



March 7, 2022

VIA ELECTRONIC MAIL: [REDACTED]

Hamilton P. Fox, III  
Office of Disciplinary Counsel  
Board of Professional Responsibility  
District of Columbia Court of Appeals  
515 5th Street NW Building A, Suite 117  
Washington, DC 20001

Dear Mr. Fox:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections.

We write to request that the Office of Disciplinary Counsel investigate the conduct taken by Joseph diGenova relating to a concerted effort to overturn the legitimate 2020 presidential election results and his direct action in seeking to incite violence against public officials.

Mr. diGenova served as a lawyer and advisor to Donald Trump and his presidential campaign, working alongside Rudy Giuliani, Sidney Powell, and others in an effort to overturn the 2020 presidential election. He also specifically stated that Christopher Krebs, who was Mr. Trump's Director of the Cybersecurity and Infrastructure Security Agency for the U.S. Department of Homeland Security, should be "drawn and quartered. Taken out at dawn and shot" after Mr. Krebs stated that the 2020 election was the "most secure in American history."

Mr. diGenova's conduct violated Rules of Professional Conduct 4.4(a) (Respect for Rights of Third Persons) and 8.4 (Misconduct). A full investigation by the Office of Disciplinary Counsel will demonstrate the egregious nature of Mr. diGenova's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. diGenova will repeat such conduct your office acts on this matter.

## BACKGROUND

Donald Trump lost the 2020 presidential election.<sup>1</sup> Anticipating his loss, Mr. Trump and his allies began questioning the election's legitimacy months before even one voter had cast a ballot.<sup>2</sup> In fact, this fit a pattern of Mr. Trump declaring fraud or a rigged election any time he lost or anticipated a loss.

Joe Biden received over 81 million votes in November 2020, defeating Mr. Trump by over seven million votes and over four percentage points.<sup>3</sup> Mr. Trump's head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, [announced](#) that the "November 3<sup>rd</sup> election was the most secure in American history. . . . There is no evidence that any voting system deleted or lost votes or changed votes or was in any way compromised." Mr. Trump [fired him](#). William Barr, Mr. Trump's own Attorney General, [declared that the Department of Justice](#) has "not seen fraud on a scale that could have effected a different outcome in the election." Attorney General Barr announced his resignation less than two weeks later, but not before again confirming that the 2020 elections had been free and fair.<sup>4</sup>

Many of Mr. Trump's own senior advisors agreed with Attorney General Barr and Mr. Krebs.<sup>5</sup> Indeed, Deputy (and later Acting) Attorney General Jeffrey Rosen and Associate (and later Acting) Deputy Attorney General Richard Donoghue regularly refuted the false information and allegations that Mr. Trump and his allies asserted about a fraudulent election.<sup>6</sup> Mr. Rosen has testified that on December 15, 2020, at a meeting that included Mark Meadows, White House Chief of Staff, that he and others told Mr. Trump that the information he was receiving from his political allies was not correct.<sup>7</sup> And Mr. Donoghue has testified to the Select Committee to Investigate the January 6th Attack on the United States Capitol (Select Committee) that on December 27, 2020, he told Mr. Trump "in very clear terms" that after "dozens of investigations, hundreds of interviews" looking at "Georgia, Pennsylvania, Michigan, and Nevada," the

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<sup>1</sup> See United States National Archives, Electoral College Results – 2020, available at <https://www.archives.gov/electoral-college/2020>.

<sup>2</sup> Kevin Liptak, *A List of the Times Trump Has Said He Won't Accept the Election Results or Leave Office if He Loses*, CNN (Sept. 24, 2020), <https://www.cnn.com/2020/09/24/politics/trump-election-warnings-leaving-office/index.html>.

<sup>3</sup> See Federal Election Commission, *Official 2020 Presidential General Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>.

<sup>4</sup> M. Balsamo, *Disputing Trump, Barr says no widespread election fraud*, Associated Press (Dec. 1, 2020), <https://perma.cc/4U8N-SMB5>.

<sup>5</sup> See Deposition of Jason Miller (Feb. 3, 2022), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>; Interview of Jeffrey Rosen (Aug. 7, 2021), United States Senate Committee on the Judiciary, 117th Cong. 30, available at <https://www.judiciary.senate.gov/rosen-transcript-final>.

<sup>6</sup> See Interview of Jeffrey Rosen *see also* Interview of Richard Donoghue (Oct. 1, 2021), available at <https://january6th.house.gov/sites/democrats.january6th.house.gov/files/2022.03.02%20%28ECF%20160%29%20Opposition%20to%20Plaintiff%27s%20Privilege%20Claims%20%28Redacted%29.pdf>

<sup>7</sup> Interview of Jeffrey Rosen.

