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March 10, 2023

Jocelyn E. Strauber
Commissioner
New York City Department of Investigation
180 Maiden Lane, 16th Floor
New York, New York 10038

**Re: Weaponization of the New York County District Attorney's Office
Against President Donald J. Trump**

Dear Commissioner Strauber:

My firm represents President Donald J. Trump, and I submit this letter calling for an independent investigation into the unprecedented multi-year probe of President Trump by the New York County District Attorney's Office's ("NYDA").

As revealed in Mark Pomerantz's unethical book, *People vs. Trump: An Insider's Account*, since at least 2019, the NYDA has weaponized its office, scouring every aspect of President Trump's personal life and business affairs, going back decades, in the hopes of finding some legal basis – however far-fetched, novel or convoluted – to prosecute him in an effort to interfere with and disrupt his political ambitions. When one legal theory would not pan out, instead of discontinuing its politically motivated investigation, the NYDA simply pivoted to a new theory, because it was determined to identify some alleged crime – indeed, any alleged crime – it thought it could get away with prosecuting.

These actions, constituting prosecutorial misconduct, are a blatant and unconstitutional attempt to interfere with a Federal election by attempting to prosecute President Trump to make him unable to run for re-election. Rather than let the American voters choose their next President, the NYDA has decided that it knows better and has attempted to short-circuit the electoral process and take matters into its own hands. In short, over the past five years, the NYDA has targeted for criminal prosecution President Trump due to the prosecutors' political animosity towards him. And, notably, it has done so utilizing extraordinary New York City resources.

The Department of Investigation should investigate this patently political prosecution, at the unwarranted expense of this City. In particular, your department should investigate the motives

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and actions of the former lead prosecutors, former District Attorney Cyrus Vance, former NYDA General Counsel Carey Dunne, and former Special Assistant District Attorney Mark Pomerantz; as well as the current prosecutors, including District Attorney Alvin Bragg; and the office of the NYDA generally, all of whom have engaged in the political weaponization of the criminal justice system. There was never any doubt, and Prosecutor Pomerantz's book makes this more apparent than ever, that the ongoing investigation by the NYDA of former President Trump represents corruption of our criminal justice system and a threat to our democracy.

The NYDA's corrupt conduct is set forth below, which necessitates an immediate and thorough investigation by your department of New York investigators.

A. Pomerantz, Dunne, and Vance's Animus Towards President Trump

Prosecutor Pomerantz's book makes abundantly clear that the NYDA has sought to prosecute President Trump purely for personal and political reasons. Indeed, the evidence that Pomerantz, Dunne, and Vance hated President Trump and weaponized their office by singling him out for targeted prosecution is overwhelming, as shown by the following:

- Prosecutor Pomerantz reveals that in 2019, Cyrus Vance and Carey Dunne were frustrated with the inability of the NYDA's career Assistant District Attorneys ("ADAs") to put together a criminal case against President Trump. According to Pomerantz, Vance and Dunne had formed a "brain trust" of outside lawyers who were not in any way employed by or affiliated with the NYDA with whom Vance and Dunne consulted about the Trump investigation. Pomerantz, a retired partner of the Paul Weiss law firm, was asked to join this brain trust.¹ Pomerantz was "delighted" to do so. (p. 6).
- After President Trump's term began in 2017, Dunne asked Pomerantz if he would like to come to work at the NYDA as an ADA tasked *solely* with investigating President Trump. Pomerantz's discussion of this offer reveals his immense dislike, both personally and politically, of President Trump and the thrill he felt in being given the opportunity to try to find a way of bringing a criminal case against him. Pomerantz writes that when he told his wife that he had accepted a position as an ADA with the job of doing nothing but investigating and trying to indict President Trump, his wife asked whether he had negotiated a salary. Pomerantz replied that he was not getting paid anything, but this was still a good deal for him because *he*

¹ Initially, Vance and Dunne approached Prosecutor Pomerantz about charging President Trump with making false statements on property tax petitions for allegedly understating the value of his buildings in order to lower his property taxes. This radical idea collapsed, however, when the New York City Law Department advised the NYDA that it was standard practice for New York City real estate owners to submit lowball numbers when challenging property taxes and that the City did not view itself as defrauded.

