No. 25-573

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, PETITIONER
v.
E. JEAN CARROLL, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* DAVID BOYLE IN SUPPORT OF RESPONDENT

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AMICUS CURIAE STATEMENT OF INTEREST

The present *amicus curiae*, David Boyle (hereinafter, "Amicus"),[1] respectfully supports Respondent, Elizabeth Jean ("E. Jean") Carroll. Amicus has never liked rape or rapists; he once helped organize a "Take Back the Night" anti-rape march. In that line, Amicus presently wishes to aid one of the world's most prominent rape/sexual-battery/defamation victims to attain justice here.

Amicus shall focus first on President/Petitioner Donald J. Trump's claim that his Bergdorf Goodman department-store rape of Carroll was somehow "facially implausible", even "facially inconceivable", Pet. at 2, 16. Amicus believes Carroll's allegations are quite plausible enough for a jury to find Trump indeed sexually battered (including *de facto* rape by his hand or hands) and defamed Carroll.

Amicus will then discuss Trump's misleading or deceptive versions of evidential issues, and, lastly, return to discussing Trump's horrific rape of Carroll.

SUMMARY OF ARGUMENT

Petitioner's petition itself has features of cruelty, misogyny, error, and disrespect for rape victims.

Trump offers a trumped-up version of a television crime show in order to discredit Carroll, with distorted or outright-invented details.

Carroll's destroyed sexual/romantic life for three

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[1] No party or its counsel wrote or helped write this brief or gave money for its writing or submission, and Amicus sent parties' counsel timely notice, *see* S. Ct. R. 37.

decades is itself "*rape ipsa loquitur*" proof that a very traumatic event, i.e., the rape, happened to her.

The courts below did not erase Federal Rule of Evidence ("FRE") 403 *vis-à-vis* the age of evidence when considering FRE 413-415, despite Trump's claims otherwise.

Nor did those courts err by using a "conduct" approach rather than Trump's preferred "categorical" approach, or by using 18 U.S.C. § 113(e) (1976), when considering FRE 413(d) on admitting sexual-assault evidence.

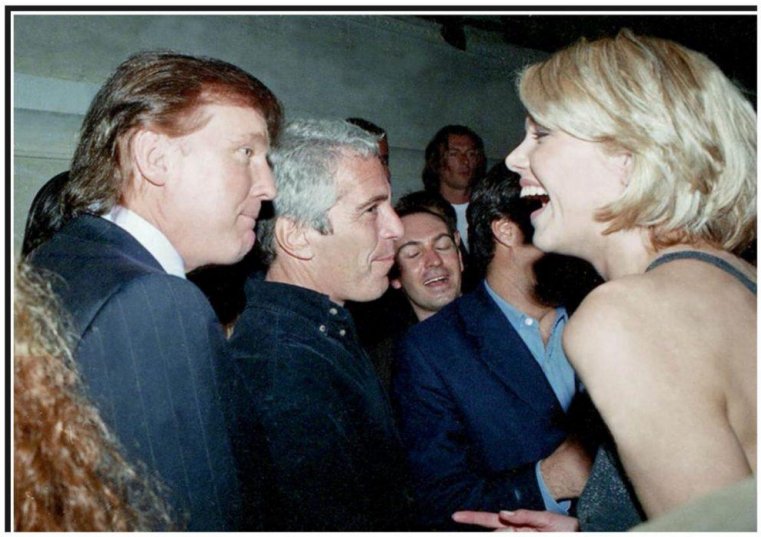
The infamous 2005 "*Access Hollywood* tape" was properly admitted as evidence, and lower courts' use of Rules 413-415 to admit it precludes even having to ask whether Rule 404(b)(2) allows in the Tape; though that Rule, or another Rule, as well as *modus operandi* and/or corroboration, should allow in the Tape.

Miscellaneous issues, such as "bias", "actual malice", and the jury's demonstrated credibility, will be discussed.

Even if some of Trump's evidentiary or circuit-split allegations were taken seriously, this case, given the problems *supra*, is a very poor vehicle for considering them; and Carroll's own case is strong.

Finally, Trump's evoking a television show may be a poor idea for him, if that show evokes the cruel, Jeffrey-Epstein-adjacent milieu he frequented and enjoyed.

