

WHERE'S RUDY?

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* James Moliterno, Vincent Bradford Professor of Law, Washington and Lee University. Thanks to the Frances Lewis Law Center for its generous support. Thanks for excellent research assistance to Christine Ward. Essay title inspiration from "Where's Waldo?" a British series of children's puzzle books created by English illustrator Martin Handford. See MARTIN HANDFORD, WHERE'S WALDO? (Candlewick Press 1997).

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INTRODUCTION

On January 6, 2021, a mob of Donald Trump supporters attacked the U.S. Capitol and terrorized the joint session of the Senate and House of Representatives as they were engaged in the constitutional process of certifying the winner of the November 2020 presidential election. At least five people died during the insurrection and the entirety of the United States' legislative branch was sent scurrying for cover into protected locations in and around the Capitol.¹ As the mob searched through the building and grounds, some carried weapons, and some carried the tools of hostage-taking.²

On January 11, 2021, the New York State Bar opened an investigation into the role Rudy Giuliani played in inciting the insurrection.³ This inquiry presents the choice of law question: Which rules of legal ethics should the New York authorities apply when judging Giuliani's incitement of insurrection conduct? What law should the same authorities apply when judging Giuliani's conduct in Ukraine which lead to Donald Trump's first impeachment?⁴ What law should the New York authorities apply when judging Giuliani's conduct after the November 2020 election, mainly in Michigan, Georgia, and Pennsylvania (including a court appearance), as he pressed demonstrably false claims about vote

1. Jack Healy, *These are the 5 People Who Died in the Capital Riot*, N.Y. TIMES (Jan. 11, 2021), <https://www.nytimes.com/2021/01/11/us/who-died-in-capitol-building-attack.html>.

2. *Retired Air Force officer at Capitol riot intended "to take hostages," prosecutor says*, CBS NEWS (Jan. 15, 2021, 7:39 AM), <https://www.cbsnews.com/news/larry-brock-arrested-capitol-riots-intended-take-hostages/https://www.cbsnews.com/news/larry-brock-arrested-capitol-riots-intended-take-hostages/>.

3. Joseph Choi, *New York State Bar Association to Consider Removing Giuliani as Member*, MSN (Jan. 11, 2021), <https://www.msn.com/en-us/news/politics/new-york-state-bar-association-to-consider-removing-giuliani-as-member/ar-BB1cEL7u?ocid=msedgntp>. The New York State Bar, it should be understood, is not the license-granting authority in New York. But its action could prompt action by the Appellate Division of the court, which does have power over licenses.

4. See Simon Shuster, *Exclusive: Ukraine Releases 'Shock' Call With Giuliani As Trump's Second Impeachment Trial Begins*, TIME (Feb. 9, 2021, 5:59 PM), <https://time.com/5937491/rudy-giuliani-ukraine-trump-impeachment/>.

fraud? This question, which law applies to out-of-licensure-state-conduct, is the focus of this paper.⁵

In addition to his presence in the U.S., while acting as one of Donald Trump's personal lawyers, Giuliani did considerable work for his client in Ukraine. Some of the work took place physically in Ukraine, while other aspects of the work took place while Mr. Giuliani or his agents were elsewhere, including Madrid, Tel Aviv, Warsaw, Budapest, and elsewhere, but his international work was always concentrated in Ukraine. Some of the work took place through subordinates, such as Lev Parnas and Igor Fruman.⁶ Under the right circumstances, bar ethics authorities in New York or D.C., where Giuliani holds active and inactive law licenses, respectively, would be required to apply the lawyer ethics law of one or more of these foreign jurisdictions.

After the November 2020 election, Mr. Giuliani made his first court appearance anywhere in nearly thirty years, arguing on behalf of the Trump Campaign in federal court in Pennsylvania, also away from his state of licensure.⁷ In Pennsylvania, Michigan, and other key election states, he has been the leader of Donald Trump's election legal team. Mr. Giuliani was described by Donald Trump as "spearheading" the Trump legal team, consisting of "Rudy Giuliani, Joseph diGenova, Victoria Toensing, Sidney Powell, and Jenna Ellis, a truly great team, added to our other wonderful lawyers and representatives!"⁸ Team member Jenna Ellis referred to the team as "an elite strike force," led by Giuliani.⁹ After suggesting that a long-since dead Hugo Chavez was behind the conspiracy to throw the election toward Joe

5. This essay is not meant to analyze whether Rudy Giuliani committed any misconduct in this work, but is limited to exploring what law might apply to any misconduct.

6. See *infra* Section 1; see also Ari Shapiro & Dave Blanchard, *How A Complicated Web Connects 2 Soviet-Born Businessmen with the Impeachment Inquiry*, NPR (Oct. 23, 2019, 5:00 AM), <https://www.npr.org/2019/10/23/771849041/how-a-complicated-web-connects-2-soviet-born-businessmen-with-the-impeachment-in>.

7. Jon Swaine & Aaron Schaffer, *Here's What Happened When Rudolph Giuliani Made His First Appearance in Federal Court in Nearly Three Decades*, WASH. POST (Nov. 18, 2020, 11:05 AM), https://www.washingtonpost.com/politics/giuliani-pennsylvania-court-appearance/2020/11/18/ad7288dc-2941-11eb-92b7-6ef17b3fe3b4_story.html.

8. Donald Trump (@realDonaldTrump), TWITTER (Nov. 14, 2020, 10:11 PM).

9. Tara Subramaniam & Holmes Lybrand, *Fact-checking Giuliani and the Trump Legal Team's Wild, Fact-free Press Conference*, CNN (Nov. 20, 2020, 10:06 AM), <https://www.cnn.com/2020/11/19/politics/giuliani-trump-legal-team-press-briefing-fact-check/index.html>.

Biden, Powell was removed from the team. Her outlandish, patently false statements may have been too unhinged even for the remaining members of the Giuliani team, a team that became a legal laughing stock for its bizarre, baseless, error-prone arguments in courts.¹⁰

Mr. Giuliani possesses an active law license issued by the state of New York, and an inactive license in the District of Columbia.¹¹ As a private¹² lawyer, which at lawyer ethics law should apply to Mr. Giuliani's out-of-state conduct on behalf of his client, Donald Trump? What do choice of law concepts and rules say about the governing legal ethics rules? Should he be governed by the lawyer law in New York, D.C., Pennsylvania, Ukraine, the EU, Spain (where meetings occurred), or some combination of these?¹³

The indeterminacy and unpredictability of choice of law doctrine is legendary. Venturing into the choice of law field generally can be a dangerous, confusing activity. No less than torts-god William Prosser and leading legal ethics scholar Charles Wolfram have warned of its pitfalls. Wolfram referred to it as the "Dismal

10. Josh Wingrove, *Giuliani Drops Sidney Powell as Trump's "Strike Force" Splinters*, DETROIT NEWS (Nov. 22, 2020, 8:05 PM), <https://www.detroitnews.com/story/news/politics/2020/11/22/giuliani-drops-sidney-powell-trump-strike-force/115030720/>.

11. See *Membership*, DC Bar, <https://join.dcbbar.org/eweb/DynamicPage.aspx?Site=dcbbar&WebCode=FindMemberResults> (last visited May 31, 2021) (search results showing that Mr. Giuliani is currently an inactive lawyer in good standing); Susan Disantis, *New York State Bar Association Launches Historic Inquiry Into Removing Trump Attorney Rudy Giuliani From Its Membership*, NYSBA (Jan. 11, 2021), <https://nysba.org/new-york-state-bar-association-launches-historic-inquiry-into-removing-trump-attorney-rudy-giuliani-from-its-membership/>; Daniel E. Slotnik, *Prominent Lawyers Want Giuliani's Law License Suspended Over Trump Work*, N.Y. TIMES (Jan. 21, 2021), <https://www.nytimes.com/2021/01/21/nyregion/giuliani-trump-law-license.html>.

12. An interesting issue beyond the scope of this essay involves Giuliani's actual status. He and Donald Trump proclaim that Giuliani is acting as a private lawyer. But it is a curious situation to consider a lawyer negotiating for concessions from a foreign government on behalf of a sitting president. Can such a lawyer actually be acting in the private interests of a sitting president or is the lawyer actually a government lawyer? And if the argument that the lawyer is a private lawyer for the president is accepted, what does it say about the president who is pursuing his admittedly private interests with foreign leaders? This question was partially answered by the evidence gathered during the impeachment inquiry.

13. The limits of this essay are the choice of law rules. Although quite interesting, the substantive differences between Ukrainian and New York truth-telling rules are outside the scope of this essay.

Swamp” (quoting Prosser).¹⁴ Prosser famously described the “quaking quagmires” that “engulf and entangle” lawyers and courts, a field inhabited by “learned but eccentric professors.”¹⁵ The unfortunate reality is that the current choice of law system is woefully inadequate to answer questions about what law applies to Giuliani’s conduct in a multitude of jurisdictions outside his home state jurisdictions. Clarity in this field is needed for bar authorities, lawyers crossing borders, and those lawyers’ opponents and collaborators. At a minimum, a lawyer negotiating with Giuliani in Ukraine or a litigation opponent of Giuliani’s in Pennsylvania, Georgia, or Michigan, should be able, with some analysis, to know with a reasonable degree of confidence which rules of legal ethics will govern Giuliani’s conduct. At present, this cannot be done with confidence.

A. BACKGROUND ON RUDY GIULIANI

In asking: “Where’s Rudy?” for purposes of analyzing legal ethics choice of law issues, we must consider where Rudy has come from. The trajectory of his career can be followed, despite the highest highs and lowest lows of his conduct. Rudy’s fascinating path leading to where he is now tells much about his ups and downs in the public eye and his willingness to play fast and loose with accepted norms in order to achieve notoriety or satisfy demanding clients.

1. TIME AS A U.S. ATTORNEY IN SDNY

In 1981, at age 37, Giuliani became the youngest person ever to hold the position of Assistant Attorney General.¹⁶ Two years later, he left the Department of Justice to become the U.S. Attorney for the Southern District of New York (SDNY).¹⁷ He led the U.S. Attorney’s office from 1983 to 1989.¹⁸

14. Charles W. Wolfram, *Choice of Law in Lawyer Discipline: Excursions into the Dismal Swamp*, 49 U. S.F. L. REV. 267 (2015).

15. William Prosser, *Interstate Publications*, 51 MICH. L. REV. 959, 971 (1953).

16. Seth Hettena, *What Happened to America’s Mayor?*, ROLLING STONE (May 17, 2020, 8:00 AM), <https://www.rollingstone.com/politics/politics-features/rudy-giuliani-new-york-trump-997712/amp/>.

17. *Id.*

18. Erica Orden & Kara Scannell, *Rudy Giuliani’s SDNY Saga: From Top Prosecutor to Subject of Scrutiny*, CNN (Jan. 15, 2020, 4:36 PM), <https://amp.cnn.com/cnn/2020/01/15/politics/rudy-giuliani-sdny-prosecutor-investigation-scrutiny/index.html>.

While serving as a U.S. attorney for the Southern District of New York, Giuliani was best known for going after corruption and organized crime.¹⁹ Giuliani was a big name in New York, which led to him running in similar social circles to another well-known New Yorker—Donald Trump.²⁰ For example, in 1988, *New York* listed Giuliani and Trump as two of the twenty most important New Yorkers.²¹

In 1985, Giuliani brought a case against a fellow U.S. Attorney charged with stealing money and drugs from the office evidence locker, which was “nearly unheard of” at the time.²² He is also “credited with mobilizing prosecutions against the five heads of the New York crime families,”²³ which culminated in the Mafia Commission Trial.²⁴ Giuliani helped attract attention to white-collar crimes by popularizing highly publicized “perp walks” (staged events leading a suspect or defendant into court or jail, for the purpose of facilitating media coverage) of Wall Street executives.²⁵ However, in some of those white-collar cases, Giuliani never brought charges against the arrestees or their convictions were overturned by the Second Circuit.²⁶ Explainable only by his dramatically changed role from prosecutor to Trump henchman, he led the prosecution of financier Michael Milken in the 1980s, then advocated for his presidential pardon earlier this year.²⁷ Additionally, Giuliani was the lead prosecutor in the high-profile

19. Yamiche Alcindor, *How Rudy Giuliani Went from “America’s Mayor” to Ukraine Business Broker*, PBS (Nov. 11, 2019, 6:40 PM), <https://www.pbs.org/newshour/show/how-rudy-giuliani-went-from-americas-mayor-to-ukraine-business-broker>.

20. *Id.*

21. Michael Kruse, *Friends with Benefits: Donald and Rudy’s Long, Strange Partnership*, POLITICO MAG. (Oct. 18, 2019), <https://www.politico.com/magazine/story/2019/10/18/trump-giuliani-ukraine-lawyer-new-york-history-friendship-229857>.

22. Orden & Scannell, *supra* note 18.

23. *Id.*

24. Arnold H. Lubasch, *U.S. Jury Convicts Eight as Members of Mob Commission*, N.Y. TIMES (Nov. 20, 1986), <https://www.nytimes.com/1986/11/20/nyregion/us-jury-convicts-eight-as-members-of-mob-commission.html>.

25. Orden & Scannell, *supra* note 18.

26. Joe Nocera, Opinion, *Prosecuting Insider Trading*, N.Y. TIMES (Dec. 12, 2014), <https://www.nytimes.com/2014/12/13/opinion/joe-nocera-prosecuting-insider-trading.html>.

27. Editorial Board, Opinion, *The Michael Milken Pardon*, WALL ST. J. (Feb. 18, 2020, 7:28 PM), <https://www.wsj.com/articles/the-michael-milken-pardon-11582072119>.

public corruption trial of Stanley Friedman, the chairman of the Bronx Democratic Party.²⁸

Giuliani's "demeanor left a trail of resentment among the dozens of federal judges in Manhattan, many of whom had worked in that U.S. attorney's office," wrote James Comey, former FBI director, in his book *A Higher Loyalty*.²⁹ "It was a resentment that was still palpable when I became the chief federal prosecutor in Manhattan—and sat in Giuliani's chair—a dozen years later," he added.³⁰ Even measured by Manhattan standards, Giuliani's publicity-seeking, self-aggrandizing actions demanded attention and left a slew of relationships in shreds.³¹

2. TIME AS MAYOR OF NEW YORK

Even before Giuliani became mayor, he was a controversial figure. Near the anniversary of a 1992 police riot at City Hall, *NY1* released a poll called "The Giuliani Profile."³² The poll revealed that seventy-seven percent of Black voters agreed with the statement: "If elected mayor, Rudolph Giuliani's sharp temper could make problems worse by adding fuel to the fire rather than calming tensions."³³ Only eleven percent believed otherwise.³⁴

Following his rise to prominence as U.S. Attorney, Rudy Giuliani was elected mayor of New York in 1993.³⁵ He was the first Republican elected mayor since 1965.³⁶ When he came into power, New York City was facing numerous systemic issues: a high crime rate, a deteriorating quality of life, a terrible economy, and

28. Orden & Scannell, *supra* note 18.

29. Josh Gerstein, *Comey's Other Target in New Book: Rudy Giuliani*, POLITICO (Apr. 18, 2018, 7:41 PM), <https://www.politico.com/story/2018/04/18/comey-book-rudy-giuliani-534197>.