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would have paid the District Attorney's Office for the opportunity to prosecute President Trump. (p. 21).

- Prosecutor Pomerantz betrays a record of extreme partisanship. Indeed, beyond taking a leave of absence from Hillary Clinton-tied law firm Paul Weiss, to toil on the case against President Trump pro bono, he donated thousands of dollars to Federal candidates, including Barack Obama, Hillary Clinton, Hakeem Jeffries, Andrew Cuomo, and Chuck Schumer, over the years. All of the candidates for Federal office that Pomerantz supported financially have been members of the Democratic Party.
- Prosecutor Pomerantz admits that he volunteered thousands of hours of his time, working day and night, pouring through hundreds of thousands of documents, and canceling vacations, all to try to figure out if some convoluted legal theory could be used to bring a criminal case against President Trump.
- Prosecutor Pomerantz boasts that when it first became public that he had been appointed an ADA with the specific task to investigate and prosecute President Trump, his friends called or emailed him, urging Pomerantz to “go get him.” (p. 1). In Pomerantz’s social circle, “getting” President Trump was prestigious.
- Prosecutor Pomerantz reveals his overwhelming contempt for President Trump when he equates President Trump with John Gotti. Pomerantz writes that when he started investigating President Trump, he believed that President Trump “would break the law for financial advantage ... was ruthless ... would not think twice about walking away from financial commitments ... [was] a bully who cultivated a reputation as a tough guy ... [was] cunning and at times charismatic... demanded complete loyalty and would go after anyone who crossed him ... [and] always seemed to stay one step ahead of the law.” *Of course, at the time, Prosecutor Pomerantz had just begun investigating and produced no actual evidence of any wrongdoing.* Ludicrously, Pomerantz compares President Trump, who has never been convicted of any crime, to convicted mob boss, repeated murderer, and racketeer John Gotti, writing that “[i]n my career as a lawyer, I had encountered only one other person who touched all these bases: John Gotti.” (pp. 108–9).
- Prosecutor Pomerantz later expanded on the depth of his animosity towards President Trump and made clear that his desire to prosecute him was because President Trump’s political views were different than Pomerantz’s “ideals,” writing:

“I had prosecuted and defended a lot of bad people: drug dealers, killers, mafia chieftains, corrupt cops, disgraced politicians, and con men of all shapes and sizes. Society had the obligation to deal with them, and my role was to make sure they were dealt with according to the law. Usually, dealing with these people did not generate much emotion. It was my job, and eventually we would all go our separate ways. *Trump was different*. He had been president, and he would have a continuing presence in the life of the country. *I saw him as a malignant narcissist, and perhaps a megalomaniac who posed a real danger to the country and to the ideals that mattered to me. His behavior made me angry, sad, and even disgusted.*” (p. 176) (emphasis added).²

As with Prosecutor Pomerantz, Carey Dunne’s own words reveal that he had targeted President Trump for political prosecution:

- When Prosecutor Pomerantz first began working at the NYDA, Dunne sent an email to the team working on the Trump investigation stating that no matter what happened, at the end, he would be able to say, “I know we’ve done all we could as lawyers and prosecutors to make a case if there is one to make.” (p. 31). In other words, Dunne had decided to do all he could to prosecute President Trump even before knowing if there was any crime committed at all.
- Since leaving the NYDA (which he did because the new District Attorney would not bring a criminal case against President Trump as quickly as he wanted), Dunne, along with Pomerantz, started a not-for-profit law firm. Dunne has said that one goal of this firm is to try to disqualify President Trump from running for President again and if he is on the ballot, they are “weighing ways” to bring a lawsuit alleging that President Trump is barred from holding a government position. <https://www.washingtonpost.com/nation/2023/01/11/new-york-lawyers-democratic/>

B. This Animus Was a Motivating Factor in The Scorched-Earth Effort to Investigate Every Aspect of Donald Trump’s Life and Find Some Way to Prosecute Him for Some Crime

Plainly, their own actions and/or words establish that Cyrus Vance, Carey Dunne, and Mark Pomerantz picked a person they hated for political reasons and targeted him for prosecution

