

Astonishingly Excellent Success or Sad! Loser! Failure: Why President Trump's Legal Narratives "Win" with Some Audiences and "Lose" with Others

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While President Trump is often called a liar and various commentators have analyzed his rhetorical approach, little has been said about storytelling's role in his wins and losses. Trump's narratives about legal issues enjoy wild success with his supporters, amuse some critics, and terrify others. Thus far into his presidency, his legal narratives have often failed with courts. With nearly sixty-three million American voters backing Trump, scholars and students of persuasion cannot ignore his successes. However, with over sixty-five million Americans voting against him and various court's ruling against him, scholars and students of persuasion also cannot ignore his failures. Trump and his team use various effective narrative and rhetorical techniques. These techniques tap into his audiences' deep frames, their strongly held values and predispositions. However, he has succeeded for reasons other than simply having an audience who liked his message. Although he regularly uses ethically questionable approaches, he also regularly uses certain rhetorical and narrative techniques that scholars and experts recommend. Nonetheless, the Trump team has also committed rhetorical errors. While these errors alienate his critics, the types of errors he commits are also particularly egregious to a judge making a determination in a lawsuit. This article identifies and lists the narrative techniques that the Trump team uses and divides them into the following categories: 1) universally successful techniques, 2) ethically questionable techniques, 3) stylistically controversial techniques, and 4) either carelessly composed or intentionally sloppy statements containing errors. It examines why even some of the latter categories succeed with his base and shows how the same techniques can sometimes fail with a legal audience, such as a court. A few of Trump's good and bad narrative techniques, including both sound best practices and ethically dubious approaches, comprise of: 1) using symbols and "endowed objects;" 2) targeting specific groups with audience-specific messages; 3) using short sound bites and simple language; 4) framing; 5) using stock structures; 6) creating strong antagonists; 7)

establishing cliff-hangers; 8) creating distractions to shift the conversation to another topic; 9) surrounding falsities with a few key details to establish verisimilitude, a sense of reality; 10) using intimidation speech to silence critics; and 11) using intensifiers, such as “great,” “tremendous,” or “astonishingly excellent.” —

ARTICLE CONTENTS

I. INTRODUCTION.....	56
II. OVERVIEW OF TRUMP-TALK TECHNIQUES	57
III. BRIEF OVERVIEW OF THE TRAVEL BAN.....	64
A. THE FIRST EXECUTIVE ORDER.....	65
B. THE SECOND EXECUTIVE ORDER.....	66
C. THE THIRD AND FINAL EXECUTIVE ORDER	66
IV. HOW TRUMP'S NARRATIVE TECHNIQUES RESONATED WITH HIS BASE	67
A. CHOOSING AND CREATING THE AUDIENCE	67
B. STORYTELLING TECHNIQUES AND GENRE CHARACTERISTICS OF TRUMP'S NARRATIVE TO THE BASE	72
C. HOW TRUMP'S NARRATIVE MUTES THE COUNTER-NARRATIVE	88
D. WHY TRUMP'S BASE FORGIVES TRUMPIAN GAFFES	92
V. WHY TRUMP'S NARRATIVES LOST WITH SOME COURTS.....	94
VI. CONCLUSION	108



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BY CATHREN PAGE[†]

I. INTRODUCTION

"Look up in the sky."

"It's a bird."

"It's a plane."¹

"It's—

Air Force One?

Whoosh! An engine roar shook the air and the trees. Wind currents ripped at our hair and clothes. My husband poked my shoulder frantically and then pointed at the sky. *It's an attack!* A hulking metal Leviathan zoomed towards us, and it clicked in my brain. *Airplane—*

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¹ Cpt Columbo, *Adventures of Superman Season One Opening Credits*, YOUTUBE (Jan. 30, 2007), <https://www.youtube.com/watch?v=p0B1ufyXOds>.

it's an airplane. What's happening? The white and blue metal cast a shadow over us as the plane hurtled at us. *It's going to hit us.* I saw the words "Air Force" and realized, *It's Air Force One. It's His plane.*

What seemed like seconds later, the plane landed on the Melbourne, Florida, airstrip and out walked President Donald J. Trump to a red, white, and blue festival full of blaring pageantry, patriotic songs, lights, drama, and a classic Trump narrative.²

Love him or hate him, Trump has mastered certain narrative techniques, often seemingly borrowed from superhero fiction.³ These techniques are key to his success, crafting him into a comic book superhero in his supporter's eyes. Yet, a portion of the same techniques that guarantee his success with his supporters have sealed his fate in several court battles and have driven many Americans to pray that he will be ousted from office.

Using the Trump travel ban as the primary example, this article examines why Trump's narrative techniques succeed so well with his base but can often fail with other audiences, including the courts. Part II of this article lists Trump's narrative techniques and sorts them into four categories: 1) universally successful techniques, 2) ethically questionable techniques, 3) stylistically controversial techniques, and 4) either carelessly composed or intentionally sloppy statements containing errors. Part III summarizes the travel ban dispute used as backdrop in this article. Part IV of this article explains why Trump's narrative techniques succeed with his base and provides examples. Part V explains why some of the same techniques have failed with certain courts. Part VI concludes this article.

II. OVERVIEW OF TRUMP-TALK TECHNIQUES

"I could stand in the middle of 5th Avenue and shoot somebody and I wouldn't lose voters."⁴ If Trump did so, he might at least still enjoy hundreds of millions of followers. While Trump's approval

² Dan Merica, *Trump Gets What He Wants in Florida: Campaign-Level Adulation*, CNN (Feb. 18, 2017, 7:58 PM), <https://www.cnn.com/2017/02/18/politics/donald-trump-florida-campaign-rally/index.html>.

³ Cf. Dana Millbank, *President Trump Has Released His Comic Book*, THE MODERATE VOICE, Feb. 13, 2018 (comparing Trump's budget plan to a comic book); Terry Gross, *Stars Of 'The President Show' Present An 'Off The Rails' Version Of Trump*, NPR: Fresh Air, Nov. 29, 2017 (satirically likening President Trump to a comic book superhero).

⁴ Jeremy Diamond, *Trump: 'I Could Shoot Somebody and I Wouldn't Lose Voters.'* CNN (Jan. 24, 2016), <http://www.cnn.com/2016/01/23/politics/donald-trump-shoot-somebody-support/index.html>.

rating has been ranging from thirty-two to thirty-nine percent,⁵ that means that perhaps 103 million or more still believe in the president.⁶ During his campaign, he mocked a disabled man,⁷ was sued for fraud,⁸ was sued for rape, sexual misconduct, criminal sexual acts, and more,⁹ and was caught on tape bragging about sexual assault.¹⁰ He alienated his party's establishment.¹¹ Yet, nearly half of American voters chose him.¹²

Since then, despite investigation into his campaign's Russian links,¹³ allegations that he's violated the Emoluments Clause by profiting from his presidency,¹⁴ and his weekly *Twitter* outbursts,¹⁵ his

⁵ Sophie Tatum, *Trump's Approval Rating at 32%*, CNN (Dec. 7, 2017), <http://www.cnn.com/2017/12/07/politics/donald-trump-approval-rating/index.html> (noting President Donald Trump's approval rating); Philip Bump, *Fans of Trump's Friendliest News Network are Turning on Him*, WASH. POST (Dec. 14, 2017), https://www.washingtonpost.com/news/politics/wp/2017/12/14/fans-of-trumps-friendliest-news-network-are-turning-on-him/?tid=sm_fb&utm_term=.4459b67a48b7; Aaron Bycoffe et al., *How Popular is Donald Trump?*, FIVETHIRTYEIGHT (Feb. 5, 2018), https://projects.fivethirtyeight.com/trump-approval-ratings/?ex_cid=rrpromo.

⁶ U.S. Bureau of the Census, *Monthly Population Estimates for the United States: April 1, 2010 to December 1, 2018*, Wash.: Gov't Printing Off., 2017. (Population Division) (NA-EST2017-01) (estimating the "Resident Population Plus Armed Forces Overseas" to be 327,191,403 as of Jan., 2018).

⁷ Callum Borchers, *Meryl Streep Was Right. Donald Trump Did Mock a Disabled Reporter*, WASH. POST (Jan. 9, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/01/09/meryl-streep-was-right-donald-trump-did-mock-a-disabled-reporter/?utm_term=.3da3e44aff6d.

⁸ Rosalind S. Helderman, *Trump Agrees to \$25 Million Settlement in Trump University Fraud Cases*, WASH. POST (Nov. 18, 2016), https://www.washingtonpost.com/politics/source-trump-nearing-settlement-in-trump-university-fraud-cases/2016/11/18/8dc047c0-ada0-11e6-a31b-4b6397e625d0_story.html?utm_term=.23fe79260d35.

⁹ *Doe v. Trump*, No. 1:16-CV-7673 (S.D.N.Y. filed Sept. 30, 2016).

¹⁰ David A. Fahrenthold, *Trump Recorded Having Extremely Lewd Conversation About Women in 2005*, WASH. POST (Nov. 18, 2016), https://www.washingtonpost.com/politics/trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eed4_story.html?utm_term=.7762fad63612.

¹¹ David A. Graham, *Which Republicans Oppose Donald Trump? A Cheat Sheet*, THE ATLANTIC (Nov. 6, 2016), <https://www.theatlantic.com/politics/archive/2016/11/where-republicans-stand-on-donald-trump-a-cheat-sheet/481449/>.

¹² Gregory Krieg, *It's Official: Clinton Swamps Trump in Popular Vote*, CNN (Dec. 22, 2016, 5:34 AM), <https://www.cnn.com/2016/12/21/politics/donald-trump-hillary-clinton-popular-vote-final-count/index.html>.

¹³ Pamela Brown et al., *Trump Lawyers Set for Key Meeting With Special Counsel Next Week*, CNN (Dec. 17, 2017, 4:11 AM), <http://www.cnn.com/2017/12/15/politics/trump-lawyers-special-counsel-meeting/index.html>.

¹⁴ Gretchen Frazee, *How the Emoluments Clause is Being Used to Sue Trump*, PBS (June 22, 2017, 4:18 PM), <https://www.pbs.org/newshour/politics/emoluments-clause-used-sue-trump>.

¹⁵ Andy Kiersz, *13 Charts Reveal Donald Trump's Twitter Habits—From His Favorite Topics to Time of Day*, BUS. INSIDER (July 14, 2017, 2:24 PM), <http://www.businessinsider.com/president-trump-twitter-by-subject-2017-7>.

base adores him,¹⁶ and Republican establishment members support him frequently.¹⁷

Trump's narrative strategy captured his base¹⁸ and mollified his more reluctant supporters.¹⁹ While societal issues may factor in his popularity,²⁰ he also successfully exploited those issues and targeted his audience.²¹

At the same time, his opponents do not just kind of dislike him—he's ignited his opposition,²² and he's already dancing with impeachment²³ and losing court battles²⁴ and political battles alike.²⁵

Those narrative techniques that have captured his base while igniting the opposition fall into four categories: 1) largely universally successful and ethically acceptable narrative techniques; 2) ethically questionable, incendiary techniques that nonetheless succeed with his voters; 3) stylistically questionable techniques that resonate with people who prefer black and white categories but might annoy and

¹⁶ Claire Galofaro, *In the Heart of Trump Country, His Base's Faith Is Unshaken*, ASSOCIATED PRESS, Dec. 28, 2017, <https://www.apnews.com/ee19ceb7cf0d4af4ab73c393708148bf/In-the-heart-of-Trump-Country,-his-base%27s-faith-is-unshaken>; David French, *Mueller Won't Shake Trump's Base*, N.Y. TIMES, Oct. 31, 2017, at A23.

¹⁷ McKay Coppins & Elaine Frey, *The Republican Establishment Stands Behind Trump*, THE ATLANTIC (Aug. 24, 2017), <https://www.theatlantic.com/politics/archive/2017/08/gop-responding-to-trumps-response/537696/>.

¹⁸ Harlan Ullman, *Trump Supporters Maintain Loyalty to the Boss—But for How Long?*, OBSERVER (Oct. 18, 2017, 6:00 AM), <http://observer.com/2017/10/how-long-will-donald-trump-supporters-stay-loyal/>.

¹⁹ Ron Elving, *Trump Confounds The Pros, Connects With Just The Right Voters*, NPR (Nov. 9, 2016:22 AM), <https://www.npr.org/2016/11/09/501387988/trump-confounds-the-pros-connects-with-just-the-right-voters>.

²⁰ Some commentators still speculate regarding whether the vote itself was hacked. 2016 *Presidential Campaign Hacking Fast Facts*, CNN (Feb. 5, 2018), <http://www.cnn.com/2016/12/26/us/2016-presidential-campaign-hacking-fast-facts/index.html>; See Alex Ward, *Russia Hacked Voting Systems in 39 States Before the 2016 Presidential Election*, VOX (June 13, 2017), <https://www.vox.com/world/2017/6/13/15791744/russia-election-39-states-hack-putin-trump-sessions>. This question is outside this article's scope. Various polls still show that millions support Trump regardless of whether those millions would be enough to place him in the White House.

²¹ Cf. MARY BETH BEAZLEY, *APPELLATE ADVOCACY 3* (Aspen Publishers 2006) (advising readers to know their audience).

²² Ginger Gibson, *Trump's First Year in Office Marked by Controversy, Protests*, REUTERS, Dec. 6, 2017, 9:06 AM, <https://www.reuters.com/article/us-global-poy-trump/trumps-first-year-in-office-marked-by-controversy-protests-idUSKBN1E01UW>; Danielle Kurtzleben, *POLL: Trump's Opposition Firmer Than His Support*, NPR, Dec. 5, 2017, <https://www.npr.org/2017/12/05/568412380/poll-trumps-opposition-firmer-than-his-support>.

²³ Jessica Kwong, *Will Trump be Impeached in 2018? Here's What the Odds Say*, NEWSWEEK (Dec. 22, 2017, 8:40 AM), <http://www.newsweek.com/trump-impeachment-2018-odds-756448>.

²⁴ Matt Ford, *President Trump Loses Another Travel-Ban Legal Battle*, THE ATLANTIC (June 12, 2017), <https://www.theatlantic.com/politics/archive/2017/06/trump-travel-ban-ninth-circuit/530055/>.

²⁵ Peter Baker, *President Tries to Regroup as West Wing Battles Itself*, N.Y. TIMES, July 30, 2017, at A1; Alana Abramson, *Most Registered Voters Wouldn't Support Donald Trump in 2020, Poll Finds*, TIME (Dec. 20, 2017), <http://time.com/5073531/donald-trump-2020-reelection-poll/>.

alienate literary readers; and 4) gaffes lampooned by opponents and laughed off by supporters.

This article takes no position on whether these techniques are simply and innate function of President Trump's overall personality and condition or whether they are deliberate strategies. Rather, his narratives have characteristics, and those characteristics have effects.

President Trump often employs largely universally successful and well-regarded techniques including:

1. Targeting specific messages to specific audiences;
2. Developing buzz words;²⁶
3. Creating powerful antagonists and resurrecting their specters as continuing threats;²⁷
4. Using simple language;
5. Speaking and writing in short sound bites;
6. Repeating key words and ideas;
7. Framing;²⁸
8. Raising the stakes for the protagonist, a narrative technique often known as the ticking time bomb;
9. Using stock structures and archetypes;
10. Using symbols and metaphors;
11. Establishing “cliff-hangers;”²⁹
12. Including concrete details to create a sense of reality;
13. Shifting the focus to his preferred themes;³⁰
14. Flipping his opponent’s narratives and making them his own; and
15. Using strong body language.³¹

²⁶ Lisa Mascaro, *‘Believe Me’ People say Trump’s language is affecting political discourse ‘Bigly,’* L.A. TIMES (Sep. 12, 2016), <http://www.latimes.com/politics/la-na-pol-trump-language-20160912-snap-story.html>.

²⁷ Joe Tacopino, *Trump: ‘Crooked Hillary’ Got a Pass, While Flynn Had His Life ‘Destroyed,’* N.Y. POST (Dec. 2, 2017, 9:35 PM), <https://nypost.com/2017/12/02/trump-crooked-hillary-got-a-pass-while-flynn-had-his-life-destroyed/>; Michael Scherer, *For Each Scene of His Presidency, Trump Casts a Villain (or Two, or Three...)*, WASH. POST (Oct. 17, 2017), https://www.washingtonpost.com/politics/for-each-scene-of-his-presidency-trump-casts-a-villain-or-two-or-three-/2017/10/16/d29d2330-b287-11e7-a908-a3470754bbb9_story.html?utm_term=.ba9412df9ef2.

²⁸ *MTP Daily With Chuck Todd*, (MSNBC television broadcast Jan. 3, 2018) (featuring Professor George Lakoff’s discussion of Trump’s framing, diversion, and deflection).

²⁹ While this technique itself can be successful and appropriate in the right context, at times, President Trump has used the cliff-hanger in an inappropriate and ethically questionable fashion. See S.A. Miller, *Trump Promises ‘Very Big Announcement’ at West Virginia Rally*, WASH. TIMES (Aug. 3, 2017), <https://www.washingtontimes.com/news/2017/aug/3/trump-touts-very-big-announcement-w-virginia-rally/>; Scott Horsley, *Trump Defends Travel Ban In News Conference With Japan’s Prime Minister*, NPR (Feb. 10, 2017, 4:23 PM), <https://www.npr.org/2017/02/10/514566924/trump-defends-travel-ban-in-news-conference-with-japans-prime-minister>.

³⁰ *MTP Daily*, *supra* note 30 (MSNBC television broadcast Jan. 3, 2018) (featuring Professor George Lakoff’s discussion of Trump’s framing, diversion, and deflection).

³¹ Some of Trump’s body-language can be nearly universally successful. He has a strong posture and uses large gestures. At the same time, he often has a harsh, angry, frowning, or smug expression as

However, President Trump has also used techniques that are ethically questionable, or perhaps even immoral and illegal, that incense his opponents, and that, at times, fail in court. Unfortunately, these techniques still resonate with many in his loyal base. These techniques include:

1. Benefitting from bots, search algorithms, and big data driven re-districting;³²
2. Stereotyping;³³
3. Exaggerating or falsifying facts;³⁴
4. Spreading false or exaggerated facts;³⁵

typically associated with the “haughtiness” of those diagnosed with narcissistic personality disorder. See generally DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, *Narcissistic Personality Disorder* 301.81(9) (5th Ed.) (discussing haughtiness as a trait of narcissistic personality disorder). Narcissists do enjoy some success with this approach, but they also alienate some people with it. Unfortunately, even opponents may find this approach intimidating, and, thus, he may enjoy at least short-term success in suppressing opponents. See Geoff Beattie, *Donald Trump: the Body Language of a Bully*, NEWSWEEK (Oct. 17, 2016, 3:05 AM), <http://www.newsweek.com/donald-trump-body-language-bully-510534>; Lindsey Ellefson, *Trump and Macron's Body Language Speaks Volumes, Experts Say*, CNN (July 17, 2017, 10:27 AM), <https://www.cnn.com/2017/07/17/politics/etiquette-experts-cnntv/index.html>.

³²John Markoff, *Trump Won Battle of Ranting, Raving Twitter Robots, Researchers Say*, N.Y. TIMES, Nov. 18, 2016, at A22; Craig Timber, *'Something Fishy' is Going on With Trump's Twitter Account, Researchers Say*, WASH. POST (May 31, 2017), https://www.washingtonpost.com/news/the-switch/wp/2017/05/31/something-fishy-is-going-on-with-trumps-twitter-account-researchers-say/?utm_term=.fd7baebe34ea; Ben Schreckinger, *Inside Trump's 'Cyborg' Twitter Army*, POLITICO (Sep. 30, 2016, 5:06 AM), <https://www.politico.com/story/2016/09/donald-trump-twitter-army-228923>.

³³Lydia O'Connor & Daniel Marans, *Trump Condemned Racism As 'Evil.' Here Are 20 Times He Embraced It*, HUFFINGTON POST (Aug. 14, 2017, 3:17 PM), https://www.huffingtonpost.com/entry/trump-racism-examples_us_5991dcabe4b09071f69b9261; Adam Serwer, *Trump's Black Outreach Repackages Racism as Earnest Concern*, THE ATLANTIC (Sep. 22, 2016), <https://www.theatlantic.com/politics/archive/2016/09/trump-black-outreach/501242/>.

³⁴Bella DePaulo, *I Study Liars. I've Never Seen One Like President Trump*, WASH. POST (Dec. 8, 2017), https://www.washingtonpost.com/outlook/i-study-liars-ive-never-seen-one-like-president-trump/2017/12/07/4e529efe-da3f-11e7-a841-2066faf731ef_story.html?utm_term=.7dea90077c3d; Ryan Teague Beckwith, *President Trump Made 1,950 Untrue Claims in 2017. That's Making His Job Harder*, TIME (Jan. 2, 2018), <http://time.com/5084420/donald-trump-lies-claims-fact-checks/?iid=sr-link1>; Jessica Taylor & Danielle Kurtzleben, *This Week in Trump's 'Alternative Facts'*, NPR (Jan. 29, 2017, 7:30 AM), <https://www.npr.org/2017/01/29/512068148/this-week-in-trumps-alternative-facts>; Calvin Woodward & Christopher Rugaber, *Fact Check: State of the Union Highlights Trump's Week of Faulty Claims*, CHI. TRIB. (Feb. 3, 2018, 3:52 PM), <http://www.chicagotribune.com/news/nationworld/politics/factcheck/ct-fact-check-trump-state-of-the-union-20180203-story.html>; Maria Konnikova, *Trump's Lies vs. Your Brain*, POLITICO (Jan./Feb. 2017), <https://www.politico.com/magazine/story/2017/01/donald-trump-lies-liar-effect-brain-214658>.

³⁵Steve Coll, *Faking it*, NEW YORKER (Dec. 11, 2017), <https://www.newyorker.com/magazine/2017/12/11/donald-trumps-fake-news-tactics>; Michael Scherer, *Can President Trump Handle the Truth?*, TIME (Mar. 23, 2017), <http://time.com/4710614/donald-trump-fbi-surveillance-house-intelligence-committee/>; Phillip Bump, *Donald Trump Retweeted a Very Wrong Set of Numbers on Race and Murder*, WASH. POST (Nov. 22, 2015), https://www.washingtonpost.com/news/the-fix/wp/2015/11/22/trump-retweeted-a-very-wrong-set-of-numbers-on-race-and-murder/?postshare=8641448242788071&utm_term=.61aeca4b90a; Chris Cillizza, *Sarah Sanders'*

5. Making ad hominem attacks;³⁶
6. Hiring cheering sections;³⁷
7. Threatening, intimidating, or bullying those he perceives as threatening;³⁸
8. Withholding ethically required disclosures of information;³⁹
9. Scapegoating and shifting the focus to irrelevant issues;⁴⁰
10. Lauding or refusing to disavow supporters and surrogates who engage in unethical or even illegal tactics;⁴¹
11. Encouraging hacking and releasing of opponents' information;⁴²
12. Attempting to discredit national security, courts, and newspapers; and⁴³
13. Releasing classified information shared by allies.⁴⁴

Trump also uses certain techniques that are not unethical or illegal, but annoy some while charming others. These techniques may annoy

Absolutely Unreal Explanation of Trump's Anti-Muslim Video Tweets, CNN (Nov. 29, 2017, 5:47 PM), <https://www.cnn.com/2017/11/29/politics/sarah-sanders-trump-tweets-analysis/index.html>.