ARGUMENT



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(Guardian Staff, *The latest tranche of Epstein evidence – in pictures*, The Guardian, Dec. 12, 2025, 1:12 p.m., https://tinyurl.com/3wcfcp2x)

I. TRUMP'S PETITION REFLECTS HIS VICIOUS CONTEMPT FOR WOMEN AND RAPE VICTIMS

The above photos from Epstein's estate (released Dec. 12, 2025), of, respectively, *see* Epstein Tranche, *supra*, Trump with sexual-predator-on-children Jeffrey Epstein; Trump with multiple unidentified women; and a bowl of "Trump Condoms", are a fresh reminder of Donald Trump's milieu and habits. His sexual boasting on the third-photo prophylactic, "I'm HUUUUGE!", *id.*, chimes with the way Carroll describes him, as a sleazy, egotistical monster, the type who boasted on the *Access Hollywood* tape that women "let" him grab their private parts, *id.* (How consensual that "let" was, is another question.)

Someone, Stormy-Daniels-34-count-felon Trump, that Epstein apparently saw as sexually boastful, *see* Trump Condom Photo, *supra*, might not be the most humble, considerate person. Indeed, in Trump's petition, the word "rape" doesn't even occur, *id.*, as if trying to make us forget he raped Carroll.

Too, he commits the *non sequitur* of referring to the "constitutionally questionable New York Adult Survivor's [sic] Act", Pet. at 9, sans even bothering to discuss why it's supposedly "questionable". Thus, it seems, again, that Trump is misogynistic and disrespects rape victims. He even misspells the Act's name, as "Survivor's", Pet. at 9, instead of the proper "Survivors", disrespecting himself and the Court.

(Ironically, America First Legal Foundation's pro-Trump amicus brief affirms the correct spelling, citing/quoting *Assemblymember Linda B. Rosenthal's Statement on New York State Assembly's Announcement that it will Pass the Adult Survivors Act Before the End of the 2022 Session*, May 19, 2022, https://perma.cc/TD63-ZXLF, Br. at 5 n.1. However, when the Foundation, *see id.*, claims the

Act may be a bill of attainder for targeting Trump, the linked statement disproves that, since it mentions many survivors, and many abusers, e.g., Jeffrey Epstein, not just Trump, *see id.*)

But despite Trump's not caring, rape is utterly monstrous, as, e.g., the Catechism notes: "*Rape* is the forcible violation of the sexual intimacy of another person[, and] deeply wounds the respect, freedom, and physical and moral integrity to which every person has a right. It causes grave damage that can mark the victim for life. [etc.]" Catechism of the Cath. Church (2d ed.; Eng. trans. 1994), pt. 3, § 2, ch. 2, art. 6, II, No. 2356.

So, does Trump not understand this, the vileness of rape?—or maybe he does, and revels in it; behold his astounding testimony that re "stars … grab[bing] women by the pu[denda]": "[I]f you look over the last million years, I guess that's been largely true. … Unfortunately or fortunately." Pet'r Appendix (hereinafter, "App.") 39A.

…"fortunately"? What is """"fortunate""" about rape/sexual assault? If a bigger "star" than Trump raped/sexually assaulted Trump or his family, would Trump call that "fortunate"? And if not, that would be a double standard, hypocrisy, since Trump said it may be "fortunate[ ]", *supra*, that stars can get away with it.

In that line, of Trump's disrespect for rape victims, he even makes up a television-show character, or at least the character's profession, to discredit Carroll:

II. TRUMP'S FABRICATED VERSION OF

A *LAW AND ORDER: SVU* EPISODE MAY DAMAGE HIS REPUTATION MORE THAN IT DOES CARROLL'S

Trump claims that a January 11, 2012 airing (Season 13, Episode 11, *Theatre Tricks* ("*Tricks*")) of NBC show *Law & Order: Special Victims Unit* ("*SVU*"),"in which a business mogul fantasizes about raping a [lingerie-wearing] victim in a Bergdorf Goodman dressing room", "precisely matches" Carroll's claims, and that "even she called the identity between her allegations and a plotline … 'amazing coincidence'", Pet. at 2, 3-4 (citations omitted). However, Carroll, and others, may want to review that show, and see how wrong Trump is.