30. Michael Winerip, *High-Profile Prosecutor*, N.Y. TIMES MAG. (June 9, 1985), <https://www.nytimes.com/1985/06/09/magazine/high-profile-prosecutor.html>.

31. *Id.*

32. PETER NOEL, WHY BLACKS FEAR 'AMERICA'S MAYOR': REPORTING POLICE BRUTALITY AND BLACK ACTIVIST POLITICS UNDER RUDY GIULIANI 6 (2007).

33. *Id.*

34. *Id.*

35. *The Evolution of Rudy Giuliani*, NPR (Oct. 1, 2019), <https://www.npr.org/2019/10/01/766176711/the-evolution-of-rudy-giuliani>.

36. Janet Cawley, *Giuliani Defeats Dinkins in Down-to-wire New York Mayor's Race*, CHI. TRIBUNE (Nov. 3, 1993), <https://www.chicagotribune.com/news/ct-xpm-1993-11-03-9311030172-story.html>.

racial conflicts.³⁷ Giuliani took a tough-on-crime stance and promised to clean up the city.³⁸

Overall, “[t]he Giuliani mayoralty was a tumultuous event” that proved to be both a service and disservice to the city.³⁹ On one hand, he did succeed in cleaning up the streets and attacking crime.⁴⁰ On the other hand, he sacrificed “the civil rights of a generation of young black men” in order to do so.⁴¹ Some of the policing tactics that were implemented during Giuliani’s tenure were later ruled as racially discriminatory and unconstitutional.⁴²

While facing criticism over patronage hires during his first term as mayor, Giuliani announced that a widely respected member of the previous administration had overspent his budget and tried to cover it up by destroying records.⁴³ Eventually, the former commissioner was cleared of wrongdoing, but Giuliani’s false allegations succeeded in distracting attention from his own cronyism, allowing him to escape the hot seat.⁴⁴

During his last term as mayor, Giuliani ran for Senate against Hillary Clinton in 2000.⁴⁵ His campaign involved a marital scandal, and he eventually dropped out of the race.⁴⁶

The events of 9/11 drastically changed Mayor Giuliani’s public perception; Americans all over the country watched his “extraordinary leadership” as the towers fell that morning.⁴⁷ He became known as “America’s mayor” because the world saw him “as the person who was taking control of an inherently out-of-control situation.”⁴⁸ *Time* dubbed him the “Mayor of the World” and the

37. *The Evolution of Rudy Giuliani*, *supra* note 35.

38. Alcindor, *supra* note 19.

39. *The Evolution of Rudy Giuliani*, *supra* note 35.

40. *Id.*

41. *Id.*

42. Alcindor, *supra* note 19.

43. *Giuliani Forms Consulting Company with Accounting Firm Ernst & Young*, WALL ST. J. (Jan. 15, 2002, 4:26 PM), <https://www.wsj.com/articles/SB1011127925243435680>.

44. Michael Oreskes, *The Power of Patronage*, N.Y. TIMES (Mar. 27, 1986), <https://www.nytimes.com/1986/03/27/nyregion/the-power-of-patronage.html>.

45. *The Evolution of Rudy Giuliani*, *supra* note 35.

46. *Id.*

47. *Id.*

48. *Id.*

Person of the Year.⁴⁹ Miraculously, tragedy had transformed Giuliani from widespread public derision to a faux-godlike figure. This dramatic turn of events helps explain Giuliani's attachment to and near-worship of Trump, his godlike client. Giuliani had not had such a fame-fix for fifteen years prior to his willingness to take outlandish positions for Donald Trump.

Additionally, Giuliani's time as mayor served as the foundation for his relationship with Donald Trump.⁵⁰ When he launched his mayoral campaign, Trump was reported to be a major financial backer.⁵¹ During his administration, Giuliani helped Trump with his business projects.⁵² However, other sources close to Giuliani's administration say that Trump gave Giuliani a total of \$7,700 during his years as mayor.⁵³ The same sources also assert that for most of Giuliani's two terms, Trump was not a fixture in his administration or someone that Giuliani would go out of his way for.⁵⁴ While their relationship had not yet matured, it showed signs of developing into the relationship it is today.

3. TIME BETWEEN MAYORAL TERM AND ASSOCIATION WITH TRUMP

In late 2001, Giuliani started a lucrative consulting firm—Giuliani Partners LLC⁵⁵—with clients located in countries such as Brazil, Qatar, Romania, and Argentina.⁵⁶ By 2007, his disclosure forms revealed that he had gone from having less than \$5 million in assets after leaving City Hall to having between \$20 million and \$50 million in assets. “Much of” that money originated from these foreign business relationships, which have remained mysterious. In particular, “his work in Turkey and with an Iranian dissident group may have broken the laws requiring registration as agents of a foreign government.”⁵⁷

49. Kruse, *supra* note 21; Eric Pooley, *Person of the Year 2001*, TIME (Dec. 31, 2001), http://content.time.com/time/specials/packages/article/0,28804,2020227_2020306,00.html.

50. Alcindor, *supra* note 19.

51. *Id.*

52. *Id.*

53. Kruse, *supra* note 21.

54. *Id.*

55. See *Giuliani Forms Consulting Company*, *supra* note 43.

56. Alcindor, *supra* note 19.

57. *Id.*

Giuliani launched his own presidential bid in 2007,⁵⁸ relying heavily on his reputation as “America’s mayor” following the 9/11 attacks.⁵⁹ In the beginning, Giuliani was an early frontrunner, but he dropped out after the Florida primary when he failed to secure a single delegate.⁶⁰ His candidacy was unsuccessful, in part, because he skipped the Iowa caucus and the New Hampshire primary.⁶¹

After he dropped out of the 2008 race, Giuliani went back to his wife’s family home in Florida.⁶² He never fully returned to his law firm, Bracewell Giuliani, but eventually resumed giving paid speeches and running his lucrative security consultancy, Giuliani Security & Safety.⁶³

In 2016, the public began to see the tie between Giuliani and Donald Trump.⁶⁴ He was “an early and vocal supporter” of Trump as a presidential candidate.⁶⁵ To Giuliani, Trump represented an opportunity for him to get back into presidential races and politics.⁶⁶

In late 2016, Giuliani campaigned for, but did not receive, the Secretary of State position.⁶⁷ One contributing factor was his extensive business entanglements with foreign governments.⁶⁸ One of his more obscure and heavily scrutinized clients was TriGlobal Strategic Ventures, to which Giuliani had ties dating to 2004.⁶⁹ TriGlobal “has provided image consulting to Russian oligarchs and clients with deep Kremlin ties.”⁷⁰ Its advisory board includes men with close ties to the Russian president and prime

58. *Id.*

59. *The Evolution of Rudy Giuliani*, *supra* note 35.

60. Alcindor, *supra* note 19.

61. *The Evolution of Rudy Giuliani*, *supra* note 35.

62. Jim Dwyer et al., *The Indispensable Man: How Giuliani Led Trump to the Brink of Impeachment*, N.Y. TIMES (Dec. 8, 2019), <https://www.nytimes.com/2019/12/08/us/politics/giuliani-trump-impeachment.html>.

63. Dwyer et al., *supra* note 62.

64. *The Evolution of Rudy Giuliani*, *supra* note 35.

65. Alcindor, *supra* note 19.

66. *The Evolution of Rudy Giuliani*, *supra* note 35.

67. Dwyer et al., *supra* note 62.

68. *Id.*

69. Mark Landler et al., *Rudolph Giuliani’s Business Ties Viewed as Red Flag for Secretary of State Job*, N.Y. TIMES (Nov. 15, 2016), <https://www.nytimes.com/2016/11/16/us/politics/donald-trump-cabinet-rudy-giuliani.html>.

70. *Id.*

minister; its founding partners have strong ties to Russian governments, Russian and Ukrainian companies, and Giuliani Partners LLC.⁷¹

In January 2017, Giuliani returned to his partnership at Greenberg Traurig, while also continuing his involvement in Giuliani Security & Safety.⁷² Later in 2017, Giuliani hired himself out to represent a Turkish money launderer—Reza Zarrab—in a possible prisoner exchange, which involved arguing directly to the president and the secretary of state on his client's behalf.⁷³ Additionally, White House aides claimed that Giuliani urged the President to deport Turkish Muslim cleric, Fethullah Gulen, on Turkish charges that he instigated a failed coup in Turkey in 2016.⁷⁴ He was paid to promote an ethane-methane deal in Uzbekistan, his security company contracted with the government of Bahrain and a Ukrainian–Russian developer, and he entered into “engagements with governments, groups, individuals, and causes in Romania, Iran, Brazil, and Venezuela.”⁷⁵ Although he had been highly active in international circles for some time, his close connection with now-president Donald Trump produced increases in business with foreign governments and firms.

4. GIULIANI'S WORK FOR TRUMP, ESPECIALLY WITH REGARD TO INFLUENCING & INVESTIGATING UKRAINIAN ISSUES

Giuliani's relationships in Ukraine predate his work for Donald Trump. Giuliani made his first reported trip to Ukraine in 2003, which prompted “a decade of consulting and publicity trips.”⁷⁶ He began working for the mayors of various cities in Ukraine, including Kharkiv (Ukraine's “second-city,” located near the Russian border in the east of Ukraine) and Kyiv.⁷⁷ His role as advisor to the mayor of Kyiv began in 2015.⁷⁸

71. *Id.*

72. Dwyer et al., *supra* note 62.

73. Jo Becker et al., *Giuliani Pressed for Turkish Prisoner Swap in Oval Office Meeting*, N.Y. TIMES (Oct. 10, 2019), <https://www.nytimes.com/2019/10/10/us/politics/giuliani-trump-rex-tillerson.html>.

74. Dwyer et al., *supra* note 62; see Matthew Rosenberg et al., *Giuliani Pushed Trump to Deport Cleric Sought by Turkey, Ex-White House Officials Said*, N.Y. TIMES (Oct. 15, 2019), <https://www.nytimes.com/2019/10/15/us/giuliani-subpoena-ukraine.html>.

75. Dwyer et al., *supra* note 62.

76. Alcindor, *supra* note 19.

77. *Id.*

78. Landler et al., *supra* note 69.

Giuliani and Trump's relationship never developed as a dear friendship, and "always has been a predominantly transactional one, a function of proximity, pragmatism, and a kind of philosophical kinship."⁷⁹

During the first two years of the Trump administration, Giuliani "ramped up" his Ukraine trips, seeking "to dig up dirt on President Trump's political rivals there."⁸⁰ Giuliani turned to two otherwise unknown associates, Lev Parnas and Igor Fruman. Parnas and Fruman, despite no significant experience in American political or business life, began to get very close and make generous donations to Trump's political causes⁸¹ because they saw an opportunity in the Trump administration's unsettling relationship with Russia.⁸²

In July 2018, Parnas arranged an introductory meeting with Giuliani.⁸³ He hoped to enlist Giuliani as an endorser and advisor for Fraud Guarantee, a business project that had been in the works for years.⁸⁴ The two ultimately agreed to a deal with an initial payment of \$500,000.⁸⁵ After that, their relationship quickly took off. In August, they went on boating rides together.⁸⁶ In September, Giuliani invited Parnas and Fruman to his annual dinner in remembrance of 9/11.⁸⁷ A short time after, Parnas made Giuliani the godfather of his newborn son.⁸⁸

In January 2019, Parnas and Fruman arranged a meeting between Giuliani and Viktor Shokin, the former Ukrainian top prosecutor who had been removed amid accusations of overlook-

79. Kruse, *supra* note 21.

80. Alcindor, *supra* note 19.

81. *Id.*

82. Ari Shapiro & Dave Blanchard, *How A Complicated Web Connects 2 Soviet-Born Businessmen with The Impeachment Inquiry*, NPR (Oct. 23, 2019), <https://www.npr.org/2019/10/23/771849041/how-a-complicated-web-connects-2-soviet-born-businessmen-with-the-impeachment-in>.

83. Michael Rothfeld et al., *How 2 Soviet Émigrés Fueled the Trump Impeachment Flames*, N.Y. TIMES (Dec. 19, 2019), <https://www.nytimes.com/2019/12/19/nyregion/lev-parnas-igor-fruman.html>.

84. *Id.*

85. *Id.*; see Kenneth P. Vogel et al., *Behind the Deal that Put Giuliani Together with a Dirt-Hunting Partner*, N.Y. TIMES (Nov. 6, 2019), <https://www.nytimes.com/2019/11/06/us/politics/ukraine-giuliani-charles-gucciardo.html>.

86. Rothfeld et al., *supra* note 83.

87. *Id.*

88. *Id.*

ing corruption.⁸⁹ During their January 23rd call, Shokin suggested that he had been ousted “for investigating Hunter Biden and payments he had received as a board member of a Ukrainian gas company.”⁹⁰ A few days later— thanks to Fruman’s Ukrainian connections—Giuliani met with Lutsenko for the first time.⁹¹ Over two days, Lutsenko brought the payments from the gas company to Hunter Biden to Giuliani’s attention.⁹²

In February 2019, Parnas, Fruman, and Giuliani traveled to Warsaw to meet Lutsenko, who would arrange meetings with Ukrainian officials.⁹³ At some point, Giuliani agreed to represent Parnas and Fruman as their lawyer.⁹⁴ During their trips to Ukraine, Parnas and Fruman met with then-President Petro Poroshenko and a close aide to his successor, Volodymyr Zelensky.⁹⁵ During the meeting with Poroshenko, Parnas allegedly offered him a White House meeting in exchange for announcing an investigation into the Bidens.⁹⁶ During the meeting with Zelensky’s aide, Parnas allegedly told him “that without such an announcement, the United States would withhold financial assistance and Vice President Mike Pence would stay home from the Ukrainian inauguration.”⁹⁷

Giuliani sent Parnas and Fruman to Kyiv in order to uncover information to undermine the U.S. intelligence community and Special Counsel Robert Mueller’s findings that Russia interfered in the 2016 election.⁹⁸ In doing so, the two associates connected Giuliani with the then-Ukrainian prosecutor general, Yuriy

89. Rothfeld et al., *supra* note 83.

90. *Id.*

91. *Id.*; see Ben Protess, William K. Rashbaum & Michael Rothfeld, *Giuliani Pursued Business in Ukraine While Pushing for Inquiries for Trump*, N.Y. TIMES (Nov. 27, 2019), <https://www.nytimes.com/2019/11/27/nyregion/giuliani-ukraine-business-trump.html>.