³⁶ Jasmine C. Lee & Kevin Quealy, *The 425 People, Places and Things Donald Trump Has Insulted on Twitter: A Complete List*, N.Y. TIMES (Jan. 3, 2018), <https://www.nytimes.com/interactive/2016/01/28/upshot/donald-trump-twitter-insults.html>.

³⁷ Henry Farrell, *This is How Donald Trump Engineers Applause*, WASH. POST (Jan. 23, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/01/23/this-is-how-donald-trump-engineers-applause/?utm_term=.b6aede488b19.

³⁸ Chris Cillizza, *Donald Trump's Bullying of Mika Brzezinski Crosses a Big Line*, CNN (June 29, 2017, 1:28 PM), <https://www.cnn.com/2017/06/29/politics/trump-mika-analysis/index.html>; Peter Baker & Cecilia Kang, *NBC Nuclear Arsenal Story Prompts a Threat by Trump*, N.Y. TIMES, Oct. 12, 2017, at A14; Michael Gerson, *The Dangerous Worldview at the Core of Trump's Intimidation*, WASH. POST (Feb. 29, 2016), https://www.washingtonpost.com/opinions/the-strong-hand-at-the-center-of-trumpisms-dangerous-worldview/2016/02/29/fd2c9ada-df17-11e5-846c-10191d1fc4ec_story.html?utm_term=.a42bb4066bee.

³⁹ Peter Overby, *Ethics Agency Rejects White House Move to Block Ethics Waiver Disclosures*, NPR (May 22, 2017 6:00 PM), <https://www.npr.org/sections/thetwo-way/2017/05/22/529502156/white-house-moves-to-block-disclosure-of-ethics-waivers-for-trump-appointees>.

⁴⁰ *MTP Daily*, *supra* note 30 (featuring Professor Lakoff's discussion of Trump's diversion and deflection).

⁴¹ Haroon Moghul, *Trump's Silence After Attack on Muslims Speaks Volumes*, CNN (June 20, 2017, 6:26 AM), <https://www.cnn.com/2017/06/20/opinions/trump-silence-london-attack-muslim-moghul/index.html>.

⁴² Ashley Parker & David E. Sanger, *Trump Eggs on Moscow in Hack of Clinton Email*, N.Y. TIMES, July 28, 2016, at A1.

⁴³ Helen Norton, *Government Speech and the War on Terror*, 86 FORDHAM L. REV. 543, 551–52 (2017); *#ReleaseTheMemo 'is Nothing But a Hyperpartisan Attempt to Discredit Mueller*, WASH. POST (Jan. 30, 2018), https://www.washingtonpost.com/opinions/releasethememo-is-nothing-but-a-hyperpartisan-attempt-to-discredit-mueller/2018/01/30/cf5d6000-05ec-11e8-b48c-b07fea957bd5_story.html?utm_term=.de07ec920c30; Marisa Schultz, *Trump Blasted For Discrediting Judge Who Blocked Ban*, N.Y. POST (Feb. 5, 2017, 12:46 PM), <https://nypost.com/2017/02/05/trump-blasted-for-discrediting-judge-who-blocked-ban/>; Yasmin Dawood, *The Fragility of Constitutional Democracy*, 77 MD. LE. REV. 192, 193 (2017); David Jackson, *Trump Again Calls Media 'Enemy of the People'*, USA TODAY (Feb. 24, 2017), <https://www.usatoday.com/story/news/politics/2017/02/24/donald-trump-cpac-media-enemy-of-the-people/98347970/>.

⁴⁴ David Lauter, *Trump Admits Sharing Information With Russia About Terrorism Threat*, L.A. TIMES (May 16, 2017, 5:10 AM), <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-trump-admits-sharing-information-with-1494935552-htmlstory.html>.

people who see issues as complex and nuanced, the kind of people who like literary writing—his writing and speaking style does not embrace all the hallmarks of stories categorized as literary.⁴⁵ Nonetheless, these same techniques likely resonate with people who categorize issues as black or white and prefer melodramas—his writing and speaking style includes many of the characteristics of melodrama, which includes various subcategories such as sometimes best-selling pulp, superhero fiction, or even GLOW or WWF wrestling.⁴⁶ Not every audience falls neatly into either of these categories. These techniques include:

1. Using intensifiers such as adverbs and adjectives;⁴⁷
2. Exploring issues shallowly as opposed to in-depth;⁴⁸ and
3. Categorizing people and issues in a black and white fashion.⁴⁹

Finally, perhaps due to his frequent personal use of Twitter,⁵⁰ Trump's techniques often include outright gaffes, more so than other presidents. Opponents see his sloppy mistakes as further evidence of his ignorance, narcissism, inattention to detail, and unintelligence.⁵¹

⁴⁵ See generally Ellen Howard, Author and Writing Professor, Yes, But Is It Literature, Vermont College of Fine Arts MFA Program in Writing for Children and Young Adults, Jan. 2006 ("Literature though it may be simply written is not simple. It is as complex as life is complex. It contains all the paradox that life contains. No character in a truly literary work, in my opinion, is wholly good or wholly evil.")

⁴⁶ See Millbank, *supra* note 3; Gross, *supra* note 3 (satirically likening Trump to a comic book superhero).

⁴⁷ Wesley Pruden, *Trumpspeak, a Language Rich in Adjectives*, WASH. TIMES (Feb. 23, 2017), <https://www.washingtontimes.com/news/2017/feb/23/donald-trumps-speech-features-superlatives>; J. David McSwane, *They Came for a Drunken Democracy Roast, but the Returns Sobered This Comedy Club Quickly*, DALLAS MORNING NEWS (Nov. 9, 2016).

⁴⁸ See Jason Schwartz, *Trump's Press Strategy: A Few Questions, Then a Quick Escape*, POLITICO (Dec. 29, 2017, 5:04 AM), <https://www.politico.com/story/2017/12/29/trump-press-media-strategy-319617> (discussing Trump's brevity with respect to addressing an issue); Carrie T. Bramen, *Americans Like to Think We're 'Nice.' Are We Really?*, WASH. POST (July 2, 2017) (stating that Trump embodies our shallowness); *The Last Word With Lawrence O'Donnell* (MSNBC television broadcast, Oct. 18, 2017) (characterizing Trump's comments as shallow); see Howard, *supra* note 45 (describing literature).

⁴⁹ James Hohmann, *The Daily 202 Why the Divider in Chief Embraces Culture Wars*, WASH. POST. (Sept. 25, 2017); see also Howard, *supra* note 45 (describing literature).

⁵⁰ Mark Abadi, *A Lawmaker Named a Bill Targeting Trump's Twitter Use After 'COVFEFE'—and it Actually Stands for Something*, BUS. INSIDER (June 12, 2017, 1:22 PM), <http://www.businessinsider.com/covfefe-act-president-donald-trump-quigley-twitter-2017-6>; Kiersz, *supra* note 15; Jessica Kwong, *White House May Ban Personal Cell Phone Use Even Though Trump Still Uses His Android*, NEWSWEEK (Nov. 27, 2017, 4:30 PM), <http://www.newsweek.com/white-house-may-ban-personal-cell-phone-use-even-though-trump-still-uses-his-723790>.

⁵¹ Steve Chapman, *Donald Trump's Biggest Flaw: He's Not That Bright*, CHI. TRIB. (Nov. 3, 2017, 2:30 PM), <http://www.chicagotribune.com/news/opinion/chapman/ct-perspec-chapman-donald-trump-dumb-20171103-story.html>; Robert Reich, *Trump May be Dumb, But he Has Plenty of Emotional Intelligence*, NEWSWEEK (Jan. 7, 2018, 5:39 AM), <http://www.newsweek.com/robert-reich-trump-may-be-dumb-he-has-plenty-emotional-intelligence-773200>; Jennifer Rubin, *Trump is as Unfit and Ignorant as Ever*, WASH. POST, Dec. 29, 2017,

However, supporters see these mistakes as forgivable, unnoticeable, or even lovable and folksy—something that makes him one of them.⁵² These gaffes include:

1. Miss-spellings;⁵³
2. Typos;⁵⁴
3. Punctuation and grammar errors;⁵⁵ and
4. Mistakes regarding information.⁵⁶

All of these techniques together have helped to secure Trump's base while the last three categories have further annoyed and angered his opposition and provide fuel for criticism. The last three categories also play a role in some of his losses with the courts.

III. BRIEF OVERVIEW OF THE TRAVEL BAN

This article uses the executive orders known as “the Travel Ban” as a primary example of Trump narratives. A brief history regarding the ban provides some context for these later examples and illustrates how Trump sometimes won and lost on this issue in court.

President Trump issued three different versions of the travel ban and suffered some losses in the courts.⁵⁷ After court injunctions, he revised the ban twice and adapted his narrative. Ultimately, in a divided opinion, the Supreme Court of the United States held that the

tum/wp/2017/12/29/trump-is-as-unfit-and-ignorant-as-ever/?utm_term=.664a93f7bf8e; Paul Krugman, *Trump's Deadly Narcissism*, N.Y. TIMES, Sep. 29, 2017, at A25.

⁵² Timothy Stanley, *Why Trump's Supporters Still Love Him*, CNN (Feb. 21, 2017, 4:52 AM), <https://www.cnn.com/2017/02/19/opinions/why-trump-supporters-love-him-not-the-media-stanley/index.html>; Nick Wing, *Trump Supporters Have Lots Of Excuses For His 'Shithole' Remark. They're All Bad*, HUFFINGTON POST (Jan. 12, 2018, 5:44 PM), https://www.huffingtonpost.com/entry/trump-shithole-defense_us_5a58e30be4b04df054f874d5.

⁵³ Farhad Manjoo, *So Trump Makes Spelling Errors. In the Twitter Age, Whoo Doesn't?*, N.Y. TIMES (Aug. 27, 2017), <https://www.nytimes.com/2017/08/27/technology/donald-trump-twitter-spelling.html>; Mark Abadi, *Trump and His White House Have Made Some Embarrassing Spelling Mistakes—Here Are The Worst Ones*, BUS. INSIDER (July 19, 2017, 12:52 PM), <http://www.businessinsider.com/trump-typos-spelling-tweets-unpresidential-2017-4/#covfefe-1>.

⁵⁴ Eli Rosenberg, *'State of the Union': Misspelled Tickets to President Trump's First Address Require a Reprint*, WASH. POST (Jan. 29, 2018), https://www.washingtonpost.com/news/politics/wp/2018/01/29/state-of-the-union-misspelled-tickets-to-president-trumps-first-address-require-a-reprint/?utm_term=.999dd2e0914b.

⁵⁵ Polly Higgins, *Donald Trump's Grammar, Syntax Errors: Times When the English Language Took a Hit*, AM N.Y. (Mar. 10, 2017), <https://www.amny.com/news/donald-trump-grammar-syntax-errors-times-when-the-english-language-took-a-hit-1.12471317>.

⁵⁶ Dan Merica, *Trump: Frederick Douglass 'Is Being Recognized More And More'*, CNN (Feb. 2, 2017, 2:11 PM), <https://www.cnn.com/2017/02/02/politics/donald-trump-frederick-douglass/index.html>.

⁵⁷ See *infra* Part III.A-C.

plaintiffs were unlikely to succeed on the merits of their Establishment Clause claim and reversed the grant of a preliminary injunction over a somewhat less sweeping ban in *Trump v. Hawaii*.⁵⁸

A. *The First Executive Order*

The series of travel bans began on January 27, 2017.⁵⁹ President Trump signed the executive order known as the Travel Ban, Executive Order 13,769, “Protecting the Nation from Foreign Terrorist Entry into the United States.”⁶⁰ The order: 1) suspended entry into the U.S. for people from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen for ninety days, 2) suspended the United States Refugee Admissions Program for 120 days, 3) directed the Secretary of State to, thereafter, prioritize refugees hailing from minority religions in their own country, 4) declared Syrian refugee’s entry into the U.S. detrimental to U.S. interests, and 5) indefinitely suspended Syrian refugee entry into the U.S.⁶¹

Trump’s base hailed the order as a fulfillment of his campaign promises.⁶² The mainstream press reviewed the order critically.⁶³ The order’s opponents marched on the airports⁶⁴ and filed suit.⁶⁵ The courts reacted both negatively in some instances and neutrally in others.⁶⁶

⁵⁸ *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018).

⁵⁹ *Washington v. Trump*, No. C17-0141JLR, 2017 WL 1050354, at *1 (W.D. Wash. Mar. 17, 2017); Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

⁶⁰ *Washington*, No. C17-0141JLR, 2017 WL 1050354, at *1; Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

⁶¹ *Washington*, 2017 WL 1050354, at *2; Exec. Order No. 13,769.

⁶² Steven Shepard, *Poll: Majority of Voters Back Trump Travel Ban*, POLITICO (July 5, 2017, 5:58 AM), <https://www.politico.com/story/2017/07/05/trump-travel-ban-poll-voters-240215>.

⁶³ See, e.g., Scott Shane, *Immigration Ban Is Unlikely to Reduce Terrorist Threat, Experts Say*, N.Y. TIMES, Jan. 29, 2017, at A1. See also, Julie Vitkovskaya, *Trump’s New Travel Ban Requires You to Prove a Close Relationship. Grandpas Didn’t Make the Cut*, WASH. POST (June 29, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/06/29/trumps-new-travel-ban-requires-you-to-prove-a-close-relationship-grandpas-didnt-make-the-cut/?utm_term=.6e0860b05d7a; Josh Gerstein, *Critics of Trump Order Urge Appeals Court Not to Restore Travel Ban*, POLITICO (Feb. 6, 2017, 06:03 AM), <https://www.politico.com/story/2017/02/trump-immigration-order-challenges-234675>; Ed O’Keefe & David Weigel, *‘Deeply Concerned’: Corporate America Responds to Trump’s Immigration Ban*, CHI. TRIB. (Jan. 30, 2017, 4:50 PM), <http://www.chicagotribune.com/business/ct-corporate-america-trump-immigration-ban-20170130-story.html>.

⁶⁴ Lauren Gambino et al., *Thousands Protest Against Trump Travel Ban in Cities and Airports Nationwide*, GUARDIAN (Jan. 29, 2017, 7:01 PM), <https://www.theguardian.com/us-news/2017/jan/29/protest-trump-travel-ban-muslims-airports>; Gibson, *supra* note 22.

⁶⁵ See, e.g., *Aziz v. Trump*, 234 F. Supp. 3d 724 (E.D. Va. 2017); see also *Darweesh v. Trump*, 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017).

⁶⁶ Compare *Aziz*, 234 F. Supp. 3d 724 (enjoining the order); *Darweesh*, 2017 WL 388504 (enjoining the order); *Badr Dhaifallah Ahmed Mohammed v. United States*, No. CV1700786ABPLAX, 2017 WL 438750, at *1 (C.D. Cal. Jan. 31, 2017) (enjoining the order) *Washington v. Trump*, 847 F.3d 1151, 1156 (9th Cir.) (upholding a grant of a nationwide injunction), *reconsideration en banc denied*, 853 F.3d 933 (9th Cir. 2017), and *reconsideration en banc denied*, 858 F.3d 1168 (9th Cir. 2017), and *cert. denied sub*

Several courts issued an injunction against enforcement of this executive order.⁶⁷

B. *The Second Executive Order*

President Trump relented in part and issued a revised travel ban on March 6, 2017.⁶⁸ The new order exempted Iraqis, persons with valid visas prior to the order's date, and lawful permanent United States residents.⁶⁹ However, states and immigrant rights organizations filed more lawsuits that resulted in more preliminary injunctions against enforcement of the new ban.⁷⁰

After the Supreme Court granted the Trump Administration certiorari and just before oral arguments, President Trump issued a third version of its travel ban.⁷¹ Version two of the ban expired, and the Court dismissed and remanded the now moot challenges.⁷²

C. *The Third and Final Executive Order*

The third ban illustrates how Trump employs the most important advice regarding narrative and persuasion: know your audience. He adapted the order to the audience as will be discussed in more detail in Part V.

While still extensive, the third ban eliminated some restrictions and employed categories purported to be based on each countries' security information sharing and counter-terrorism relationships with

nom. Golden v. Washington, 138 S. Ct. 448 (2017) (upholding a nationwide injunction of the order) with *Louhghalam v. Trump*, 230 F. Supp. 3d 26 (D. Mass. 2017) (refusing to grant an injunction); *Sarsour v. Trump*, 245 F. Supp. 3d 719, 724 (E.D. Va. 2017) (refusing to grant an injunction).

⁶⁷ See *Aziz*, 234 F. Supp. 3d 724; *Darweesh*, 2017 WL 388504; *Mohammed*, 2017 WL 438750, at *2.

⁶⁸ Lori A. Nessel, *Instilling Fear and Regulating Behavior: Immigration Law As Social Control*, 31 GEO. IMMIGR. L.J. 525, 545 (2017) (citing Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017)); Glenn Thrush, *Trump's New Ban Halts Travelers From 6 Nations*, N.Y. TIMES, Mar. 6, 2017, at A1.

⁶⁹ Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017); see also Nessel, *supra* note 68.

⁷⁰ *Hawai'i v. Trump*, 241 F. Supp. 3d 1119 (D. Haw. 2017) (order granting preliminary injunction); *Int'l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539 (D. Md. 2017) (order granting preliminary injunction).

⁷¹ See Nessel, *supra* note 68; see also *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2083 (2017), *petition for cert. filed*, 85 U.S.L.W. 4477 (U.S. June 1, 2017) (No. 16-1436); Executive Order by President Donald J. Trump Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order No. 13780 (Mar. 6 2017), <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

⁷² See *Int'l Refugee Assistance Project*, 583 U.S. ____ (16-1436) (Oct. 10, 2017) (finding that the challenged provision of the Executive Order had expired and no longer presented a live case or controversy) and *Int'l Refugee Assistance Project*, 583 U.S. ____ (16-1540) (Oct. 24, 2017) (dismissing and remanding the Ninth Circuit Court of Appeals challenge based on the provision at issue expiring); see also Nessel, *supra* note 68.

the United States.⁷³ In some instances, the third ban still suspended all entry of nationals of some countries.⁷⁴ In others, the ban suspended all entry of other countries' nationals who were seeking certain types of visas while restricting entry in certain visa categories.⁷⁵ The order now included Venezuela and North Korea⁷⁶ and lifted restrictions on Chad.⁷⁷ The Proclamation exempted lawful permanent residents and foreign nationals who have been granted asylum and provided case-by-case waivers in under certain circumstances.⁷⁸

On February 15, 2018, the Fourth Circuit upheld an injunction against the latest ban,⁷⁹ which the Ninth Circuit upheld.⁸⁰ However, ultimately, the Supreme Court of the United States reversed the grant of a preliminary injunction on that ban in *Trump v. Hawaii*.⁸¹

Trump's narrative techniques regarding the order played a large role in securing his base and winning with certain judges, alienating the opposition, and losing many of the court cases and losing the vote of certain judges.

IV. HOW TRUMP'S NARRATIVE TECHNIQUES RESONATED WITH HIS BASE

Before this travel ban ever came before a court, Trump told a continuing story about it during his campaign and after to both his base and the press. He chose his audience, and, in a chicken and egg type cycle, sometimes created his audience. He used effective storytelling techniques that often portrayed genre characteristics akin to melodrama, which includes subcategories such as pulp or superhero fiction. He then muted the counter-narrative, using often ethically questionable techniques that nonetheless still worked at times. While opponents lampooned his gaffes, even those may have established him as a more folksy and relatable person to his base.

A. Choosing and Creating the Audience

Narrative effectiveness begins with the audience, and adapting to audience would fall within the universally successful and well-

⁷³ *Trump v. Hawaii*, 138 S. Ct. 2392, 2405 (2018).

⁷⁴ *Trump*, 138 S. Ct. at 2405.

⁷⁵ *Id.*

⁷⁶ *Id.* at 2405.

⁷⁷ *Id.* at 2406.

⁷⁸ *Id.* at 2405–06.

⁷⁹ *Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233, 272 (4th Cir. 2018).

⁸⁰ *Trump v. Hawaii*, 138 S. Ct. 923, 924 (2018).

⁸¹ *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018).

regarded class of techniques. Audiences hold “deep frames,” values and concepts that structure how they view the world.⁸² Uncontested ideas lie at the core of a deep frame belief; for example, someone’s deep frame could include the idea of obedience and respect for authority.⁸³ These deep frames operate in the subconscious, and people may reject facts that seem to defy their deep frame beliefs; the fact to them will seem to defy “common sense.”⁸⁴ Thus, succeeding with audience can mean either choosing audiences whose deep frames align with the message or adapting the ideas supporting the message so that it aligns with the audience deep frames.⁸⁵

In campaigning, Trump chose his audience and, at times, adapted to audience. Much has been discussed regarding Democratic miscalculation regarding issues such as “the establishment’s” blindness towards the working class Americans’ plight,⁸⁶ historical cronyism,⁸⁷ and the elitism inherent in a system with poor campaign reform.⁸⁸ These factors all likely played some role Trump’s election. However, Trump also chose an audience that various media and politicians had already stoked and primed.⁸⁹

⁸² RUTH A. ROBBINS, KEN CHESTEK, AND STEVE JOHANSEN, YOUR CLIENT’S STORY: PERSUASIVE LEGAL WRITING 122 (Wolters Kluwer 2013); see also GEORGE LAKOFF, THE ALL NEW DON’T THINK OF AN ELEPHANT KNOW YOUR VALUES AND FRAME THE DEBATE—THE ESSENTIAL GUIDE FOR PROGRESSIVES 1-29 (2014) (discussing the two overarching frames, the strict father worldview versus the nurturant parent worldview).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Alec Macgillis, *The Original Underclass, Poor White Americans’ Current Crisis Shouldn’t Have Caught the Rest of the Country as off Guard as it Has*, THE ATLANTIC (Sep. 2016), <https://www.theatlantic.com/magazine/archive/2016/09/the-original-underclass/492731/>.