Department of Justice – Mr. Trump’s own Department of Justice – had concluded that “the major allegations are not supported by the evidence developed.”<sup>8</sup>

Despite clear proof that no fraud occurred, and that no one stole the election from him, Mr. Trump and his lawyers sought to overturn the legitimate results by filing 65 baseless lawsuits across the country.<sup>9</sup> None succeeded and, in fact, courts have imposed sanctions on the lawyers who participated in these suits and referred them for sanctions to their respective state bars.<sup>10</sup>

## FACTS GIVING RISE TO COMPLAINT

Mr. diGenova actively advised, and participated in, the litigation. As Rudy Giuliani, [Mr. Trump’s lead attorney stated](#):<sup>11</sup>

Well, this is representative of our legal team. We’re representing President Trump and we’re representing the Trump campaign. When I finish, Sidney Powell and then Jenna Ellis will follow me. And we will present in brief the evidence that we’ve collected over the last, I guess it is two weeks. Also, Joseph diGenova, Victoria Toensing are here with me. There are a lot more lawyers working on this, but I guess, we’re the senior lawyers.

Mr. diGenova stood alongside Mr. Giuliani as the latter repeated falsehood after falsehood about the 2020 election, on behalf of the legal team representing Mr. Trump. In fact, just a small sampling of what Mr. Giuliani said *at one press conference* illustrates the problem:

And what emerged very quickly is it’s not a single voter fraud in one state. This pattern repeats itself in a number of states. Almost exactly the same pattern, which to any experienced investigator, prosecutor would suggest that there was a plan from a centralized place to execute these various acts of voter fraud, specifically focused on big cities and specifically focused on, as you would imagine, big cities controlled by Democrats, and particularly focused on big cities that have a long history of corruption.

The number of voter fraud cases in Philadelphia could fill a library. Just a few weeks ago, there was a conviction for voter fraud and one two weeks before that. And I’ve often said, I guess,

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<sup>8</sup> Interview with Richard Donoghue.

<sup>9</sup> W. Cummings, J. Garrison & J. Sergeant, *By the numbers: President Donald Trump’s failed efforts to overturn the election*, USA Today (Jan. 6, 2021), available at <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/>.

<sup>10</sup> *See, e.g., King v. Whitmer*, No. 20-13134 (U.S. Dist. Ct. E. Dist. Mich. Aug. 25, 2021), available at [https://www.michigan.gov/documents/ag/172\\_opinion\\_order\\_King\\_733786\\_7.pdf](https://www.michigan.gov/documents/ag/172_opinion_order_King_733786_7.pdf).

<sup>11</sup> Rudy Giuliani Trump Campaign Press Conference Transcript November 19: Election Fraud Claims, available at <https://www.rev.com/blog/transcripts/rudy-giuliani-trump-campaign-press-conference-transcript-november-19-election-fraud-claims>.

sarcastically, but it's true, the only surprise I would have found in this is if Philadelphia hadn't cheated in this election, because, for the last 60 years, they've cheated in just about every single election. You could say the same thing about Detroit.

Each one of these cities are cities that are controlled by Democrats, which means they can get away with anything they want to do. It means they have a certain degree of control over... certainly control the election board completely. And they control law enforcement. And unfortunately, they have some friendly judges that will issue ridiculously irrational opinions just to come out in their favor.

...

A truck pulled up to the Detroit center where they were counting ballots. The people thought it was food, so they all ran to the truck. Wasn't food. It was thousands and thousands of ballots and the ballots were in garbage cans, they were in paper bags, they were in cardboard boxes, and they were taken into the center. They were put on a number of tables. At that time, they thought all the Republican inspectors had left, all but two had and an employee of Dominion who we will address a little bit later, Dominion.<sup>12</sup>

And, again, while Mr. Giuliani spoke, he did so on behalf of the entire legal team.

Days later, when Mr. diGenova spoke for himself, he took the rhetoric to an even more dangerous level. On November 30, 2020, Mr. diGenova called into the Howie Carr Show to discuss his work on behalf of his client, Mr. Trump. Approximately twenty-four minutes into the show, [Mr. diGenova said](#):

Mail-in balloting is inherently corrupt and this election proved it. This was not a coincidence. This was all planned and, you know, **anybody who thinks that this election went well like that idiot Krebs....That guy is a class A moron. He should be drawn and quartered. Taken out at dawn and shot.**

In making such statements, diGenova endangered the safety and well-being of Mr. Krebs and his family. Indeed, after diGenova's comments, [Mr. Krebs began receiving a barrage of harassing messages](#), many of which directly referenced diGenova himself or his exact words. For example:

- On December 4, 2020, @jamaimone tweeted: **“Ridiculous that diGenova had**

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<sup>12</sup> <https://www.rev.com/blog/transcripts/rudy-giuliani-trump-campaign-press-conference-transcript-november-19-election-fraud-claims>.