First, Trump is badly in error about the "business mogul" part; the character is actually a judge (!), Gerald Crane. *Tricks*, *supra*, at, e.g., minutes/ seconds 19:07-19:09 of the c. 42-minute video Amicus watched. A much-younger woman, Holly Schneider, whom Crane finds on a "sugar daddy" dating website, pre-arranges with him, for money, to indulge his fantasy of "bursting in" to the dressing room and role-play "raping" her, with her consent, *see id.*

By contrast, Carroll had no intention of indulging a rape or rape fantasy by Trump—who is certainly no judge—, and was actually raped/battered by him in the Bergdorf dressing room, not merely *pretend*-raped, for money or otherwise.

Too, in *Tricks*, *see id.*, Schneider is solely trying on lingerie, as opposed to Carroll's not agreeing to Trump's request to try it on, and her trying to get Trump to try it on himself, *see* App.4A, 140A. And

Carroll isn't a young woman, nor did Carroll/Trump meet on a dating website, or prearrange their chance meeting. So, there are multiple differences between the TV show and Carroll's real-life rape; thus, no "precise match[ ]".

Hence, Trump misleads the Court, pulls "theatre tricks", by falsifying *Theatre Tricks*. The Court is welcome to view the show, if allowed; Amicus spent $1.99 and viewed it online. Scenes about the dressing-room fantasy, or tying Schneider to it, are at c. 35:11-35:52, 36:24-36:28, and 38:01-38:14.

As for the ostensible "inconceivability" of both the *SVU* (staged) rape and Carroll's real rape being at Bergdorf Goodman: first off, would a judge, affluent enough to be a "sugar daddy", use, say, a Harlem 99-cent store's dressing room instead? A store like Bergdorf seems much more likely. "Inconceivability" there? No.

And as for the real rape also occurring at Bergdorf, this is unsurprising, since the block on which Bergdorf lies is essentially *across the street* from Trump Tower's block, i.e., "catty-corner" from that block, *see* map at https://tinyurl.com/4ud3r75z. Indeed, Bergdorf is at 754 5th Avenue, *id.*, and Trump Tower is at 725 5th Avenue, https://www.trumptowerny.com/. Very close, so, hardly "inconceivable" that Trump might visit Bergdorf, even when Carroll happens to be there.

As well, Carroll claims in her new book, Not My Type: One Woman vs. a President (2025) ("NMT"), that Trump boasted about the rape to Jeffrey Epstein, *see id.* 257-58 (citation omitted). If so,

Epstein may have told others, and the story may have spread about, and inspired the *SVU* episode, whether the show's staff were aware of it or not.

Last, but not least, Carroll herself wrote a 1986 *Saturday Night Live* sketch featuring William Shatner as "Alan", cavorting around in his underwear before a mirror, as his lingerie-wearing wife looks on: *see, e.g.*, Bronwyn Douwsma, *Classic SNL Review: December 20, 1986: William Shatner / Lone Justice (S12E08)*, https://bronwynjoan.com/blog/2021/11/14/classic-snl-review-december-20-1986-william-shatner-lone-justice-s12e08, including description/photos of the skit "Look at That!" with Shatner and Nora Dunn, and noting Carroll's authorship, *id.*

For all we know, that "underwear follies" skit may have inspired the *SVU* episode, if, say, writers saw the *SNL* sketch and didn't remember it.

In fact, if Trump is willing to speculate that Carroll borrowed from *SVU* to concoct a story: why not, instead, speculate that Trump remembered Carroll's *SNL* skit when he saw her at Bergdorf, and, sadist that he can be (*see, e.g.*, his "fortunately" comment about sexual assault *supra* at 6), thought it would be funny to rape or sexually batter her, in a riff off of her own underwear-themed skit?

We shall revisit *SVU* later—there is even more to discuss—; but shall now focus on the many years of horrific damage which the rape did to Carroll.

III. CARROLL'S ROMANTIC/SEXUAL LIFE HAS BEEN DESTROYED FOR 3 DECADES, WHICH IS "*RAPE IPSA LOQUITUR*" PROOF

THAT TRUMP RAPED/BATTERED HER

"In relation to the specific act of being digitally raped, Ms. Carroll testified that it was 'extremely painful' [and] testified also about not being able to maintain a romantic relationship or have sex for the past two decades since the 'very violent' incident with Mr. Trump[.]" App.179A (footnote omitted) (Kaplan, J.).