⁸⁷ Katrina Vanden Heuvel, *Trump’s Team of Faux Populists and Real Crony Capitalists*, WASH. POST (Dec. 6, 2016), [https://www.washingtonpost.com/opinions/trumps-team-of-faux-populists-and-real-crony-capitalists/2016/12/06/236b4ed4-bb14-11e6-ac85-](https://www.washingtonpost.com/opinions/trumps-team-of-faux-populists-and-real-crony-capitalists/2016/12/06/236b4ed4-bb14-11e6-ac85-094a21c44abc_story.html?utm_term=.91c4ffe1d53b)

[094a21c44abc_story.html?utm_term=.91c4ffe1d53b](https://www.washingtonpost.com/opinions/trumps-team-of-faux-populists-and-real-crony-capitalists/2016/12/06/236b4ed4-bb14-11e6-ac85-094a21c44abc_story.html?utm_term=.91c4ffe1d53b) (discussing how Trump’s “drain the swamp” platform resonated with some voters who were fed up with cronyism); Luigi Zingales, *Donald Trump, Crony Capitalist*, N.Y. TIMES (Feb. 23, 2016), <https://www.nytimes.com/2016/02/23/opinion/campaign-stops/donald-trump-crony-capitalist.html> (discussing how some voters perceived Trump as an anti-establishment, free-market evangelist); Armstrong Williams, *Trump Channels Americans’ Anger at Cost to Establishment*, WASH. TIMES (Mar. 20, 2016), <https://www.washingtontimes.com/news/2016/mar/20/donald-trumps-anger-message-echoes-american-trend-/>; Nomi Prins, *The Magnitude of Trump’s Cronyism Is Off the Charts—Even for Washington*, NATION (Dec. 9, 2016), <https://www.thenation.com/article/the-magnitude-of-trumps-cronyism-is-off-the-charts-even-for-washington/>(mentioning); Alexander Nazaryan, *Trump is Leading the Most Corrupt Administration in U.S. History, One of First Class Kleptocrats*, NEWSWEEK (Nov. 2, 2017, 9:54 AM), <http://www.newsweek.com/2017/11/10/trump-administration-most-corrupt-history-698935.html>.

⁸⁸ Richard W. Painter, *Big Money, Big Government*, N.Y. TIMES, Feb. 3, 2016, at A23.

⁸⁹ See Caroline Mala Corbin, *Essay: Terrorists Are Always Muslim but Never White: At the Intersection of Critical Race Theory and Propaganda*, 86 FORDHAM L. REV. 455, 475 (2017); cf. Nessel, *supra* note 68 at 525 (discussing how Trump tapped into stoked fear).

For instance, regarding the travel ban, Trump has entered a chicken and egg cycle with media favorable to his message and has evoked ethically questionable stereotypes. The media sends his audience messages regarding Muslims; Trump then reinforces that message, and the media and Trump entering a cycle of reinforcement. Media such as Fox and Breitbart include stereotypical portrayals of Muslim terrorists and more frequently report on terrorism.⁹⁰ Likewise, most fiction television portrayals of Muslims connect to terrorist or terrorist adjacent storylines,⁹¹ and media covers terrorism committed by Muslims 449 percent more than other terrorism.⁹² The portrayals may often feature one-dimensional, robed, turbaned figures, who skulk about, speak in thick accents, and scream in Arabic just before bombing a group of men, women, and children.⁹³

In promoting initiatives like the travel ban, Trump relies on his audience's preconceptions, based on the priming his audience has already received. He reveals this reliance when he says things like,

⁹⁰ Taylor Markey, *Westernized Women?: The Construction of Muslim Women's Dissent in U.S. Asylum Law*, 64 UCLA L. REV. 1302, 1312 (2017); Ian S. Lustick, *Fractured Fairy Tale: The War on Terror and the Emperor's New Clothes*, 16 MINN. J. INT'L L. 335, 335-40 (2007); Joe Mulhall, *Breitbart's Click-Hate Echo Chamber is a Threat to Europe. Here's Why*, GUARDIAN (Mar. 7, 2017, 10:23 EST), <https://www.theguardian.com/commentisfree/2017/mar/07/breitbart-threat-to-europe-postwar-liberal-consensus>; Brian Stelter, *Fox News Apologizes 4 Times for Inaccurate Comments About Muslims in Europe*, CNN (Jan. 18, 2015), <http://money.cnn.com/2015/01/18/media/fox-apologizes-for-anti-islam-comments/index.html>; Ed Mazza, *Fox News Host Lectures Muslims: 'Don't Burn People Alive And Set Off Bombs'*, HUFFINGTON POST (Apr. 16, 2017), https://www.huffingtonpost.com/entry/fox-news-muslim-community_us_58f4202de4b0b9e9848cbf37; Michael Crowley & Nahal Toosi, *Trump Appointees Endorsed Link Between Islam and Radicalism*, POLITICO (Nov. 18, 2016), <https://www.politico.com/story/2016/11/trump-appointees-islam-radicalism-231647>; see also, e.g., Thomas D. Williams, *Jesuit Scholar: Islamic Extremists Are the True Muslims*, BREITBART (June 16, 2017), <http://www.breitbart.com/national-security/2017/06/16/jesuit-scholar-islamic-extremists-are-the-true-muslims/>; Max Fisher, *It's Not Just Fox News: Islamophobia on Cable News is Out of Control*, VOX (Jan. 3, 2015, 12:48 PM), <https://www.vox.com/2014/10/8/6918485/the-overt-islamophobia-on-american-tv-news-is-out-of-control>; Nathan Lean, *Fox News War on Muslims*, SALON (Sep. 11, 2012), https://www.salon.com/2012/09/11/fox_news_war_on_muslims/.

⁹¹ See Corbin, *supra* note 89; Melena Ryzik, *Can Television Be Fair to Muslims?*, N.Y. TIMES (Nov. 30, 2016), <https://www.nytimes.com/2016/11/30/arts/television/can-television-be-fair-to-muslims.html>.

⁹² See Corbin, *supra* note 89 at 460.

⁹³ Cf. See Lustick, *supra* note 90; *Muslim Artists Struggle to Connect with American Audiences*, NPR (Apr. 27, 2016), <https://www.npr.org/2016/04/27/475923639/muslim-artists-struggle-to-connect-with-american-audiences>; Peter Beaumont, *Homeland is brilliant drama. But does it present a crude image of Muslims?*, GUARDIAN (Oct. 13, 2012, 07:19 EDT), <https://www.theguardian.com/tv-and-radio/2012/oct/13/homeland-drama-offensive-portrayal-islam-arabs>; Lucy Ward, *From Aladdin to Lost Ark Muslims Get Angry at 'Bad Guy' Film Images*, GUARDIAN (Jan. 25, 2007), <https://www.theguardian.com/media/2007/jan/25/broadcasting.race>; Diane Winston, *Faith Front: So Where Are The Muslims on 'CSI'*, L.A. TIMES (May 7, 2006), <http://articles.latimes.com/2006/may/07/opinion/op-winston7>; Mona Eltahawy, *Many Faces of Islam*, WASH. POST (March 9, 2002); Ryzik, *supra* note 91.

"Well, there is a Muslim problem. Absolutely. You just have to turn on your television set."⁹⁴

Trump not only relies on his audience's preconceptions but may have also further ventured into the ethically questionable category by using big data profiling to determine which audiences received which messages. Recently, a Trump contracted company known as Cambridge Analytics acquired a new and sophisticated computer algorithm that psychologically profiled people based on their likes and purchases.⁹⁵ The company sent ads tailored to specific personalities.⁹⁶ According to some reports, the company aided Brexit,⁹⁷ and Ted Cruz won the Iowa Caucus after hiring them.⁹⁸ When Cruz dropped out the race, Trump hired them.⁹⁹ The Mueller investigation is currently examining the company,¹⁰⁰ and, now, some people dispute the extent that the company aided Trump or Cruz.¹⁰¹ However, original interviews with the company stated that when promoting gun rights,

⁹⁴ See *Aziz*, 234 F. Supp. 3d at 730; see also Corbin, *supra* note 89 (indicating people's preconceptions based on this archetype).

⁹⁵ Nina Burleigh, *How Big Data Mines Personal Info to Craft Fake News and Manipulate Voters*, NEWSWEEK (June 8, 2017, 1:01 PM), <http://www.newsweek.com/2017/06/16/big-data-mines-personal-info-manipulate-voters-623131.html>.

⁹⁶ *Id.*; see also Stephen Marche, *Why is the U.S. So Susceptible to Social Media Distortion*, NEW YORKER (Oct. 31, 2017), <https://www.newyorker.com/culture/cultural-comment/why-is-the-us-so-susceptible-to-social-media-distortion> (discussing the thousands of dollars that Russian trolls spent on Google and Facebook ads).

⁹⁷ Sean Illing, *Cambridge Analytica, the Shady Data Firm that Might be a Key Trump-Russia Link, Explained*, VOX (Dec. 18, 2017), <https://www.vox.com/policy-and-politics/2017/10/16/15657512/mueller-fbi-cambridge-analytica-trump-russia>; Editorial: *The Guardian View on Digital Electioneering: Out of the Shadows Citizens Should Have the Right to Know What Data is Held on Them—and Which Algorithms Manipulate It*, GUARDIAN (May 15, 2017); but see Nicholas Confessore & Danny Hakim, *Data Firm Says 'Secret Sauce' Aided Trump; Many Scoff*, N.Y. TIMES, Mar. 6, 2017 (disputing that the company engineered Brexit).

⁹⁸ *Firm Used by Trump Campaign Asked WikiLeaks for Access to Clinton E-mails* (CNN New Day television broadcast, Oct. 26, 2017); Burleigh, *supra* note 95; Illing, *supra* note 97; *Cambridge Analytica Congratulates Senator Ted Cruz on Iowa Caucus Win: Behavioral Microtargeting Firm Played Integral Role in Identifying Likely Pro-Cruz Caucus Voters and Driving GOTV*, PRNEWswire, Feb. 2, 2016, <https://www.prnewswire.com/news-releases/cambridge-analytica-congratulates-senator-ted-cruz-on-iowa-caucus-win-300213608.html>; Jane McCallion, *Ted Cruz Entangled in Facebook Data Grabbing Scandal*, IT Pro (Dec. 14, 2015), <http://www.itpro.co.uk/security/25734/ted-cruz-entangled-in-facebook-data-grabbing-scandal/>; but see Confessore, *supra* note 97 (stating after the fact that Ted Cruz disavowed the firm's reliability).

⁹⁹ Kenneth P. Vogel et al., *Trump Team Builds 'Psychological Profile' of Clinton For Debate*, POLITICO (Sep. 26, 2016, 7:09 AM), <https://www.politico.eu/article/trump-builds-clinton-profile-debate/>.

¹⁰⁰ James Hohmann, *Democrats Risk Overplaying Their Hand by Pushing for Trump's Resignation*, WASH. POST (Dec. 15, 2017), https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2017/12/15/daily-202-democrats-risk-overplaying-their-hand-by-pushing-for-trump-s-resignation/5a3343ee30fb0469e883fbd6/?utm_term=.373a3efc8eee.

¹⁰¹ Compare Confessore, *supra* note 97 (offering statements that Cambridge did not use psychographics on the Trump campaign but that the campaign did hire the company); with *Trump Campaign Distances from Data Group, Executive Says Otherwise; Interview With Senator Richard Blumenthal of Connecticut*, (CNN television broadcast, Anderson Cooper: 360, Oct. 17, 2017).

the company might send ads with storm clouds to users who rank high for neuroticism.¹⁰² In contrast, they might send ads with a traditional family scene with a father and son hunting together to users who tested as pro-gun, introverted, and agreeable.¹⁰³

From there, the Trump supporters may have again ventured into the ethically questionable category by manipulating access to articles and ads by using algorithms and bots, automated applications that appear to be human users.¹⁰⁴ Some researchers indicate that the alt-right and similar groups learned how to manipulate the Google algorithm to their advantage.¹⁰⁵ According to one researcher, the autocomplete function became more likely to fill in an alt-right search term, like "feminism is cancer,"¹⁰⁶ and the top hits in the articles in a search were more likely to favor Trump and his agenda.¹⁰⁷ One researcher has suggested various ways that groups may have manipulated the algorithm via hashtags and frequent or bot-powered, searches¹⁰⁸ while other commentators suggest that search history, location, and other such factors may skew Google and Facebook results in favor of various biases.¹⁰⁹ It is unclear how much this issue persists.

Not only do algorithms benefit Trump, but an army of bots also controls the dominance of his message. An estimated four million Trump Twitter followers are actually bots, sometimes even bots that have stolen real people's identities.¹¹⁰ Trump has re-tweeted bot

¹⁰² See McKenzie Funk, *The Secret Agenda of a Facebook Quiz*, N.Y. TIMES, Nov. 20, 2016, at SR5.

¹⁰³ See *id.*

¹⁰⁴ Olivia Solon & Sam Levin, *How Google's Search Algorithm Spreads False Information With a Right-Wing Bias*, GUARDIAN (Dec. 16, 2016), <https://www.theguardian.com/technology/2016/dec/16/google-autocomplete-rightwing-bias-algorithm-political-propaganda>.

¹⁰⁵ See Solon, *supra* note 104.

¹⁰⁶ See Solon, *supra* note 104; see also Carole Cadwalladr, *Google, Democracy and the Truth About Internet Search*, GUARDIAN (Dec. 4, 2016), <https://www.theguardian.com/technology/2016/dec/04/google-democracy-truth-internet-search-facebook>. Readers might consider going to Google and experimenting with the autofill function to test these ideas.

¹⁰⁷ See Solon, *supra* note 104.

¹⁰⁸ See Solon, *supra* note 104; see also Alex Hern, *How Social Media Filter Bubbles and Algorithms Influence the Election*, GUARDIAN (May 22, 2017), <https://www.theguardian.com/technology/2017/may/22/social-media-election-facebook-filter-bubbles> (mentioning that bots can increase the popularity of a search or item and move that hit higher in the feed); Cadwalladr, *supra* note 106.

¹⁰⁹ Megan Anderle, *How Facebook and Google's Algorithms Are Affecting Our Political Viewpoints*, WASH. POST (Oct. 15, 2015, 10:06 AM), https://www.huffingtonpost.com/megan-anderle/how-facebook-and-googles-_b_8282612.html.

¹¹⁰ Scott Shane, *The Fake Americans Russia Created to Influence the Election*, N.Y. TIMES, Sep. 8, 2017, at A1; Patricia Garcia, *Trump's Twitter Following Might Include More Than 4 Million Bots*, VOGUE (Aug. 7, 2017), <https://www.vogue.com/article/trump-twitter-bots-fake-accounts-nicole-mincey>; Ryan Bort, *Nearly Half of Donald Trump's Twitter Followers are Fake Accounts and Bots*, NEWSWEEK (May 30, 2017), <http://www.newsweek.com/donald-trump-twitter-followers-fake-617873>.

tweets,¹¹¹ and over 50,000 Trump-supporting bot accounts are Russian linked.¹¹² The bots could potentially have several purposes: 1) disseminate Trump's message far and wide;¹¹³ 2) increase the appearance of his popularity; 3) validate supporters so that they feel less ashamed of their actions; 4) appeal to those who follow the crowd; 5) drown opposition messages so that they get lost in a sea of Trump support; and 6) intimidate opposition members by making them feel outnumbered.

As for the ignited opposition, Trump could ignore this audience in an election and in legislation. Due both to the electoral college and big data driven redistricting after the 2010 census,¹¹⁴ the fiery opposition posed no threat in the election. Since Republicans control Congress,¹¹⁵ he can also often ignore or manage opposition.

B. Storytelling Techniques and Genre Characteristics of Trump's Narrative to the Base

In ignoring the opposition, Trump told a story with genre characteristics that appealed to his base and, at times, he has even used storytelling techniques generally considered effective in any genre. Most of his storytelling techniques consist of universally successful and effective techniques or stylistically questionable techniques. These stylistically questionable techniques may often be a matter of genre-characteristics and genre-preferences. Trump's genre is akin to

¹¹¹ See Garcia, *supra* note 110.

¹¹² Bryan Logan, *Twitter Found More Than 50,000 Russia-Linked Accounts That Actively Shared Election-Related Material and Trump Interacted with Them Hundreds of Times*, Bus. Insider (Jan. 19, 2018), <http://www.businessinsider.com/twitter-found-more-russian-bots-trump-interacted-with-many-2018-1>; One source believes that the Russians employ the bots to sow divisiveness among Americans and destabilize the country. Tom McCarthy, *How Russia Used Social Media to Divide Americans*, Guardian (Oct. 14, 2017), <https://www.theguardian.com/us-news/2017/oct/14/russia-us-politics-social-media-facebook>.

¹¹³ See *The Beat* (MSNBC television broadcast, Jan. 31, 2018)(discussing how news sources have shared bot tweets).

¹¹⁴ NICHOLAS R. SEABROOK, *DRAWING THE LINES* 1-3 (Cornell Univ. Press 2017); Anthony J. Gaughan, *Illiberal Democracy: The Toxic Mix of Fake News, Hyperpolarization, and Partisan Election Administration*, 12 DUKE J. CONST. L. & PUB. POL'Y 57, 62 (2017)(alluding to how big data can fuel district maps to carve more partisan districts for future elections); Angelo N. Ancheta, *Redistricting Reform and the California Citizens Redistricting Commission*, 8 HARV. L. & POL'Y REV. 109, 130 (2014); David Daley, *The House the GOP Built: How Republicans Used Soft Money, Big Data, and High-Tech Mapping to Take Control of Congress and Increase Partisanship*, N.Y. MAG. (Apr. 24, 2016), <http://nymag.com/daily/intelligencer/2016/04/gops-house-seats-are-safe-heres-why.html> (explaining how social media and other data points helped the Republicans to redraw more favorable district lines); Griff Palmer & Michael Cooper, *How Maps Helped Party Keep Edge in the House*, N.Y. TIMES, Dec. 15, 2012, at A10; see also 2012 REDMAP Summary Report, REDISTRICTING MAJORITY PROJECT (Jan. 4, 2013), <http://www.redistrictingmajorityproject.com/>.

¹¹⁵ Eric Bradner, *Republicans Keep Control of Congress*, CNN (Nov. 9, 2016, 3:08 AM), <https://www.cnn.com/2016/11/08/politics/congress-balance-of-power-2016-election/index.html>.

certain comic books and shares some characteristics with popular serial pulp fiction, superhero stories,¹¹⁶ and serial spy thrillers. Characteristics of these genres often include: 1) simple language, simple sentences, and buzz words,¹¹⁷ peppered with adverbs; 2) simple, black and white, good versus evil propositions;¹¹⁸ 3) a recurring cast of strong, often one-dimensional¹¹⁹ foes; 4) high, potentially world-ending, stakes; 5) frequent reliance on stereotypes and stock structures; 6) symbols and visuals; and 7) cliff-hangers.¹²⁰ He sealed his stories with concrete details that establish a sense of reality. This genre and approach worked well with Trump's base.

While this genre characterization may sound humorous, this type of narrative can be both effective and popular. In fact, comics initially developed to fight Nazi propaganda and may have swayed American sentiment.¹²¹ Comic techniques have enjoyed popular success as well. In 2017 alone, over seven million comic books were sold,¹²² and in 2017, the six superhero movies to premiere made four billion dollars at the box office.¹²³

¹¹⁶ Superhero fiction has grown, and often more critically acclaimed superhero fiction includes more fully dimensional characters. This superhero fiction enjoys the branding that initially made it popular, and it still includes effective: 1) portrayals of the protagonist that identify the protagonist as the audience's ideal version of themselves; 2) strong antagonists; 3) high stakes; 4) symbolic and visual solutions that are easy to follow; 5) symbolic and visual representation of strengths and weaknesses; and 6) simple, easy to follow language. In a follow-up article, I am examining how Trump's narrative tracks this techniques and how proponents of ethics and truthfulness can respond to these techniques by ethically and accurately using superhero narratives of their own.

¹¹⁷ Mascaro, *supra* note 26.

¹¹⁸ RICHARD J. GRAY II & BETTY KAKLAMANIDOU, *THE 21ST CENTURY SUPERHERO: ESSAYS ON GENDER, GENRE AND GLOBALIZATION IN FILM* (Kindle Location 130) (noting the good versus evil as constitutive of super-hero films); Cf. MARC DIPAOLLO, *WAR, POLITICS AND SUPERHEROES: ETHICS AND PROPAGANDA IN COMICS AND FILM* 19 (McFarland & Company, Inc., Publishers. Kindle Edition) (discussing one historians concerns that contemporary mythic fiction embraced a black and white/Christian versus Muslim view of the world).

¹¹⁹ Cf. DIPAOLLO, *supra* note 118 at 1 (discussing simplifying characters in comics).

¹²⁰ See JAMES SCOTT BELL, *HOW TO WRITE PULP FICTION* 72 (Compendium Press. Kindle Edition 2017) (describing cliff hangers as a key to successful pulp fiction).

¹²¹ Dan Turello, *War and Superheroes: How the Writer's War Board Used Comics to Spread its Message in WWII*, LIBR. OF CONG. (Nov. 3, 2015), <https://blogs.loc.gov/kluge/2015/11/war-and-superheroes-how-the-writers-war-board-used-comics-to-spread-its-message-in-wwii/>; Mark Peters, *A Collection of Anti-Nazi Comic Book Covers From the 1940s is One of the Most Relevant Books of the Year*, SALON (Aug. 17, 2017, 7:00 PM), <https://www.salon.com/2017/08/17/a-collection-of-anti-nazi-comic-book-covers-from-the-1940s-is-one-of-the-most-relevant-books-of-the-year/>.

¹²² John Mayo, *Marvel Sells More Comics, but DC Takes 7 of October's Top 10*, CBR.COM (Nov. 13, 2017), <https://www.cbr.com/october-2017-comic-sales-charts/>.

¹²³ Mark Hughes, *How 2017 Became The Greatest Year For Superhero Movies Of All Time*, FORBES (Nov. 27, 2017), <https://www.forbes.com/sites/markhughes/2017/11/27/how-2017-became-the-greatest-year-for-superhero-movies-of-all-time/#7eca246613e6>; see also Mathew Ingram, *Six Years Later, Disney's Acquisition of Marvel Looks Smarter Than Ever*, FORTUNE (Oct. 8, 2015), <http://fortune.com/2015/10/08/disney-marvel/>.

In keeping with this genre, Trump used keywords and buzz phrases¹²⁴ to ignite his base's smoldering fears.¹²⁵ Keywords and buzz phrases and fear-based narratives, if they are fair and accurate, can be a universally successful technique. As Professor Ken Chestek has demonstrated in his article on fear and persuasion, fear has persuasive sticking power,¹²⁶ and linguistics Professor George Lakoff notes that repetition and framing of ideas with buzz words not only has sticking power but actually trains our brains how to think. The two together are a powerful combination. So just as Batman and Robin's Robin might say, "holy homicide, Batman," to reinforce the gravity of the situation, Trump too peppers his narratives with phrases to reinforce the stakes and his theme.