92. Rothfeld et al., *supra* note 83.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. Rothfeld et al., *supra* note 83; see also Ben Protess et al., *Giuliani Associate Says He Gave Demand for Biden Inquiry to Ukrainians*, N.Y. TIMES (Nov. 10, 2019), <https://www.nytimes.com/2019/11/10/nyregion/trump-ukraine-parnas-fruman.html>.

98. Alcindor, *supra* note 19.

Lutsenko.⁹⁹ Giuliani's meetings with Lutsenko played an important role in the first of Donald Trump's two impeachment investigations.¹⁰⁰ Further, Parnas and Fruman have since been indicted by federal prosecutors for "allegedly illegally funneling campaign contributions to get the U.S. ambassador to Ukraine removed from her post, among other charges."¹⁰¹

What was happening among Giuliani, Parnas, and Fruman is directly related to Giuliani becoming one of President Trump's personal lawyers in April 2018, representing Trump in the federal investigation into Russian election interference.¹⁰² Giuliani decided to "[take] their defense right to the court of public opinion on TV."¹⁰³

In late 2018, Giuliani "began to pursue information in Ukraine that he believed might show that the Mueller inquiry was built on a false premise, suggesting that it was really Ukrainians who meddled in the election and then framed the Russians for it."¹⁰⁴ This claim is built on two circumstances: 1) Ukraine's release of documents detailing multimillion dollar payments by the Russia-aligned party to Paul Manafort, among others; and 2) the blame directed at Russia for the hacking of DNC computers.¹⁰⁵ "Far more than a lawyer serving a client in a legal matter though, Mr. Giuliani continued his Ukraine project long after Mr. Trump was clear of any jeopardy from the Mueller investigation, which ended in March."¹⁰⁶

When Giuliani met with the former Ukrainian prosecutor Viktor Shokin, Shokin claimed that Vice President Biden had forced his removal because his son, Hunter, had been given a po-

99. Lutsenko has previously said that "he had information that could be damaging to the Bidens and was working closely with Rudy Giuliani in his effort to, as Giuliani saw it, expose some kind of malfeasance by the Biden family." *Id.*

100. *Id.*

101. *Id.*; see Rothfeld et al., *supra* note 83.

102. Robert Costa et al., *Trump Hires Giuliani, Two Other Attorneys Amid Mounting Legal Turmoil over Russia*, WASH. POST (Apr. 19, 2018, 9:08 PM), https://www.washingtonpost.com/politics/trump-hires-giuliani-two-other-attorneys-amid-mounting-legal-turmoil-over-russia/2018/04/19/8346a7ca-4418-11e8-8569-26fda6b404c7_story.html.

103. Alcindor, *supra* note 19.

104. Dwyer et al., *supra* note 62.

105. Dwyer et al., *supra* note 62.

106. *Id.*

sition by an oligarch who wanted the prosecutor out.¹⁰⁷ Based in part on this information, Giuliani's Ukraine project expanded to include "the vilification of" Biden and the American ambassador in Kyiv, Marie Yovanovitch.¹⁰⁸ Giuliani also played a significant role in having Yovanovitch sent home. He fed claims about her and Biden to a journalist, bundled articles and memos into folders from Trump hotels, and sent the materials to Secretary of State Pompeo in a White House envelope.¹⁰⁹ Though the charges against the ambassador were determined to be fabrications, they were amplified by Donald Trump Jr. on social media, and Yovanovitch was "abruptly ordered home."¹¹⁰

During the spring of 2019, documents released by House Democrats showed that Giuliani wrote a letter with Trump's "knowledge and consent" to Volodymyr Zelensky, the then-Ukrainian president-elect, seeking a meeting.¹¹¹ That August, Giuliani met with an advisor to Zelensky.¹¹² He also told then-Ambassador to the EU Gordon Sondland that he wanted the Ukrainians to announce investigations, which he knew from experience could be "lethal" at the right moment.¹¹³

By the fall, Giuliani's project was "crumbling."¹¹⁴ Lutsenko, in a series of interviews, said that "he could find no evidence of wrongdoing involving the Bidens and violations of Ukrainian law."¹¹⁵ Giuliani himself conceded in an interview that "there was no evidence that Ukraine had hacked the Democratic computers, and said that he had never actually investigated it."¹¹⁶

In October 2019, Parnas and Fruman were indicted by federal prosecutors for "allegedly illegally funneling campaign contributions to get the U.S. ambassador to Ukraine removed from

107. *Id.*

108. *Id.*

109. *Id.*

110. Dwyer et al., *supra* note 62

111. Orden & Scannell, *supra* note 18.

112. Dwyer et al., *supra* note 62.

113. *Id.*

114. Dwyer et al., *supra* note 62.

115. Heidi Przybyla & Allan Smith, *Giuliani Turns on "Honest" Ukrainian Prosecutor Who Says Bidens Did Nothing Illegal*, NBC NEWS (Oct. 1, 2019, 4:00 PM), <https://www.nbcnews.com/politics/trump-impeachment-inquiry/giuliani-turns-honest-ukrainian-prosecutor-who-says-bidens-did-nothing-n1060941>.

116. Dwyer et al., *supra* note 62.

her post, among other charges.”¹¹⁷ Additional charges relating to Yovanovitch’s removal seemed likely, at least for Parnas,¹¹⁸ but President Trump sacked the U.S. Attorney, whose office was handling the investigation into Parnas, Fruman, and Giuliani, before those charges could be brought.¹¹⁹ Yet, while Giuliani was actively involved with his Ukraine project on behalf of the president, he was also pursuing business with Ukrainian officials and the government, for up to \$500,000 in contracts.¹²⁰ Giuliani said that he dismissed an offer from Lutsenko to hire him personally, but spent about a month considering a separate deal with the Ukrainian government, before ultimately rejecting that deal as well.¹²¹ Giuliani stated that “he considered the deal in order to learn more about the recovery of assets and money laundering in Ukraine.”¹²²

Giuliani did not solely execute the Ukraine pressure campaign; rather, “[t]op figures in the administration knew of it or worked with him.”¹²³ Sondland testified that “[e]veryone was in the loop.”¹²⁴ However, Giuliani did serve “as the wrangler of business hustlers, compromised ex-prosecutors, Ukrainian oligarchs and a host of bewildered American diplomats and Ukrainian elected officials” who could not comprehend how he had come to wield such influence, or to what ends he was wielding it.¹²⁵

In December 2019, Giuliani traveled to Budapest and Kyiv to talk with former Ukrainian prosecutors, including Lutsenko, who played a role in promoting claims that became the basis for Trump and Giuliani’s pressure campaign.¹²⁶ The purpose of Giuliani’s trip was “to help prepare more episodes of a documentary series for a conservative television outlet promoting his pro-

117. Alcindor, *supra* note 19.

118. Rothfeld et al., *supra* note 83.

119. Katie Benner & Nicole Hong, *U.S. Attorney Ousted by Barr Will Testify Privately Before Congress*, N.Y. TIMES (July 2, 2020), <https://www.nytimes.com/2020/07/02/us/politics/justice-department-barr-berman-congress-testimony.html>.

120. Dwyer et al., *supra* note 62.

121. Proress, Rashbaum & Rothfeld, *supra* note 91.

122. *Id.*

123. Dwyer et al., *supra* note 62.

124. *Id.*

125. *Id.*

126. Kenneth P. Vogel & Benjamin Novak, *Giuliani, Facing Scrutiny, Travels to Europe to Interview Ukrainians*, N.Y. TIMES (Dec. 17, 2019), <https://www.nytimes.com/2019/12/04/us/politics/giuliani-europe-impeachment.html?action=click&module=Top%20Stories&pgtype=Homepage>.

Trump, anti-impeachment narrative.”¹²⁷ The series was promoted as “a Republican alternative to the Ukraine-related impeachment hearings, including Ukrainian ‘witnesses’ whom House Democrats . . . declined to call.”¹²⁸

During the closed-door depositions of the impeachment investigation, numerous witnesses “said Giuliani played a critical role in shaping U.S. policy with Ukraine in order to benefit President Trump politically.”¹²⁹ William Taylor, the Ambassador to Ukraine who replaced the Giuliani-ousted Yovanovitch, said that Giuliani was leading an “irregular, informal channel of U.S. policy making with respect to Ukraine.”¹³⁰

Currently, Giuliani is under investigation by federal prosecutors in Manhattan to determine whether he broke lobbying laws in his dealings with Ukraine.¹³¹ The case against Giuliani grew out of the case against Parnas and Fruman.¹³² Giuliani has denied wrongdoing but acknowledged that he and his associates worked with Ukrainian prosecutors to collect potentially damaging information about Yovanovitch and the Bidens.¹³³ Additionally:

the lobbying disclosure law contains an exemption for legal work, and Mr. Giuliani said his efforts to unearth information and push both for investigations into Ukraine and for news coverage of his findings originated with his defense of Mr. Trump in the special counsel’s investigation. He acknowledged that his work morphed into a more general dragnet for dirt on Mr. Trump’s targets but said that it was difficult to separate those lines of inquiry from his original mission of discrediting the origins of the special counsel’s investigation.¹³⁴

127. *Id.*

128. *Id.*

129. Alcindor, *supra* note 19.

130. *Id.*

131. Rosenberg et al., *supra* note 74.

132. Protesse, Rashbaum & Rothfeld, *supra* note 91.

133. Michael S. Schmidt et al., *Giuliani Is Said to Be Under Investigation for Ukraine Work*, N.Y. TIMES (Dec. 17, 2019), https://www.nytimes.com/2019/10/11/us/politics/rudy-giuliani-investigation.html?rref=collection%2Fbyline%2Fben-protesse&action=click&contentCollection=undefined®ion=stream&module=stream_unit&version=latest&contentPlacement=9&pgtype=collection.

134. *Id.*

5. ADVANCING TRUMP'S COVID POSITIONS

In early April 2020, as the COVID-19 pandemic ramped up and captured intense media coverage, Giuliani “advocated for an anti-malarial drug cocktail to Trump in ‘three or four’ one-on-one phone calls and also to doctors, coronavirus patients and hospital executives.”¹³⁵ Twitter briefly locked him out of his account after he tweeted that the drug combination was 100% effective.¹³⁶ Although the administration’s own health officials had been more cautious, some doctors across the country prescribed hydroxychloroquine for weeks during spring 2020, after Trump “repeatedly promoted [it] as a ‘what have you got to lose’ remedy.”¹³⁷ Thus, “[a]lmost overnight, the hard-to-pronounce drug has become a litmus test for support of the president.”¹³⁸ Support Trump; support hydroxychloroquine. Like wearing MAGA hats and refusing to wear masks, promoting hydroxychloroquine symbolized Trump support. By July 1, the FDA was cautioning against the drug’s use to treat COVID-19 in most settings.¹³⁹ Nonetheless, Giuliani announced in October that he was taking hydroxychloroquine as a COVID-preventive measure.¹⁴⁰ Less than two months later, he would test positive for COVID.¹⁴¹

135. Justine Coleman, *Giuliani Touts Experimental Coronavirus Treatment in Private Conversations with Trump*, THE HILL (Apr. 5, 2020, 5:24 PM), <https://thehill.com/homenews/administration/491260-giuliani-touts-experimental-coronavirus-treatment-in-private>.

136. Coleman, *supra* 135; see Chris Mills Rodrigo, *Twitter Takes Down Posts Promoting Anti-malaria Treatment for Coronavirus*, THE HILL (Mar. 30, 2020, 5:23 PM), <https://thehill.com/policy/technology/490245-twitter-takes-down-posts-promoting-anti-malaria-treatment-for-coronavirus>.

137. Katie Thomas, *Trump Calls This Drug a “Game Changer.” Doctors Aren’t So Sure.*, N.Y. TIMES (Apr. 17, 2020), <https://www.nytimes.com/2020/04/17/health/trump-hydroxychloroquine-coronavirus.html>.

138. *Id.*

139. *FDA cautions against use of hydroxychloroquine or chloroquine for COVID-19 outside of the hospital setting or a clinical trial due to risk of heart rhythm problems*, U.S. FOOD & DRUG ADMIN. (July 1, 2020), <https://www.fda.gov/drugs/drug-safety-and-availability/fda-cautions-against-use-hydroxychloroquine-or-chloroquine-covid-19-outside-hospital-setting-or>.

140. Jordan Williams, *Giuliani says he’s taking hydroxychloroquine despite testing negative for COVID-19*, THE HILL (Oct. 7, 2020), <https://thehill.com/homenews/administration/520060-giuliani-says-hes-taking-hydroxychloroquine-despite-testing-negative>.

141. Jeremy Diamond, *Giuliani hospitalized after testing positive for coronavirus*, CNN (Dec. 7, 2020), <https://www.cnn.com/2020/12/06/politics/rudy-giuliani-coronavirus-positive/index.html>.

Giuliani has also spoken out about contact tracing, a key surveillance tool for monitoring future coronavirus outbreaks.¹⁴² In a Fox News segment with Laura Ingraham, Giuliani called the development of a contract tracing system “totally ridiculous.”¹⁴³ He then compared COVID-19 to other potentially fatal diseases, derisively stating that “[w]e should trace everybody for cancer, and heart disease. And obesity. I mean, a lot of things kill you more than COVID-19. So, we should be traced for all those things.”¹⁴⁴ However, this was not a harmless exchange because “when a man once referred to as ‘America’s Mayor’ says something so flatly false—and, candidly, ignorant—it will have the impact of turning some watchers against the idea of contact tracing.”¹⁴⁵ All in all, Giuliani played a significant role in aggravating the intensity of suffering from COVID in the United States.

6. POST-ELECTION EXPLOITS

In the weeks following election day, Mr. Giuliani became “a firehose of conspiracy theories about why President Trump lost.”¹⁴⁶ Giuliani, along with the rest of the president’s legal team, made baseless claims of widespread voter fraud, corrupted and hackable voting machines, and foreign interference in the election.¹⁴⁷ According to Giuliani, among those in on the conspiracy to steal the election from his client were China, antifa, Cuba, George Soros, two presidents of Venezuela (one of whom is dead), Big Tech, several U.S. cities with Black-majority populations, and (also long since dead) Chicago Mayor Richard Daley. Giuliani alleged that these players were responsible for continuing the pattern of corruption involving stuffing ballot boxes with phony

142. Chris Cillizza, *Rudy Giuliani May Have Said the Dumbest Thing Yet Uttered About the Coronavirus*, CNN (Apr. 24, 2020, 7:49 PM), <https://amp.cnn.com/cnn/2020/04/24/politics/rudy-giuliani-donald-trump-laura-ingraham-coronavirus/index.html>.

143. *Id.*

144. *Id.*

145. Cillizza, *supra* note 142.

146. Chris Megerian, *As Trump’s Election Lawsuits Fizzle, Giuliani Goes to Court. It Doesn’t Get Better*, L.A. TIMES (Nov. 17, 2020, 5:12 PM), <https://www.latimes.com/politics/story/2020-11-17/trump-election-lawsuits-fizzle-as-giuliani-appears-in-court-for-him>.

