‘It Was over with by the Time of the Election’*, NEWSWEEK (Dec. 16, 2018, 10:24 PM), <https://www.newsweek.com/trumps-lawyer-rudy-giuliani-claims-collusion-not-crime-it-was-over-time-1260963>.

75. Blake, *supra* note 43.

76. Allyson Chiu & Lindsey Bever, *Rudy Giuliani: ‘I Never Said There Was No Collusion’ Between Trump Campaign and Russia*, WASH. POST (Jan. 17, 2019), [https://www.washingtonpost.com/nation/2019/01/17/rudy-giuliani-says-i-never-said-there-was-no-collusion-between-trump-campaign-russia/?utm\\_term=.6f40659479e6](https://www.washingtonpost.com/nation/2019/01/17/rudy-giuliani-says-i-never-said-there-was-no-collusion-between-trump-campaign-russia/?utm_term=.6f40659479e6).

77. Zhao, *supra* note 74.

78. Blake, *supra* note 43.

79. *Id.*

80. Samuel Chamberlain, *Giuliani Claims ‘I Never Said There Was No Collusion’ in Trump Campaign*, FOX NEWS (Jan. 16, 2019), <https://www.foxnews.com/politics/giuliani-claims-i-never-said-there-was-no-collusion-in-trump-campaign>.

81. Allan Smith, *Giuliani Now Claims ‘I Never Said There Was No Collusion Between the Campaign’ and Russia*, EURONEWS (Jan. 19, 2019), <https://www.euronews.com/2019/01/19/giuliani-now-claims-i-never-said-there-was-no-collusion-n959681>.

*Trump Tower Moscow Deal:*

Giuliani stated that Trump was involved in discussions to build a skyscraper in Moscow throughout the entire presidential campaign. According to Giuliani, he quoted Trump that the Moscow Tower discussions were “going on from the day I announced to the day I won.”<sup>82</sup> Giuliani later corrected his statement to allow for the possibility that the President and his lawyer Michael Cohen could have discussed the project through the election. They were “fleeting conversations,” according to Giuliani, but that there were no notes or logs about the dates.<sup>83</sup> “We’re at Cohen’s mercy for the dates,” Giuliani stated.<sup>84</sup> However, one day after making these statements Giuliani backtracked, stating that his comments about the dates of conversations about the Trump Tower were “hypothetical,” and “not based on conversations I had with the President.”<sup>85</sup>

When asked about whether President Trump signed a letter of intent during the 2016 presidential campaign that laid the groundwork to develop a Trump Tower, Giuliani claimed that the letter had not been signed.<sup>86</sup> Then, after being shown the letter and that Trump had indeed signed the letter, Giuliani stated: “I don’t think I said nobody signed it.”<sup>87</sup> He added “of course” Trump signed it. “How could you send it but nobody signed it?”<sup>88</sup> He claimed the latter was meaningless because the project didn’t go anywhere. “It means nothing but an expression of interest . . . .”<sup>89</sup>

*Trump Tower Meeting:*

Giuliani stated that top Trump officials met at Trump Tower two days before the well-publicized June 9th Trump Tower meeting involving Donald Trump, Jr., Jared Kushner, Paul Manafort, Rick Gates and a Russian lawyer, to plan for the June 9th meeting, then, four hours later, denied that the meeting ever took place, stating that he was merely repeating a claim that multiple reporters had

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82. Mazzetti et al., *supra* note 51.

83. *Id.*

84. *Id.*

85. Isaac Chotiner, “*Even If He Did Do It, It Wouldn’t Be A Crime*”: Rudy Giuliani on President Trump, NEW YORKER (Jan. 21, 2019), <https://www.newyorker.com/news/q-and-a/even-if-he-did-do-it-it-wouldnt-be-a-crime-rudy-giuliani-donald-trump-robert-mueller-moscow-buzzfeed>.

86. Justin Wise, *Giuliani Says Trump Signing Letter of Intent for Moscow Tower is Meaningless*, HILL (Dec. 19, 2018, 7:18 AM), <https://thehill.com/homenews/administration/422013-giuliani-says-trump-signing-letter-of-intent-for-moscow-trump-tower>.

87. *Id.*

88. *Id.*

89. *Id.*

been asking him about.<sup>90</sup> When he was questioned about his assertion that President Trump did not know about the June 9th meeting, Giuliani stated that “Nobody can be sure of anything.”<sup>91</sup>

*Michael Cohen Testimony:*

After news reports stated that Trump had told his personal lawyer Michael Cohen to lie to Congress about negotiations over the Trump Tower, Giuliani derided the report as false.<sup>92</sup> “There are no tapes, there are no texts, there is no corroboration that the president told him to lie.”<sup>93</sup> Giuliani stated that “I have been through all the tapes, I have been through all the texts, I have been through all the e-mails, and I knew none existed.”<sup>94</sup> When asked what tapes he had reviewed, Giuliani conceded that the original report mentioned texts and emails, but not tapes.<sup>95</sup> “I shouldn’t have said tapes.”<sup>96</sup>