In Trump's narrative the ethically questionable aspect of these techniques is that they resort to stereotypes, which invites both inaccuracy and illogic. For example, Trump has referred to undocumented immigrants as "bad hombres," "drug lords," and "bad, bad people."¹²⁷ He has said, "The Mexican Government is forcing their most unwanted people into the United States. They are, in many cases, criminals, drug dealers, rapists, etc."¹²⁸ He has demanded "strong borders" because "they get the cash. We get the drugs."¹²⁹ Fueling his travel ban narrative, he speaks of the "Muslim problem,"¹³⁰ "radical Islamic terrorists,"¹³¹ "terror states," and "terror nations."¹³²

Just as a comic book or a general melodrama often employs universally successful, simple language, Trump packaged these buzzwords¹³³ with simple language and short sound bites to convey an idea that was black and white. A study analyzing Trump's speeches has found that they are between a Fifth and Seventh Grade Reading

¹²⁴ Mascaro, *supra* note 26.

¹²⁵ Cf. GEORGE LAKOFF, DON'T THINK OF AN ELEPHANT 1-3 (Chelsea Green Publishing 2004) (describing how a different set of buzz words shaped perception).

¹²⁶ *Fear and Loathing in Persuasive Legal Writing: An Empirical Study of the Effects of the Negativity Bias*, 14 J. Leg. Comm. & Rhetoric: JALWD 1 (2017) (forthcoming).

¹²⁷ *Full Transcript: Third 2016 Presidential Debate*, POLITICO (Oct. 20, 2016, 12:04 AM), <https://www.politico.com/story/2016/10/full-transcript-third-2016-presidential-debate-230063>.

¹²⁸ Michelle Ye Hee Lee, *Donald Trump's False Comments Connecting Mexican Immigrants and Crime*, WASH. POST (July 8, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime/?utm_term=.fa62d0de2881.

¹²⁹ *Full transcript: Third 2016 Presidential Debate*, POLITICO (Oct. 20, 2016, 12:04 AM), <https://www.politico.com/story/2016/10/full-transcript-third-2016-presidential-debate-230063>.

¹³⁰ *Aziz*, 234 F. Supp. 3d at 730-1.

¹³¹ *Hawai'i*, 241 F. Supp. 3d at 1126.

¹³² *Aziz*, 234 F. Supp. 3d at 730-1.

¹³³ Mascaro, *supra* note 26.

Level.¹³⁴ For instance, the quoted sentences above have only one clause. There are but two prepositional phrases in the four sentences.

The word choices themselves are almost as simple as the “Bam” and “Pow” word choices in a Batman comic. The antagonists in Trump’s narrative are not “evil,” “nefarious,” “foul,” or “wicked.” They are “bad, bad people.” A toddler can understand the word “bad,” but perhaps not its synonyms. Legal Writing Professor Susie Salmon notes, “[B]ad is also a more ambiguous and general, so each audience member can map her own meaning onto it.”¹³⁵

The use of simple words and simple speaking style is not merely universally successful and well-regarded; in a Democracy, every political or legal narrative should employ such plain English so that all of the voting public can understand the story. Legal writing experts have long advocated for the use of such simple, plain English in legal narratives.

Not only are the words simple, but this “bad person” concept is black and white like the black and white concepts in melodramas and is, thus, easy to comprehend. As *Mr. Robot*’s Elliot Alderson would say, in computer code, “You are either a one or a zero.”¹³⁶ According to this philosophy, people, decisions, places are either good or bad. There are no mixed motivations or pluses and minuses. While many critics may find this notion short-sighted and simple-minded, this lack of complexity is also easy to follow and comfortingly concrete. Thus, this black and white approach falls within the stylistically questionable category and ventures into the ethically questionable category when it creates inaccuracy.

Not only is the concept black and white or good versus evil, but Trump also creates clear and strong antagonists in his narratives. Story critics typically consider powerful antagonists to be a successful narrative strength. The creation of a strong antagonist becomes a stylistic problem only when the antagonist is one-dimensional. The inaccuracy invited by one-dimensionality can then raise ethical questions. Nonetheless, in story, if it’s easy to identify the “bad guy,” audiences know whom to root against. Thus, superheroes fight evil

¹³⁴ Justin W. Moyer, *Trump’s Grammar in Speeches ‘Just Below 6th Grade Level,’ Study Finds*, WASH. POST (Mar. 18, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/03/18/trumps-grammar-in-speeches-just-below-6th-grade-level-study-finds/?utm_term=.ac9dc99db50f.

¹³⁵ Memo from Susie Salmon, Director of Legal Writing and Clinical Professor of Law, Susie Salmon’s Comments on unpublished draft of *Astonishingly Excellent Success or Sad! Loser! Failure: Why President Trump’s Legal Narratives “Win” With Some Audiences and Lose with Others*, 19 (Mar. 17, 2018)(copy on file with the author).

¹³⁶ *Mr. Robot: ones-and-zeroes.mpeg* (USA television broadcast July 1, 2015).

super-villains with super powers, and pulp heroes like James Bond fight powerful, extraordinarily wealthy villains set on destroying the world. Similarly, Trump's strong antagonists include the "illegal immigrant," a criminal who will rape American women and take American jobs.¹³⁷ In Trump's travel ban narrative, the Muslim antagonists hate the West and war against it; true to his black and white statements, Trump has said that it is hard to separate radical Islam and Islam.¹³⁸

Like a comic book superhero,¹³⁹ Trump also fights repeat "villains" in his stories; Mexicans, "illegal aliens," and Muslims all have recurring roles. He even uses comic book names for some of his recurrent foes, Crooked Hillary,¹⁴⁰ Bad Hombre,¹⁴¹ Rocket Man,¹⁴² and, the travel ban foe, Radical Islamic Terrorist.¹⁴³

One almost expects that any moment, he might burst out with, "Quick! Into the Trump-Mobile, Rocket Man is going to destroy the world." In this comic-type narrative, Barack Obama is also sometimes the villain and sometimes a sort of Cat Woman that Bat Man¹⁴⁴ has temporarily teamed up with.¹⁴⁵ In contrast, Trump has turned Hillary Clinton into a regular Lord Voldemort¹⁴⁶ in his stories. Clinton is no longer running for office, has no plans to run for office again, and has

¹³⁷ Tal Kopan, *What Donald Trump Has Said About Mexico and Vice Versa*, CNN (Aug. 31, 2016), <http://www.cnn.com/2016/08/31/politics/donald-trump-mexico-statements/index.html>.

¹³⁸ *Hawai'i*, 241 F. Supp. 3d at 1136.

¹³⁹ Gross, *supra* note 3 (satirically likening President Trump to a comic book superhero).

¹⁴⁰ See Sophie Tatum, *Trump After 'Lock Her Up' Chant: Talk to Jeff Sessions*, CNN (Sep. 23, 2017, 8:56 AM), <https://www.cnn.com/2017/09/22/politics/donald-trump-alabama-hillary-clinton/index.html>; Alexander Nazaryan, *Donald Trump's Tweets: The Great American Novel*, Newsweek (Aug. 17, 2016), <http://www.newsweek.com/donald-trump-tweets-great-american-novel-490878>

¹⁴¹ *Full Transcript: Third 2016 Presidential Debate*, POLITICO (Oct. 20, 2016, 12:04 AM), <https://www.politico.com/story/2016/10/full-transcript-third-2016-presidential-debate-230063>.

¹⁴² Jason Le Miere, *Trump Called Kim Jong Un 'Little Rocket Man' Because to the President, 'Little' is the Ultimate Insult*, NEWSWEEK (Sep. 29, 2017, 1:27 PM), <http://www.newsweek.com/trump-kim-jong-un-rocket-674536>.

¹⁴³ *Hawai'i*, 241 F. Supp. 3d at 1126.

¹⁴⁴ See, e.g., BATMAN #392.

¹⁴⁵ Chris Riotta, *Trump Says Obama Colluded and Obstructed Over Russia to Help Hillary Clinton*, NEWSWEEK (June 6, 2017), <http://www.newsweek.com/donald-trump-president-obama-blames-russia-investigation-fbi-twitter-white-628990>; Elizabeth Dias, *President Trump Blames Obama for North Korea, But He's Following Obama's Strategy*, TIME (Oct. 27, 2017), <http://time.com/5000762/north-korea-donald-trump-nuclear-strategy/>; Stephen Collinson & Eric Bradner, *Trump Calls Obama 'a Very Good Man' After Historic White House Meeting*, CNN (Nov. 11, 2016), <http://www.cnn.com/2016/11/10/politics/donald-trump-obama-paul-ryan-washington/index.html>; Jeremy Diamond, *Trump Has Said a Lot of Things About Obama Over the Years*, CNN (Mar. 4, 2017), <http://www.cnn.com/2017/03/04/politics/donald-trump-obama-quotes/index.html>.

¹⁴⁶ See, e.g., J.K. ROWLING, *HARRY POTTER AND THE SORCERER'S STONE* (Arthur A. Levine Books 1997) (showing the first surrogate for the long-dead Lord Voldemort); J.K. ROWLING, *HARRY POTTER AND THE CHAMBER OF SECRETS* (Arthur A. Levine Books 1999) (including another plot fighting a Lord Voldemort surrogate); J.K. ROWLING, *HARRY POTTER AND THE ORDER OF THE PHOENIX* (Arthur A. Levine Books 2003); see also Nazaryan, *supra* note 140.

largely stepped out of public life.¹⁴⁷ Her political career is about as alive¹⁴⁸ as Lord Voldemort's body.¹⁴⁹ But just as the specter of Voldemort somehow appears to threaten Harry Potter, his loved ones, his classmates, and the world,¹⁵⁰ in Trump's narratives, so too does "Crooked Hillary" appear to haunt Trump's supporters again.¹⁵¹

The recurring super-villain approach and super-villain naming techniques work and appeal to genre fans for several reasons. First, just as a marketer might brand a product, these narratives brand the super-villains people love to hate. People recognize them as "the bad guy" in part based on their past roles in other stories. Second, once the narrative has already established this villain as the bad guy, it is easier to blame the person for subsequent wrongs. Third, the naming convention has repetitive sticking power,¹⁵² providing negative ideas along with a name creates an association between the negative ideas and the character.

However, Trump does not stop at using comic book names for "bad guys,"¹⁵³ in another universally successful approach, he repeats these key ideas and peppers them throughout his stories.¹⁵⁴ For

¹⁴⁷ Dan Merica, *Clinton's Really Not Running Again—And Her Book is Proof*, CNN (Sep. 12, 2017), <http://www.cnn.com/2017/09/12/politics/hillary-clinton-not-running-for-president/index.html>; Daniel Politi, *Hillary Clinton Says She Will Never Run for Office Again*, SLATE (Sep. 10, 2017), http://www.slate.com/blogs/the_slatest/2017/09/10/hillary_clinton_says_she_will_never_run_for_office_again.html.

¹⁴⁸ *Id.*

¹⁴⁹ See ROWLING, *SORCERER'S STONE*, *supra* note 146; ROWLING, *CHAMBER OF SECRETS*, *supra* note 146; ROWLING, *ORDER OF THE PHOENIX*, *supra* note 146.

¹⁵⁰ See, e.g., ROWLING, *SORCERER'S STONE*, *supra* note 124; ROWLING, *CHAMBER OF SECRETS*, *supra* note 124; ROWLING, *ORDER OF THE PHOENIX*, *supra* note 146.

¹⁵¹ *Morning Joe: Trump still talks about Hillary Clinton 'All the Time'* (NBC News television broadcast Jan. 11, 2018), <https://www.nbcnews.com/video/trump-still-talks-about-hillary-clinton-all-the-time-1134558275978>; Samantha Schmidt, *'Nobody Here Talks About Hillary Clinton,' Kellyanne Conway Says Just Before Trump Tweets, Again, About Hillary Clinton*, WASH. POST (Jan. 11, 2018), https://www.washingtonpost.com/news/morning-mix/wp/2018/01/11/kellyanne-conway-nobody-here-talks-about-hillary-clinton/?utm_term=.9ee5ab26419f.

¹⁵² See Sean Rossman, *Trump's Repetitive Rhetoric is a Trick Used in Advertising*, USA TODAY (Feb. 16, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/02/16/mess-fake-news-disaster-trumps-repetition-advertising-tactic/98014444> (discussing generally how repetition has sticking power and how repeat terms train our brains).

¹⁵³ Aaron Blake, *The Final Trump-Clinton Debate Transcript, Annotated*, WASH. POST (Oct. 19, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/10/19/the-final-trump-clinton-debate-transcript-annotated/?utm_term=.57ecee781c50.

¹⁵⁴ Peter W. Stevenson, *We Noticed Donald Trump Says a Lot of Things Twice. He Says a Lot of Things Twice*, WASH. POST (Jan. 15, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/01/15/this-video-of-donald-trump-repeating-himself-is-pretty-great-video/?utm_term=.cb9c78a63c07; Rossman *supra* 152; Olivia Godhill, *Rhetoric Scholars Pinpoint Why Trump's Inarticulate Speaking Style is So Persuasive*, QUARTZ (Apr. 22, 2017), <https://qz.com/965004/rhetoric-scholars-pinpoint-why-trumps-inarticulate-speaking-style-is-so-persuasive/>; see also *The Beat* (MSNBC television broadcast Jan. 31, 2018) (featuring Professor George Lakoff's discussion of Trump's framing and repetition).

example, in discussing immigration, Trump will say, "I want security for this country, okay? I want security."¹⁵⁵ Linguistics Professor George Lakoff explains that this tactic trains our brains to focus on the repeated term.¹⁵⁶

Not only does Trump repeat these ideas, but he frames or bookends his stories to put them in context for the audience.¹⁵⁷ For instance, even when recognizing Ramadan, the holy month of prayer and fasting for Muslims, Trump frames his discussion with terrorism references rather than simply acknowledging the holy month and extending well-wishes.¹⁵⁸ His Ramadan speech discussed recent terrorist attacks abroad as "acts of depravity that are directly contrary to the spirit of Ramadan. Such acts only steel our resolve to defeat the terrorists and their perverted ideology."¹⁵⁹ Thus, while purporting that Ramadan stands for something other than terrorism, he himself still included terrorism in his Ramadan speech.¹⁶⁰

Trump's frame includes melodramatic intensifiers, adverbs and adjectives that tell the audience how to feel and may appeal to some genre fans while being stylistically questionable for others.¹⁶¹ Speaking of the travel ban, Trump promised to use "*extreme* vetting."¹⁶² He stated, "But there's a *tremendous* hatred. And we have to be *very* vigilant. We have to be *very* careful."¹⁶³ These intensifiers tend to appear more in popular pulp and less in literary fiction.¹⁶⁴

¹⁵⁵ Stevenson, *supra* note 154.

¹⁵⁶ See Rossman, *supra* note 152.

¹⁵⁷ John Podhoretz, *Trump Just Took 'Telling Ordinary Americans' Stories' to a Whole New Level*, N.Y. POST (Jan. 31, 2018, 12:11 AM), <https://nypost.com/2018/01/31/trump-just-took-telling-ordinary-americans-stories-to-a-whole-new-level/>; Mary Papenfuss, *In the Future, We May All Talk Like Trump, Linguist Warns. Sad*, HUFFINGTON POST (Jan. 22, 2018), https://www.huffingtonpost.com/entry/trumpspeak-drilling-intoour-heds_us_5a656a0fe4b0022830041626; *MTP Daily*, *supra* note 30 (featuring Professor George Lakoff's discussion of Trump's framing, diversion, and deflection).

¹⁵⁸ Sarah Bailey, *Trump's Statement on Ramadan is Almost Entirely About Terrorism*, WASH. POST (May 26, 2017), https://www.washingtonpost.com/news/acts-of-faith/wp/2017/05/26/trumps-statement-on-ramadan-is-almost-entirely-about-terrorism/?utm_term=.09cd43ddb778.

¹⁵⁹ See *id.*

¹⁶⁰ See *id.*

¹⁶¹ See Pruden, *supra* note 47; McSwane, *supra* note 47.

¹⁶² *Hawai'i*, 241 F. Supp. 3d at 1136 (emphasis added).

¹⁶³ *Id.* (emphasis added).

¹⁶⁴ Cf. "Argument by adjectives and adverbs is cheap argument. It is only slightly more sophisticated than *ad hominem*, which in turn is only slightly more sophisticated than a fistfight outside of a bar." Jonathan K. Van Patten, *On Editing*, 60 S.D. L. REV. 1, 32 (2015) (discussing how these modifiers can be conclusory and argumentative); see also Mary L. Fredrickson, *Book Review: The Seven Deadly Sins of Legal Writing*, 35 WYO. LAW 35 Aug. 2012, at 20, 20 ("Adverbs tend to foreshadow the response you hope the readers will make on their own."); KAMELA BRIDGES & WAYNE SCHIESS, *WRITING FOR LITIGATION* 90 (Wolters Kluwer 2011) (advising to avoid hyperbolic adverbs and inflammatory adjectives); Jonathan K. Van Patten, *Twenty-Five Propositions on Writing and Persuasion*, 49 S.D. L. REV. 250, 269 (2004) (discussing how adverbs can be conclusory); see also NANCY KRESS, *CHARACTERS, EMOTION, & VIEWPOINT* 110 (Writer's Digest Books 2005) (advising that carefully chosen

It's possible that such intensifiers might appeal more to audience members whom George Lakoff has identified as adhering to a "strict father" deep frame.¹⁶⁵ In this mindset, people look to authority figures to set strict rules that everyone else must follow.¹⁶⁶ These intensifiers tell the audience how to view an event as opposed to providing showing detail that allows audiences to decide how to view an event on their own.

Aside from the simple language that provides an adverbial short cut telling an audience how to feel, the idea itself is simple.¹⁶⁷ Thus, while literary fans may dislike the simplicity, audiences can more easily understand the idea and feel as though the idea is common sense. For instance, in superhero fiction, the villain has made an attack and now threatens to destroy the world, so the superhero must battle and defeat the villain. Likewise, Trump's travel ban narrative is that Muslims have committed terrorist acts such as attacking the World Trade Center,¹⁶⁸ bombing people at the Boston Marathon,¹⁶⁹ and making "rampant" attacks across Europe.¹⁷⁰ So the U.S. will block all terrorist Muslims from the country by banning them.¹⁷¹ Most people can more easily follow these simple ideas.

Many will switch channels to wrestling or NCIS, in the time needed to explain: 1) many visa holders served the United States and

adverbs can convey tone of voice and cautioning against overuse); cf. Lance N. Long & William F. Christensen, *Clearly, Using Intensifiers Is Very Bad-or Is It?*, 45 IDAHO L. REV. 171, 179 (2008) (indicating based on study data that overuse "intensifiers," such as "clearly" is often disapproved of by judges, that it is often associated with negative outcomes, and advising others to use with caution); FRANCINE PROSE, *READING LIKE A WRITER* 16-17, 28 (HarperCollins 2006) (praising author Flannery O'Connor's lack of adverb use and discussing how a character's misuse of a word puts the reader in the character's point of view); STEPHEN KING: *ON WRITING* 125 (10th Anniversary ed. Scribner 2010) ("I believe the road to hell is paved with adverbs, and I will shout it from the rooftops."); Sidney Powell, *Federal Appeals in the Fifth Circuit: Tips for the Texas Practitioner*, 42 BAYLOR L. REV. 97, 124 (1990); but see Scott Moise, *Adverbs: So Much Undeserved Hate for Such A Little Part of Speech*, 26 S.C. LAW., Nov. 2014, at 56, 56 (admitting to some problems with adverbs but arguing that legal readers need them to reach conclusions, yet not explaining how).

¹⁶⁵ See George Lakoff, *The All New Don't Think of an Elephant: Know Your Values and Frame the Debate* (discussing the strict father mindset generally).

¹⁶⁶ See *id.*

¹⁶⁷ Cf. Mascaro, *supra* note 26 (discussing how Professor George Lakoff states that Trump's simple solutions appeal to some).

¹⁶⁸ See *Aziz*, 234 F. Supp. 3d at 730-1 (featuring an interview where Trump justified banning people from "terror states" because "I don't notice Swedish people knocking down the World Trade Center."); John Wagner, *Trump Warns Anew Against Attacks from 'Radical Islamic Terrorists' as he Visits Centcom*, WASH. POST (Feb. 6, 2017), https://www.washingtonpost.com/news/post-politics/wp/2017/02/06/trump-warns-anew-against-attacks-by-radical-islamic-terrorists-as-he-visits-centcom/?utm_term=.191328f8ecb0.

¹⁶⁹ Wagner, *supra* note 168.

¹⁷⁰ *Id.*

¹⁷¹ Cf. *id.* (indicating that his statements were in defense of the travel ban).

want to *escape* terrorists;¹⁷² 2) "Muslim terrorists" kill more Muslims than anyone else;¹⁷³ 3) most Muslims are not terrorists just as most Christians do not bomb abortion clinics;¹⁷⁴ 4) visas holders are either necessary to our economy, or they are allies needed in war;¹⁷⁵ and 5) we likely play into the terrorists' hands when we shun potential allies and stoke resentment between the United States and the Middle East.¹⁷⁶ Unfortunately, these linked details overwhelm shorter attention spans.¹⁷⁷

In catering to shorter attention spans, Trump also follows another frequent and often successful storytelling tip, raise the stakes.¹⁷⁸ In genres such as comics, superhero stories, and James Bond style movies, often the writer raises the stakes to apocalyptic levels. In so doing, these narratives tap into the persuasive power of fear noted in Ken Chestek's article on fear and persuasion.¹⁷⁹ The narrative makes

¹⁷² See, e.g., *Darweesh*, 2017 WL 388504 (describing how the detained Mr. Darweesh was initially granted a visa after his service for the U.S. made him a terrorist target).