147. Jane C. Timm, *Rudy Giuliani Baselessly Alleges “Centralized” Voter Fraud at Free-wheeling News Conference*, NBC NEWS (Nov. 19, 2020, 10:24 PM), <https://www.nbcnews.com/politics/donald-trump/rudy-giuliani-baselessly-alleges-centralized-voter-fraud-free-wheeling-news-n1248273>.

ballots.¹⁴⁸ Giuliani has also offered alternative election results for swing states and suggested that President Trump has a viable path to a second term.¹⁴⁹

Mr. Giuliani “peddled disinformation” and “spread baseless allegations” in a variety of capacities and on numerous topics, including: 1) making several Fox News appearances to spread disinformation and mistrust regarding voting software; 2) holding a press conference in a Philadelphia parking lot—right next to a sex shop, crematorium, and jail¹⁵⁰—to endorse President Trump’s groundless allegations of voter fraud; and 3) using his personal YouTube show as a platform to perpetuate his claims of media corruption.¹⁵¹

On November 17, 2020, in one of more than sixty unsuccessful challenges to the November 2020 presidential election, Mr. Giuliani appeared in federal court for the first time on President Trump’s behalf, though he has served as the President’s personal lawyer throughout his term.¹⁵² Giuliani argued that President-elect Biden’s victory was due to a massive conspiracy. In his opening remarks, he alleged “widespread, nationwide voter fraud.”¹⁵³ However, he provided no evidence in support of this claim, and the complaint set forth no such allegations. In fact, when questioned by U.S. District Judge Matthew W. Brann about his voter fraud claim, Giuliani admitted that “[t]his is not a fraud case.”¹⁵⁴

148. Dan Zak & Josh Dawsey, *Rudy Giuliani’s post-election meltdown starts to become literal*, WASH. POST (Nov. 19, 2020, 10:17 PM) https://www.washingtonpost.com/lifestyle/style/rudy-giuliani-press-conference-trump-election/2020/11/19/9192f928-2a9d-11eb-92b7-6ef17b3fe3b4_story.html.

149. *Id.*

150. Miles Bryan, *From Obscure to Sold Out: The Story of Four Seasons Total Landscaping in Just 4 Days*, NPR (Nov. 11, 2020, 5:04 AM), <https://www.npr.org/2020/11/11/933635970/from-obscure-to-sold-out-the-story-of-four-seasons-total-landscaping-in-just-4-d>.

151. Megerian, *supra* note 146.

152. *Id.*

153. Tessa Berenson, *Donald Trump and His Lawyers Are Making Sweeping Allegations of Voter Fraud in Public. In Court, They Say No Such Thing*, TIME (Nov. 20, 2020, 3:13 PM), <https://time.com/5914377/donald-trump-no-evidence-fraud/>.

154. Megerian, *supra* note 146. The specific claims were “narrowly focused” on whether local election officials in Pennsylvania should have given voters an opportunity to cure problems with their mail-in ballots instead of rejecting them. *Id.* The practice of curing ballots is only available in certain counties.

Approximately eight thousand people dialed in to listen to the November 17th hearing.¹⁵⁵ Accordingly, the proceeding represented “a rare occasion for the president’s rhetoric to be scrutinized in a courtroom, where evidence is required and legal standards hold sway.”¹⁵⁶ Judge Brann’s resulting decision makes it clear that Mr. Giuliani’s allegations did not meet these standards:

Plaintiffs ask this Court to disenfranchise almost seven million voters. . . . One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption, such that this Court would have no option but to regrettably grant the proposed injunctive relief despite the impact it would have on such a large group of citizens. That has not happened. Instead, this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence.¹⁵⁷

Two days later, on November 19, 2020, Giuliani and other members of the Trump Campaign’s legal team held a “rambling news conference” at the Republican National Committee headquarters.¹⁵⁸ It featured “mixed misleading statements, wild conspiracy theories and outright fabrications” about the election results and a viable path to a second term for the president.¹⁵⁹ While speaking about the president’s chances of reelection, Giuliani said “[g]ive us a chance to prove it in court and we will.”¹⁶⁰ Notably, that same day, the Trump Campaign suffered a “trio of defeats” in the Court of Common Pleas in Pennsylvania, Maricopa County Court in Arizona, and federal district court in Georgia.¹⁶¹ These losses were in addition to the twenty-nine post-election cases that the campaign had already lost or withdrawn,

155. Megerian, *supra* note 146.

156. *Id.*

157. Donald J. Trump for President, Inc. v. Boockvar, No. 4:20-CV-02078, 2020 WL 6821992, at *1 (M.D. Pa. Nov. 21, 2020).

158. Alan Feuer & Linda Qiu, *Giuliani Makes Accusations of Fraud that the Trump Team Has Failed to Support in Court*, N.Y. TIMES (Nov. 19, 2020), <https://www.nytimes.com/2020/11/19/technology/giuliani-false-fraud-claims.html>.

159. *Id.*

160. *Id.*

161. Kevin Breuninger & Dan Mangan, *Trump Campaign Loses 3 Cases Challenging Ballots After Dropping Its Lawsuit in Michigan*, CNBC (Nov. 19, 2020, 6:58 PM), <https://www.cnbc.com/2020/11/19/trump-campaign-drops-michigan-election-lawsuit-rudy-giuliani-says.html>.

eventually totaling more than sixty losses.¹⁶² Nevertheless, Giuliani also insisted: “I know crimes, I can smell them. You don’t have to smell this one, I can prove it to you, 18 different ways. I can prove to you that he won, Pennsylvania, by 300,000 votes. I can prove to you that he won Michigan, probably 50,000 votes.”¹⁶³ Can he “smell” crimes from his many years of prosecutorial service? Perhaps. But can he “prove it to you 18 different ways,” that Trump received more votes than Biden in Pennsylvania and Michigan? He cannot; his claims are false. These are matters of fact that do not fall within any range of truth permitted to advocates on behalf of clients.

On December 2, 2020, Mr. Giuliani was invited to participate in a state legislative hearing to discuss alleged voting irregularities in Michigan.¹⁶⁴ Over the course of approximately five hours, Giuliani implored the House members to “take back [their] power” and disregard the certified election results in Biden’s favor.¹⁶⁵ The Michigan Attorney General later called the hearing a “state sponsored disinformation campaign geared toward undermining our electoral system.”¹⁶⁶ Much of the hearing resembled a court proceeding rather than a legislative committee hearing. This was partly due to the fact that Giuliani received “unusual leeway” to call up witnesses and question them while lawmakers primarily observed.¹⁶⁷ In particular, during the questioning of “star witness” Melissa Carone, she accused the legislators of tampering with state voting records and insinuated that vehicles transporting food to poll workers actually contained illegitimate ballots.¹⁶⁸ Giuliani again contended that requesting a recount would be pointless, and that the final vote count was fraudulent. However, the Michigan Bureau of Elections had released over 1,100 documents pertaining to absentee voting efforts and three county

162. *Id.*

163. Timm, *supra* note 147.

164. Jerusalem Demsas, *Rudy Giuliani’s Bizarre Legal Strategy, in Two Clips*, VOX (Dec. 3, 2020, 2:40 PM), <https://www.vox.com/2020/12/3/22150194/trump-rudy-giuliani-michigan-results-election-fraud-voter-suppression-detroit-melissa-carone>.

165. Lauren Gibbons, *In Unusual Hearing, Rudy Giuliani Asks Michigan Lawmakers to “Take Back Your Power,”* M LIVE (Dec. 3, 2020), <https://www.mlive.com/public-interest/2020/12/in-unusual-hearing-rudy-giuliani-asks-michigan-lawmakers-to-take-back-your-power.html>. The certified election results in Michigan show that Trump lost by more than 154,000 votes to Biden. *Id.*

166. Demsas, *supra* note 164.

167. Gibbons, *supra* note 165.

168. Demsas, *supra* note 164.

clerks had testified to the security of elections in their county.¹⁶⁹ There continues to be no evidence in support of Giuliani's claims.

Rudy Giuliani crossed borders and ethical norms on behalf of Donald Trump. For purposes of this essay, the borders are what matter. Determining what state or country's law applies to Giuliani's various acts around the globe is an unreasonably difficult task given the vague choice of law provisions available.

B. CHOICE OF LAW GENERALLY AND SPECIFICALLY AS TO THE LAW GOVERNING LAWYERS

The indeterminacy and unpredictability of the choice of law doctrine is legendary. As indicated in the Introduction, the choice of law field can be dangerous and confusing, even for scholars. Charles Wolfram referred to it as the "Dismal Swamp" (quoting Prosser).¹⁷⁰

But as often happens when lawyers write laws governing other lawyers, the drafters have to make herculean efforts to remove indeterminacy.¹⁷¹ It seems that while lawyers comfortably advise their clients about the uncertainties inherent to law's application, when lawyers are in effect "the clients," that uncertainty becomes less comfortable. Hence the ABA and state bars make serious efforts to draft positive law regarding the choice of law provisions governing lawyers rather than simply relying on the vagueries of the common law choice of law doctrine.

Should the lawyers involved in a transaction or litigation be permitted to choose the applicable jurisdiction's code of conduct that would apply to them, much like contracting parties can choose the jurisdiction's law that governs their transaction? Perhaps, if lawyers had the power to choose what ethics law would apply to their cross-border conduct, much as contracting parties may choose the law that will govern any disputes under the contract, the choice of law rules would fade in importance. However, this path to deciding what ethics law applies can be dismissed readily as violating public policy. Any such effort by lawyers to choose the jurisdiction whose law would govern their behavior

169. Gibbons, *supra* note 165.

170. Charles W. Wolfram, *Choice of Law in Lawyer Discipline: Excursions into the Dismal Swamp*, 49 U. S.F. L. REV. 267 (2015); William Prosser, *Interstate Publications*, 51 MICH. L. REV. 959, 971 (1953).

171. James Moliterno, *Why Formalism?*, 49 KAN. L. REV. 135 (2000); Wolfram, *supra* note 170, at 267.

should fail. Contracting parties are essentially making private law that should be relatively free to choose what law governs.¹⁷² The contracting parties' relationship and intentions, within certain public policy bounds, govern their rights and liabilities.¹⁷³ As a result, the law honors the choice of governing law made by contracting parties. But the regulation of lawyers is a matter of public interest, not private interest. Lawyers are answerable to the state authority that granted the license. That state can choose to defer to the law of other jurisdictions in certain circumstances, if it chooses to do so. But the governing law is surely not a matter of choice for the governed lawyers.¹⁷⁴

1. CHOICE OF LAW RULES RELEVANT TO THIS ESSAY

Numerous jurisdictions' choice of law rules are relevant to Giuliani's situation beginning with his active New York license and his inactive D.C. one. Because the New York rule, the D.C. rule, and the ABA model rule contemplate the application of ethics codes in the places of the misconduct or the places where the misconduct is predominantly felt, rules of other jurisdictions must be considered. Also, choice of law rules of jurisdictions where Giuliani has acted in one way or another contemplate holding lawyers responsible under local law for conduct within the jurisdiction.

As a result, a slew of rules potentially applicable to Giuliani's situation are discussed in this section: New York, D.C., Ukraine, and CCBE (the European umbrella bar association). Further, a hypothetical is used to illustrate choice of law principles illustrative of Giuliani's situation. To discuss that hypothetical, the choice of law rules of Poland and Spain are also discussed in this section.

a. ABA Rule

The ABA Model Rules of Professional Conduct serve as a general guide for lawyers admitted to practice in the United States. Obviously, a U.S. lawyer is governed by the rules of professional conduct adopted in his or her state of licensure. MR 8.5

172. WILLISTON ON CONTRACTS: CONTRACTS § 1:1 (4th ed. 2021).

173. *Id.*

174. For the misguided but contrary view, see Mark Little, Note, *The Choice of Rules Clause: A Solution to the Choice of Law Problem in Ethics Proceedings*, 88 TEX. L. REV. 855 (2010).

has been adopted without change in a majority of states, but not in New York. After asserting the disciplinary authority of the home state in part a, MR 8.5 contains the choice of law provision,¹⁷⁵ and essentially divides into two parts, (b)(1) (applicable to conduct in connection with a tribunal) and (b)(2) (applicable to any other conduct), with part (b)(2) then dividing again between situations in which the misconduct is mainly felt where it happens and situations in which the effect of the misconduct is felt elsewhere. Part (a) asserts the authority that a “home” jurisdiction may assert over a lawyer, whether the misconduct occurs in the home state or elsewhere. Part (b) divides between conduct connected to “a matter pending before a tribunal” and “any other conduct.”

Several of the comments to MR 8.5 are instructive on the nature and scope of the rule. Comment [3] explains the purpose of the provision:

Paragraph (b) . . . takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.¹⁷⁶

Comment [5] addresses lawyers who regularly practice in multiple jurisdictions:

175. See MODEL RULES OF PROF'L CONDUCT r. 8.5 (AM. BAR ASS'N 1983):

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows: (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and (2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

176. MODEL RULES OF PROF'L CONDUCT, *supra* note 175, at r. 8.5 cmt. 3.

When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.¹⁷⁷

Comment [6] describes the procedure for applying the provision:

If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.¹⁷⁸

Comment [7] addresses lawyers engaged in transnational practice: "The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise."¹⁷⁹

The original adoption of MR 8.5 in 1983 provided that a lawyer admitted to practice in the local jurisdiction "is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere."¹⁸⁰ The comment to the original rule states: "If the rules of professional conduct in the two jurisdictions differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction." Thus, the original rule defaulted to general principles of conflicts of law, which left considerable lack of clarity.¹⁸¹

The 1993 amendment of MR 8.5 divided all choice of law issues into two categories.¹⁸² The first category involved alleged lawyer misconduct in connection with litigation before a court of which the lawyer was a member of the bar, over which that

177. MODEL RULES OF PROF'L CONDUCT, *supra* note 175, at r. 8.5 cmt. 5.

178. *Id.* at cmt. 6.

179. *Id.* at cmt. 7.

180. Wolfram, *supra* note 170, at 274.

181. *Id.*

182. *Id.* at 276.

court's jurisdiction was controlling.¹⁸³ The second category involved alleged misconduct that did not occur in connection with litigation, for which the controlling jurisdiction depended on where the lawyer was admitted to practice.¹⁸⁴ If the lawyer was admitted in only one jurisdiction, that jurisdiction's law was controlling for all conduct not related to pending litigation.¹⁸⁵ If the lawyer was admitted in multiple jurisdictions, the controlling jurisdiction was the one in which the lawyer "principally practice[d]"—unless the conduct had a "predominant effect" in another jurisdiction, in which event that jurisdiction's law was controlling.¹⁸⁶ The two subcategories were stated as follows:

(i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction; and

(ii) if the lawyer is licensed to practice in this jurisdiction and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.¹⁸⁷

On August 12, 2002, the ABA House of Delegates adopted all nine recommendations made by the Commission on Multijurisdictional Practice.¹⁸⁸ One of these recommendations was that "[t]he ABA amend Rule 8.5 of the ABA *Model Rules of Professional Conduct* in order to clarify the authority of a jurisdiction to discipline lawyers licensed in another jurisdiction who practice law within their jurisdiction pursuant to the provisions of Rule 5.5 or other law."¹⁸⁹

183. Wolfram, *supra* note 170, at 276.

184. *Id.*

185. *Id.*

186. *Id.*

187. Wolfram, *supra* note 170, at 275-77.

188. *Commission on Multijurisdictional Practice*, AM. BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/committees_commissions/commission-on-multijurisdictional-practice/ (last visited Feb. 13, 2021).