Sometimes a thing speaks for itself: in Latin, "*res ipsa loquitur*". For a woman to spend decades bereft of sexual or romantic activity with anyone else, after having had multiple lovers, *see* NMT 10-11 (listing eight men), looks as if some hyper-traumatic event did indeed cause the end of her erotic/romantic life.

If there were no traumatic event, why would this rather lusty lady, Carroll, cease to have a sex/ romance life? What is the cause? …Sans cause, the huge alteration in Carroll's life would be like an object somehow moving of its own accord, without any Newtonian force making it move: causelessly, surreally, absurdly.

Amicus isn't proposing formal full equivalency of *res ipsa loquitur* and "*rape ipsa loquitur*", but there is certainly a resemblance. Suffering may speak for itself, and bring up the question of what caused the suffering.

If anyone thinks Carroll has just been training to be a nun (!!), say, for decades, with her (unwanted) celibacy, they might be grossly mistaken.

Carroll mentions that the late Dr. Edgar P. Nace, an expert testifying for Trump, claimed that her divorce from second husband John Johnson was

somehow the reason for her celibacy, NMT 25. However, this sounds unlikely: why, then, didn't her divorce from her first husband Steve Byers, NMT 92, also cause decades of celibacy?

Too, Carroll refutes Nace's assertion by saying, in her interview by Anna Martin, *E. Jean Carroll's Vibrant Sex Life Ended 30 Years Ago. She Wants It Back.*, N.Y. Times, Sept. 3, 2025, Tr., https://www.nytimes.com/2025/09/03/podcasts/e-jean-carroll-trump.html?showTranscript=1, "I was still having sex with John Johnson[,] even though we had divorced." *Id.*

The interview has further revelations, e.g., Martin notes, "[I]t's not just sex. It's romance and romantic relationships in general. You had not had one since[;] even … a flirtation with a stranger was not possible." Carroll affirms, "Not if it was within my age group and a possibility", and calls herself, "A desiccated, skinny, old lady sitting there in a chair who had wiped out 30 years of pleasure from her life." *Id.*

Carroll's self-description *supra* sounds to Amicus rather like Winston Smith's post-torture state in Orwell's *1984* (1949) — hideous and heartbreaking. Truly, and sadly, rape "causes grave damage that can mark the victim for life." Cath. Catechism, *supra* at 6. Perhaps Carroll should be compensated for this damage, and amply.

IV. THE SECOND CIRCUIT DID NOT OBLITERATE RULE 403 *VIS-À-VIS* NON-RECENT TESTIMONY

Those criticizing Carroll insultingly toss around

the word "stale" about her or other witnesses' testimony, e.g., *see* the Menashi-Park dissent from denial of rehearing *en banc*, App.202A, concerning Jessica Leeds' testimony against Trump re matters 45 years before.

However, such testimony may not automatically be "stale": *see, e.g.*, Ramon Antonio Vargas & David Hammer, *New Orleans Catholic archdiocese gains approval to pay $230m to sexual abuse survivors*, The Guardian, Dec. 8, 2025, 1:46 p.m., https://www.theguardian.com/us-news/2025/dec/08/catholic-church-new-orleans-settlement-victims-sexual-abuse, "'[T]he trauma done to us will not ever end,' Neil Duhon said on the stand after recounting how he was kidnapped and raped by the serial pedophile priest Lawrence Hecker in 1975[; Duhon's testimony] led to Hecker's arrest, conviction and life sentence[,] shortly before his death in December 2024." *Id.*

1975 to 2024, comprises 49 years, longer than the 45 years in Leeds' case, and the testimony caused a conviction for Duhon's rape and kidnapping, *see id.* Thus, comparatively-"old" testimony isn't necessarily "stale" at all.

And Trump creates a straw man by asserting, *see* Pet. at 13-21, that the appeals court utterly discounted the evidence's age, thus supposedly flouting FRE 403. However, that court did no such thing, *see* App.46A-47A: "[W]e conclude that the time lapse between the alleged acts does not negate the probative value of the evidence of those acts to the degree that would be required to find an abuse of discretion in admitting them for the jury's consideration." (citations omitted) Trump fails to

mention this.