¹⁷³ Jack Moore, *Why are Muslims Killing Muslims? Egypt Suffers Worst Terror Attack in History*, NEWSWEEK (Nov. 24, 2017, 11:25 AM), <http://www.newsweek.com/why-are-muslims-killing-muslims-egypt-worst-terror-attack-history-721381>; Michael Edison Hayden, *Muslims 'Absolutely' the Group Most Victimized by Global Terrorism, Researchers say*, ABC NEWS (June 20, 2017, 1:26 PM), <http://abcnews.go.com/Politics/muslims-absolutely-group-victimized-global-terrorism-researchers/story?id=48131273>

¹⁷⁴ Arwa Mahdawi, *The 712-Page Google doc That Proves Muslims do Condemn Terrorism*, THE GUARDIAN (Mar. 26, 2017, 12:00 EDT), <https://www.theguardian.com/world/shortcuts/2017/mar/26/muslims-condemn-terrorism-stats>; Mary Kate Cary, *Pressing a Muslim Reformation*, U.S. NEWS (Dec. 18, 2015, 6:00 AM), <https://www.usnews.com/news/the-report/articles/2015-12-18/yes-moderate-muslims-do-denounce-terrorism-though-the-media-ignores-it>

¹⁷⁵ See, e.g., *Darweesh*, 2017 WL 388504 (describing Mr. Darweesh's service to the U.S.); see, also Octavio Blanco, *1,500 Economists to Trump: Immigrants are Good for the U.S. Economy*, CNN MONEY (Apr. 12, 2017, 7:55 AM), <http://money.cnn.com/2017/04/12/news/economy/economists-immigrants-economy-trump/index.html>; Julie Vitkovskaya, Kayla Epstein, Kevin Uhrmacher and Samuel Granados, *Previously Barred Refugees, Immigrants can Continue Entering the U.S.*, WASH. POST (Feb. 9, 2017), <https://www.washingtonpost.com/graphics/national/immigration-order-explainer/>.

¹⁷⁶ Stephen Collinson, *Donald Trump's Travel Ban Fundamentally Changes American History*, CNN (Jan. 30, 2017, 1:50 PM), <https://www.cnn.com/2017/01/30/politics/donald-trump-immigration-ban/index.html>

¹⁷⁷ Cf. LAKOFF, DON'T THINK OF AN ELEPHANT *supra* note 125, at 33-6 (explaining how scientifically complex explanations seem like weaseling that leads to disbelief in systemically caused scientific problems).

¹⁷⁸ Writing guides often advise to raise the stakes, see, e.g., *How to Raise the Stakes in the First 50 Pages of Your Novel*, WRITERS DIGEST (Jan. 30, 2013), <http://www.writersdigest.com/online-editor/how-to-raise-the-stakes-in-your-first-50-pages-of-your-novel>; see also, JOHN GARDNER, THE ART OF FICTION 166 (Vintage Books 1991) (discussing how the plot will be more or less interesting depending on how the sequencing affects the welfare of the character); Laura Melchor, *Graduate Lecture: Why Should Readers Care? How to Raise the Stakes and Build Tension in Your Novel*, Vermont College of Fine Arts MFA Program in Writing for Children and Young Adults (Feb. 14, 2017).

¹⁷⁹ Kenneth D. Chestek, *Of Reptiles and Velcro: The Brain's Negativity Bias and Persuasion*, 15 NEV. L.J. 605, 618 (2015) (Citing Nobel Laureate Daniel Kahneman, who explains how the human brain processes stimuli and makes decisions. Kahneman theorizes that there is a System 1 for fast intuitive thinking, that processes stimuli almost instantaneously and unconsciously, and a System 2, our conscious rational self, which is more methodical, and monitors System 1, articulates judgments, and makes choices. System 2 often endorses or rationalizes ideas and feelings that were generated by System 1)

the audience afraid and then provides a solution. For instance, in the season finales of the super-heroine show, *Buffy the Vampire Slayer*, Buffy is not just saving helpless school boys from vampires—she's saving the world—from an Apocalypse.¹⁸⁰ James Bond or even Austin Powers are not just trying to stop a ticking time bomb—they too are trying to save the whole world from destruction.¹⁸¹ Trump similarly raises the already distorted stakes in his narrative about immigrants. In his story, Mexican immigrants are not just taking jobs—they are rapists.¹⁸² Regarding the travel ban, it's not merely a risk to admit people from the predominantly Muslim nations that Trump calls "terror states," it's "commit[ing] suicide."¹⁸³ He states, "You've seen that. ISIS is on a campaign of genocide, committing atrocities across the world. Radical Islamic terrorists are determined to strike our homeland."¹⁸⁴

This radical Muslim terrorist idea is known as a stock structure. A stock structure is a standardized information bit that the brain relies on to help people get through their days, and narratives universally employ stock structures.¹⁸⁵ So for instance, if someone says, "law school classroom," people may picture chairs, lights, and other items and characteristics typically associated with a law school classroom.¹⁸⁶ Likewise, if someone says, "Hailing a taxi-cab," people familiar with this process may fill in the blanks with a picture the possibly yellow cab, the street, the other cars, and the person whistling or waving for a cab.¹⁸⁷

Just as the first *X-Men* movie uses the Holocaust as stock structure for super-villain Magneto's origin, Trump has used the World Trade Center bombing as a stock structure in his travel ban narrative.¹⁸⁸ In an interview, if he merely references "knocking down the World Trade Center,"¹⁸⁹ many listeners can fill in the blanks in a process known as coding.¹⁹⁰ His audience can supply their own images; many

¹⁸⁰ See, e.g., *Buffy the Vampire Slayer: The Gift* (WB television broadcast May 22, 2001). *Buffy the Vampire Slayer: Chosen* (United Paramount Network television broadcast May 20, 2003).

¹⁸¹ See, e.g., AUSTIN POWERS: INTERNATIONAL MAN OF MYSTERY (New Line Cinema 1997); *GOLDFINGER* (United Artists 1964).

¹⁸² See Ye Hee Lee, *supra* note 128.

¹⁸³ See *Aziz*, 234 F. Supp. 3d at 730.

¹⁸⁴ Wagner, *supra* note 168.

¹⁸⁵ ROBBINS, *supra* note 82, at 32.

¹⁸⁶ *Id.*

¹⁸⁷ See *id.* (referring to hailing a taxi cab as a stock structure).

¹⁸⁸ See *Aziz*, 234 F. Supp. at 730.

¹⁸⁹ See *id.*

¹⁹⁰ See Ty Alper et al., *Stories Told and Untold: Lawyering Theory Analysis and the First Rodney King Trial*, 12 CLINICAL L. REV. 1, 15 (2005) (describing how an audience pictures additional

have seen footage of the trade towers collapsing, first responders pulling victims from rubble, and stories of the radical terrorists who flew a plane into the tower.¹⁹¹

Those radical terrorists can also be archetypal stock structures. A character can be a stock structure, such as an employee,¹⁹² a professor, and so on. While people make assumptions based on characters and may even stereotype characters, such assumptions and stereotypes do not always have a racist or unethical result. Rather someone may picture a carpenter as someone who wears a toolbelt at work. A personality type is another type of character stock structure. Both Karl Jung and Joseph Campbell have pinpointed certain character patterns, which could also be considered stock structures and labeled them as psychological or character types.¹⁹³ Works on storytelling techniques have given these archetypes names like “the trickster,” “the hero,” and “the mentor.”¹⁹⁴

Trump’s radical Islamic terrorist is a stock structure drawing on the antagonist archetype and is ethically questionable due to both its inaccuracy and its appeal to racism and religious prejudice. As previously discussed in the section on audience, both media outlets and television include stereotypical portrayals of Muslim terrorists,¹⁹⁵

information based on several details in a process known as coding); Michaela Roessner, *Gotham Writers’ Workshop*, Online World-Building Lecture in Advanced Science Fiction Writing (Aug. 8, 2012) (on file with author) (discussing how a good science fiction provides a few key details so that the reader envisions the setting and has a sense of verisimilitude); see also Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 LEGAL COMM. & RHETORIC: JALWD 107, 112-3 (2016)(explaining how our brain even quickly codes and interprets visual information).

¹⁹¹ James Barron, *Thousands Feared Dead as World Trade Center Is Toppled*, N.Y. TIMES (Sep. 11, 2001), <http://www.nytimes.com/2001/09/11/national/thousands-feared-dead-as-world-trade-center-is-topped.html>; *9/11 Archive Footage-South Tower Collapsing*, YOUTUBE (Apr. 5, 2006), https://www.youtube.com/watch?v=8Mz0_x7313I; Katie Walmsley, *9/11 Anniversary: Survivor Reflects on Escaping Death*, ABC NEWS (Sep. 10, 2011), http://abcnews.go.com/US/September_11/911-anniversary-survivor-reflects-escaping-death/story?id=14479161; *9/11 Attacks*, HISTORY (2010), <http://www.history.com/topics/9-11-attacks>.

¹⁹² *Id.*

¹⁹³ JOSEPH CAMPBELL, *THE PORTABLE JUNG* 178-269 (Viking Penguin, Inc. 1971); JOSEPH CAMPBELL, *THE HERO WITH A THOUSAND FACES* 315-56 (Princeton University Press 1973).

¹⁹⁴ See, e.g., CHRISTOPHER VOGLER, *THE WRITER’S JOURNEY* 29-33 (Michael Wiese Productions 1998); Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client’s Story Using the Characters and Paradigm of the Archetypal Hero’s Journey*, 29 SEATTLE U. L. REV. 767, 769 (2006).

¹⁹⁵ Taylor Markey, *Westernized Women?: The Construction of Muslim Women’s Dissent in U.S. Asylum Law*, 64 UCLA L. REV. 1302, 1312 (2017); Lustick, *supra* note 90 at 335-40; Joe Mulhall, *Breitbart’s Click-Hate Echo Chamber is a Threat to Europe. Here’s Why*, GUARDIAN (Mar. 7, 2017, 10:23 EST), <https://www.theguardian.com/commentisfree/2017/mar/07/breitbart-threat-to-europe-postwar-liberal-consensus>; Brian Stelter, *Fox News Apologizes 4 Times for Inaccurate Comments About Muslims in Europe*, CNN (Jan. 18, 2015), <http://money.cnn.com/2015/01/18/media/fox-apologizes-for-anti-islam-comments/index.html>; Ed Mazza, *Fox News Host Lectures Muslims: ‘Don’t Burn People Alive And Set Off Bombs.’* HUFFINGTON POST (Apr. 16, 2017), https://www.huffingtonpost.com/entry/fox-news-muslim-community_us_58f4202de4b0b9e9848cbf37; Michael Crowley & Nahal Toosi, *Trump Appointees Endorsed Link Between Islam and Radicalism*, POLITICO (Nov. 18, 2016),

and the media reports on Muslim committed terrorism 449 percent more than other terrorism.¹⁹⁶

These narratives do not merely portray a stereotypical archetype; they also often fail to portray Muslim or Middle Eastern persons engaging in activities other than terrorism.¹⁹⁷ These media outlets do not frequently show, if at all, portrayals of a woman wearing a head scarf or a Middle Eastern man, out doing charity work, parenting their children, giving intellectual presentations, and so on.¹⁹⁸ Trump relies on his audience's preconceptions, based on the priming his audience has already received, when he says things like, "Well, there is a Muslim problem. Absolutely. You just have to turn on your television set."¹⁹⁹

Trump further seals the stock structure with symbols and metaphors, a universally successful technique. These can include visual cues and a type of symbol known to creative writers as an endowed object, an object that represents theme, character, and change in a story.²⁰⁰ This symbolic storytelling speaks to our

<https://www.politico.com/story/2016/11/trump-appointees-islam-radicalism-231647>; see also, e.g., Thomas D. Williams, *Jesuit Scholar: Islamic Extremists Are the True Muslims*, BREITBART (June 16, 2017), <http://www.breitbart.com/national-security/2017/06/16/jesuit-scholar-islamic-extremists-are-the-true-muslims/>; Max Fisher, *It's Not Just Fox News: Islamophobia on Cable News is Out of Control*, VOX (Jan. 3, 2015, 12:48 PM), <https://www.vox.com/2014/10/8/6918485/the-overt-islamophobia-on-american-tv-news-is-out-of-control>; Nathan Lean, *Fox News War on Muslims*, SALON (Sep. 11, 2012), https://www.salon.com/2012/09/11/fox_news_war_on_muslims/; See Corbin, *supra* note 89; Ryzik, *supra* note 91; Cf. Lustick, *supra* note 90; *Muslim Artistis Struggle to Connect with American Audiences*, NPR (Apr. 27, 2016), <https://www.npr.org/2016/04/27/475923639/muslim-artists-struggle-to-connect-with-american-audiences>; Peter Beaumont, *Homeland is brilliant drama. But does it present a crude image of Muslims?*, GUARDIAN (Oct. 13, 2012, 07:19 EDT), <https://www.theguardian.com/tv-and-radio/2012/oct/13/homeland-drama-offensive-portrayal-islam-arabs>; Lucy Ward, *From Aladdin to Lost Ark Muslims Get Angry at 'Bad Guy' Film Images*, GUARDIAN (Jan. 25, 2007), <https://www.theguardian.com/media/2007/jan/25/broadcasting.race>; Diane Winston, *Faith Front: So Where Are The Muslims on 'CSI'*, L.A. TIMES (May 7, 2006), <http://articles.latimes.com/2006/may/07/opinion/op-winston7>; Eltahawy, *supra* note 93; Ryzik, *supra* note 91.

¹⁹⁶ See Corbin, *supra* note 89 at 460.

¹⁹⁷ See Eltahawy, *supra* note 93; Corbin, *supra* note 89 at 460; Laila Lalami, *'Bride' Walks Down Aisle of Stereotyping*, L.A. TIMES (Jan. 1, 1996), http://articles.latimes.com/1996-01-01/entertainment/ca-19979_1_arab-countries.

¹⁹⁸ Meighan Stone, *Snake and Stranger: Media Coverage of Muslims and Refugee Policy*, SHORESTEIN CTR. ON MEDIA, POL. AND PUB. POL'Y (June 22, 2017, 8:15 AM), <https://shorensteincenter.org/media-coverage-muslims-refugee-policy/>; Noah Smith, *Middle Eastern Immigrants Make the U.S. Stronger*, BLOOMBERG (July 24, 2017, 12:21 PM), <https://www.bloomberg.com/view/articles/2017-07-24/middle-eastern-immigrants-make-the-u-s-stronger>; Eltahawy, *supra* note 93.

¹⁹⁹ See *Aziz*, 234 F. Supp. 3d at 730; see also Corbin, *supra* note 89 (indicating people's preconceptions based on this archetype).

²⁰⁰ Cathren Koehlert-Page, *Like a Glass Slipper on a Stepsister: How the One Ring Rules Them All at Trial*, 91 NEB. L. REV. 600 (2013). James Parry Eyster, *Lawyer As Artist: Using Significant Moments and Obtuse Objects to Enhance Advocacy*, 14 LEGAL WRITING: J. LEGAL WRITING INST. 87 (2008); Kimberly Winters, *The Things Stories Carry: How a Rope, a Loop of Red Thread, a Song-less Canary,*

subconscious. Thus, the ring in the Lord of the Rings persuades the audience that power corrupts;²⁰¹ the glass slipper in Cinderella conveys Cinderella's daintiness, beauty, and fragility;²⁰² and the glove in the O.J. Simpson case symbolized reasonable doubt as to whether Simpson committed the murders.²⁰³ In superhero fiction, such objects convey strengths and weaknesses; Kryptonite represents superman's weakness, and the outline of invisible plane represents one of Wonder Woman's plane.

Long before he was president, Trump erected symbols to his own wealth, giant towers,²⁰⁴ gold plated fixtures,²⁰⁵ and even a fictional confederate monument.²⁰⁶ Additionally, after the original draft of this article discussing his superhero strengths had already been accepted for publication, Trump told the press that he had an invisible plane. Moreover, during his campaign, he donned a red "Make America Great Again" cap to signal to his working class voters that he was one of them,²⁰⁷ someone that they could kick back and have a beer with.

Regarding immigration, Trump has turned a symbol into a policy prerogative—building a wall. While Trump literally wants to build a wall to bar immigrants,²⁰⁸ the wall works metaphorically as well. The

and Other Collected Objects can Reveal the Heart of a Story (Fall 2004) (unpublished critical thesis, Vermont College/Union Institute & University) (on file with author).

²⁰¹See Koehlert-Page, *Like a Glass Slipper*, *supra* note 200; THE LORD OF THE RINGS: THE FELLOWSHIP OF THE RING (New Line Cinema 2001).

²⁰²See *id.*

²⁰³See *id.*; see also Robert W. Peterson, *The Bard and the Bench: An Opinion and Brief Writer's Guide to Shakespeare*, 39 SANTA CLARA L. REV. 789, (1999); Erik Ortiz, *Robert Shapiro Admits Trying on Gloves in O.J. Simpson Trial*, NBC NEWS (May 18, 2016, 9:16 AM), <https://www.nbcnews.com/news/us-news/robert-shapiro-admits-trying-o-j-simpson-s-gloves-n576046>.

²⁰⁴Max Abelson et al., *Inside Trump Tower*, BLOOMBERG (Oct. 25, 2016), <https://www.bloomberg.com/features/2016-trump-tower/>.

²⁰⁵Benjamin Zhang, *Check out Donald Trump's \$100 Million Personal Boeing*, BUS. INSIDER (June 9, 2016), <http://www.businessinsider.com/donald-trump-boeing-757-airliner-trump-force-one-2016-6/#trumps-boeing-757-2j4er-first-flew-in-may-1991-the-new-airliner-was-delivered-to-sterling-airlines-a-now-defunct-danish-low-cost-carrier-a-couple-of-years-later-it-found-its-way-into-the-fleet-of-mexicos-taesa-also-a-now-defunct-airline-2>.

²⁰⁶Nicholas Fandos, *In Renovation of Golf Club, Donald Trump Also Dressed Up History*, N.Y. TIMES, Nov. 25, 2015, at A1.

²⁰⁷Carolina A. Miranda, *It's Been Worn, Memed and Burned: How Donald Trump's 'Make America Great Again' Hat Reflects a Nation's Anger*, L.A. TIMES (July 15, 2016), <http://www.latimes.com/entertainment/arts/miranda/la-ca-cam-anger-donald-trump-make-america-great-again-hat-20160706-snap-story.html>.

²⁰⁸Julie Hirschfeld Davis, *Trump Rolls Out His Crackdown on Immigration*, N.Y. TIMES, Jan. 26, 2017, at A1; Pete Grieve, *Trump tweets 'We will BUILD THE WALL!'*, CNN (June 22, 2017), <https://www.cnn.com/2017/06/22/politics/donald-trump-build-wall-mexico-second-deadliest/index.html>; *Donald Trump's Mexico wall: Who is going to pay for it?*, BBC, Feb. 6, 2017, <http://www.bbc.com/news/world-us-canada-37243269>.

wall is no mere policy initiative; it's a visual symbol that provides a safety illusion.²⁰⁹

These symbols help to hold attention, and he further secures rapt attention with cliff-hangers, a universally successful technique that may only become stylistically questionable when the manipulation is too obvious.²¹⁰ These cliffhangers keep audiences on the edges of their seats. People hold their breaths as super-heroine, Buffy the Vampire Slayer and her sister, Dawn, teeter on the edge of a makeshift platform over the glowing portal to a demon world at the end of Season Five. They hang on to a last breath of hope after T'Challa falls off a cliff in the ordeal phase of Black Panther. Likewise, the nation waited in anticipation when, on the heels of the travel ban uproar, Trump announced that he would announce his Supreme Court nominee²¹¹ in a Bachelor reality-show style presentation.²¹²

Having secured attention, Trump cements his story with concrete details, another universally successful technique that only becomes ethically questionable when it is inaccurate.²¹³ These details lend the story a sense of reality, what fiction writers of every genre call verisimilitude.²¹⁴ Fiction storytellers have long used techniques to make even magic seem real.²¹⁵ Further advancing his travel ban narrative, Trump used these verisimilitude techniques when discussing terrorism at a rally. He created a protagonist, established a

²⁰⁹ Cf. Paul Singer, *Less than 25% of Republicans in Congress Endorse Border Wall Funding in USA Today Survey*, USA TODAY (Sep. 20, 2017), <https://www.usatoday.com/story/news/politics/2017/09/20/trump-border-wall-survey-congress-republicans-billions/640196001/> (referring to the wall as an illusion).

²¹⁰ Miller, *supra* note 29; Jim Puzzanghera, *Trump's 'Big Announcement' on Tax Reform This Week Won't Be That Big*, L.A. TIMES (Apr. 24, 2017), <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-trump-s-big-announcement-on-tax-1493037925-htmlstory.html>.

²¹¹ David A. Graham, *How Trump Can Use the Supreme Court to Get Conservatives in Line*, THE ATLANTIC (Jan. 30, 2017), <https://www.theatlantic.com/politics/archive/2017/01/how-trump-can-use-the-supreme-court-to-get-conservatives-in-line/514959/>.

²¹² See Dahlia Lithwick, *Trump's Supreme Court Reality Show Was Not a Distraction*, SLATE (Jan. 31, 2017, 10:59 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2017/01/trump_s_supreme_court_reality_show_was_not_a_distraction.html.

²¹³ Cf. Austin Smith, *Trump and the Beltway Hays Code*, THE HILL, Dec. 8, 2015 (discussing how Trump establishes verisimilitude).

²¹⁴ See also Cathren Page, *Stranger Than Fiction: What Fiction Writers Can Teach Lawyers About Creating a Sense of Reality in Legal Narratives*, 78 LOUISIANA L. REV. (forthcoming 2018).

²¹⁵ J.A. CUDDON, *DICTIONARY OF LITERARY TERMS & LITERARY THEORY* 755 (5th ed. 2013). See also Page, *supra* note 214; GARDNER, *supra* note 178, at 22 (mentioning the suspension of disbelief that accompanies verisimilitude); Eugene Volokh, *Crime Facilitating Speech*, 57 STAN. L. REV. 1095, 1123 (2005) (mentioning that some fiction authors strive for accuracy for the sake of establishing verisimilitude); Jayne W. Baynard, *Securities Fraud, Recidivism, and Deterrence*, 113 PENN ST. L. REV. 189, 206-7 (mentioning how "con men" must include enough detail to establish verisimilitude).

plot, and weaved in concrete and sensory details to lend air of reality. He stated:

'They were having terrorism problems, just like we do . . . [a]nd [U.S. Gen. John J. Pershing] caught 50 terrorists who did tremendous damage and killed many people. And he took the 50 terrorists, and he took 50 men and he dipped 50 bullets in pigs' blood . . . He took 50 bullets, and he dipped them in pigs' blood. And he had his men load his rifles, and he lined up the 50 people, and they shot 49 of those people. And the 50th person, he said: You go back to your people, and you tell them what happened. And for 25 years, there wasn't a problem. Okay? Twenty-five years, there wasn't a problem.'

By the way, this is something you can read in the history books—not a lot of history books because they don't like teaching this.²¹⁶

Trump establishes a sense of truth with a specific general's name and specific numbers for people, bullets, and years. He weaves in sensory details, bullets, pigs' blood, and rifles. He even bolsters the aura of reality with the reference to the history book. That reference is a version of another verisimilitude technique, the false document, a forged document used in fiction to create a feeling of truth.²¹⁷ His story seems as though it could be true, and yet, investigation indicates that it is likely a mere military fable.²¹⁸ Thus, while he used a universally successful technique, he violated ethics with his inaccuracy.