189. AM. BAR ASS'N, REPORT OF THE COMMISSION ON MULTIJURISDICTIONAL PRACTICE (2002), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mjp_migrated/intro_cover.pdf.

These amendments included¹⁹⁰:

- 1) adding to subsection (a) that “[a] lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction”;
- 2) deleting the language in subsection (b)(1) that the lawyer’s conduct is in connection with a proceeding in a court where that lawyer has been admitted to practice;
- 3) adding to subsection (b)(2) that:
the rules of the jurisdiction in which the lawyer’s conduct occurred, or if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer’s conduct will occur.;
- 4) deleting subsections (b)(2)(i) and (ii), which determined the applicable rules depending on whether the lawyer was licensed to practice only in this jurisdiction or other jurisdictions; and
- 5) changing comment [7] from stating that the choice of law provision is not intended to apply to transnational practice, to stating that the provision applies to lawyers engaged in transnational practice, unless superseded by international authorities.

The result was the creation of the present rule.

Few courts have applied the rule. Courts have held that if State A’s rules specify using State B’s rules in a disciplinary issue, State A will not also incorporate State B’s rules on non-conduct procedural matters, such as the applicable standard of appellate review.¹⁹¹ Additionally, some courts have applied state rules based on MR 8.5(b) in non-disciplinary contexts, including

190. AM. BAR ASS’N COMM’N ON MULTIJURISDICTIONAL PRACTICE, REPORT 201C TO THE ABA HOUSE OF DELEGATES (2002), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mjp_migrated/201c.pdf.

191. See *In re Disciplinary Action Against Overboe*, 763 N.W.2d 776, 779–82 (N.D. 2009); Wolfram, *supra* note 170, at 282.

ruling on disqualification motions, sanctions motions, and fee disputes.¹⁹²

Twenty-two states have adopted MR 8.5 without change,¹⁹³ one state has not, twenty states have adopted substantially the same rule as MR 8.5, and eight states have adopted a substantially different rule than MR 8.5.¹⁹⁴ Additionally, some states title this provision “Jurisdiction,” rather than “Disciplinary Authority; Choice of Law.”¹⁹⁵

Thirty states have adopted MR 8.5 comment [7], fifteen states have not, and one state has adopted substantively the same comment as MR 8.5 comment [7].¹⁹⁶

MR 8.5 applies exclusively to disciplinary issues.¹⁹⁷ For all non-disciplinary legal issues, “the general common law of choice of law will determine which jurisdiction’s law applies.”¹⁹⁸ Accordingly, Restatement (Third) of the Law Governing Lawyers § 1 cmt. e (2000) says that: “In general, traditional choice-of-law principles, such as those set out in the Restatement Second of Conflict of Laws, have governed questions of choice of law in non-disciplinary litigation involving lawyers.”¹⁹⁹

b. New York Rule

New York has a variation of MR 8.5, similar to the 1993 version of the ABA rule. Changes include: 1) replacing “this jurisdiction” with “this state” throughout; 2) deleting the second sentence

192. Wolfram, *supra* note 170, at 282.

193. AM. BAR ASS’N CPR POLICY IMPLEMENTATION COMM., VARIATIONS OF ABA MODEL RULE 8.5 OF PROFESSIONAL CONDUCT, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_8_5.pdf (last updated Dec. 12, 2018) [hereinafter VARIATIONS OF ABA MODEL RULE 8.5].

194. *Id.*

195. *Id.*

196. AM. BAR ASS’N CPR POLICY IMPLEMENTATION COMM., VARIATIONS OF ABA MODEL RULE 8.5 COMMENT [7] OF PROFESSIONAL CONDUCT, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_8_5_cmt_7.pdf (last updated Sept. 29, 2017).

197. Wolfram, *supra* note 170, at 277.

198. *Id.* at 278–79.

199. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 1 cmt. e (AM. LAW. INST. 2000).

in (a), “A lawyer . . . jurisdiction;” and 3) declining to adopt MR subparagraphs of (b).²⁰⁰ Instead, NY adopts:

(1) For conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) For any other conduct: (i) If the lawyer is licensed to practice only in this state, the rules to be applied shall be the rules of this state, and (ii) If the lawyer is licensed to practice in this state and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.”²⁰¹

Additionally, NY adopted an older variation of comment [1]: “It is longstanding law that the conduct of a lawyer admitted to practice in this state is subject to the disciplinary authority of this state, regardless of where the conduct occurs.”²⁰²

New York did not adopt the Model Rules until 2009.²⁰³ It was the last state to abandon the old ABA Model Code of Professional Responsibility.²⁰⁴ New York has essentially adopted the 1993 version of MR 8.5. It has also adopted comment [7].²⁰⁵

The New York version of MR 8.5 creates awkwardness by purporting to limit the applicable jurisdiction’s rules to those in

200. NEW YORK RULES OF PROFESSIONAL CONDUCT, r. 8.5 (N.Y. STATE BAR ASS’N 2020), <https://nysba.org/app/uploads/2020/02/NEW-YORK-RULES-OF-PROFESSIONAL-CONDUCT.pdf>.

201. VARIATIONS OF ABA MODEL RULE 8.5, *supra* note 193.

202. NEW YORK RULES OF PROFESSIONAL CONDUCT, *supra* note 200, at r. 8.5 cmt 1.

203. Hal R. Lieberman & Harvey Prager, *New York’s Catch-all Rule: Is It Needed? Part 1*, N.Y. LEGAL ETHICS REPORTER, <http://www.newyorklegaethics.com/new-yorks-catch-all-rule-is-it-needed-part-1/> (last visited Feb. 13, 2021).

204. Roy Simon, *Comparing New NY Rules of Professional Conduct to Existing NY Code of Professional Responsibility (Part I)*, N.Y. LEGAL ETHICS REPORTER, <http://www.newyorklegaethics.com/comparing-the-new-n-y-rules-of-professional-conduct-to-the-existing-n-y-code-of-professional-responsibility-part-i/> (last visited Feb. 13, 2021).

205. NEW YORK RULES OF PROFESSIONAL CONDUCT *supra* note 200, at r. 8.5 cmt. 7.

which the lawyer “is licensed.”²⁰⁶ First, as shown in part by the subsequent ABA amendments that eliminated that phrase, it makes no sense in the context of cross-border practice to limit the choices of jurisdictions to those in which the lawyer holds a full license. The point of the choice of law concept is frustrated by that limitation because when the lawyer travels away from their state of licensure, they will rarely travel exclusively to places where they also have a license. By this rule, a lawyer is free to disrespect the norms of a host jurisdiction if the lawyer is not licensed there, unless a broad interpretation of where the “lawyer is licensed” is applied. In the litigation setting, the lawyer will often hold pro hac vice permission to practice in the host jurisdiction for that particular case. That should be interpreted under the New York rule as a jurisdiction where the lawyer is licensed. Stretching further, a lawyer operating in a host state under the permission of a multijurisdictional practice rule modelled on ABA MR 5.5 might also be regarded as practicing in a jurisdiction where the lawyer is licensed, albeit in a very limited way.

c. D.C. Rule

The District of Columbia also has a variation of the present version of MR 8.5.²⁰⁷ Changes include: 1) deleting the second sentence in (a), “A lawyer . . . jurisdiction.”; 2) adding to the third sentence in (a), “A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction *where the lawyer is admitted* for the same conduct.”; and 3) declining to adopt MR subparagraphs of (b)(2).²⁰⁸ Instead, D.C. adds:

(2) For any other conduct, (i) If the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and (ii) If the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to

206. *Id.* at r. 8.5

207. D.C. RULES OF PROFESSIONAL CONDUCT r. 8.5 (D.C. BAR 2007), https://www.dcbbar.org/getmedia/85934036-ef28-4a1c-8bda-8e79ecfd4985/DC-Rules-of-Professional-Conduct_1220.pdf.

208. *Id.*

practice, the rules of that jurisdiction shall be applied to that conduct.”²⁰⁹

D.C. has adopted the 1993 version of MR 8.5. It has also adopted comment [7].²¹⁰ The result is a rule that includes some of the same confusing content as the New York rule, which was later remedied in ABA amendments.

d. Ukrainian Rule

Outside of the United States, it is not uncommon for countries to assert that when a foreign lawyer practices in the host country, the law of the host country governs the lawyer’s conduct. Such is the Ukrainian law on this point as seen in subsequent provisions. When a lawyer works through agents, it is as if the lawyer does the work herself.²¹¹ As such, when Giuliani reached into Ukraine to practice law on behalf of his client Donald Trump, even through agents, Giuliani was arguably practicing according to the law of Ukraine. Under the standard interpretation of the ABA rule, and the broad interpretation of the New York rule, Giuliani was practicing in Ukraine with permission in the form of a limited license, and Ukraine is the place “where [some of the] conduct occurred,” and potentially where the predominant effect of the conduct would be felt.

The Ukrainian National Bar Association (“UNBA”) International Relations Committee pursuant to authority granted to it in the Law of Ukraine On the Bar and Practice of Law, adopted a code of conduct and various rules regulating the practice of law.²¹² Article 4 of the Law on the Bar and Practice of Law provides the principles of and standards for the practice of law, including the territorial scope of the adopted rules:

2. A Ukrainian attorney may practice law in the entire territory of Ukraine and abroad unless otherwise provided for by an international treaty ratified by the Verkhovna Rada of Ukraine, or by the laws of a foreign state.

209. VARIATIONS OF ABA MODEL RULE 8.5, *supra* note 193.

210. D.C. RULES OF PROFESSIONAL CONDUCT, *supra* note 207, at r. 8.5 cmt. 6.

211. JAMES MOLITERNO, EMANUEL LAW OUTLINE ON PROFESSIONAL RESPONSIBILITY 182-83 (6th ed. Wolters Kluwer 2020).

212. LAW OF UKR. ON THE BAR AND PRACTICE OF LAW (UKR. NAT’L BAR ASS’N 2014), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/National_Laws_on_the_Bars/EN_Ukraine_Law_of_Ukraine_on_the_Bar_and_Practice_of_Law.pdf.

4. An attorney of a foreign state shall practice law in the entire territory of Ukraine in accordance with this law unless otherwise provided for by an international treaty ratified by the Verkhovna Rada of Ukraine.²¹³

Three other articles help clarify the depth and breadth of Article 4 provisions. First, Article 59 addresses how a foreign attorney may obtain the right to practice law in Ukraine:

1. The attorney of a foreign state may practice law in Ukraine taking into account specific provisions of this Law.

2. The attorney of a foreign state who intends to practice law in Ukraine shall submit to the qualification and disciplinary commission of the bar at the place of his/her residence or stay in Ukraine an application for his/her inclusion in the Unified Register of Attorneys of Ukraine. The application shall be accompanied by the documents confirming the right of the said attorney to practice law in the respective foreign state. The list of the said documents shall be approved by the Bar Council of Ukraine.

6. The attorney's professional rights and duties, guarantees of practice of law and organizational forms of practice of law determined by this Law shall extend to the attorney of a foreign state during his/her practice of law in Ukraine.²¹⁴

Further, Article 60 discusses the liability of an attorney of a foreign state:

1. In the event of misconduct by the attorney of a foreign state included in the Unified Register of Attorneys of Ukraine, he/she shall be brought to disciplinary liability per the procedure provided for by this Law for Ukrainian attorneys, taking into account specific provisions established by part two of this Article.

2. The attorney of a foreign state included in the Unified Register of Attorneys of Ukraine may be brought to disciplinary liability only by way of warning or exclusion from the Unified Register of Attorneys of Ukraine.

3. The qualification and disciplinary commission of the bar shall inform the respective governmental body or a body of

213. *Id.* at art. 4.

214. *Id.* at art. 59.

attorneys' self-government of a foreign state where the attorney obtained the status of the attorney or the right to practice law that the attorney of a foreign state has been brought to disciplinary liability.²¹⁵

Finally, Article 61 explains the relations of a foreign attorney with the bodies of attorneys' self-government:

1. The attorney of a foreign state may apply to bodies of attorneys' self-government for the protection of his/her professional rights and duties; participate in educational and methodological events conducted by the qualification and disciplinary commissions of the bar, the Higher Qualification and Disciplinary Commission of the Bar, regional bar councils, the Bar Council of Ukraine and the Ukrainian National Bar Association.²¹⁶

The Ukrainian law thus asserts authority over foreign lawyers practicing in Ukraine, and suggests the challenge of double-deontology.

2. UNBA RULES OF PROFESSIONAL CONDUCT

The UNBA Rules of Professional Conduct were approved by the Constituent Congress of Advocates of Ukraine on November 17, 2012.²¹⁷ Their purpose "is the unified consolidation of traditions and experience of the Ukrainian bar in the field of interpretation of the rules of professional conduct, and of the generally recognized deontological rules and regulations accepted by the international bar community."²¹⁸ Additionally:

These Rules serve for the advocates as a compulsory system of guidelines in the process of balancing and practical coordination of their manifold, and sometimes conflicting, professional rights and responsibilities according to the status, main objections of the bar and principles of its activities as defined by the Constitution of Ukraine, the Law of Ukraine 'On the Bar and Practice of Law' and other legislative acts of

215. *Id.* at art. 60.

216. *Id.* at art. 61.

217. See RULES OF PROFESSIONAL CONDUCT (UKR. NAT'L BAR ASS'N 2012), https://www.cbbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/EN_Ukraine_UNBA_Rules_of_Professional_Conduct.pdf [hereinafter UKR. RULES OF PROFESSIONAL CONDUCT].

218. *Id.* at 1.

Ukraine. They also set a single system of criteria for the evaluation of ethical aspects of the advocate's conduct in the disciplinary proceedings before the qualification and disciplinary commissions of the bar.²¹⁹

Several articles are relevant to the choice of law issue. Article 1 stipulates that "[t]he provisions of these Rules complement and specify the applicable legislation on the bar and practice of law rather than abrogate or replace it."²²⁰ Article 43 provides that:

In representing the client's interests or acting as a defender in the court, an advocate must comply with the requirements of applicable procedural legislation, legislation on the bar and advocate's activity, judicial system and status of judges, other legislation governing the conduct of the parties to the court proceedings, and with the requirements of these Rules.²²¹

Further, Article 67 discusses disciplinary action:

In the application of disciplinary sanctions for the breach of the Rules of Professional Conduct and/or Professional ethical (deontological) rules of conduct of foreign advocates (in the cases provided for by these Rules), which operate in the countries in which such advocates are entitled to practice law, the disciplinary bodies of the bar of Ukraine must base themselves on the general principles of legal liability; in particular, they must apply disciplinary sanctions only for the culpable breaches.²²²

a. CCBE Rule

Once the conduct occurs in any European country that is party to the CCBE agreements, the CCBE rules become relevant.