**to apologize for this. What Krebs did is called treason and guess what the punishment is for treason. That's right, it is death!"**

- On or about December 1, 2020, @Planejane37 posted: **"He said you should be shot & I agree."**

Moreover, in calling for Mr. Krebs to be executed in a method reserved for those found guilty of treason, diGenova effectively branded Mr. Krebs a traitor. In addition to the harassment Mr. Krebs received directly in support of diGenova's statement, Mr. Krebs was also flooded with tweets labeling him a traitor. [For example:](#)

- On November 30, 2020, @Thinkingshared tweeted: **"#ChrisKrebs is a TRAITOR AND LIAR!!!"**
- On November 30, 2020, @Mindarelli21 tweeted: **"Chris Krebs is a fraud and a traitor to the United States."**
- On November 30, 2020, @Malthusian\_Trad tweeted: **"Chris it's obvious you lied. It's been corroborated by several top experts that Dominion systems do connect their data to the internet. You are caught – and we're gonna find out more soon, traitor."**
- On December 3, 2020, @xLight56 tweeted: **"Chris Krebs is a traitor."**
- On December 4, 2020, @Hitch41418076 tweeted: **"@realDonaldTrump Americans want Traitor Chris Krebs in jail."**

The harassment was not limited to Twitter. [Mr. Krebs was called a traitor and comments](#) made in support of diGenova's statements were also made on the social media site Parlor. For example:

- On December 1, 2020, @Fixitwm posted: **"Traitors that are treasonous should be shoot [sic]. No if about it!"**
- On December 1, 2020, @Gordonpoole0 posted: **"Why waste a bullet, just smash his head in with rock."**
- On December 1, 2020, @Spraguep36 posted: **"Shoot him at Dawn."**
- On December 1, 2020, @Prtsmnn1 posted: **"By his own comments he has put himself in the line of fire! We know now that he did lie when he said there had been no cyber interference with the election. Under this evidence alone he should be tried for treason and shot as a trader [sic]."**
- On December 1, 2020, @JHHenry2112 posted: **"Can I pull the trigger??? Pretty please, please please please???"**

- On December 1, 2020, @StandUnited posted: **“The penalty for treason has not changed. His time is near.”**
- On December 1, 2020, @bLtq posted: **“The old saying ‘If it ain’t true, why get upset about it’. Seems to me he knows he should be shot for treason.”**
- On December 1, 2020, @Kenazdeb17 posted: **“He didn’t get shot at dawn. He should consider himself lucky.”**
- On December 1, 2020, @Nathanbluedog posted: **“So it was just a threat? Geez, let’s bring back firing squads for treasonous crimes! It’s time!”**

Outside of the internet harassment, Mr. Krebs received [threatening emails and a text](#). All were sent after Mr. diGenova’s comments and all to Mr. Krebs’s direct number and email. For example:

- On November 30, 2020, at 11:52 p.m. (the evening of Mr. diGenova’s threatening statement), Mr. Krebs received the following text from the number (817) 716-6258: **“Pretty sure youre [sic] fucked buddy.”**
- On December 2, 2020, Mr. Krebs received an email from “Mike S” (snakebike05@gmail.com) with the subject line **“Do you have a security detail,”** stating, **“Based on the rumblings I’m hearing you need to get a security detail for you and your family I’m very concerned for you this is a heads up for you.”**
- On December 3, 2020, Mr. Krebs received an email from David Siebert (davidsiebert1003@comcast.net) with the subject line **“Chinese traitor,”** stating, **“Krebbly, How will it feel to be arrested for sedition. Are you going to give up the ones above you or are you going to take the execution route. American Patriot.”**

Mr. Krebs and his family were compelled to leave their home, unsure if any harassers would actually decide to carry out Mr. diGenova’s suggestion. Perhaps most disturbing, Mr. Krebs’s ten-year old asked, [“Daddy’s going to get executed?”](#)

## **APPLICABLE STANDARDS AND RULES OF PROFESSIONAL CONDUCT**

Rule 4.4(a) (Respect for Rights of Third Persons) provides that, “In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.”

Rule 8.4 (Misconduct) provides that it constitutes professional misconduct to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) Engage in conduct that seriously interferes with the administration of justice...