In other words, the Second Circuit does explicitly consider that the time lapse *may* negate probative value, but rationally believes that the negation isn't enough to make a difference, *see id.* Since that court faithfully followed Rule 403, this disproves Trump's contention that the Second Circuit somehow threw out the Rule when considering Rules 413-415.

Too, Petitioner complains, *see* Pet. at 19-21, that that court shouldn't have cited (App.46A) Congresswoman Molinari's words supporting Rules 413-415's allowing inclusion of older sexual-offense evidence. Amicus himself wonders if the Second Circuit really *needed* to mention Molinari's words.

That is, that court may have been "gilding the lily": i.e., since Rules 413-415, *see id.* for each, visibly impose no limit on age of evidence, there was no necessity to cite Molinari. Perhaps that Circuit felt that "from an abundance of caution", they should cite more support (Molinari); but it seems unnecessary.

Trump also mentions constitutional-avoidance and due-process issues when attacking the Second Circuit's supposed (mis)interpretation of Rules 413-15, *see* Pet. at 21. But, once again, that Circuit didn't throw out Rule 403, *see* once more 46A-47A: "[T]he time lapse … does not negate the probative value of the evidence … to the degree … required [for] abuse of discretion," *id.* (citations omitted) Therefore, there is no unfairness and no problem, due-process or otherwise.

In sum, Question Presented 1 (Pet. at i), "Whether [FRE] 415 overrides Rule 403's

requirement to balance the probative value of temporally remote propensity evidence against its prejudicial effect [etc.]?" is a mere red herring, since no "overrid[ing]" occurs in this case.

V. THE SECOND CIRCUIT DOES NOT ABUSE RULE 413(D) BY ADMITTING CONDUCT EVIDENCE OR USING 18 U.S.C. § 113(E)

And re Question Presented 2, "Whether [FRE] 413(d) authorizes ... evidence [re] 'crime[/]sexual assault' when the alleged prior act did not constitute a crime[/]sexual assault?", Trump again obfuscates the issue.

First off, Trump notes that "49 U.S.C. § 46506 ...was not enacted *until 1994*", Pet. at 22; and says the appeals court instead relied on "18 U.S.C. § 113(e), which at the relevant time prohibited 'simple assault'[,] which required no sexual element", Pet. at 22-23. However, Trump doesn't reveal that there were earlier versions than 1994 of § 113, *supra*, which did indeed mention sexual abuse; e.g., the 1948 version of 18 U.S.C. § 113(a) says, "Assault with intent to commit murder or rape, by imprisonment for not more than twenty years." June 25, 1948, ch. 645, 62 Stat. 689, uscode.house.gov/statviewer.htm?volume=62&page=689.

This establishes, *see id.*, that sexual abuse (rape being the most extreme form) was very important, important as murder in prison-time terms, to Section 113's drafters, even if Congress may not have created a formal federal non-rape sexual-abuse crime, e.g., groping, until 1986; *see, e.g.,* "18 USC Ch. 109A: SEXUAL ABUSE", https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid

%3AUSC-1994-title18-chapter109A&num=0 (listing 1986 sexual-abuse laws (citations omitted here) preceding 1994's 49 U.S.C. § 46506).

Thus, even if § 113(e) has never *per se* included "groping" by that name, the § 113 code provision as a whole has, *see id.*, since 1948, found rape and/or sexual abuse abhorrent.

Therefore, when the Second Circuit affirms in App.25A-29A, *see id.*, that a jury could reasonably have found Trump's "simple assault" on Jessica Leeds was a substantial step towards groping her genitals, that chimes with the 1948 drafters' abhorrence of rape; the jury would have been using § 113(e) to further a purpose the drafters wanted, punishing sexual abuse of women (here, Leeds), even though a federal groping or "non-rape sexual abuse" crime may not have formally existed in 1978-79.

(Indeed, unless one assumes Trump was, say, looking for his plane ticket, or maybe for a stray breath mint, under Leeds' skirt, a nefarious sexual purpose is the first thing that comes to mind.)

Trump also asserts that the Second Circuit erred by citing particular misconduct of his rather than meeting "categorical" elements of a crime, *see* Pet. at 23-28. However, Trump fails to mention that that Circuit observed, "The categorical approach, however, is a particular method of statutory interpretation that has been crafted 'for sentencing and immigration purposes,' *United States v. Maxwell*, 118 F.4th 256, 265 n.22 (2d Cir. 2024)—not for reading rules of evidence." App.247A. Thus, the Circuit has disposed of his objection.