The Code of Conduct for European Lawyers was originally adopted on October 28, 1988, and was most recently amended on May 19, 2006.²²³ It was promulgated by the Council of Bars and Law Societies of Europe (CCBE), an international nonprofit whose membership includes the bars and law societies of 45 coun-

219. UKR. RULES OF PROFESSIONAL CONDUCT, *supra* note 217, at 1-2.

220. *Id.* at art. 1.

221. *Id.* at art. 43.

222. *Id.* at art. 67.

223. *History*, CCBE, <https://www.ccbe.eu/about/history/> (last visited Apr. 7, 2021).

tries from the European Union, the European Economic Area, and wider Europe.²²⁴ Several rules discuss the choice of law issue. Rule 2.4 provides that: “When practising cross-border, a lawyer from another Member State may be bound to comply with the professional rules of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.”²²⁵ Rule 4.1 applies to lawyers appearing before a court or tribunal: “A lawyer who appears, or takes part in a case, before a court or tribunal must comply with the rules of conduct applied before that court or tribunal.”²²⁶ Rule 4.5 applies for other judicial functions: “The rules governing a lawyer’s relations with the courts apply also to the lawyer’s relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.”²²⁷

Rule 1.6 provides definitions for commonly used terms. In this Code, “Member State” means a member state of the European Union or any other state whose legal profession is included in Article 1.4.²²⁸ “Home Member State” means the Member State where the lawyer acquired the right to bear his or her professional title.²²⁹ “Host Member State” means any other Member State where the lawyer carries on cross-border activities.²³⁰

Rule 1.2.2 explains the function and purpose of the Code:

The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application. The particular rules of each Bar and Law Society nevertheless are

224. *Who We Are*, CCBE, <https://www.ccbe.eu/about/who-we-are/> (last visited Feb. 13, 2021).

225. CODE OF CONDUCT FOR EUROPEAN LAWYERS r. 2.4 (CCBE 2006), https://www.advokatsamfundet.se/globalassets/advokatsamfundet_sv/advokatetik/2006_code_en.pdf.

226. *Id.* at r. 4.1.

227. CODE OF CONDUCT FOR EUROPEAN LAWYERS, *supra* note 225, at r. 4.5.

228. *Id.* at r. 1.6.

229. *Id.*

230. *Id.*

based on the same values and in most cases demonstrate a common foundation.²³¹

Rule 1.3.1 clarifies that “[a] particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of “double deontology,” notably as set out in Articles 4 and 7.2 of Directive 77/249/EEC and Articles 6 and 7 of Directive 98/5/EC.”²³² Additionally, the Commentary on Article 1.4 defines the scope of the code: “The Code accordingly applies to all the lawyers represented on the CCBE, whether as full Members or as Observer Members,” including Poland, Spain, and Ukraine.²³³ “It is also hoped that the Code will be acceptable to the legal professions of other non-member states in Europe and elsewhere so that it could also be applied by appropriate conventions between them and the Member States.”²³⁴

The Commentary on Article 2.4 states that “[t]he Lawyers Establishment Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State practicing on a permanent basis in another Member State by virtue of Article 43 of the consolidated EC treaty,” which follows:

(a) irrespective of the rules of professional conduct to which he or she is subject in his or her Home Member State, a lawyer practicing under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practicing under the relevant professional title of the Host Member State in respect of all the activities the lawyer pursues in its territory (Article 6.1);

(b) the Host Member State may require a lawyer practicing under his or her home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that state lays down for professional activities pursued in its territory.²³⁵

231. *Id.* at r. 1.2.2.

232. CODE OF CONDUCT FOR EUROPEAN LAWYERS, *supra* note 225, at r. 1.3.1

233. *Id.* at r. 1.4 cmt.

234. *Id.*

235. *Id.* at r. 2.4 cmt.

There are three statuses of membership with the CCBE: 1) full members, 2) associate members, and 3) observer members.²³⁶

Full members are comprised of:

The founders of the present Association together with the organisations which are representative of the profession of lawyer, recognized as such and designated to form a national delegation by the authorities of each Member State of the European Union or the European Economic Area or the authorities of the Swiss Confederation and which are admitted in such capacity by the Plenary Session according to Article VIII b).²³⁷

These members may be excluded by the Plenary Session duly convened in accordance with the provisions of Article VIII b).²³⁸ They may resign at any time, by written notification delivered to the Secretariat.²³⁹ Further, “[t]he full member who has resigned or has been excluded has no rights to any assets of the association, is not entitled to be reimbursed any part of the subscriptions paid and must pay the subscriptions that have been fixed for the year in which its resignation is tendered.”²⁴⁰ Full members are grouped in national delegations, each of which shall be composed of a maximum of six individuals.²⁴¹

Associate members are comprised of:

[T]he organisations which are representative of the profession of lawyer recognised as such and designated by the authorities of each State, member of the Council of Europe, which is in official negotiations in view of its accession to the European Union, and which have been admitted as such by the Plenary Session according to article VIII b).²⁴²

These members may attend meetings of the Plenary Session without a right to vote, represented by no more than one individ-

236. STATUTES OF THE COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE (CCBE 2020), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/STATUTS/EN_statutes.pdf.

237. *Id.* at 3.

238. *Id.*

239. *Id.*

240. *Id.*

241. STATUTES OF THE COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, *supra* note 236, at 3.

242. *Id.*

ual for each State, and may attend meetings of the Standing Committee.²⁴³ They may be excluded on the same grounds as a full member.²⁴⁴ They may also resign at any time, by written notification delivered to the Secretariat.²⁴⁵ Further, “[t]he associate member who has resigned or has been excluded has no rights to any assets of the association, is not entitled to be reimbursed any part of the subscriptions paid and must pay the subscriptions that have been fixed for the year in which its resignation is tendered.”²⁴⁶

Observer members are comprised of “the organisations which are representative of the profession of lawyer in a Member State of the Council of Europe and which have been admitted as such by the Plenary Session according to article VIII b).”²⁴⁷ These members may attend meetings of the Plenary Session without a right to vote, represented by no more than one individual for each State, and may attend meetings of the Standing Committee.²⁴⁸ They may be excluded on the same grounds as a full or associate member; they may also resign at any time, by written notification delivered to the Secretariat.²⁴⁹ Further, “[t]he observer member who has resigned or has been excluded has no rights to any assets of the association, is not entitled to be reimbursed any part of the subscriptions paid and must pay the subscriptions that have been fixed for the year in which its resignation is tendered.”²⁵⁰ It is also important to note that “[t]he capacity of observer member implies compliance with these statutes and the adoption of the CCBE Code of conduct.”²⁵¹

Many of the distinctions between types of members involve the Plenary Session and Standing Committee. The Plenary Session, or general assembly, is comprised of the full members pre-

243. *Id.*

244. *Id.*

245. STATUTES OF THE COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, *supra* note 236, at 4.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

250. STATUTES OF THE COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, *supra* note 236, at 4.

251. STATUTES OF THE COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, *supra* note 236, at 4.

sent at a meeting.²⁵² The powers necessary to achieve the CCBE's goals are vested in the Plenary Session.²⁵³ They get certain exclusive powers, including control over the budget, amendments to the statute, admission/exclusion of all members, and internal management rules.²⁵⁴ Associates and observers can attend these meetings but have no say.²⁵⁵

The Standing Committee is the administration of the CCBE.²⁵⁶ It consists of "as many members as there are delegations," one President, and three Vice-Presidents (VPs have the right to speak but cannot vote).²⁵⁷ This Committee has all the leftover powers of management and administration. It can further delegate some powers to one or more persons. It seems as though the only members with "delegations" are full members, so this committee might be all full members too. However, it also may mean that one associate/observer member is allowed for each delegation present.

Spain and Poland are full members of CCBE.²⁵⁸ Ukraine is an observer member of the CCBE.²⁵⁹

b. Spanish Rule

In addition to Ukraine, some of Giuliani's conduct occurred in Spain, raising the potential, though unlikely, application of the Spanish law on *abogados*.

The Code of Conduct of the Spanish Bar²⁶⁰ was last modified in the Plenary Session on September 10, 2002. In their preliminary remarks, the drafters acknowledged that "[t]he General Council of the Spanish Bar drafts this rule being aware that the general interest requires the definition of the homogeneous rules applicable to all the lawyers in the Spanish territory, but with

252. *Id.* at 5.

253. *Id.*

254. *Id.*

255. *Id.* at 4.

256. STATUTES OF THE COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, *supra* note 236, at 6.

257. *Id.* at 5.

258. *Members*, CCBE, <https://www.ccbe.eu/structure/members/> (last visited May 31, 2021).

259. *Id.*

260. CODE OF CONDUCT OF THE SPANISH BAR (GEN. COUNCIL OF THE SPANISH BAR 2002), https://www.ccbe.eu/NTCdocument/Spain_EN_Codigo_deon1_1251981686.pdf.

absolute respect to the competences of the Autonomous Councils and to the Law societies that are in charge of the regulation of the professional practice in the territorial scope inherent to them.”²⁶¹ Article 1 contains the choice of law provisions:

1. “The lawyer is obliged to respect the ethical and deontological duties of the profession established in the General Articles of the Spanish Lawyers, approved by virtue of the Real Decreto (Spanish Royal Decree) 658/2001, of 22nd of June, in the Code of Conduct approved by the Council of Bar and Law societies of Europe (CCBE) on the 28th of November 1998, and within the actual Code of Conduct approved by the General Council of Spanish Bar, or those as the case may be approved in the Council of Societies of the Autonomous region and the specific Law Society of which is a member.”
2. “When the lawyer acts outside of the scope of the Law Society of his/her residence, within or outside of the territory of Spain, the lawyer shall respect besides of the rules of his/her Law Society, the ethics and deontology rules in force in the scope of the Host Law Society or in the Law Society in which is carrying out a certain professional performance.”
3. “The Councils of the Law Societies in the different Autonomous regions and the different Law Societies shall send the Codes of Conduct that may have been established to the General Secretaryship of the General Council of the Spanish Bar and the latter shall obtain for the Secretariat of the CCBE the codes of conduct of the rest of the States within the European Union.”²⁶²

The Spanish rule, therefore, relies on double-deontology implicating both the Spanish rule and the CCBE rule.

c. Polish Rule

The Rules of Ethics for Advocates and the Dignity of the Profession (Code of Ethics for Advocates)²⁶³ was adopted by the Polish Bar Council on October 10, 1998, and was last amended on

261. *Id.* at 3.

262. CODE OF CONDUCT OF THE SPANISH BAR, *supra* note 260, at art. 1.

263. See RULES OF ETHICS FOR ADVOCATES AND THE DIGNITY OF THE PROFESSION (POLISH BAR COUNCIL 2011), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/EN_Poland_PBC_Code_of_Ethics_for_Advocates.pdf [hereinafter POLISH RULES OF ETHICS FOR ADVOCATES].

November 19, 2011. Chapter I includes the choice of law provisions:

§ 1(4) An advocate practising the profession abroad has a duty to comply with the standards set forth in this Code as well as standards of ethics for advocates in force in the host country.

§ 2 In cases not covered by this Code, an advocate shall be guided by the principles established in resolutions by the authorities of the bar and in disciplinary decisions, as well as customary norms accepted by the community of advocates.²⁶⁴

Resolution No. 3/2014 regarding the Code of Ethics of Attorney at Law was passed on November 22, 2014.²⁶⁵ Article 2 provides that:

1. Attorneys at law providing legal assistance abroad shall comply herewith as well as with the rules of professional ethics of the host country.

2. When providing cross-border legal services, attorneys at law shall comply with the provisions of the Council of Bars and Law Societies of Europe (CCBE) Code of Conduct, including when it comes to: 1) their professional contacts with lawyers from other CCBE Member States, and 2) professional activities of attorneys at law within the territory of another CCBE Member State, regardless of whether they are actually present there.²⁶⁶

d. Nonbinding International Rules

Rule 1 of the International Code of Ethics of the International Bar Association (“IBA”), which was in effect until 2011, stated that:

A lawyer who undertakes professional work in a jurisdiction where he is not a full member of the local profession shall adhere to the standards of professional ethics in the jurisdiction in which he has been admitted. He shall also observe all

264. *Id.* at ch. 1.

265. CODE OF ETHICS OF ATTORNEY AT LAW (EXTRAORDINARY ASSEMB. OF POL. ATTORNEYS AT LAW, 2014), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/National_Regulations/DEON_National_CoC/EN_Poland_KIRP_Code_of_professional_Conduct.pdf [hereinafter POLISH CODE OF ETHICS OF ATTORNEY AT LAW].

266. POLISH CODE OF ETHICS OF ATTORNEY AT LAW, *supra* note 265, at art. 2.

ethical standards which apply to lawyers of the country where he is working.²⁶⁷

In the 2019 version of the IBA International Principles on Conduct for the Legal Profession, section 1.3 (international implications) states that:

Differences in jurisdictional approach should be taken into account in cases of cross-border or multi-jurisdictional practice. Every lawyer is called upon to observe applicable rules of professional conduct in both home and host jurisdictions (Double Deontology) when engaging in the practice of law outside the jurisdiction in which the lawyer is admitted to practice A universally accepted framework for determining proper conduct in the event of conflicting or incompatible rules has yet to be developed, although certain jurisdictions have adopted conflict of law principles to determine which rules of professional conduct apply in cross-border practice.²⁶⁸

Giuliani's global movements create a web of confusing choice of law issues, leaving many questions about what rules will govern his far-flung conduct.

C. A HYPOTHETICAL

Given the confusing web of potentially applicable laws regulating the cross-border conduct of lawyers, a hypothetical may help by simplifying the set of facts. This hypothetical is a prelude to a discussion of Rudy Giuliani's exploits.²⁶⁹ A lawyer with a license to practice in Poland represents a Polish corporate client with whom a U.S. corporation is considering a joint venture to open a factory in Serbia. The U.S. corporation is represented by a lawyer licensed in Pennsylvania. What should happen when the U.S. lawyer and the Polish lawyer both happen to be in Madrid and decide to meet and discuss their respective clients' interest in a joint business venture? Might the U.S. lawyer, quite reasonably, want to know what ethics rules would regulate the Polish lawyer's level of honesty in their dealings? Might the Polish lawyer like to know the same about the U.S. lawyer? Research into the legal culture of the two countries, and the regions from which

267. Wolfram, *supra* note 170, at 282.

268. IBA INTERNATIONAL PRINCIPLES ON CONDUCT FOR THE LEGAL PROFESSION (COUNCIL OF THE INT'L BAR ASS'N 2019).

269. I regularly use this hypothetical in my class on this subject with students in the U.S., Spain, Czech Republic, Slovakia, Ukraine, Georgia, and China.

the lawyers come would also surely play a role in evaluating the likely level of honesty to which the counterpart lawyer might adhere. But to know the law that would govern each lawyer's conduct, study of the choice of law rules within respective lawyer conduct codes would be necessary.