² Prosecutor Pomerantz’s acknowledgement, in his own words, that prosecuting “Trump was different” from other cases he had prosecuted previously because President Trump “would have a continuing presence in the life of the country” and “posed a real danger to the country” is as astonishing as it is unprecedented and in and of itself provides sufficient basis for the Department of Investigation to look into this matter.

to harm his ability to run for national office. Indeed, so intent were these prosecutors on targeting President Trump that they impelled his former long-time 75-year-old chief financial officer, Allen Weisselberg, to plead guilty and accept 90-days in jail for not declaring for tax purposes certain business perks he received, by threatening him with 15 years in prison. For that matter, evincing its zealous intent to investigate and prosecute President Trump, the NYDA hired as senior counsel Matthew Colangelo, a former senior U.S. Department of Justice official who previously investigated President Trump.³

The unusual and outrageous nature of the ensuing investigation, which has been ongoing since at least 2017, and has used massive amounts of the District Attorney's Office's resources, can be seen from the following facts:

1. The Breadth of the Investigation

In his book, Prosecutor Pomerantz admits that the NYDA has investigated virtually every aspect of President Trump's personal and business life, including the following:

- Alleged payments to Stormy Daniels;
- President Trump and The Trump Organization's taxes;
- Whether President Trump and The Trump Organization allegedly defrauded its largest lender, Deutsche Bank;
- Whether President Trump's personal financial statements allegedly inflated the value of his real estate assets;
- Whether President Trump or The Trump Organization was allegedly involved in money laundering;
- The accuracy of information provided by President Trump and The Trump Organization to the General Services Administration as part of The Trump Organization's bid to convert the Old Post Office in Washington, D.C. to a luxury hotel;
- Allegations of insurance fraud;
- Restructuring of complex commercial real estate loans; and

³ <https://www.reuters.com/legal/manhattan-district-attorney-hires-senior-lawyer-who-has-probed-trump-2022-12-05/>

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- Accuracy of information given to other lenders. (p. 13).

In order to investigate these areas, the NYDA served countless subpoenas on The Trump Organization, its attorneys, accountants, lenders and other third party businesses associated with President Trump and The Trump Organization demanding the production of an endless array of documents, including, among other things, the following:

- Tax returns and accounting work papers prepared for President Trump and The Trump Organization (millions of pages of documents);
- Information about all attorneys ever hired by President Trump and The Trump Organization;
- Every appraisal for every building owned by President Trump and The Trump Organization;
- Information about former President Trump's children;
- Information about employees of The Trump Organization and its affiliated companies;
- Information regarding filings President Trump and The Trump Organization made with the Federal Government;
- Information regarding loans President Trump and The Trump Organization obtained from lenders;
- Information regarding virtually every building and virtually every business owned by President Trump and The Trump Organization;
- Information regarding President Trump's Financial Statements;
- Information regarding insurance;
- Information regarding finances of Trump Organization golf clubs and membership clubs; and
- Information regarding the Donald J. Trump Revocable Trust.

2. The Funding Sources

In an extremely unusual act, former District Attorney Cyrus Vance used settlement funds from a different case to pay outside consultants, including FTI Consulting, what we believe to be millions of dollars to investigate and analyze every aspect of President Trump's taxes and financial statements. Vance appears to have done this so that the tremendous amount of public money being spent on the Trump investigation could be hidden from public view. In fact, the NYDA has fought in court, so far successfully, to avoid having to disclose exactly how much it spent on outside consultants as part of its Trump investigation.