*Hush Money Payments:*

After Trump denied having affairs with Stormy Daniels and Karen McDougall, then denied knowledge of hush money payoffs to them, then denied any knowledge of the payoffs, Giuliani claimed that the payoffs were simple, private transactions and that the hush payments weren’t crimes.<sup>97</sup> Although made a few weeks before the election, Giuliani claimed that the sole purpose of the payments was to avoid embarrassment and had nothing to do with the election.<sup>98</sup> In the face of claims by Cohen, the prosecutors, a judge, and the media company AMI that the payments were intended to help Trump’s campaign, Giuliani stated that “I can produce an enormous number of witnesses that say the president was very concerned about how this was going to affect his children, his marriage.”<sup>99</sup> Moreover, Giuliani stated, “the amount of money is consistent with harassment, not truth.”<sup>100</sup> He added: “When it’s true and you have the kind of money the president had, it’s a \$1 million

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90. Rebecca Morin, *‘Never Happened’: Giuliani Walks Back Confusing Claim of Secret Trump Tower Meeting*, POLITICO (July 31, 2018, 6:26 AM), <https://www.politico.eu/article/never-happened-giuliani-walks-back-confusing-claim-of-secret-trump-tower-meeting/>.

91. *Id.*

92. Haltiwanger, *supra* note 49.

93. Chotiner, *supra* note 86.

94. Haltiwanger, *supra* note 49.

95. *Id.*

96. *Id.*

97. Hains, *supra* note 45.

98. *Id.*

99. *Id.*

100. *Id.*

settlement. When it's not true, when it's a harassment settlement and it's not true, you give them \$130,000, \$150,000. They went away for so little money that it indicates their case was very, very weak."<sup>101</sup>

*Interview With Mueller:*

In discussing the circumstances under which Trump would submit to an interview with Special Counsel Mueller, Giuliani claimed that Mueller is trying to trap Trump into committed perjury.<sup>102</sup> According to Giuliani, "When you tell me . . . that [Trump] should testify because he's going to tell the truth, and he shouldn't worry, well that's so silly because it's somebody's version of the truth, not the truth."<sup>103</sup> When the interviewer stated that "truth is truth," Giuliani responded, "No, it isn't truth . . . Truth isn't truth."<sup>104</sup>

*9/11:*

According to Giuliani, "Under those eight years, before Obama came along, we didn't have any successful radical Islamic terrorist attack in the United States." Giuliani added, "They all started when Clinton and Obama got into office."<sup>105</sup>

*Charging Trump:*

According to Giuliani, Trump could shoot former FBI director James Comey in the oval office and not be indicted while still serving as President.<sup>106</sup> Jay Sekulow and John Dowd added that the President has the constitutional authority to pardon even himself for federal crimes.<sup>107</sup>

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101. *Id.*

102. Fredreka Schouten, *Truth isn't Truth: Trump Lawyer Rudy Giuliani Worries Mueller Interview Could Lead to Perjury Charge*, USA TODAY (Aug. 19, 2018, 3:54 PM), <https://www.usatoday.com/story/news/politics/2018/08/19/rudy-giuliani-truth-isnt-truth-amid-worries-trump-perjury-risk/1037010002/>.

103. *Id.*

104. *Id.*

105. *Giuliani Says There Were No 'Radical Islamic' Attacks in U.S. Before Obama*, CHI. TRIB. (Aug. 15, 2016, 5:12 PM), <https://www.chicagotribune.com/news/nationworld/politics/ct-giuliani-terrorism-20160815-story.html>.

106. S.V. Date, *Giuliani: Trump Could Have Shot Comey and Still Couldn't Be Indicted for It*, HUFFPOST (June 4, 2018), [https://www.huffingtonpost.com/entry/trump-shoot-comey\\_us\\_5b145897e4b02143b7cd633e](https://www.huffingtonpost.com/entry/trump-shoot-comey_us_5b145897e4b02143b7cd633e).

107. *Id.*



Although federal prosecutors implicated President Trump in campaign-related felonies, Giuliani claims it's not a big deal.<sup>108</sup> "Nobody got killed, nobody got robbed . . . This was not a big crime . . . I think in two weeks they'll start with parking tickets that haven't been paid."<sup>109</sup>

*Joe Biden:*

After calling Joe Biden "a moron," and "a mentally deficient idiot," Giuliani clarified his remarks that "I didn't mean that. I meant he's dumb."<sup>110</sup> "Every decision he's made about foreign policy has turned out to be wrong, you know."<sup>111</sup> Giuliani continued: "He didn't want to go into Iraq when they took over Kuwait, that was wrong. He did want to go into Iraq later and then he changed his mind then he wanted to divide Iraq into three parts. His, it's all coming about because he's a fun guy, but they only love him because he's a Democrat. If he were a Republican they would be going after him constantly."<sup>112</sup>

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108. Steve Benen, *Giuliani Argues That Trump's Alleged Crimes Were Not 'Big'*, MSNBC (Dec. 14, 2018, 8:40 AM), <http://www.msnbc.com/rachel-maddow-show/giuliani-argues-trumps-alleged-crimes-were-not-big>.

109. *Id.*

110. Veronica Stracqualursi, *Rudy Giuliani Tries to Clarify His Remarks on Biden: 'I Meant He's Dumb'*, CNN POL. (June 16, 2018, 6:03 PM), <https://www.cnn.com/2018/06/16/politics/rudy-giuliani-joe-biden-cnntv/index.html>.

111. *Id.*

112. *Id.*