Where would such an analysis begin and where would it lead? How much power over the lawyers do the various jurisdictions involved in the story have in the first place? First, only the license-granting jurisdiction will have power over the license itself. But even a host jurisdiction, say Spain in this story, is essentially permitting, even if tacitly, the lawyers to perform legal work for their respective clients in Spain. Presumably, the U.S. lawyer's work while sitting at a terrace in Madrid is permitted by the licensing state's version of MR, the multijurisdictional practice rule [MJP]. While a host jurisdiction like Spain may lack power to affect the lawyer's license, it could prohibit continued legal work by the lawyer in its territory.

The Polish lawyer would naturally look to the jurisdiction granting her license for guidance about what law to follow when crossing borders and the Pennsylvania lawyer would do the same. The Polish lawyer would find this: "[a]n advocate practising the profession abroad has a duty to comply with the standards set forth in this Code as well as standards of ethics for advocates in force in the host country."²⁷⁰ If that seemed unsatisfying, the Polish lawyer, who has crossed borders within the EU, might look to the choice of law rule of the CCBE, the umbrella organization of European bar associations and law societies. Here, the Polish lawyer would find the following: "When practising cross-border, a lawyer from another Member State may be bound to comply with the professional rules of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity."²⁷¹ Member organizations of the CCBE are obliged to deposit their codes of conduct at the Secretariat of the CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat."²⁷² Of course, the Pennsylvania lawyer might also have done the same in researching what conduct rules will govern the negotiating counterpart from Poland.

270. POLISH RULES OF ETHICS FOR ADVOCATES, *supra* note 263, ch. 1, §1, 4.

271. CODE OF CONDUCT FOR EUROPEAN LAWYERS, *supra* note 225, at r. 2.4.

272. *Id.*

Neither researcher should be terribly satisfied, although the resolution of conflicting rules would be familiar to the Polish, civil law trained, lawyer. One frequent international law suggestion of how to deal with conflicting law governing lawyers can be dealt with easily. The Polish and EU rules mentioned in the context of our hypothetical, as well as (non-binding) rules crafted by the International Bar Association, suggest a standard civil law technique for dealing with conflict of law, double deontology.²⁷³ By this technique, the rule chosen for the lawyer to follow is the more stringent of the two. Some surface appeal attends this suggestion: one might think that complying with the more stringent rule means that the less stringent rule is complied with *a fortiori*. But this is only rarely the reality when the technique applies to law governing lawyers.

The technique functions well only in the rare circumstance when the topic of the competing rules is one in which there is only one duty, and it is the measure of that duty that is in conflict. Take the rule requiring a lawyer to be careful when safeguarding a client's property that is in the lawyer's possession. Perhaps in jurisdiction 1, the rule requires the lawyer to use "care." But in jurisdiction 2, the rule requires the lawyer to use "exceptional care." Here, only the duty to the client is at stake and the lawyer could be led by use of the international analytical technique to use "exceptional care." So far, so good.

But this "one-duty" situation is the exception rather than the norm. Almost all of the topics and rules within the law governing lawyers represent a balancing of competing duties. The rules requiring a certain level of honesty to third parties, for example, represent an effort to balance the duty to advance a client's interests with the duty to refrain from excessively abusive conduct toward others. Any rule's placement of that line represents the rule drafter's preferred balance between competing duties. A competing rule places the line elsewhere, favoring client interests or favoring third parties. As between the two competing rules, there is no "more stringent" one. Complying with either rule compromises the duty that was less favored by its rule drafters. The same is

273. See *Double Deontology Group*, SPAIN-AM. BAR ASS'N, <http://spainamericanbar.org/en/member-services/legal-ethics-research-coordination-panel> (last visited Feb. 13, 2021); *Deontological Ethics*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://plato.stanford.edu/entries/ethics-deontological/> (last updated Oct. 30, 2020); Matthew T. Nagel, *Double Deontology and the CCBE: Harmonizing the Double Trouble in Europe*, 6 WASH. U. GLOBAL STUD. L. REV. 455 (2007).

true for confidentiality exceptions, conflict waivers and imputation rules, duty to court rules, and so on. Most frequently, rules pit client interests against those of others, including courts, third parties, the legal profession/colleagues, and the public generally.

Back to our Polish lawyer, Pennsylvania lawyer, their clients, and their glasses of vino tinto at a terrace in Madrid. Identifying the correct choice of governing law for the Polish lawyer presents real challenges. What about the Pennsylvania lawyer? (It must also be obvious that in any event, if the two lawyers are governed by different standards of honesty, a serious impediment to their negotiations will exist.)

The Pennsylvania lawyer's license was issued by a jurisdiction that has adopted a clone of ABA Model Rule 8.5. MR 8.5(a) is not really a choice of law rule, but a rule expressing the power of the Pennsylvania authorities to discipline the lawyer, no matter where his conduct may occur.²⁷⁴ MR 8.5(b)(1) does not touch this lawyer's situation because it applies when litigation is pending (or perhaps impending).²⁷⁵ Both lawyers and their clients in the hypothetical surely hope to conduct a successful transaction and avoid litigation in the future. MR 8.5(b)(2) is the focus for the Pennsylvania lawyer because he is engaged in conduct not covered by 8.5(b)(1).²⁷⁶

The first stop as a possible governing law choice is the place "where the conduct occurs," in this instance, Spain. Such a result seems implausible on its face: Spain has next to no interest in this conduct, the offense of false statements being made on its soil notwithstanding. A slightly better fit is another description of where the conduct is occurring, the EU. This choice has some appeal, especially if the EU rules apply to the Polish lawyer's conduct. This choice represents the only scenario in which the rules governing the two lawyers could be the same rules. But the CCBE rules are really only rules for EU lawyers who cross borders. They have no general application to EU lawyers functioning domestically.²⁷⁷ As such, the case for their application to the Pennsylvania lawyer is weak.

274. PENN. RULES OF PROFESSIONAL CONDUCT r. 8.5 (DISCIPLINARY BD. OF SUP. CT. OF PENN. 2021), <http://www.padisciplinaryboard.org/for-attorneys/rules/rule/3/the-rules-of-professional-conduct>.

275. *Id.*

276. *See id.* at r. 8.5(b).

277. CODE OF CONDUCT FOR EUROPEAN LAWYERS, *supra* note 225, at r. 1.3.1.

If not the law where the conduct occurs, then where, according to MR 8.5? The law of the place “where the predominant effect of the conduct” is felt. Now we are faced with multiple possibilities, depending on the nature of any misconduct on the part of the Pennsylvania lawyer. Perhaps his misconduct results in fraud being perpetrated on the Polish company, leading to heavy impact in Poland. Or the misconduct might result in a collapse of the deal, leading to heavy impact in Poland, Pennsylvania, and even Serbia. Or perhaps the misconduct results in a successful claim being brought against the Pennsylvania company, suggesting that the predominant effect will be felt in Pennsylvania.

Unfortunately, but predictably, there is very little case law on the meaning of “predominant effect.” And what exists is not very helpful when analyzing a challenging situation such as this hypothetical.²⁷⁸

Happily for U.S. lawyers, MR 8.5(b)(2) includes one more twist, a safe-harbor provision. This provision excuses the lawyer from disciplinary liability if the lawyer has complied with any state’s law, as long as a reasonable argument can be made that the predominant effect would be felt in that state.²⁷⁹

In part because the ABA rule and its complete and partial clones have seen so little use and interpretation, the limits on arguments about where the predominant effect will be felt are only modestly limited.

278. *E.g.*, In re Disciplinary Proceedings Against Marks, 665 N.W.2d 836, 845–46 (Wis. 2003) (explaining that in line with MR 8.5, Wisconsin’s disciplinary authority could proceed against a lawyer who violated the Michigan Rules of Professional Conduct); In re Disciplinary Action Against Overboe, 745 N.W.2d 852, 861–62 (Minn. 2008) (applying Minnesota’s version of MR 8.5(b) and its predominant-effect test, the court applied North Dakota law to charges that a lawyer made deceptive use of a trust account and commingled funds, but then applied Minnesota lawyer to charges that the lawyer lied to Minnesota disciplinary authorities about those events and failed to cooperate with their investigation); In re Disciplinary Action Against Overboe, 763 N.W.2d 776, 779–82 (N.D. 2009) (finding that the lawyer involved in the Minnesota Overboe decision, *supra*, was subject to reciprocal discipline, rejecting his argument that the Minnesota finding that he had violated a North Dakota lawyer code should not provide the basis for such discipline because Minnesota applied its less-searching clearly erroneous standard to review the hearing referee’s findings rather than North Dakota’s standard of *de novo* review).

279. MODEL RULES OF PROF’L CONDUCT, *supra* note 175, at r. 8.5(b)(2).

D. BACK TO RUDY

Rudy's situation is remarkably similar to the hypothetical, except that there is no counterpart European lawyer and the stakes for the place of the U.S. lawyer's work are strikingly pronounced. In the hypothetical, the jurisdiction-target of the lawyer's work was hoping that a new factory would result from the clients' deal. When Rudy conducted his foreign state meetings with international associates, however, the fate of multiple countries was on the line. Hanging in the balance for Ukraine was the prestige that comes from a White House meeting for a new head of state, added local stability, a powerful message to Russia of alignment of Ukrainian-U.S. interests, and the receipt of Congressional funded lethal military aid critical to its ongoing conflict with Russia and its local operatives. The outcome of Rudy's deal-making could not have been more powerful for Ukraine's future.

Both Rudy's active New York and inactive D.C. licenses significantly influence the application of choice of law rules to Rudy's work. Both New York and D.C. have outlier choice of law rules, based on the 1993 version of ABA Model Rule 8.5. Had it been adopted in New York or D.C., application of current ABA MR 8.5 would create a smoother analytical path than the application of the New York or D.C. rule.

1. NEW YORK AND D.C.

As is the usual starting point, no matter where a lawyer's conduct (or misconduct) occurs, the state of licensure has jurisdiction over the disciplinary process.²⁸⁰ The applicable law is determined by analysis of part (b) of the rule, and as is the case for the ABA Model Rule, there is a division between court conduct and "any other conduct."²⁸¹

Unlike the current ABA model provision, New York's choice of law rule maintains a tight focus on jurisdictions in which the subject lawyer has been admitted to practice.²⁸² Very few court applications of ABA MR 8.5 or New York R 8.5 exist. None have faced the question of how broadly "admitted to practice" should be interpreted; whether it includes jurisdictions where a lawyer is currently representing a client *pro hac vice* or jurisdictions in

280. NEW YORK RULES OF PROFESSIONAL CONDUCT, *supra* note 200, r. 8.5 cmt. 1.

281. *Id.* at r. 8.5(b).

282. *See id.* at r. 8.5.

which a lawyer is engaging in temporary, non-litigation practice pursuant to the multijurisdictional practice rules like ABA MR 5.5. The absence of a focus on “admitted to practice” language in the amended and current versions of ABA MR 8.5 is some indication that these temporary “admissions” should be included. Under modern MR 8.5, the scope of possible governing law is not limited to those jurisdictions in which the lawyer has a full license. So, limiting the choices largely diminishes the importance of having a choice of law rule. If a lawyer, for example, has only one license, that state’s law will always govern that lawyer’s conduct no matter where it occurs and no matter what jurisdictions will feel the sting of a lawyer’s misconduct.

Adhering tightly to the language of the New York rule and not accounting for pro hac vice admission as signifying “admission to practice” makes part (b)(1) of the rule nonsensical and inconsequential. Part (b)(1) indicates that the lawyer’s conduct that is connected with a tribunal is governed by the jurisdiction where the court sits and the lawyer is admitted to practice. Limiting the choice of law only to jurisdictions where the lawyer holds a full license would eliminate the rule’s significance every time a lawyer left his or her home jurisdiction to practice in a court. Surely, in this part at least, “admitted to practice” includes pro hac vice admission.

A second interpretive nuance of part (b)(1) involves the “conduct in connection with a proceeding” language. Should this phrase be limited to conduct that occurs *after* litigation has been initiated, or might it also include the work done in contemplation of proceedings, such as witness interviewing, fact investigation, and the like, that are done in anticipation of litigation, whether the litigation does or does not in fact ensue. The better view seems to be the broader one. If not, then all of the lawyer’s activities occurring outside the home jurisdiction until the formal initiation of litigation will be governed by part (b)(2)’s “any other conduct” language. Doing so would substantially reduce the likelihood that the jurisdiction of the eventual tribunal would be the governing law.

Rudy’s conduct in Ukraine and elsewhere is unlikely to fall under part (b)(1). No litigation has occurred in Ukraine or elsewhere regarding his work. The closest argument to bring his conduct within (b)(1) would be to focus on reports that he hoped his investigation would support Donald Trump’s defense to litigation

in the U.S., including the impeachment inquiry, but also matters relating to possible litigation brought against either Hunter or Joe Biden for alleged misconduct in Ukraine relating to Burisma.

Far more likely, Rudy's conduct will fall under (b)(2), for "any other conduct." Here, again, New York's rule, unlike the current ABA rule, focuses on jurisdictions in which the lawyer is "licensed to practice."²⁸³ Substituting the word "licensed" for "admitted" tends to limit the argument regarding permitted multijurisdictional practice. However, the work change hardly eliminates the multijurisdictional practice argument. Neither the word "admitted" nor the word "licensed" is commonly used in connection with permitted multijurisdictional activities. The more common phrase used in connection with temporary multijurisdictional activities is "provision of legal services."²⁸⁴ Such a lawyer is not commonly said to be "admitted in" or "licensed in" the external jurisdiction. Nonetheless, policy arguments favor the broader definition in (b)(2) just as they do in (b)(1). Given the tight focus on jurisdictions in which the lawyer is licensed, the New York rule makes it impossible for law from a foreign jurisdiction to govern lawyer conduct unless the lawyer is also licensed in that foreign jurisdiction. And, as with (b)(1), as the ABA amended MR 8.5 between 1993 and today, it eliminated the "licensed" language.

Following the literal words of the New York rule, Rudy's conduct, no matter where it occurs, will always be governed by New York's law governing attorneys, or potentially D.C.'s law because he is licensed there, albeit in an inactive status. The rule, interpreted literally, would provide a consistent answer, but it would not really be a choice of law rule requiring the complex language chosen. Instead, it would simply dictate that a New York lawyer's conduct will be governed by New York law or the law of some other jurisdiction in which the lawyer is also fully licensed.