Indeed, Trump repeatedly cites cases which prove

not his own, but the lower court's, point, *see* Pet. at 24-26: *Leocal v. Ashcroft*, 543 U.S. 1 (2004) (about the possible sentencing of an alien to deportation, re whether his conviction was for a "crime of violence" or not); *Sessions v. Dimaya*, 584 U.S. 148 (2018) (also about "crime of violence" re deportation sentence for alien); *Pereida v. Wilkinson*, 592 U.S. 224 (2021) ("crime of moral turpitude" re deportation sentence for alien); *Shular v. United States*, 589 U.S. 154 (2020) (sentencing minimum for prior "serious drug offenses", in firearms case); *Kawashima v. Holder*, 565 U.S. 478 (2012) ("fraud or deceit" re aggravated felony re deportation sentence for aliens); *Delligatti v. United States*, 604 U.S. 423 (2025) (sentencing minimum for using "physical force" in firearms case).

Trump also claims "the ordinary meaning" of the word "involve" in Rule 413(d) is "require" or "entail", Pet. at 25; but not all dictionaries say this, e.g., the Merriam-Webster online dictionary at https://www.merriam-webster.com/dictionary/involve lists "to have within or as part of itself : INCLUDE" before listing "to require as a necessary accompaniment : ENTAIL", *id.*

Trump also cites Wright & Miller about "involve", Pet. at 25; *but see United States v. Clay*, No. 24-2057 (10th Cir. 2025), which not only informatively discusses why Rule 413(d) involves conduct, not statutory elements, citing the Fifth, Seventh, Eighth, and Tenth Circuits in support, *see Clay*, *supra*, slip op. at 19-21 (*available at* https://law.justia.com/cases/federal/appellate-courts/ca10/24-2057/24-2057-2025-08-26.html), but also notes about Wright & Miller's saying "involving" means an element of the crime, "We must disagree[;] Rule

413's text points toward a circumstance-specific understanding, one that other circuits have persuasively adopted", *Clay* at 20 n.8, and that "[t]he remedy for any odd applications of Rule 413 is not to artificially constrict its text on the front end, but, instead, to rely on Rule 403 on the back end to exclude the evidence in particular odd cases." *Id.*

Finally, Trump says "the ordinary meaning of … 'sexual assault' supports a categorical approach", drawing on *Delligati*, *supra* at 16, and upon Judge Menashi's dissent (citation omitted here), Pet. at 26-27.

But the Second Circuit rebuts Menashi's misuse of *Delligati* by pointing out that "Rule 413(d) defines 'sexual assault' in relation to '*conduct* described in subparagraphs (1)–(4)' and 'an attempt or conspiracy to engage in [that] *conduct*'", App.247A, and "statutes that require … assess[ment of] the 'conduct' of an individual rather than a 'conviction' call for circumstance-specific inquiries. *Alvarez v. Garland* [etc.]", App.247A, seeing that "even in the sentencing or immigration context, the Supreme Court has declined … the categorical approach where, as here, the text 'calls for circumstance-specific application.' *Nijhawan v. Holder*, 557 U.S. 29, 38 (2009)", App.247A. Thus, the categorical approach is inappropriate here, and the lower courts respected and correctly applied FRE 413(d).

VI. RULES 413-415 ALLOW IN THE *ACCESS HOLLYWOOD* TAPE, BUT EVEN IF THEY DID NOT, ADMITTING THE TAPE DOES NOT VIOLATE RULE 404(B)(2)

The third and final Question Presented, "Whether [FRE] 404(b)(2) permits … '*modus operandi*' or 'corroboration' evidence of prior 'bad acts' without establishing a non-propensity purpose[,] such as … enumerated exception[s] in Rule 404(b)(2)?" involves the *Access Hollywood* tape, *see* Pet. at 28-33.

Once more, a red herring. Question Presented 3 need not even be asked, since the Second Circuit observes that Rules 413-15 themselves authorize admission of the Tape, with Rule 404(b) as a mere alternative, *see* App.249A-250A, and also records that Trump didn't object, even during appeal or his rehearing petition, to the district court's omitting the Tape from jury instructions re evidence of his sexual assaults on women, *see* App.249A n.7.