Even more unusual, the NYDA allowed private parties who harbored animosity towards President Trump to independently fund part of this investigation, allowing two private law firms, including Paul Weiss, to pay for three Assistant District Attorneys to work full time for the NYDA, solely on the Trump investigation.⁴

3. The NYDA's Insistence on Pursuing Charges Against President Trump Based on "Novel" Legal Theories

Prosecutor Pomerantz himself admitted that he attempted to dream up "novel" legal theories to prosecute President Trump. Thus, for example, Pomerantz reveals that the Stormy Daniels settlement was referred to as a "zombie case" because even though multiple prosecutors had decided that there was no case against President Trump, Prosecutor Pomerantz and his colleagues kept trying to bring the case back from the dead. (p. 46). Indeed, the NYDA had done a lot of work investigating the alleged facts involving Stormy Daniels, with whom President Trump did not have an affair, in 2019, even visiting convicted felon Michael Cohen, who pled guilty to lying to Congress, in prison on at least two occasions in 2019. (p. 39). This work also included hiring an outside law firm to research legal issues. At the end of 2019, however, the NYDA decided there was no valid basis for a case against President Trump based on the Stormy Daniels facts. Nonetheless, Prosecutor Pomerantz decided that he would resurrect this case by coming up with what he calls a "novel" criminal theory of charging President Trump with money laundering because he, as the victim of an alleged extortion, purportedly paid the alleged extortionist (Stormy Daniels) money. The other prosecutors who were working on the Trump investigation thought this was not a "novel" legal theory. Rather, they thought it was not a legal theory at all.⁵ Eventually, even Pomerantz conceded that his legal theory was meritless.

⁴ Pomerantz brags that these associates were the highest-paid people working at the NYDA. (p. 120).

⁵ This theory is so bizarre and frivolous that even Andrew Weissmann, who worked on the Mueller investigation and is deeply anti-Trump, described it on MSNBC as "incredible," "not great," and evidence of selective prosecution of President Trump.

After realizing that there was no criminal case to be made on the Stormy Daniels facts, Prosecutor Pomerantz began focusing on President Trump's Statements of Financial Condition (SOFC), which he believed, based on the claims of Michael Cohen, must be criminal. Again, Pomerantz advanced a legal theory which senior prosecutors in the office believed was fundamentally unsound. (p. 110).

Not only was Prosecutor Pomerantz's view of the law a radical departure from accepted New York State law, the case which Pomerantz proposed bringing against President Trump relied on the testimony of Michael Cohen, a convicted fraudster and perjurer who has made a living, since being released from prison, by attacking President Trump in books, podcasts, and television appearances. Other experienced prosecutors repeatedly stated that they did not believe that a criminal case should depend on Cohen, a person whom federal prosecutors in the Southern District of New York had labeled completely untrustworthy. (p. 158).⁶

4. Repeatedly Dismissing the Concerns of Experienced Senior Prosecutors

When senior prosecutors complained that Prosecutor Pomerantz's theory of criminality with respect President Trump's SOFC was invalid, Pomerantz ignored their views, dismissively referring to these other prosecutors as belonging to "the Chickenshit Club."

Prosecutor Pomerantz's determination to "get Trump" became so concerning to other NYDA prosecutors that there was a "mini revolt," in which other members of the legal team went to Carey Dunne to complain about Pomerantz's determination to indict. These prosecutors, who included Julieta Lozano, an extremely experienced and respected prosecutor who was Chief of the Major Economics Bureau, told Dunne that they did not believe that the evidence would ever justify a criminal case against President Trump. When their concerns were dismissed by Pomerantz, Dunne and Vance (Pomerantz dismissively claims that Lozano did not know the evidence), Lozano and one other person refused to have anything more to do with the ongoing investigation into President Trump. (pp. 159-161). In fact, as set forth in Pomerantz's book, Lozano resigned from the NYDA because she believed the office was unfairly pursuing President Trump.

Ignoring Lozano's concerns, Prosecutor Pomerantz continued to press forward and called a meeting of the investigative team to present his view of why the case should go forward. But once again, the most experienced career prosecutors expressed their concern. Chris Conroy, Chief of the Investigations Bureau, spoke at this meeting about his misgivings with the legal theory. Yet again, Pomerantz dismissed the views of the experienced ADAs, saying that they "did not display a lot of energy" and speculating that they were intimidated by President Trump. (p. 171).