**A SUBSTANTIAL BASIS EXISTS FOR THE OFFICE OF DISCIPLINARY COUNSEL  
TO INVESTIGATE MR. DIGENOVA'S CONDUCT AND TO IMPOSE  
APPROPRIATE DISCIPLINE**

The Office of Disciplinary Counsel should investigate on the following bases:

1. Mr. diGenova's comments served no purpose other than embarrassing and burdening a third party and constitute a criminal act that interfered with the administration of justice

As he served as Mr. Trump's attorney, Mr. diGenova's statement on the Howie Carr show served no legitimate purpose. Instead, the comments were aimed at harassing, embarrassing, and burdening Mr. Krebs. And it worked. Mr. Krebs and his family suffered considerably because of Mr. diGenova's actions and the Office of Disciplinary Counsel should take action to enforce Rule 4.4(a).

In addition, Mr. diGenova's conduct likely violates Rule 8.4(b) and (d).

Rule 8.4(b) does not require that an attorney have been formally charged with a crime to be disciplined. Under the Code of the District of Columbia, "A riot in the District of Columbia is a public disturbance involving an assemblage of 5 or more persons which by tumultuous and violent conduct or the threat thereof creates grave danger of damage or injury to property or persons."<sup>13</sup> Mr. diGenova's suggestion carried the real possibility that Mr. Trump's supporters would carry it out. And "drawing and quartering" and "taking out at dawn and shot" are public forms of execution, which would likely bring together five or more people. One need only look to the social media response and to the January 6 insurrection to see the real risk that Mr. Trump's supporters would carry out Mr. diGenova's call to action. Thus, Mr. diGenova could be credibly charged with inciting to riot under C.D.C. § 22-1322(c).

Further, at the time Mr. diGenova made the statement, he was part of a legal team representing Mr. Trump in litigation around the country that centered on allegations of election fraud and vote manipulation. It was certainly conceivable that the Director of the Cybersecurity and Infrastructure Security Agency who had called the election the "most secure in American history" could offer testimony in a proceeding on the matter.

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<sup>13</sup> Code of District of Columbia § 22-1322(a).

If an attorney in any other matter publicly called for the execution of a key witness, that attorney would face sanctions and discipline. The public and legal profession may have become accustomed to wild accusations and statements from Mr. Trump and his attorneys, but that does not mean that Mr. diGenova can escape accountability for his actions. He interfered with the legal system and administration of justice by calling for Mr. Krebs's public execution. His actions warrant discipline.

2. Mr. diGenova assisted others to engage in conduct that violated the Rules of Professional Conduct

The Supreme Court of the State of New York, Appellate Division suspended Mr. Giuliani's license for his post-election conduct, including the statements he made at press conferences and in media appearances. As the Court stated:

[T]here is uncontroverted evidence that [Mr. Giuliani] communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump's failed effort at reelection in 2020. These statements were made to improperly bolster [Mr. Giuliani's] narrative that due to widespread voter fraud, victory in the 2020 United States presidential election was stolen from his client. We conclude that [Mr. Giuliani's] conduct immediately threatens the public interest and warrants interim suspension from the practice of law, pending further proceedings before the Attorney Grievance Committee.<sup>14</sup>

Mr. diGenova worked closely with, and assisted, Mr. Giuliani as the latter carried out his effort to undermine the 2020 presidential election results and overturn the will of over 81 million voters. Because Mr. diGenova's work alongside Mr. Giuliani is uncontroverted and because the Supreme Court of New York has already found that Mr. Giuliani violated numerous Rules of Professional Conduct, Mr. diGenova violated Rule 8.4(a).

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The United States Supreme Court has long recognized in upholding disciplinary actions that "speech by an attorney is subject to greater regulation than speech by others."<sup>15</sup> As officers of the court an attorney is "an intimate and trusted and essential part of the machinery of justice" and a "crucial source of information and opinion."<sup>16</sup> Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed,

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<sup>14</sup> *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021, available at [https://www.nycourts.gov/courts/ad1/calendar/List\\_Word/2021/06\\_Jun/24/PDF/Matter%20of%20Giuliani%20\(2021-00506\)%20PC.pdf](https://www.nycourts.gov/courts/ad1/calendar/List_Word/2021/06_Jun/24/PDF/Matter%20of%20Giuliani%20(2021-00506)%20PC.pdf).

<sup>15</sup> *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 465 (1978).

<sup>16</sup> *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

disciplinary boards and courts considering the conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

Mr. diGenova's actions enjoy no First Amendment protection that shields him from discipline. That members of our esteemed profession would engage in such actions – conduct that contributed to substantial harm to American democracy – should cause considerable distress within the entire legal community. For the reasons set forth above, The 65 Project respectfully requests that the Office of Disciplinary Counsel investigate Mr. diGenova's conduct and impose appropriate discipline.

Sincerely,



Michael Teter  
Managing Director, The 65 Project