However, even if one wrongly hypothesizes that Rules 413-15 somehow don't authorize the Tape as evidence: from an abundance of caution, Amicus will show how 404(b), or another Rule, does authorize it.

For example, there is FRE 406, "Habit; Routine Practice": "Evidence of a person's habit … may be admitted to prove … the person … acted in accordance with the habit[/]routine practice. [etc.]" *Id.* Trump admits, even confesses (if not necessarily confessing he raped Carroll), that, "You know I'm automatically attracted to beautiful -- I just start kissing them. It's like a magnet. Just kiss. I don't even wait. And when you're a star, they let you do it. You can do anything[.] Grab them by the pu[denda]. You can do anything." App.38A (the Tape).

This monstrous admission, including "automatically", *id.*, sounds like a mechanical *habit*, as in Rule 406, *supra*. Trump isn't "attracted' merely by *feeling* attracted, but rather, is "automatically"

almost *mechanically attracted*, "like a magnet", to physically accost women ("Just kiss"/"Grab them by the pu[denda]"), *see* App.38A.

And his "I don't even wait" implies women's lack of consent, so that "they let you do it" may mean a lack of complaint, or a failure to sue (present case excepted), rather than genuine consent.

But Rule 406, while potentially useful here, isn't even needed, since Trump's automatic, battery- or sexual-battery-inducing "attract[ion]" to women may fulfill the "intent", "motive", "opportunity", or "plan" parts of 404(b)(2), *id.* —Intent: perpetual, uncontrollable intent (desire), to accost pretty women physically—and intent in the legal sense ("scienter" or such), when we reflect that Trump knows it may be "[u]nfortunate[ ]", e.g., illegal, to do that to women sans consent, *see* his "Unfortunately or fortunately" quote *supra* at 6. Or, "motive", i.e., fulfilling his confessedly-uncontrollable lust.

"Opportunity" and "plan" (the latter sounding like *modus operandi*, *infra*) may also resonate here; "[W]hen you're a star, they let you do … anything", App.38A, shows "opportunity", and maybe also "plan", in that Trump's plan may be always to gratify his lust, using the opportunity that being a "star" gives, *see id.*, to get away with "anything".

As for Trump's attack on *modus operandi*, his cases, Pet. at 30-31, don't all solidly support his notion that only "identity" justifies using *modus operandi*.

First off, *United States v. Fountain*, 2 F.3d 656 (6th Cir. 1993), says, "It was not [Joe W. Fountain's] defense … that somebody else committed the crimes

… and there was no other justification for proving that Fountain previously had committed narcotics offenses employing a certain *modus operandi*", *id.* at 668, leaving open, *see id.*, the possibility of some *non*-identity "other justification" for using *modus operandi*.

Similarly, *United States v. Williams*, 985 F.2d 634 (1st Cir. 1993), says, "Evidence of *modus operandi* is admissible under Rule 404(b) to prove identity … but identity is not disputed in this case", *id.* at 637 (citation omitted), not that identity is the *only possible* reason for using *modus operandi*. In fact, that court continues, "[T]he government made no effort to link the 'carrot' and the alleged plan to the 'stick'", referring to the prosecution's using *modus operandi* to prove the defendant used a "carrot" (offer of rent money) and "stick" (intimidation) to get an apartment from which to sell cocaine—showing that a non-identity use, i.e., involving defendant's alleged "carrot/stick" plan, might have justified using *modus operandi*, *see id.* at 637-38.

And re Trump's claiming a circuit split about whether "corroboration" can allow in blackballed propensity evidence under Rule 404(b)(2), his cases, Pet. at 32-33, don't strongly support him. For example, *United States v. Pitts*, 6 F.3d 1366 (9th Cir. 1993), observes, "'Direct' corroborating evidence is evidence that is not wholly disconnected[/]remote[/] collateral to the matter corroborated. … [I]f the chain of inferences … is too lengthy, the evidence … is much more likely to adhere unfairly to defendant without the justifying presence of probativeness on an issue other than propensity." *Id.* at 1370-71. Thus, that court doesn't give *carte blanche* to

corroboration, but instead recognizes, *see id.*, that corroboration can stray into forbidden "propensity" territory, unless "direct".