⁶ <https://www.justice.gov/usao-sdny/pr/michael-cohen-pleads-guilty-manhattan-federal-court-eight-counts-including-criminal-tax>

5. The Failure of Pomerantz and Others in the NYDA to Put Aside Their Personal and Political Animus Towards President Trump

In his book, Prosecutor Pomerantz inadvertently reveals why so many of the career prosecutors at the NYDA did not believe there was a legitimate basis for a prosecution of President Trump. Pomerantz repeatedly expresses outrage at President Trump's behavior, such as President Trump's alleged involvement with Stormy Daniels, referring to the "venal and sordid nature of this conduct and the former president's willingness to engage in it." Because Prosecutor Pomerantz personally thought that President Trump's alleged behavior with Stormy Daniels was immoral and unethical, Pomerantz deemed it "criminal," while at the same time conceding that the law does not criminalize such conduct.⁷

Prosecutor Pomerantz therefore attempted to construct a criminal charge by twisting the law. This, however, is not the way that the criminal law works. The fact that conduct may, in the eyes of a prosecutor, be "immoral" or offend the sensibilities of others, does not make that conduct criminal. Thus, when discussing President Trump's SOFC, which Prosecutor Pomerantz believed overstated the value of his properties,⁸ Pomerantz writes that "*[e]veryone said they thought Donald Trump had committed serious criminal conduct, but they were concerned whether it fit within the strictures of New York's Penal Law*" (p. 192) (emphasis added). Again, in his zeal to get President Trump at any cost, Prosecutor Pomerantz ignored the basic legal principle that if behavior does not "fit within the strictures of New York's Penal Law," then it is not a crime.

C. Having Failed to Persuade Bragg to Bring a Criminal Case, Pomerantz Impermissibly Leaked Confidential Grand Jury Information With the Specific Purpose of (1) Forcing Bragg to Continue Investigating President Trump, and (2) Convincing the Public That President Trump is Guilty of Crimes with Which He Had Never Been Charged

Ultimately, after Cyrus Vance declined to run for re-election, Alvin Bragg was elected as the new District Attorney. But when Pomerantz and Dunne were unable to immediately convince Bragg that they had a valid legal theory for a criminal case against President Trump, Pomerantz

⁷ With respect to the Stormy Daniels case, Pomerantz shockingly writes as follows: "*I viewed it as serious criminal conduct, even though it seemed we could not thread the needle of NY's antiquated Penal Law to find an appropriate felony charge that was immune from legal challenges.*" (p. 61) (emphasis added).

⁸ Pomerantz spent months reviewing President Trump's SOFC and was outraged by what he believed was improper inflation of the value of assets. Pomerantz never understood that the SOFC were forward looking projections and not current valuations of the properties, even though the statements explicitly state as much.

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and Dunne quit in a fit of pique. Before leaving, Pomerantz warned Bragg that Pomerantz's resignation was going to reflect poorly on Bragg in the court of public opinion. In order to insure that would occur, and in an attempt to force a criminal case to be brought against President Trump, Pomerantz wrote and then apparently leaked his resignation letter, which was full of lies and misleading statements.

Pomerantz then proceeded to publish his book and appear on numerous television shows and blogs to discuss the NYDA's investigation and convince the public that President Trump is guilty and should have been prosecuted. In doing so, Pomerantz had not only irreparably tainted and prejudiced the investigation but committed a multitude of ethical violations.⁹

D. The NYDA's Ongoing Efforts to Resurrect The "Zombie Case" Yet Again

Despite the fact that Pomerantz, Dunne and Vance have all left the office, the NYDA's selective prosecution and targeting of President Trump for personal and political reasons has continued with as much fervor as before. According to published reports, the focus of the NYDA's current investigation appears to be the so-called "zombie case" involving allegations that President Trump and/or his company falsified records of payments to Ms. Daniels in an effort "to hide the payout from voters days before the 2016 election" in violation of state or federal campaign laws – the very same case that even Prosecutor Pomerantz ultimately concluded was meritless.¹⁰

To say such prosecution would involve "novel" legal theories would be an understatement. Indeed, even the New York Times has described the potential charges as involving "a low-level felony charge that would be based on a largely untested legal theory."¹¹ The only previous time the government tried to prosecute this type of case was against former U.S. senator and vice-presidential candidate John Edwards in 2012. While that that case ended in a hung jury, legal