However, to Trump's base, it does not matter whether these stories are factually true—only whether they have the sort of thematic truth

²¹⁶ Jenna Johnson & Jose A. DelReal, *Trump Tells Story About Killing Terrorists with Bullets Dipped in Pigs' Blood, Though There's No Proof of It*, WASH. POST (Feb. 20, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/02/20/trumps-story-about-killing-terrorists-with-bullets-dipped-in-pigs-blood-is-likely-not-true/?utm_term=.01e1242477a9; This story later came back to haunt Trump in the most recent of the travel ban cases. *Int'l Refugee Assistance Project*, 2018 WL 894413, at *15.

²¹⁷ See Page, *supra* note 214 (discussing false documents in fiction and law). For brief description of “false documents” see Michael Hinken, *Documentary Fiction: Authenticity and Illusion*, 41 MICH. QUARTERLY REV. (2006); see also <http://www.narrati.com/Narratology/Narratology.htm> (last accessed February 25, 2017).

²¹⁸ See Johnson, *supra* note 216.

that all good myths have.²¹⁹ It matters that they seem just true enough that even if they did not happen, his base can say, "Still, it could have happened."

Trump's team inserted similar lies,²²⁰ rebranded now as "alternative facts,"²²¹ within his narratives, but, if his base noticed, they forgave the lies. They forgave them the same way a person reads a novel knowing that it's false and yet forms beliefs about the world as a result of reading. For example, in one interview, presidential spokesperson, Kellyanne Conway advanced the travel ban stating, "President Obama had a six month ban on the Iraqi refugee program after two Iraqis came here, were radicalized and they were the masterminds behind the Bowling Green Massacre."²²² Even though this massacre never happened supportive viewers might likely think, "Okay, so it was a plot and not an actual massacre, but it could have happened. And that's what matters."²²³

Whether an event "could have happened" is part of a narrative's overall thematic or mythic truth. Using effective narrative techniques and melodrama approaches, Trump has secured his base's belief in the mythic and thematic truth of his stories. Like any successful storyteller, he has used key words and buzz phrases and simple language. He has conveyed simple ideas. He then has tapped into his audience's fear and effectively branded his oppositions by creating a recurring cast of super-villains with super-villain names. He relies on stock structures to tell the story of his villains and their foul-deeds. He establishes cliff-hangers to further tap into his audience's fear. From there, he has effectively used visual symbols and metaphors to reassure his fear-primed audience that he can defeat his super-villains. Finally, he seals his myth with an air of truth by including concrete

²¹⁹ See Nazaryan, *supra* note 140.

²²⁰ Nate Silver, *How Donald Trump Hacked the Media*, FIVETHIRTYEIGHT (Mar. 30, 2016), <http://fivethirtyeight.com/features/how-donald-trump-hacked-the-media/>.

²²¹ Rebecca Sinderbrand, *How Kellyanne Conway Ushered in the Era of 'Alternative Facts,'* WASH. POST (Jan. 22, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/01/22/how-kellyanne-conway-ushered-in-the-era-of-alternative-facts/?utm_term=.471757a794f3.

²²² *Hardball With Chris Matthews* (MSNBC television broadcast Feb. 3, 2017); see also Aaron Blake, *Kellyanne Conway's 'Bowling Green Massacre Wasn't a Slip of the Tongue. She Has Said it Before,* WASH. POST (Feb. 6, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/02/06/kellyanne-conways-bowling-green-massacre-wasnt-a-slip-of-the-tongue-shes-said-it-before/?utm_term=.e0dbf6546c23.

²²³ Cf. Samantha Schmidt & Lindsey Bever, *Kellyanne Conway Cites Bowling Green Massacre That Never Happened to Defend Travel Ban,* WASH. POST (Feb. 3, 2017), <https://www.washingtonpost.com/news/morning-mix/wp/2017/02/03/kellyanne-conway-cites-bowling-green-massacre-that-never-happened-to-defend-travel-ban/> (explaining that the so-called massacre never happened); Blake, *supra* note 222 (indicating that Trump supporters will dismiss the correction as quibbling).

details. Many may see him as a sad, loser of a president for his ethical lapses, yet within his genre, he tells an astonishingly excellent story.

C. How Trump's Narrative Mutes the Counter-Narrative

Trump's most questionable tactics center more around his muting of the counter-narrative than they do around employing narrative techniques or using melodrama, superhero, or pulp genre approaches. He: 1) silences the opposition via widespread dissemination of often false stories, 2) distracts and shifts to his preferred themes, 3) flips his opponents' narratives, 4) scapegoats his opponents, discredits his opponents via falsehoods and ad hominem attacks, 5) uses fake cheering sections and bots to appear more popular than he is, 6) displays dominant and intimidating body language and tone of voice, and 7) threatens retaliation against opponents.

Regarding the first of these approaches. Trump seals his stories' "truthiness" via the widespread dissemination mentioned in subsection A.²²⁴ In the unethical category, he repeats and reposts false facts, such as those from the General Pershing story that advanced the travel ban narrative.²²⁵ From there, search algorithms and the bot army spread both "fake news" and Trump narratives further.²²⁶ Thus, the Trump narrative often effectively drowns out his opposition.

Not only does he drown the opposition, but when the story turns against him, Trump often effectively distracts and shifts focuses to his preferred themes.²²⁷ This tactic can be universally acceptable unless it becomes too cagey or evasive, which lands the approach in the ethically questionable category. In Trump's case, as Christian and

²²⁴See discussion *supra* subsection IV. A.

²²⁵See, e.g., Ali Vitali, *Trump Defends Michael Flynn, Points Finger at Hillary Clinton*, NBC NEWS (Dec. 4, 2017, 1:10PM), <https://www.nbcnews.com/politics/white-house/trump-says-he-feels-very-badly-flynn-points-finger-hillary-n826221>; Gabby Morrongiello, *Trump 'Not Ready to Pull the Trigger' on Chief of Staff John Kelly*, WASHINGTON EXAMINER (Feb. 12, 2018, 12:27 PM), <http://www.washingtonexaminer.com/trump-not-ready-to-pull-the-trigger-on-chief-of-staff-john-kelly/article/2648831>

²²⁶Solon, *supra* note 104; *The Beat* (MSNBC television broadcast, Jan. 31, 2018); see also Chris Riotta, *Donald Trump's Twitter Bots are a Fake News Army Taking Over Facts*, NEWSWEEK (June 5, 2017, 4:34 PM), <http://www.newsweek.com/donald-trump-twitter-bots-fake-followers-trolls-army-white-house-propaganda-621018>

²²⁷*MTP Daily*, *supra* note 30 (featuring Professor George Lakoff's discussion of Trump's framing, diversion, and deflection); Gabby Morrongiello, *Top Five Times Trump Tweeted to Change the Subject*, WASH. EXAMINER (Nov. 25, 2017), <http://www.washingtonexaminer.com/top-five-times-trump-tweeted-to-change-the-subject/article/2641576>; Paul McGeough, *Trump Tactics*, SYDNEY MORNING HERALD (Mar. 25, 2017) ??; Peter Baker & Maggie Haberman, *Ever a Showman, Donald Trump Keeps Washington Guessing*, N.Y. TIMES, Mar. 1, 2017, at A1; Sanford Levinson & Jack M. Balkin, *Democracy and Dysfunction: An Exchange*, 50 IND. L. REV. 281, 320 (2016); Silver, *supra* note 220; Papenfuss, *supra* note 157.

evangelical leaders denounced the travel ban, Trump accelerated his announcement regarding his Supreme Court nominee, an issue much followed by evangelicals concerned about abortion.²²⁸

In addition to shifting, Trump discredits opposition in several ways, some ethical and some unethical. Trump flips his opponents' narratives, a tactic that is universally successful when it's accurate and ethically questionable when it's not. Trump has ventured into the unethical category with this approach. For example, after people first complained of the fake news stories that favored Trump, Trump turned this complaint on its head by calling his critics "fake news."²²⁹

In addition to flipping his critic's stories, Trump also shifts blame onto them,²³⁰ again a successful tactic that becomes unethical when it's dishonest as Trump has often been. For instance, as the investigation of the Trump campaign's Russian collusion escalated,²³¹ Trump, without proof, accused former President Obama of wiretapping him.²³² He tweeted, "This is Nixon/Watergate. Bad (or sick) guy!"²³³ He's taken a similar approach regarding the travel ban; when a court enjoined his first travel ban, he blamed the court for future terrorism.²³⁴

From there, Trump encourages followers to hit the mute button on all critics. He attempts to discredit opponents, critics, or even allies who try to encourage another course of action.²³⁵ In another unethical approach, he does so by falsifying information about them and making

²²⁸ Graham, *supra* note 211.

²²⁹ Noah Bierman, *As Trump Announces 'Fake News Awards,' GOP Senators Assail his Attacks on the Press as Antidemocratic*, LOS ANGELES TIMES (Jan. 17, 2018, 6:10 PM), <http://www.latimes.com/politics/la-na-pol-fake-news-trump-20180117-story.html>

²³⁰ See Jennie Josephson, *Read Our Full Conversation with George Lakoff on 'Your Brain on Trump'*, NPR Marketplace (April 18, 2017) <https://www.marketplace.org/2017/04/18/economy/make-me-smart-kai-and-molly/transcript-blog-trump-george-lakoff>(discussing how Trump attacks the messenger).

²³¹ See David Leonhardt, *Decoding the Wiretapping Allegations*, N.Y. TIMES (March 6, 2017), <https://www.nytimes.com/2017/03/06/opinion/decoding-the-wiretapping-claims.html>; The Editorial Board, *Opinion When One President Smears Another*, N.Y. TIMES, March 6, 2017 at A22.

²³² Michael D. Shear & Michael S. Schmidt, *Trump, With No Proof, Trump Claims Obama Tapped*, N.Y. TIMES, March 5, 2017, at A1.

²³³ Jana Heigl, *A Timeline of Donald Trump's False Wiretapping Charge*, POLITIFACT (Mar. 21, 2017, 3:35 PM), <http://www.politifact.com/truth-o-meter/article/2017/mar/21/timeline-donald-trumps-false-wiretapping-charge/>.

²³⁴ Neil S. Siegel, *Reciprocal Legitimation in the Federal Courts System*, 70 VAND. L. REV. 1183, 1244–45 (2017).

²³⁵ Siegel, *supra* note 234 at 1244–45; Peter Baker & Sydney Ember, *Trump Escalates His Criticism of News Media, Fueling Partisan Debate*, N.Y. TIMES, Dec. 12, 2017, at A21; Matthew Nussbaum, *Agitated Trump Lashes out at McConnell, Ryan, Obama, Clapper, Media*, POLITICO (Aug. 24, 2017, 10:23 AM), <https://www.politico.com/story/2017/08/24/trump-twitter-storm-attacks-241983>.

ad hominem attacks upon them.²³⁶ For instance, President Trump has described the media as the enemy of the people.²³⁷ He criticized a federal judge's Hispanic heritage and attributed the judge's decision in the fraud suit against Trump University to racial bias.²³⁸

Trump also manages his audience's perception, focusing more on perception than on actual substance or syllogistic integrity. People will defer to perception over reason and later use reason to justify their perceptions.²³⁹ Managing perception can be universally successful, but when this perception management relies on illogic and falsehood, it becomes unethical. Trump manages perception through the ad hominem attacks,²⁴⁰ the bot army,²⁴¹ and his fake cheering sections.²⁴² He appears strong and popular to his base whereas opponents appear weak.²⁴³

Even Trump's body language and tone of voice reinforce this perception, and using good body language and tone of voice can be universally successful. Studies show that people make and form a lasting impression of a speaker in the first seven to twenty seconds

²³⁶ Papenfuss, *supra* note 157; Louis Ren, *How Donald Trump Fails Logic and Presidential Thinking*, U.S. NEWS & WORLD REP. (Aug. 17, 2017), <https://www.usnews.com/opinion/articles/2017-08-17/how-donald-trump-fails-logic-and-presidential-thinking>; Conor Friedersdorf, *The False-Accuser-in-Chief*, THE ATLANTIC (Feb. 10, 2018), <https://www.theatlantic.com/politics/archive/2018/02/the-false-accuser-in-chief/553025/>.

²³⁷ Dawood, *supra* note 43; Jackson, *supra* note 43.

²³⁸ Christopher L. Peterson, *Trump University and Presidential Impeachment*, 96 OR. L. REV. 57, 110 (2017).

²³⁹ LAKOFF, *supra* note 125, at 33-6 (discussing how mere logic cannot change deeply held beliefs); Kenneth D. Chestek, *Of Reptiles and Velcro: The Brain's Negativity Bias and Persuasion*, 15 NEV. L.J. 605, 618 (2015) (Citing Nobel Laureate Daniel Kahneman, who explains how the human brain processes stimuli and makes decisions. Kahneman theorizes that there is a System 1 for fast intuitive thinking, that processes stimuli almost instantaneously and unconsciously, and a System 2, our conscious rational self, which is more methodical, and monitors System 1, articulates judgments, and makes choices. System 2 often endorses or rationalizes ideas and feelings that were generated by System 1); Roy Eidelson, *The "Mind Games" of Donald Trump*, PSYCHOLOGY TODAY (Dec. 27, 2016), <https://www.psychologytoday.com/blog/dangerous-ideas/201612/the-mind-games-donald-trump>; *see also Fear and Loathing in Persuasive Legal Writing: An Empirical Study of the Effects of the Negativity Bias*, 14 J. Leg. Comm. & Rhetoric: JALWD 1 (2017) (forthcoming); Nazaryan, *supra* note 140; *see also Murray, supra* note 190, at 107, 112-3 (explaining how even visual perception can be selective).

²⁴⁰ *See Papenfuss, supra* note 157; Ren, *supra* note 236.

²⁴¹ Riotta, *supra* note 226; Douglas Guilbeault & Samuel Woolley, *How Twitter Bots are Shaping the Election*, THE ATLANTIC (Nov. 1, 2016), <https://www.theatlantic.com/technology/archive/2016/11/election-bots/506072/>.

²⁴² Rob Crilly, *Inside Trump's White House Part II: The Untouchable Inner Circle of Donald's Family and Entourage*, TELEGRAPH (July 25, 2017), <http://www.telegraph.co.uk/news/2017/07/25/inside-trumps-white-house-part-ii-untouchable-inner-circle-donalds/>; Phillip Bump, *Even the Firm That Hired Actors to Cheer Trump's Campaign Launch Had to Wait to be Paid Quite a Coda to the Campaign*, WASH. POST (Jan. 20, 2017).

²⁴³ Jonathan Bernstein, *Commentary: Marco Rubio Failed, and Not Just Because of Donald Trump*, CHI. TRIB. (Mar. 16, 2016, 9:30 AM), <http://www.chicagotribune.com/news/opinion/commentary/ct-marco-rubio-demise-donald-trump-20160316-story.html>.

based on body language alone.²⁴⁴ Where body language and substance conflict, people likely defer to body language.²⁴⁵ Moreover, people tend to believe deeper and more even tones of voice.²⁴⁶

While Trump's body language is often unpleasant and not charming,²⁴⁷ it is strong.²⁴⁸ He stands tall, holds his head high, and makes wide and decisive gestures.²⁴⁹ While many may find his smirk enraging, he does have a look of certainty. His tone of voice is similarly decisive and deep.²⁵⁰

Aside from managing perception with tactics such as strong body language and ad hominem attacks, his tactics achieve another ethically questionable purpose as well—intimidation. In particular, an ad hominem attack can temporarily silence opposition.²⁵¹ It might trigger traumatic memories of school-yard bullies;²⁵² when a bot army

²⁴⁴ KARE ANDERSON, GETTING WHAT YOU WANT: HOW TO REACH AGREEMENT AND RESOLVE CONFLICT EVERY TIME 74, 74-76 (1994); Vivian Giang, *It Takes Just 3 Seconds To Make A Brilliant First Impression*, BUS. INSIDER (Jan. 3, 2014, 4:56 PM), <http://www.businessinsider.com/how-to-make-a-great-first-impression-2014-1>.

²⁴⁵ See *Improving Speaking Skills Can Help Boost Your Career*, N.Y. TIMES, May 18, 1992; Helen Osborne, *Make 'Em Sit Up and Listen*, ESTATES GAZETTE (Feb. 9, 2002); cf. Kevin Conboy, *Inventory Less Sales Equals Scrap: Legal Education's Largest Lacuna*, 18 TRANSACTIONS: TENN. J. BUS. L. 81, 101 (2016) (indicating that seven percent of the impression we make is based on what we say).

²⁴⁶ Megan Garber, *Why We Prefer Masculine Voices (Even in Women)*, THE ATLANTIC (Dec. 18, 2012), <https://www.theatlantic.com/sexes/archive/2012/12/why-we-prefer-masculine-voices-even-in-women/266350/>; Brian Resnick, *What Science Says About "Sounding Presidential,"* THE ATLANTIC (Sep. 16, 2015), <https://www.theatlantic.com/politics/archive/2015/09/what-science-says-about-sounding-presidential/454191/>.

²⁴⁷ This statement is the personal opinion of the author. See also Jennifer Rubin, *Republicans in a Funk*, THE WASH. POST, Apr. 14, 2017.

²⁴⁸ Lauren O'Callaghan, *How Donald Trump is Using the 'DOMINATOR' Handshake to Send the World a Message*, EXPRESS (U.K.) (February 3, 2017), <https://www.express.co.uk/life-style/life/762678/donald-trump-handshake>.

²⁴⁹ Cf. *How Trump Bullies with His Body Language*, CONVERSATION (Oct. 14, 2016), <http://theconversation.com/how-donald-trump-bullies-with-his-body-language-66468> (discussing Trump's arms-wide gestures and decisive gestures).

²⁵⁰ Ian Johnston, *Politicians Don't Just Walk Like Apes, They Talk Like Them Too, Donald Trump and Hillary Clinton Adopt a Tone of Voice Designed to Convey Authoritarian Charisma When Speaking to Their Peers*, INDEPENDENT ONLINE (U.K.), (May 25, 2016), <http://www.independent.co.uk/news/science/donald-trump-hillary-clinton-bernie-sanders-voice-talk-like-apes-chimpanzees-a7048516.html>.

²⁵¹ Cf. Peter Margulies, *Democratic Transitions and the Future of Asylum Law*, 71 U. COLO. L. REV. 3, 40 (2000) (noting that adjudicators who engage in ad hominem abuse can silence asylum seekers).

²⁵² Cf. Toni Wehman, *Not Part of the Game Plan: School District Liability for the Creation of a Hostile Athletic Environment*, 77 U. COLO. L. REV. 767, 773 (2006) (indicating that gender insults can put youth at a suicide risk); Brady Coleman, *Pragmatism's Insult: The Growing Interdisciplinary Challenge to American Harassment Jurisprudence*, 8 EMP. RTS. & EMP. POL'Y J. 239, 242, 298-9 (2004) (indicating that continuous and systematic hostile communication known as "mobbing" can induce PTSD effects similar to that of rape victims). For an example of insults leading to suicide, see, e.g., Sarah Jameson, *Cyberharassment: Striking A Balance Between Free Speech and Privacy*, 17 COMMLAW CONSPECTUS 231 (2008) (discussing how repeat online insults preceded a teen's suicide); Chris Blank,

launches such an attack, the silencing effect is greater. People may delete their social media accounts or decide not to venture into the fray.²⁵³ Likewise, in a debate, such an attack can unnerve the opposition.

This intimidation has an even darker side, Trump threatens retaliation. For example, he encouraged Russia to hack and release Hillary Clinton's email.²⁵⁴ He even suggested that gun rights advocates could take matters into their own hands if Clinton defeated him.²⁵⁵

Given the extent of Trump's untruthfulness and possible illegal actions, his muting of the counter-narrative has succeeded fairly well. However, while many of the muting tactics he uses can be universally successful and well-regarded in some contexts, they become ethically wrong when combined with dishonesty, intimidation, or illegal actions. Thus, widespread dissemination, shifting attention, flipping narratives, shifting blame onto others, discrediting opponents, managing perception, and using strong body language and tone of voice all work well in persuasion. However, the deception, illegal actions, and intimidation make these tactics unethical. This unethical thread creates a weakness in his approach that likely plays a role in the votes he lost, the court battles he has lost, described in more detail below, and in possible future losses.

Given that policy decisions affect even the decision-maker, any personal or party wins dishonestly gained also ultimately result in a loss for society as a whole. This loss affects even the decision-maker; for instance, dishonesty resulting in a less fact-based, less sound counter-terrorism policy can ultimately result in greater hostility and subject even the decision-maker to danger. Such decisions are akin to urinating in a community pool that one is still swimming in.

D. Why Trump's Base Forgives Trumpian Gaffes

Trump's opponents may often be astounded that his unethical approaches have not lost and may be similarly surprised that his

Mo. Teen's Suicide Inspires Bill, FOXNEWS (Jan. 29, 2008), <http://www.foxnews.com/wires/2008Jan29/0,4670,InternetSuicide,00.html> (discussing how repeat insults preceded a teen's suicide).

²⁵³ Cf. Alina Selyukh, *Postelection, Overwhelmed Facebook Users Unfriend, Cut Back*, NPR (Nov. 20, 2016), <https://www.npr.org/sections/alltechconsidered/2016/11/20/502567858/post-election-overwhelmed-facebook-users-unfriend-cut-back> (discussing how people have cut back on Facebook due to political vitriol).

²⁵⁴ Parker, *supra* note 42.

²⁵⁵ Jason Szep, *'Go to Hell!' A Divided America Struggles to Heal After Ugly Election*, REUTERS (Nov. 9, 2016), <https://www.reuters.com/article/us-usa-election-division-insight/go-to-hell-a-divided-america-struggles-to-heal-after-ugly-election-idUSKBN13419A>.

outright gaffes have not further sealed that loss. However, it's possible that his errors actually aided him with some of his base.