Applying it consistently with the current ABA MR 8.5 would lead to a more interesting analysis. First, according to MR 8.5(b)(2), the first choice of governing law is the place where the conduct occurred.²⁸⁵ This would be Ukraine, despite the fact that

283. NEW YORK RULES OF PROFESSIONAL CONDUCT, *supra* note 200, at r. 8.5(b)(2).

284. MODEL RULES OF PROF'L CONDUCT, *supra* note 175, at r. 5.5(d).

285. MODEL RULES OF PROF'L CONDUCT, *supra* note 175, at r. 8.5(b)(2).

much of the conduct occurred electronically and some inconsequential part of the conduct occurred in Madrid and Tel Aviv. The most significant work was done by Rudy's agents Parnas and Fruman while physically in Ukraine. They met with a variety of state actors while there, including former and current Ministers of Justice.

Second, if the "predominant effect" of the conduct would be felt somewhere other than the location of the conduct, the law of that jurisdiction would apply. Here, the candidates for predominant effect would be New York (private citizen Donald Trump's home), D.C. (the center of events that ensued as a result of Rudy's work, including the impeachment inquiry and proceedings, Florida, a weak candidate for predominant effect as the formally-claimed residence of Donald Trump, and Ukraine.

New York would be an excellent candidate for predominant effect if this were actually a purely private matter for the client, Donald Trump. But it was not; instead it was an effort to undermine the President's anticipated opponent in 2020, and the political gains or fallout of any of Rudy's misconduct would not be felt in Donald Trump's home. Instead, the serious candidates are D.C. and Ukraine. But the nature of the misconduct could affect where its predominant effect would be felt. Material, false statements made by Rudy or his agent to Ukrainian officials would produce one kind of predominant effect. Similar material, false statements made to U.S. State Department officials (such as the then Ambassador to Ukraine or to the U.S. Ambassador to the EU) would have a somewhat different effect. Similarly, an inappropriate contact between Rudy and a represented person interested in the matter might produce a still different effect.

But generically speaking, without deciding whether and what kind of misconduct was committed, the known effects of Rudy's conduct in Ukraine were felt with considerable seismic force in both the U.S. generally, D.C. in particular, and Ukraine. Ukraine's new government was left twisting in the wind without either political support in the form of a White House meeting or military support in the form of lethal weaponry as it struggled to hold off Russian aggression in its eastern provinces. These effects by all reports, were felt deeply in Ukraine, not only by the government but by a fearful populace as well. In the U.S., and D.C. in particular, the effects were different in kind but arguably no less profound. Donald Trump, Rudy's client, was impeached in

part due to Rudy's work on his behalf pressuring the new Ukrainian President to initiate an investigation that legal authorities in the country had already determined to be without merit.²⁸⁶ Although the Ukrainian-related impeachment of Donald Trump was felt throughout the U.S., D.C. is political ground zero. Virtually all of the impeachment action centered on Congress and the White House.

While a reasonable argument may be made that the predominant effect was felt in Ukraine, a reasonable argument could also be made that the predominant effect was felt in the U.S., and D.C. in particular. In the end, under the New York version of 8.5, Rudy would be safe relying on either the New York or e D.C. law governing lawyers. Under the D.C. rule, which is not significantly different from the New York rule, Rudy would be safe relying on D.C. law governing lawyers. In one of the majority of states using a clone of the current ABA MR 8.5, Rudy would be safe relying on either DC or Ukrainian law governing lawyers.

By what rules should Mr. Giuliani's conduct during his court appearance in the United States District Court for the Middle District of Pennsylvania (MDPA) be judged? Should the truth-telling qualities of his statements during the hearing and in documents be measured against New York law, or Pennsylvania law, or some other?

And what of his conduct during the Michigan legislative hearing on December 2? Again, will the quality of his conduct be measured against the rules of conduct in New York, in Michigan, or somewhere else?

As always, the first analytical stop is the law of a lawyer's state of licensure. Mr. Giuliani has an active license in New York and an inactive one in D.C.

As previously discussed, New York has adopted a choice of law rule which is substantively similar to the 1993 version of ABA Model Rule 8.5. Under the rule:

A lawyer admitted to practice in this state [NY] is subject to the disciplinary authority of this state, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the

286. *Trump impeachment: The short, medium and long story*, BBC (Feb. 5, 2020), <https://www.bbc.com/news/world-us-canada-49800181>.

disciplinary authority of both this state and another jurisdiction where the lawyer is admitted for the same conduct.²⁸⁷

For conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the applicable rules shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise.²⁸⁸

“[Under] [p]aragraph (b)(1) [the tribunal paragraph] the lawyer shall be subject *only* to the rules of the jurisdiction in which the court sits unless the rules of the court . . . provide otherwise.”²⁸⁹ In this case, Giuliani requested and was granted pro hac vice admission to the MDPA. Because he was admitted “for purposes of that proceeding,” Giuliani may be subject to the disciplinary authority of both New York and MDPA for his conduct in connection with the hearing.

The D.C. choice of law rule is the same.²⁹⁰ The tribunal portion of D.C.’s RPC 8.5(b)(1) states that “[f]or conduct in connection with a matter pending before a tribunal, the rules to be applied shall be the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise.”²⁹¹ And, “as to a lawyer’s conduct relating to a matter pending before a tribunal the lawyer shall be subject only to the rules of professional conduct of that tribunal.”²⁹² Thus, just like under the New York rule, D.C. and the MDPA may exercise disciplinary authority over Giuliani’s conduct before the MDPA.

In such a disciplinary proceeding, what rules would apply to Giuliani’s court-connected conduct? Both the New York and the D.C. choice of law rule point to the rules of conduct applicable in the MDPA.

At the beginning of the hearing, Giuliani requested and was granted pro hac vice admission by Judge Brann.²⁹³ Lawyers prac-

287. NEW YORK RULES OF PROFESSIONAL CONDUCT, *supra* note 200, at r. 8.5(a).

288. *Id.* at r. 8.5(b)(1).

289. *Id.* at r. 8.5 cmt. 4.

290. D.C. RULES OF PROFESSIONAL CONDUCT, *supra* note 207, at r. 8.5.

291. *Id.* at r. 8.5(b)(1).

292. *Id.* at r. 8.5 cmt. 4.

293. U.S. District Court Middle District of Pennsylvania, *Donald J. Trump for President v. Boockvar, et al.* 4:20-CV-02078, YOUTUBE (Nov. 30, 2020), https://www.youtube.com/watch?v=c_-Rvu8jTjk&feature=emb_err_woyt.

ting pro hac vice are subject to discipline by the jurisdiction in which they are visiting to the extent of their pro hac vice admission.²⁹⁴ In other words, Judge Brann and the MDPA had the authority to withdraw the temporary practice admission in the event of perceived misconduct by Mr. Giuliani. More significantly, under Local Rule of the Middle District of Pennsylvania 83.27, by requesting pro hac vice admission, Giuliani was “deemed thereby to have conferred disciplinary jurisdiction upon [that] court for any alleged misconduct . . . arising in the course of or in the preparation for such proceeding.”²⁹⁵ Consequently, Giuliani has permitted New York, D.C., and the MDPA, or any combination thereof to exercise jurisdiction over his conduct in connection with the Trump Campaign’s election fraud litigation in the MDPA. No matter which jurisdiction or jurisdictions chose to exercise their disciplinary authority, the applicable rules of professional conduct are determined by the MDPA.

By Local Rule, specifically LR 83.23, the standards for professional conduct in the MDPA are 1) the Rules of Professional Conduct adopted by the Supreme Court of Pennsylvania, and 2) the Code of Professional Conduct enacted in the Middle District of Pennsylvania’s Civil Justice Reform Act Plan.²⁹⁶ As such, Mr. Giuliani’s conduct would be measured against the strictures of, for example, the truth-telling provisions of the Pennsylvania Rules of Professional Conduct and the various provisions of the MDPA-adopted The Code of Professional Conduct (CPC).²⁹⁷ The MDPA CPC is a typical civility code/creed, the likes of which have been adopted by most state bar associations and many courts. However, while most such civility documents are aspirational and unenforceable,²⁹⁸ the MDPA CPC has been adopted by Local Rule as a binding set of standards. The CPC includes several provisions of particular relevance:

1. The rule of law will govern my entire conduct. I will not violate the law or place myself above the law. . . .

294. MOLITERNO, *supra* note 211, at 18.

295. U.S. DIST. COURT FOR THE MIDDLE DIST. OF PA., RULES OF COURT r. 83.27 (2014), <https://www.pamd.uscourts.gov/sites/pamd/files/LR120114.pdf> [hereinafter MDPA LOCAL RULES].

296. MDPA LOCAL RULES r. 83.23.2.

297. *Id.* at app. C.

298. James Moliterno, *Lawyer Creeds and Moral Seismography*, 32 WAKE FOREST L. REV. 781 (1997).

7. Procedural rules are necessary to judicial order and decorum. I will be mindful that pleadings, discovery processes and motions cost time and money. I will not use them heedlessly. If an adversary is entitled to something, I will provide it without unnecessary formalities.

8. I will not engage in conduct that brings disorder or disruption to the courtroom. I will advise my client and witnesses appearing in court of the proper conduct expected and required there and, to the best of my ability, prevent my client and witnesses from creating disorder or disruption.²⁹⁹

A combination of these provisions and those of the Pennsylvania Rules of Professional Conduct will govern Mr. Giuliani's conduct in connection with his work in the MDPA.

The application of Rule 8.5 to the Michigan legislative hearing is a bit more complicated but leads to similar results. The initial question is whether the legislative hearing was a tribunal. Although the Michigan Rules do not define "tribunal," ABA MR 1.0(m) defines the term "tribunal" to mean "a court, an arbitrator in a binding arbitration proceeding or a *legislative body*, administrative agency or other body *acting in an adjudicative capacity*."³⁰⁰ Such a body "acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter."³⁰¹ In this instance, the Michigan House Oversight Committee held hearings to investigate "claims about election irregularities."³⁰² These hearings did not render any binding legal judgments. However, in the absence of a definition of tribunal in Michigan law,³⁰³ the New York or Michigan disciplinary authorities would be charged

299. MDPA LOCAL RULES, *supra* note 296, app. C.

300. MODEL RULES OF PROF'L CONDUCT, *supra* note 175, at r. 1.0(m) (emphasis added).

301. *Id.*

302. Cassidy Johncox, *Michigan Legislature to Hear from Rudy Giuliani, UK Authorizes Pfizer Coronavirus Vaccine for Emergency Use, Tracking Snow Totals*, CLICK ON DETROIT (Dec. 2, 2020, 8:58 AM), <https://www.clickondetroit.com/news/local/2020/12/02/morning-briefing-dec-2-2020-michigan-legislature-to-hear-from-rudy-giuliani-uk-authorizes-pfizer-coronavirus-vaccine-for-emergency-use-tacking-snow-totals/>.

303. SUPREME COURT OF MICH., MICHIGAN RULES OF PROFESSIONAL CONDUCT r. 1.0 (2020), <https://courts.michigan.gov/courts/michigansupremecourt/rules/documents/michigan%20rules%20of%20professional%20conduct.pdf>.

with determining the status of the legislative hearing as a tribunal or not.

Like the ABA Model Rules, Michigan Rules provide that “[a] lawyer representing a client before a legislative body . . . in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.”³⁰⁴ This provision effectively transplants many of the rules requiring candor to courts into the legislative realm, even when the legislative hearing is not clearly defined as a tribunal. While the Michigan Rules and the Model Rules do not explicitly state whether a legislative body can constitute a “tribunal,” for the purposes of MR 8.5, Comment [2] to MR 3.9 is instructive:

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies *have a right to expect lawyers to deal with them as they deal with courts.*³⁰⁵

Thus, even if the legislative hearing did not constitute a tribunal, Mr. Giuliani was required to conduct himself in truth-telling terms largely the same manner as he would have in court.

But, even if the legislative hearing was not a tribunal, Michigan Rules of Professional Conduct almost apply to Mr. Giuliani’s conduct at the hearing. The alternative to activities connected with a tribunal in the choice of law rules, including those of New York and D.C., dictates that “for all other conduct” the applicable law will be that of the place of the conduct (here, Michigan) or the place where the predominant effect of the conduct would be felt.³⁰⁶ The subject of the legislative hearing was the prospect of fraud in the election claimed by Giuliani to have taken place in Michigan. The goal of the hearing, from the Trump Campaign’s perspective, was to overturn the election result in Michigan. Without question, the predominant effect of any misconduct during the Michigan legislative hearing would have been felt in Michigan.

304. MODEL RULES OF PROF’L CONDUCT, *supra* note 175, at r. 3.9.

305. *Id.* at r. 3.9 cmt. 2 (emphasis added).

306. *See supra* nn.175–190.

In the end, Mr. Giuliani's conduct in the MDPA would be measured by the Pennsylvania Rules of Professional Conduct and the MDPA CDC. His conduct in connection with the Michigan legislative hearing would be governed by the Michigan Rules of Professional Conduct.

This part is no hypothetical. Congressman Bill Pascrell Jr. (D NJ) has filed bar ethics complaints against Giuliani in Michigan, New York, Pennsylvania, Arizona, and Nevada.³⁰⁷ Numerous other lawyer groups have also filed complaints in New York, and the New York City Bar Association has joined in the call for Giuliani's disbarment.³⁰⁸

CONCLUSION

Choice of law in lawyer discipline matters, and the language among the popular choice of law rules in use matters. The core goals of choice of law principles should not limit the choices to the states in which a lawyer has a full, formal license. Doing so undermines the modern choice of law interests analysis by eliminating jurisdictions that may have the greatest interest in the conduct.

Lawyers cross borders physically and electronically on a daily basis. Accordingly, choice of law rules are critical, especially when a lawyer engages in missions that are targeted at particular jurisdictions, as Rudy Giuliani did. As such, the targeted jurisdiction has a powerful interest in having its rules of lawyer ethics govern the conduct.

So, where is Rudy? At any given moment, that is hard to answer. But wherever he is, the choice of law rules deserve closer study if the policies that drive them are to be realized.

307. Bill Pascrell, Jr. (@PascrellforNJ), TWITTER (Nov. 20, 2020, 2:51 PM), <https://twitter.com/PascrellforNJ/status/1329875147067625474>; Kim Bellware, *Congressman Seeks to Have Rudolph Giuliani Disbarred over Attempts to Overturn Election*, WASH. POST (Nov. 24, 2020, 10:34 AM), https://www.washingtonpost.com/politics/2020/11/24/rudy-giuliani-disbar/?utm_campaign=wp_main&utm_medium=social&utm_source=facebook&fbclid=IwAR3IJ3EfxP8Qr88YoAEXNDU5akPqgTAlxGeIOGTNGhbMjdwBNbiWGq4B0w.

308. Sonia Moghe, *NYC Bar Association Joins Push to Have Giuliani Investigated to be Disbarred*, CNN (Mar. 2, 2021, 1:47 PM), <https://www.cnn.com/2021/03/02/politics/giuliani-nyc-bar-association/index.html>.