⁹See New York's Rules of Professional Conduct, Rule 3.6(b) (a "statement ordinarily is likely to prejudice materially an adjudicative proceeding when it refers to a civil matter triable to a jury, a criminal matter or any other proceeding that could result in incarceration, and the statement relates to" ... "any opinion as to the guilt or innocence of a defendant or suspect in a criminal matter that could result in incarceration."); ABA Model Rules for Prosecutors, Rule 3-1.7(f) ("[t]he prosecutor should not permit the prosecutor's professional judgment or obligations to be affected by the prosecutor's personal, political, financial, professional, business, property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case."); New York Penal Law § 215.70 (a "person is guilty of unlawful grand jury disclosure," a Class E Felony, when "a public prosecutor ... or other public servant having official duties in or about a grand jury room or proceeding ... intentionally discloses to another the nature or substance of any grand jury testimony, or any decision, result or other matter attending a grand jury proceeding which is required by law to be kept secret.").

¹⁰ <https://www.nytimes.com/2023/01/30/nyregion/trump-stormy-daniels-grand-jury.html>

¹¹ *Id.*

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experts excoriated the government for prosecuting the case in the first place, calling it “ill-advised,” describing the legal standards as “murky,” “expansive and unprecedented,” and stating that, if the government wants to prosecute this kind of conduct, “they need to change the law.”¹² As former Federal Election Committee Chairman Bradley Smith explained at the time: *“Government officials should not be stretching laws beyond their normal meaning to get people just because they don’t like those people, because they want to get a nice scalp.”*

Sadly, ten years later, that appears to be exactly what the NYDA is trying to do once again.¹³ Whether the current District Attorney, Alvin Bragg, ultimately succumbs to the political pressures that have been placed on him by the public and his former colleagues and brings formal charges against President Trump remains to be seen. But what cannot be disputed is that by proceeding down the same winding road in search of a crime for personal and political reasons, the NYDA is flagrantly abusing its sacred authority and dishonoring its mantra of “One Standard of Justice for All.”¹⁴

E. Conclusion

As recently stated in a February 3, 2023 letter from the Association of Prosecuting Attorneys to the NYDA:

[P]rosecutors hold an office of public trust and have an obligation to preserve the presumption of innocence for every citizen until the facts and evidence have been presented to a judge or jury, who are the only parties allowed in our system of justice to declare guilt. In addition to prejudicing the rights of a defendant to an impartial trial, any public disclosure of confidential communications can improperly influence the future jurors or judges who may later be asked to decide the guilt of defendant. Consequently, extrajudicial statements by persons associated with a case are frequently used to support defendant’s motions to change the venue of court proceedings to jurisdictions untainted by these prejudicial statements and even to dismiss the case when change of venue cannot relieve the taint.

¹² <https://www.politico.com/story/2012/04/legal-experts-question-theory-of-edwards-case-075563>

¹³ See, e.g., <https://www.cnn.com/2023/01/13/politics/trump-organization-investigation-timeline-alvin-bragg/index.html> (“Investigations into the Trump Organization’s business practices are entering a new chapter and will ‘go as long as the facts and the law require,’ Manhattan District Attorney Alvin Bragg told CNN on Friday”); <https://www.cnn.com/2022/12/06/politics/trump-organization-fraud-trial-verdict/index.html> (Following the conviction of the Trump Organization, DA Bragg appeared on CNN. “When asked on ‘CNN This Morning’ Wednesday why charges weren’t brought against the former president, Bragg said the investigation is ongoing. ‘This was a chapter in it. A case against the corporations,’ Bragg said.”)

¹⁴ <https://www.manhattanda.org/>

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Based upon the foregoing, we call upon the Department of Investigation to conduct a full and fair investigation into the conduct of Messrs. Pomerantz, Dunne and Vance, the current prosecutors, including District Attorney Alvin Bragg, and the office of the NYDA generally to determine whether and to what extent they have improperly weaponized their office for political gain – at the extraordinary expense of New York City – in an effort to undermine a future Federal election and push their own personal, political agenda to the detriment of American citizens.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Joseph Tacopina", with a stylized flourish extending to the right.

Joseph Tacopina