Trump's narratives are not without outright gaffes such as misspellings,²⁵⁶ typos,²⁵⁷ grammar errors,²⁵⁸ and mistakes regarding information. His miss-spelled tweets include words like, "unpresidented," "honer," "leightweight," and "chocker,"²⁵⁹ and no one is really sure what "covfefe" means.²⁶⁰ Likewise, at one point, Trump talked of Frederick Douglas as though he were still alive.²⁶¹

Far from alienating his base, these errors possibly helped some of Trump's base to feel as though he is one of them.²⁶² Conservative movements have mocked education, calling universities "liberal indoctrination centers."²⁶³ Trump claims colleges teach students to hate religion.²⁶⁴ Moreover, despite claiming to be a billionaire, Trump ran on an anti-establishment platform with anti-elitist overtones.²⁶⁵ Additionally, though Trump narrowly captured the majority of *white* people with college degrees, he performed better with those lacking college degrees;²⁶⁶ thus, his errors may possibly make him more

²⁵⁶ Caitlin Gibson, *They've Made It Their Mission to Talk Back to Trump on Twitter, But Is Anyone Listening*, WASH. POST (May 8, 2017), https://www.washingtonpost.com/lifestyle/style/theyve-made-it-their-mission-to-rebut-every-trump-tweet-but-is-anyone-listening/2017/05/08/9687d36c-303d-11e7-8674-437ddb6e813e_story.html?utm_term=.d74bea21ff1e; Kristine Phillips, *'Feminism' is Merriam-Webster's Word of the Year, Thanks in Part to Kellyanne Conway*, WASH. POST (Dec. 12, 2017), https://www.washingtonpost.com/news/arts-and-entertainment/wp/2017/12/12/feminism-is-merriam-websters-word-of-the-year-thanks-in-part-to-kellyanne-conway/?utm_term=.21106edb12b2.

²⁵⁷ Sam Levine, *One of the White House May Be Itself*, HUFFINGTON POST (Apr. 3, 2017), https://www.huffingtonpost.com/entry/white-house-press-office-message_us_58de97b8e4b0ba359594ab1b.

²⁵⁸ Higgins, *supra* note 55.

²⁵⁹ See Phillips, *supra* note 256.

²⁶⁰ Cf. Ray Suarez, *Words You Heard in 2017*, NPR (Dec. 31, 2017), <https://www.npr.org/2017/12/31/574892722/words-you-heard-in-2017> (calling the term "inscrutable").

²⁶¹ See Merica, *supra* note 56.

²⁶² Cf. Olivia Goldhill, *Rhetoric Scholars Pinpoint Why Trump's Speaking Style is So Persuasive*, Quartz (quoting anthropology professor, Dr. Richard Wilson, as saying that populist leaders use ungrammatical phrases to seem popular).

²⁶³ Neil Gross, *The Indoctrination Myth*, N.Y. TIMES, Mar. 4, 2012, at SR12; see also Avon R. Lahr, *Liberal Agendas Spark Too Many Protests*, ST. CLOUD TIMES (Mar. 31, 2016), <https://www.sctimes.com/story/opinion/2016/03/31/liberal-agendas-spark-many-protests/82479438/> (employing this term when referring to universities); Bob Kemper, *Conservatives Gain Foothold on Campus*, ATLANTA CONST. J. (Oct. 9, 2005), ??.

²⁶⁴ Daniel Cox, *College Professors Aren't Killing Religion*, FIVETHIRTYEIGHT (Oct. 10, 2017), <https://fivethirtyeight.com/features/college-professors-arent-killing-religion/>.

²⁶⁵ Cathleen Decker, *Trump's War Against Elites and Expertise*, L.A. TIMES (July 27, 2017, 3:00 AM), <http://www.latimes.com/politics/la-na-pol-trump-elites-20170725-story.html>.

²⁶⁶ David Wasserman, *2018 Could be the Year of the Angry White College Graduate*, FIVETHIRTYEIGHT (Sep. 5, 2017), <https://fivethirtyeight.com/features/2018-could-be-the-year-of-the-angry-white-college-graduate/>; Clare Malone, *Reluctant Trump Voters Swung the Election: Here's How They Think He's Doing*, FIVETHIRTYEIGHT (Apr. 18, 2017), <https://fivethirtyeight.com/features/reluctant-trump-voters-swung-the-election-heres-how-they-think-hes-doing/>; Harry Enten, *Even Among the Wealthy Education Predicts Trump Support*, FIVETHIRTYEIGHT (Nov. 29, 2016),

appealing to his base rather than less. He may seem more relatable.²⁶⁷ Critics of Trump's errors may seem like the snotty, liberal school-teachers who once made supporters feel ashamed of their own errors.

Even if these errors do not woo all of Trump's base, their deep-frame beliefs and his narrative strategy likely make them want to forgive Trump. Just as some may find filming errors in their favorite movies or shows, they may decide that there is so much to love in the story that they forgive it.

In contrast, people already predisposed to dislike Trump, his approaches, and his policies take these errors as further evidence of his incompetence, ignorance, and anti-intellectualism.

V. WHY TRUMP'S NARRATIVES LOST WITH SOME COURTS

The ethical flaws noted above posed a greater hurdle for Trump in the travel ban cases than the outright gaffes. Ultimately, his travel ban narrative achieved some wins and faced some losses due to many of the same strengths and weaknesses noted above. His losses forced him to change his position as well as his approach. He eventually won with some Supreme Court Justices by changing his audience, adapting to his audience, finding a legal and ethical means of muting the counter-narrative, and finding a legal and ethical means of preventing fact-checking regarding his motivations as discussed in more detail below.

The travel ban narrative initially failed with some of the courts and, ultimately failed with the dissenting justices, for various reasons.²⁶⁸ These reasons provide guidance for lawyers, particularly new lawyers who may emulate politicians' debate styles, styles that can often be inappropriate in court. The reasons for his failures likely include some of the following:

1. the legal system's fact-checking builds integrity into the process;²⁶⁹

<https://fivethirtyeight.com/features/even-among-the-wealthy-education-predicts-trump-support/>; Nate Silver, *Education, Not Income, Predicted Who Would Vote for Trump*, FIVETHIRTYEIGHT (Nov. 22, 2016, 2:53 PM), <http://fivethirtyeight.com/features/education-not-income-predicted-who-would-vote-for-trump/>; Andrew McGill, *America's Educational Divide Put Trump in the White House*, THE ATLANTIC (Nov. 27, 2016), <https://www.theatlantic.com/politics/archive/2016/11/education-put-donald-trump-in-the-white-house/508703/>.

²⁶⁷ See Goldhill, *supra* note 262.

²⁶⁸ See, e.g., *Darweesh*, 2017 WL 388504; *Hawai'i*, 241 F. Supp. 3d 1119; *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir.), as amended (May 31, 2017), as amended (June 15, 2017), cert. granted, 137 S. Ct. 2080, 198 L. Ed. 2d 643 (2017), and vacated and remanded sub nom. *Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353 (2017).

²⁶⁹ See FED. R. EVID. 104(b), 106, 402, 601, 602, 607, 611 613, 614 802, 901, 1002 (establishing rules regarding who can testify, what they can testify to, how their testimony can be impeached, and what

2. rules on professional responsibility and civil and appellate procedure prevent most attorneys from making misrepresentations or material factual omissions;²⁷⁰
3. some of the same rules also require attorneys to make disclosures;²⁷¹
4. the courts must hear both sides and cannot change the channel;²⁷²
5. federal judges typically have the intelligence, education, and legal background to understand and appreciate a more complex explanation;²⁷³
6. federal judges often engage less in black and white thinking than the average member of the American public;²⁷⁴
7. the Establishment Clause of the Constitution limits religious stereotypes;²⁷⁵
8. the court system is typically not meant to consider popular opinion in its decision-making and even serves to prevent the tyranny of the majority;²⁷⁶

other evidence can be admitted); FED. R. CIV. P. 11 (providing for sanctions and stating that attorneys certify that motions, pleadings, or other papers are to the "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances. . . (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information."); FED. R. APP. P. 28(a)(6), (e); *Davison v. Huntington Ingalls, Inc.*, 712 F.3d 884, 886 (5th Cir. 2013) (dismissing appeal that did not include record citations); *Rodriguez-Machado v. Shinseki*, 700 F.3d 48, 49 (1st Cir. 2012) (dismissing appeal that did not include record citations).

²⁷⁰ 28 U.S.C. § 1927 (2012); FED. R. CIV. P. 11; FED. R. APP. P. 10, 46; *In re Liotti*, 667 F.3d 419, 421 (4th Cir. 2011) (finding attorney's misrepresentations to the court supported public admonition); *DCD Programs, Ltd. v. Leighton*, 846 F.2d 526 (9th Cir. 1988) (determining that attorney was subject to two-months suspension for misrepresenting record on appeal); Candor Toward the Tribunal, Ann. Mod. Rules Prof. Cond. § 3.3, 4.1 ("A lawyer shall not knowingly. . . (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.").

²⁷¹ 28 U.S.C. § 1927 (2012); FED. R. CIV. P. 11, Candor Toward the Tribunal, Ann. Mod. Rules Prof. Cond. § 3.3.

²⁷² A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY, Model Code of Judicial Conduct Canon 2, Rule 2.6(A) ("A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.").

²⁷³ See Jason Iuliano & Avery Stewart, *The New Diversity Crisis in the Federal Judiciary*, 84 TENN. L. REV. 247, 286 (2016) (compiling statistical information about judges' legal education); Douglas G. Smith, *Structural and Functional Aspects of the Jury: Comparative Analysis and Proposals for Reform*, 48 ALA. L. REV. 441, 489 (1997); LOUIS NIZER, MY LIFE IN COURT 524 (Doubleday & Co., Inc., 1961); Joseph Bishop, 72 YALE L.J. 618, 623 (1963) (complimenting judges perhaps too much in overlooking how the demographics and privilege may affect judicial perspectives).

²⁷⁴ See Patricia H. Murrell, *Competence and Character: The Heart of Cle for the Profession's Gatekeepers*, 40 VAL. U. L. REV. 485, 507 (2006); Patricia H. Murrell, *Judging: A Role with Soul*, JUDGES' J., Winter 2006, at 1, 5; cf. Jeffrey S. Sutton, *A Review of Richard A. Posner, How Judges Think* (2008), 108 MICH. L. REV. 859, 864 (2010) (indicating that some cases are difficult to decide).

²⁷⁵ U.S. CONST. amend I.

²⁷⁶ A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY, Model Code of Judicial Conduct Canon 2, Rule 2.4(a) ("A judge shall not be swayed by public clamor or fear of criticism").

9. relevance rules and sanctions prevent many ad hominem attacks;²⁷⁷
10. relevance rules also prevent litigants from changing the subject to a completely different topic; and²⁷⁸
11. federal judges are likely savvy enough to see the logical fallacy in an ad hominem attack and be turned off by such non-arguments.²⁷⁹

Following the first executive order, Trump lost a few battles after the United States canceled thousands of visas, prevented hundreds from entering the U.S., and detained people at the airport.²⁸⁰ Detainees Hameed Khalid Darweesh, Tareq Aqel Mohammed Aziz, and various other persons, organizations, and states sued the President and challenged the order.²⁸¹ Several courts granted motions for injunctions.²⁸²

Adapting to his audience, Trump withdrew and revised the order, but then two courts of appeals upheld injunctions for the second order as well.²⁸³ After Trump attempted to change his audience and petitioned for a stay of those injunctions, the Supreme Court of the United States left the injunctions in place regarding the original respondents and anyone similarly situated; the Court stayed the injunction only with respect to foreign nationals who lacked any bona fide relationship with a person or entity in the United States.²⁸⁴

Before the Court could hear that suit's merits, Trump again adapted to his audience and replaced the order with a third Executive

²⁷⁷ See FED. R. EVID. 403; *Eagan v. CSX Transp., Inc.*, 271 F. Supp. 2d 993, 996, (E.D. Mich. 2003) (labeling insults to witnesses and counsel as inappropriate and prejudicial); see also *Walden v. City of Chicago*, 846 F. Supp. 2d 963, 87 FED. R. EVID. Serv. 1164 (N.D. Ill. 2012) (labeling this kind of conduct as unethical); *State v. Matthews*, 358 N.C. 102, 110-112 (2004); 28 U.S.C. § 1927 (2012); FED. R. CIV. P. 11; See also *Coats v. Pierre*, 890 F.2d 728, 734 (5th Cir. 1989), cert. denied, 498 U.S. 821 (1990) (“Abusive language toward opposing counsel has no place in documents filed with our courts; the filing of a document containing such language is one form of harassment prohibited by Rule 11”); *Unique Concepts, Inc. v. Brown*, 115 F.R.D. 292, 293 (S.D.N.Y.1987) (sanctioning counsel for “abusive ad hominem attacks on opposing counsel”).

²⁷⁸ FED. R. EVID. 401-403.

²⁷⁹ See, e.g., *Inn Interest of C.M.*, 2014 UT App 234 (Utah Ct. App. 2014), cert. denied, 347 P.3d 405 (Utah 2015) (stating “[k]nowledgeable readers understand that those with persuasive arguments based on law and logic rarely resort to ad hominem attacks.”).

²⁸⁰ Benjamin Mueller & Matthew Rosenberg, *Confusion and Disorder at Airports as Travelers Are Detained Without Lawyers*, N.Y. TIMES, Jan. 30, 2017, at A13; Amanda Holpuch & Oliver Laughland, *Trump Administration Offers Conflicting Numbers of Revoked Visas After Travel Ban*, GUARDIAN (Feb. 3, 2017, 5:14 PM), <https://www.theguardian.com/us-news/2017/feb/03/trump-immigration-restrictions-judge-temporary-ban-order>.

²⁸¹ *Aziz*, 234 F. Supp. 3d 724; *Darweesh*, 2017 WL 388504; *Mohammed*, 2017 WL 438750; *Louhghalam*, 230 F. Supp. 3d 26; *Sarsour v. Trump*, 245 F. Supp. 3d 719; *Washington*, 847 F.3d 1151.

²⁸² See *Washington*, 2017 WL 462040, at *2; *Aziz*, 234 F. Supp. 3d at 739.

²⁸³ *IRAP v. Trump*, 857 F.3d 554 (4th Cir. 2017) (hereinafter “*IRAP I*”) (en banc); *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017) (per curiam).

²⁸⁴ *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087, 198 L. Ed. 2d 643 (2017).

Order.²⁸⁵ Two appellate courts upheld injunctions regarding that order.²⁸⁶ However, Trump changed his audience again by petitioning the Supreme Court for review; in a divided opinion, the Supreme Court reversed the injunctions and remanded the cases.²⁸⁷

While Trump's story helped to win the election and impassion his base,²⁸⁸ prior to adaptation and change, his initial legal narrative failed with several courts.²⁸⁹ Although some Trump-tactics overlap with good legal storytelling techniques,²⁹⁰ Trump had less audience choice, and the judicial audience follows a different set of rules when judging a narrative. He does not get to change the venue or target people within a district.²⁹¹ Instead, at that time, he was largely stuck with judges appointed by Democrats or establishment Republicans.²⁹² He could not simply ignore or dismiss this audience, and this audience could not just stay home.²⁹³

Second, while Trump's simple theme and stereotypes may resonate with his base, his original theme ran contrary to the Constitution of the United States. While Americans are free to personally embrace beliefs and values contrary to the Constitution, the courts guard the Constitution.²⁹⁴ When judges preside in a case, the Constitution of the United States of America, serves as their highest value.²⁹⁵ Several courts deemed opposition to the first travel ban was

²⁸⁵ See Nessel, *supra* note 68; see also *Int'l Refugee Assistance Project*, 137 S. Ct. at 2083, *petition for cert. filed*, 85 U.S.L.W. 4477 (U.S. June 1, 2017) (No. 16-1436); Executive Order by President Donald J. Trump Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order No. 13780 (Mar. 6 2017), <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

²⁸⁶ *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018); *Trump v. Hawaii*, 138 S. Ct. at 924 (granting certiorari for *Hawai'i*, 878 F.3d at 673 (9th Cir. 2017)); *Int'l Refugee Assistance Project*, 2018 WL 894413, at *17.

²⁸⁷ *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018); *Trump v. Hawaii*, 138 S. Ct. at 924 (granting certiorari for *Hawai'i*, 878 F.3d at 673 (9th Cir. 2017)); *Int'l Refugee Assistance Project*, 2018 WL 894413, at *17.

²⁸⁸ Adam Serwer, *The Nationalist's Delusion*, THE ATLANTIC (Nov. 20, 2017), <https://www.theatlantic.com/politics/archive/2017/11/the-nationalists-delusion/546356/>.

²⁸⁹ See *Aziz*, 234 F. Supp. 3d at 738; see also *Darweesh*, 2017 WL 388504; *Mohammed*, 2017 WL 438750.

²⁹⁰ See Nazaryan, *supra* note 140.

²⁹¹ See 28 U.S.C. §§ 1251-1369 (2012); See 28 U.S.C. §§ 1390, 1391 (2012).

²⁹² The President has the power to appoint Judges of the Supreme Court. U.S. CONST. art. II, §2. The President appoints by and with the advice and consent of the Senate, district judges and circuit judges, that will hold office during good behavior. 28 U.S.C. §§ 44, 133 (2012); Kyle Kim, *Trump Appointing Judges at Rapid Pace*, L.A. TIMES (Jan. 19, 2018), <http://www.latimes.com/projects/la-na-pol-trump-federal-judiciary/>.

²⁹³ Under Article III of the Constitution, judges have the authority and obligation, in all matters over which they have jurisdiction, to decide cases and controversies. See U.S. CONST. art. III, §2. See, also, 28 U.S.C. §§1331-1367 (2012).

²⁹⁴ See generally *Marbury v. Madison*, 5 U.S. 137 (1803).

²⁹⁵ See U.S. CONST. art. VI.

likely to succeed on the merits with respect to violating the Establishment Clause.²⁹⁶ This clause provides that “Congress shall make no law respecting an establishment of religion.”²⁹⁷ Lacking any evidence from the administration, in *Aziz*, the court looked outside the order itself to examine the president's actual statements, including a statement on his website that the order was a “Muslim ban.”²⁹⁸ The court found that this discriminatory purpose likely violated the Establishment Clause regardless of the number of Muslims affected by the order.²⁹⁹

The court’s examination of Trump's quotes demonstrates our legal system’s fact-checking. While a person can lie in the press and attempt to discredit fact-checking publications by calling them “fake news,”³⁰⁰ our legal system fact-checks evidence.³⁰¹

In a court case, opponents will introduce evidence that reveals a party's lies.³⁰² Evidence must be either sworn testimony or authenticated documents, photos, reports, or videos.³⁰³ Thus, Trump could not produce doctored photos or documents,³⁰⁴ and his opponents could impeach his testimony.³⁰⁵

²⁹⁶ See *Aziz*, 234 F. Supp. 3d at 738; see also, *Hawai’i*, 245 F. Supp. 3d at 1237; Intern. Refugee Assistance Project v. Trump, 857 F.3d 554, 604 (4th Cir. 2017).

²⁹⁷ *Aziz*, 234 F. Supp. 3d at 733 (quoting U.S. CONST. amend. I).

²⁹⁸ See *Aziz*, 234 F. Supp. 3d at 736.

²⁹⁹ See *id.* at 736-7.

³⁰⁰ Evan McMullin & Mindy Finn, *The Fake News Awards Are Another Escalation in Trump's Assault on Press Freedoms*, L.A. TIMES (Jan. 17, 2018, 4:00 AM), <http://www.latimes.com/opinion/op-ed/la-oe-mcmullin-finn-fake-news-awards-20180117-story.html>; Steve Coll, *Donald Trump's "Fake News" Tactics*, NEW YORKER (Dec. 11, 2017), <https://www.newyorker.com/magazine/2017/12/11/donald-trumps-fake-news-tactics>; Angie D. Holan, *The Media's Definition of Fake News vs. Donald Trump's*, POLITIFACT (Oct. 18, 2017, 2:11 PM), <http://www.politifact.com/truth-o-meter/article/2017/oct/18/deciding-whats-fake-medias-definition-fake-news-vs/>.

³⁰¹ See FED. R. EVID. 104(b), 106, 402, 601, 602, 607, 611 613, 614 802, 901, 1002 (establishing rules regarding who can testify, what they can testify to, how their testimony can be impeached, and what other evidence can be admitted); FED. R. CIV. P. 11 (providing for sanctions and stating that attorneys certify that motions, pleadings, or other papers are to the “to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances. . . (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.”); FED. R. APP. P. 28(a)(6), (e); *Davison*, 712 F.3d at 886 (dismissing appeal that did not include record citations); *Rodriguez-Machado*, 700 F.3d at 49 (dismissing appeal that did not include record citations).

³⁰² Cf. FED. R. EVID. 607, 613, 801(d)(1)(A). ??

³⁰³ See FED. R. EVID. 104(b), 106, 402, 601, 602, 607, 611 613, 614 802, 901, 1002 (establishing rules regarding who can testify, what they can testify to, how their testimony can be impeached, and what other evidence can be admitted).

³⁰⁴ See FED. R. EVID. 601, 602, 607, 611 613, 901, 1002 (establishing rules regarding who can testify, what they can testify to, how their testimony can be impeached, and how photos and documents must be authenticated).

³⁰⁵ FED. R. EVID. 607, 613.

Trump's opponents did so in *Aziz* by using his own videotaped statements, Rudolph Guiliani's videotaped statements, and the statements on Trump's own website.³⁰⁶ While the defense asserted that the court could not infer an anti-Muslim animus in the travel ban, Trump's statements referring to the order as a "Muslim ban" contradicted that position.³⁰⁷ Trump could not call these statements "fake news" because they were authenticated recordings and materials on his own website.³⁰⁸ Moreover, in *IRAP II*, the court actually quoted and labeled Trump's Pershing legend as apocryphal and anti-Muslim.³⁰⁹

In addition to losing whatever advantage Trump may have achieved with dishonesty, Trump also lost the ability to drown out the opposition with widespread dissemination of his message. In a court case, both sides get to introduce evidence, and no computer algorithm favors evidence on one side in a court case.³¹⁰ Page limits and rules of evidence prevent parties from drowning the opposition's voice, and bots cannot intervene in a suit.³¹¹ Thus, both sides can evenly present evidence.

While Trump's attorneys could still repeat concepts throughout briefs, motions, and petitions, Trump's previously successful short sound bites bit him back in some of these cases.³¹² The persuasive force of these soundbites was that they appealed to an audience already primed to fear Muslims.³¹³ However, the biased nature of these statements worked against the order because those who believe in the Establishment Clause³¹⁴ values also recognized the bias. The court in *Aziz* relied on Trump's own statements in determining that an anti-

³⁰⁶ *Aziz*, 234 F. Supp. 3d at 730-1, 736-7.

³⁰⁷ *Aziz*, 234 F. Supp. 3d at 736; see also Eugene Scott & Ariane de Vogue, *Trump Says He's Calling it a 'Travel Ban'*, CNN (June 5, 2017, 2:58 PM), <https://www.cnn.com/2017/06/05/politics/trump-travel-ban-courts/index.html>.

³⁰⁸ *Aziz*, 234 F. Supp. 3d at 736; see also Noah Bierman, *Donald Trump's Muslim Ban Was Removed from His Website, But it's Back*, L.A. TIMES (Nov. 10, 2016, 1:41 PM), <http://www.latimes.com/nation/politics/trailguide/la-na-updates-trail-guide-so-what-s-the-deal-with-donald-trump-s-1478812963-htmlstory.html>.

³⁰⁹ *Int'l Refugee Assistance Project*, 2018 WL 894413, at *15.

³¹⁰ FED. R. EVID. 611; MICHAEL H. GRAHAM, 5 HANDBOOK OF FED. EVID. § 611:3 (8th ed. 2017).

³¹¹ *Id.*

³¹² See *Aziz*, 234 F. Supp. 3d at 736 (finding that Trump's statements established an anti-Muslim animus).

³¹³ See Corbin, *supra*, note 89 at 475; cf. Nessel, *supra* note 68 at 525 (discussing how Trump tapped into stoked fear); Nida Khan, *Calculated Anti-Muslim Tweets*, US News (Nov. 30, 2017, 7:00 AM), <https://www.usnews.com/opinion/civil-wars/articles/2017-11-30/donald-trump-further-islamophobia-by-retweeting-anti-muslim-propaganda>

³¹⁴ See U.S. CONST. amend. I. For a recognition of the bias, see, e.g. *Aziz*, 234 F. Supp. 3d at 736.

Muslim animus fueled the EO and demonstrated a likelihood of success on the Establishment Clause claim.³¹⁵

That is not to say that sound bites cannot be effective in legal writing when they are consistent with a legally tenable theory. However, they work best for opening lines, headings, topic sentences, and closing lines.³¹⁶ From there, the attorney must supply more substance and depth. Even judges who lean black and white in their thinking cannot change the channel to NCIS in the middle of reading a brief or hearing an oral argument in such a high profile case.³¹⁷ It is still just as important to prime judges with themes and sound bites as it is to prime a lay audience.³¹⁸ However, once tasting an amuse bouche, a judge, particularly a Federal Judge, still wants the whole meal.³¹⁹

Instead of filling the table with savory substance, in the earlier cases, Trump's framing intensifiers merely drove home the idea that the order was rooted in religious bias. The courts quoted some of Trump's intensifier statements. "[N]o, it's not the Muslim ban. But it's countries that have *tremendous* terror. . . ."³²⁰ He initially called for "a *total* and *complete* shutdown of Muslims entering the United States until our country's representatives can figure out what is going on."³²¹ In *IRAP II*, the court noted that Trump wished to return to "the original Travel Ban," rather than "the *watered down, politically correct* version they submitted to [the Supreme Court]."³²² The possible harm done by these intensifiers may be consistent with Professor Lance

³¹⁵ *Aziz*, 234 F. Supp. 3d at 736.

³¹⁶ See BEAZLEY, *supra* note 21 at 155-7, (discussing how point headings are concise statements of the writer's best points); BRYAN A. GARNER, LEGAL WRITING IN PLAIN ENGLISH 65-8 (The Univ. of Chicago Press 2001)(describing topic sentences as basic units of thought); Cathren Koehlert-Page, *Not So Very Bad Beginnings: What Fiction Beginnings Can Teach Lawyers*, 86 MISS. L.J. 315 (2017); ROBBINS, *Supra* note 82 at 200 (discussing how headings "chunk" the information).

³¹⁷ A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY, Model Code of Judicial Conduct Canon 2, Model Code of Judicial Conduct Canon 2, Rule 2.6(A) ("A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.").

³¹⁸ See generally Chris Guthrie et al., *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1 (2007); see also Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305 (2010); Steven J. Johansen, *Coming Attractions: An Essay on Movie Trailers & Preliminary Statements*, 10 LEGAL COMM. & RHETORIC: JALWD 41, 43-44 (2013) (describing studies that show that people make lasting first impressions and filter other information through their first impressions); Edmund Ursin, *How Great Judges Think: Judges Richard Posner, Henry Friendly, and Roger Traynor on Judicial Lawmaking*, 57 BUFF. L. REV. 1267 (2009); Koehlert-Page, *supra* note 316.

³¹⁹ See KRISTIN CONRAD ROBBINS TISCIONE, RHETORIC FOR LEGAL WRITERS 218-20 (West 2009)(discussing the meat that goes into legal paragraphs).

³²⁰ *Hawai'i*, 241 F. Supp. 3d at 1126 (emphasis added).

³²¹ *Aziz*, 234 F. Supp. 3d at 730.

³²² *Int'l Refugee Assistance Project*, 2018 WL 894413, at *15.

Long's study that shows that intensifiers appear far more frequently in losing briefs and petitions; it is unclear whether people simply use intensifiers when they are already losing or the intensifiers cause the loss.³²³

Likewise, the symbols Trump used may have hurt him in these earlier cases as well. In *IRAP II*, the court noted that Trump retweeted an anti-Muslim video entitled, "Muslim Destroys a Statue of Virgin Mary!"³²⁴ This title reeks of Muslim versus Christian symbolism. Mary represents the Christian faith, purity, and innocence. Her destruction at the hands of an alleged Muslim symbolizes Muslim destruction of innocent Christians.

Trump also could not distract from the issue by changing the subject to North Korea,³²⁵ football protests,³²⁶ or wiretapping.³²⁷ The relevance rules only allow evidence relevant to the legal issue at stake.³²⁸

Trump's defense did try to scapegoat Barack Obama, a recurrent, never-dying foe. The defense argued that the Obama's administration had singled out the same countries for stricter vetting.³²⁹ However, this scapegoating failed because the court did not analyze the case in a black and white fashion; rather, it engaged in the nuanced approach required by precedent³³⁰ and examined the purpose behind the law in an Establishment Clause claim.³³¹

³²³ Long, *supra* note 164, at 172. Even before I became a writing Master of Fine Arts, a Legal Writing Professor, and an Applied Legal Storytelling scholar, I cringed upon reading intensifiers except where they were used in satire. I personally find them to be a "corny," telling way of writing as opposed to a showing way of writing. I am not alone. In the MFA program, professors expressed distaste for adverbs and intensifiers. In various writing critique groups, my studied critique partners and I have laughed about how satire has nailed a childlike voice by using intensifiers in narratives with either child narrators or immature narrators. In contrast, I have sometimes heard law students express admiration for intensifiers in other students' work or in professors' work, and some popular fiction works contain intensifiers. Thus, intensifiers may fall within the stylistically questionable range of techniques; they repel some audiences while appealing to others.

³²⁴ *Int'l Refugee Assistance Project*, 2018 WL 894413, at *15.

³²⁵ Jack Moore, *Muslim Ban No More? Trump Battles Accusation by Adding 'Rogue States' to Travel Ban*, NEWSWEEK (Sep. 25, 2017, 10:53 AM), <http://www.newsweek.com/muslim-ban-no-more-trump-changes-adds-rogue-states-travel-ban-670219>.

³²⁶ Timothy Egan, *A Method to the Madness: Trump's Fog Machine*, N.Y. TIMES, Sep. 30, 2017, at A22.

³²⁷ Richard Wolfe, *Out of Control? Or is Trump's Tweeting Designed to Distract?*, GUARDIAN (Mar. 4, 2017, 12:33 EST), <https://www.theguardian.com/us-news/2017/mar/04/donald-trump-tweeting-designed-to-distract-russia-obama>.

³²⁸ FED. R. EVID. 401, 402.

³²⁹ *Aziz*, 234 F. Supp. 3d at 736.

³³⁰ See *Aziz*, 234 F. Supp. 3d at 736 (taking a nuanced approach in explaining that precedent provided that the purpose behind the law matters regardless of whether the law shares similarities with other measures with sectarian heritage).

³³¹ *Id.*

Trump's defense also could not scapegoat opposing counsel or make ad hominem attacks.³³² Those approaches would be irrelevant and potentially sanctionable.³³³

After suffering losses, Trump tried to scapegoat and discredit the courts themselves.³³⁴ He called the judge who initially temporarily enjoined the travel ban a “so-called judge.”³³⁵ Trump tweeted that he “[j]ust cannot believe a judge would put our country in such peril. If something happens blame him and court system. People pouring in. Bad!”³³⁶ Though these attacks will not change the court rulings, some have expressed concern that President Trump is attempting to delegitimize the courts and usurp greater authority.³³⁷

Aside from scapegoating the judge, Trump's defense did attempt to scapegoat Muslims creating a powerful antagonist, to invoke the stereotypical Muslim-terrorist archetype, and to raise the stakes. The first order itself states a policy of protecting citizens from “foreign nationals who intend to commit terrorist attacks.”³³⁸ The defense asserted to the court that the order was necessary to protect the United States from these terrorist attacks.³³⁹

However, these initial approaches failed with some courts again due to fact-checking, and the courts' ability to examine a full color spectrum as opposed to black and white propositions. In *Aziz*, ten national security professionals provided contrary evidence; the only evidence existing on the record.³⁴⁰ These professionals hailed from the highest levels of the Department of State and national security agencies through both Republican and Democratic administrations.³⁴¹ They explained that: 1) they lacked awareness of any specific threat justifying the travel ban; 2) they believed the order ultimately undermined United States security; and 3) national security and

³³² See FED. R. EVID. 403; *Eagan*, 271 F. Supp. at 996 (labeling insults to witnesses and counsel as inappropriate and prejudicial); see also *Walden*, 846 F. Supp. 2d 963 (labeling this kind of conduct as unethical); *Matthews*, 358 N.C. at 110-112; 28 U.S.C. § 1927 (2012); FED. R. CIV. P. 11; see also *Coats*, 890 F.2d at 734 (“Abusive language toward opposing counsel has no place in documents filed with our courts; the filing of a document containing such language is one form of harassment prohibited by Rule 11”); *Unique Concepts, Inc.*, 115 F.R.D. at 293 (sanctioning counsel for “abusive ad hominem attacks on opposing counsel”).

³³³ FED. R. CIV. P. 11(c).

³³⁴ *Schultz*, *supra* note 43.

³³⁵ *Norton*, *supra* note 43.

³³⁶ *Id.* at 551-2.

³³⁷ *Siegel*, *supra* note 234, at 1244-45.

³³⁸ Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

³³⁹ See *id.*

³⁴⁰ *Aziz*, 234 F. Supp. 3d at 729.

³⁴¹ *Id.*

foreign policy grounds did not justify the order.³⁴² In fact, since September 11, 2001, not one alien from any of the countries listed in the order had perpetrated an attack in the United States, and the security professionals swore to this proposition.³⁴³

The petition for writ of habeas corpus in an initial Travel Ban case, *Darweesh v. Trump*, further underscored the idea that the order actually threatens Americans.³⁴⁴ Hameed Darweesh worked for the United States military.³⁴⁵ Iraqis targeted him and threatened him due to his alliance, and the United States granted him a visa as a result.³⁴⁶ If the United States does not protect its allies, it's likely not to have any. Moreover, Darweesh, the ally, the real person, undermined the stereotypical concept the powerful Muslim-terrorist antagonist.

Because Trump's attorneys could not embellish the facts or include unproved details, the opponents beat him in the game of verisimilitude. Trump could not insert unproved details.

His opponents' details in *Darweesh* in particular established verisimilitude. In their petition for writ of habeas corpus, Mr. Darweesh's attorneys listed the details, dates, and locations for all of the work that Mr. Darweesh performed for the U.S. Military.³⁴⁷ Then they included the following passage:

Mr. Darweesh was directly targeted twice for his association with the U.S. Armed Forces. While working at the Baghdad Airport between 2004 and 2005, the Baghdad Police entered his house, claiming they were searching for a terrorist. The Baghdad Police are widely known to be closely affiliated with anti-American militias. Shortly after this incident, two of Mr. Darweesh's colleagues were killed as soon as they arrived at work. As a result of these attacks, Mr. Darweesh feared for his safety and decided to leave Baghdad for Kirkuk.

³⁴² *See id.*

³⁴³ *See id.*

³⁴⁴ Petition for Writ of Habeas Corpus, *Darweesh v. Trump*, No. 1:17-cv-00480 (E.D.N.Y. Jan. 28, 2017), 2017 WL 393446; Scott Shane, *Visceral Fear, Dubious Cure*, N.Y. Times, Jan. 29, 2017, at A1.

³⁴⁵ *See generally* Petition for Writ of Habeas Corpus, *Darweesh v. Trump*, No. 1:17-cv-00480 (E.D.N.Y. Jan. 28, 2017), 2017 WL 393446; Kaila C. Randolph, *Executive Order 13769 and America's Longstanding Practice of Institutionalized Racial Discrimination Towards Refugees and Asylum Seekers*, 47 STETSON L. REV. 1 (2017).

³⁴⁶ Petition for Writ of Habeas Corpus, *Darweesh v. Trump*, No. 1:17-cv-00480 (E.D.N.Y. Jan. 28, 2017), 2017 WL 393446.

³⁴⁷ *Id.*

In the second instance, in July 2009, Mr. Darweesh was stopped at a market in Kirkuk where he was informed by a local shopkeeper that men were driving around in a BMW asking for him by name and the location of his house. These men returned a second time the following week, and Mr. Darweesh had strong reasons to suspect that the men searching for him were terrorists. As a result, Mr. Darweesh and his family were forced to flee to a different area of Iraq, Erbil.³⁴⁸

The specific dates, jobs, and cities help readers to fill in the blanks with scenes they have viewed before. Then the attorneys took readers from the city to inside Mr. Darweesh's home. For a moment, readers catch a glimpse of real time as the police enter Mr. Darweesh's residence. Again, the attorneys repeat specific locations. These concrete details lend a sense of reality to the story.

The second paragraph includes even more specifics to help readers visualize the scene. Readers see pictures when they read words like "shopkeeper," "the market," and "BMW." Readers are momentarily in real time again, following Mr. Darweesh as he is accosted at the market and as the shopkeeper gives him information.

Rather than vaguely threatening terrorism, the attorneys detail at least two particular instances in which Mr. Darweesh feared death; two of his colleagues later died as a result of those incidents. Mr. Darweesh was so scared that he fled to Kirkuk, then to Erbil, and finally to the United States.

As readers envision Mr. Darweesh moving through his life, he becomes a real human-being and not some bomb-wielding stereotype. The attorneys create an aura of reality. In fact, readers primed to see Iraq as a hazardous country might view the threats as even more real and vivid.

Thus, in several of these cases, Trump's sound bites and his sweeping stereotypical assertions and stakes drowned in his opponent's concrete and accurate details.

Despite these losses, Trump ultimately succeeded with enough justices on the final travel ban case before the Supreme Court of the United States. He did so in part by changing the audience. He

³⁴⁸ *Id.* at 3.

appeared before a different set of justices than he had before. These justices now included one of his own recently hand-picked appointees, Neil Gorsuch, who occupied the seat that would have been held by Merrick Garland had the Senate confirmed him. The Court's majority consisted of justices appointed by Republican presidents, and the decision was divided along those party lines.

However, he still likely would not have succeeded with a majority of justices had he also not relied on his greatest strength, adapting to his audience. In several previous iterations of the travel ban case, his legal team had relied on bald assertions regarding the order's necessity for national security.³⁴⁹ Experts contradicted these assertions and showed that in fact the order increased risk.³⁵⁰ Unable to turn to President Trump's legal documents for evidence regarding the reasons for the order, the courts relied on his out-of-court statements indicating a discriminatory animus.³⁵¹ In response to these losses, the Trump administration changed its approach.

The administration established criteria for review countries for security threat, conducted a "worldwide review," and provided data-based reasons supporting their national security argument.³⁵² While it's possible to attack his administrations' reasoning, the argument now had verisimilitude springing from these details and true facts as opposed to stereotypes and lies.

The administration developed a security-based list of criteria for review of foreign countries.³⁵³ They assessed security risk indicators as well as the country's information-sharing practices and requested that countries change their practices.³⁵⁴ The two pages created verisimilitude with their rich details regarding the different criteria, the varying results of the review, and the administrations' response.³⁵⁵

Not only did the decision-making process become more verisimilar, but the order itself also became less black and white and more nuanced, an approach more likely to resonate with a critically examining legal audience. Some justices still saw the order as fueled by a discriminatory animus.³⁵⁶ However, in the lead opinion the Court applied a rational basis review to the Establishment Clause claim to

³⁴⁹ See, e.g., *Aziz v. Trump*, 234 F. Supp. 3d 724, 729, 738 (E.D. Va. 2017).

³⁵⁰ See *id.*

³⁵¹ See, e.g., *id.*

³⁵² *Trump v. Hawaii*, 138 S. Ct. 2392, 2404–07 (2018).

³⁵³ *Id.* at 2404–5.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.* at 2423–24 (Kennedy, J., dissent).

determine that the administration did not violate the clause.³⁵⁷ The changes provided some support for that position. The order added two non-Muslim majority countries, North Korea and Venezuela, subtracted Somalia, and reduced restrictions on Iraq.³⁵⁸ For each country it also created different visa categories and criteria based on the administration's review.³⁵⁹ The Court decided the order was facially neutral towards religion.³⁶⁰

The Trump administration's storytelling approach sealed this decision. It primed its audience with by including references to terror-risks.³⁶¹ In it's brief, it created verisimilitude around that fear by peppering its brief with references to "a state sponsor of terrorism," "heightened terrorism concerns," "dangerous individuals [entering the country]," "active conflict zones," and the like.³⁶² It also seeded in a fear of erasing the separation of powers and exceeding judicial authority by forwarding the argument that decisions regarding entry of foreign nationals may implicate "'relations with foreign powers.'"³⁶³ Thus, the Court found that it must exercise restraint regarding a matter more suited to the Legislature or the Executive.³⁶⁴ Accordingly, the Court held that it must apply the deferential rational basis review to determine whether the entry policy was plausibly related to the government's stated legitimate objective, protecting the country.³⁶⁵

Thus, the administration found a legal means of muting the counter-narrative and reducing the fact-checking impact regarding Trump's motivations. The administration succeeded in limiting the reviews' scope to the order itself and rendered largely irrelevant the previous Trump narrative rife with the weaknesses noted above. Ultimately, Trump could have his cake and eat it too; he could make discriminatory statements that appealed to anti-Muslim voters while speaking out of the other side of his mouth to the Court to express a seemingly non-discriminatory position.

Though Trump changed his audience and adapted to audience with the help of his team, the weaknesses in his narrative still repelled the justices appointed by Democratic presidents. Justice Breyer's

³⁵⁷ *Id.* at 2420-23.

³⁵⁸ *Trump v. Hawaii*, 138 S. Ct. 2392, 2404–05 (2018).

³⁵⁹ *Id.* at 2404-6.

³⁶⁰ *Id.* at 2418.

³⁶¹ *Id.* at 2404; Brief for Pet., *Trump v. State of Hawaii*, 2018 WL 1050350, at 5 (U.S. 2018).

³⁶² *Id.*

³⁶³ *Trump v. Hawaii*, 138 S. Ct. 2392, 2419 (2018).

³⁶⁴ *Id.*

³⁶⁵ *Id.* at 2417-20.

dissent focused on fact-checking the proclamation's purported waiver positions against the reality regarding actual failures to apply the waiver.³⁶⁶ Here the potential dishonesty regarding the waiver's application served as a weakness in a narrative already rife with verisimilar details regarding the President's discriminatory statements. Because the detailed list of statistics and anecdotes came from amicus briefs, Breyer would have remanded the case for further fact-finding to determine whether the administration was applying in proclamation with religious animus.³⁶⁷

In fact-checking, President Trump's own words seemed to persuade Justice Sotomayor that the policy violated the Establishment Clause. In the first paragraph of her dissent, she quoted the president's statement regarding a "total and complete shutdown of Muslims entering the United States."³⁶⁸ Justice Sotomayor then extensively detailed the President's anti-Muslim quotes and stories starting from his campaign on into his presidency.³⁶⁹ Justice Sotomayor noted that Establishment Clause cases called for a more stringent standard of review, but found that even under rational basis review the President's statements overwhelmed the policy's national security façade.³⁷⁰ She saw the broad policy as intricately connected to the President's statements and set aside the legal fiction that had vaunted the proclamations' text over the President's own words.

Thus, in the travel ban cases, the biggest strengths that have sealed Trump's wins before the courts have been: 1) his ability to change the audience, 2) his ability to adapt to the audience, 3) his determination to find a means of muting counter-narratives; 4) his inclusion of verisimilar details; 5) his use fear to prime his audience; and 6) even his use of a powerful seeming super-villain, the terrorist.

In contrast, his biggest weaknesses before the courts are: 1) his resorts to stereotyping; 2) his black and white solutions; 3) his dishonesty; 4) his scapegoating; and 5) his bullying.

³⁶⁶ *Id.* at 2429 (Breyer, J. dissenting).

³⁶⁷ *Id.* at 2433 (Breyer, J. dissenting).

³⁶⁸ *Trump v. Hawaii*, 138 S. Ct. 2392, 2433 (2018) (Sotomayor, J. dissenting).

³⁶⁹ *Id.* at 2435-38 (Sotomayor, J. dissenting).

³⁷⁰ *Id.* at 2441 (Sotomayor, J. dissenting).

VI. CONCLUSION

Trump did do "so much winning,"³⁷¹ and some Americans got "sick and tired"³⁷² of it. However, many of his sound bites also bit him back at times. He may not have lost to China yet, but he's lost some court battles and some voters while still managing to accomplish some of his stated objectives.

Though many factors affect Trump's "wins," his superhero-storytelling techniques aided him "bigly."³⁷³ However, aspects of those techniques as well as his ethically questionable techniques and gaffes also made him a "loser"³⁷⁴ at times.

Those who persuade or campaign can learn much both from his ethical, successful techniques and from the cautionary tale of his failures. In the follow-up to this article, I will be further examining the superhero approach in Trump's narratives, using others' past campaigns to reveal how advocates for truth and equality can ethically combat discriminatory or unsound narratives with their own superhero approaches, and discussing how to respond to unethical muting of the counter-narrative.

The wheels of justice and politics may turn slowly, and legal battles are fought on a variety of fronts before a variety of audiences. However, a true and fair story told well may ultimately be faster than a speeding bullet, more powerful than a locomotive, and able to leap tall buildings in a single bound.

³⁷¹ See generally Robert Schlesinger, *So Much Winning*, U.S. NEWS (Sept. 29, 2017, 6:00 AM), <https://www.usnews.com/opinion/articles/2017-09-29/so-much-winning-under-trump-whos-proving-to-be-a-big-loser>.

³⁷² *Id.*

³⁷³ *Who, What, Why: Did Donald Trump use the Word 'Bigly'?*, BBC, Sep. 27, 2016, <http://www.bbc.com/news/magazine-37483869>.

³⁷⁴ Jessica Estepa, *From 'Rocket Man' to 'Loser Terrorists,' Donald Trump Brings His Signature Phrases to United Nations Speech*, USA TODAY (Sep. 19, 2017, 1:45 PM), <https://www.usatoday.com/story/news/politics/onpolitics/2017/09/19/rocket-man-loser-terrorists-here-donald-trumps-signature-p-brings-rally-rhetoric-united-nations-speech/681092001/>.