And *United States v. Porter*, 881 F.2d 878 (10th Cir. 1989), says, "To help ensure that evidence of other bad acts is not used for … 'prov[ing] the character of a person in order to show action in conformity therewith,' [we] require[] the Government to 'articulate precisely [how] a fact of consequence may be inferred from the evidence of other acts'", *id.* at 884 (citation omitted); thus, *see id.*, *Porter* doesn't coddle banned character evidence.

Moreover, "[a]lthough corroboration is not among the purposes expressly listed in rule 404(b), [the Rule's] text … indicates that the purposes listed therein are not intended to be exhaustive, but are merely examples[, since] evidence 'may . . . be admissible for other purposes, *such as* proof of motive, [etc.]'" *Id.* at 886 n.8 (citations omitted). So, *see id.*, *Porter* doesn't claim that corroboration can allow in propensity evidence; the word "propensity" isn't even in the opinion, *id.*

Finally, re *United States v. Linares*, 367 F.3d 941 (D.C. Cir. 2004), although Petitioner quotes (Pet. at 32) *Linares*, "[P]rior-acts evidence must corroborate other evidence by proving a proper element, such as intent or identity", *id.* at 949, *Linares* also says of FRE 404(b), "Indeed, we have described the rule as one of inclusion rather than exclusion[,] and explained that it excludes only evidence that is offered for the sole purpose of proving that a person's actions conformed to his or her character", *Linares* at 946 (internal quotation marks, citations omitted); and, "[E]vidence might corroborate a witness's

testimony by showing plan, purpose, intent, etc. and therefore be admissible under 404(b)", *id.* at 949 (citation omitted).

The last quote is revealing in that it mentions, *id.*, "purpose" as a reason for corroboration; but 404(b)(2) mentions "purpose" only once, as an initial broad label pointing to the later list of items like "plan", "intent", etc., *id.* So, *Linares*' inclusion of "purpose" alongside "plan" and "intent", i.e., as a new term lying where it wasn't in 404(b)(2), chimes with what *Porter*, *supra*, says of 404(b): "[T]he purposes listed therein are not intended to be exhaustive, but are merely examples", *Porter* at 886 n.8 (citations omitted).

Thus, *Porter* and *Pitts* may not really conflict with *Linares* after all, following a close reading of all three. (*See also* the Second Circuit, "Evidence of a pattern may also be relevant for the *non-propensity* purpose of *corroborating* witness testimony." App.43A (emphases added).)

And corroboration, as opposed to *modus operandi*, is useful when considering Judge Menashi's saying the Second Circuit mistakenly claimed Trump: barely knew; conversed with; "lunged at" in a "semi-public place"; and "forcefully touched [sans] consent", Nancy O'Dell, App.213A. Menashi seemingly thinks "[i]n each of the three encounters [and pattern including lunging etc.]", App.44A, doesn't refer to Carroll/Leeds/Natasha Stoynoff, but rather, to Leeds/Stoynoff/O'Dell.

If the former threesome is correct, Menashi is wrong, of course. But if the latter one is somehow true, Menashi may have a small point: say, the Second Circuit may accidentally have mashed

together the arguable "lung[ing]" at O'Dell (Trump "moved on her like a bitch", App.38A) with Trump's later words about kissing. However, any such error alone should not prevent admission of the Tape: corroboration can be partial, not utterly total.

That is, the Second Circuit says, "Moreover, the tape was 'directly corroborative' of the testimony of Ms[s]. Carroll[/Leeds/Stoynoff] as to the pattern of behavior each allegedly experienced [etc.]", App.44A (citation omitted). So, even if that court were wrong about O'Dell being kissed etc., and she doesn't fit a *modus operandi* master pattern identical to Carroll/Leeds/Stoynoff's sufferings, the Tape's foul-mouthed revelations re Trump's possible lunging ("I did try and f[ ]ck her [O'Dell] … I moved on her like a bitch" (some brackets added for decorum)), and forcibly, and/or without consent, kissing/"pu[denda]"-groping women, App.38A, corroborate features of Trump's assaults on Carroll/Leeds/Stoynoff. (*See also* Trump to Stoynoff after forcibly kissing her, "[W]e are going to have an affair … best sex", App.30A-31A (citation omitted). As well, note the possible rape/assault attempt, Trump's "mov[ing] on" and "try[ing to] f[]ck" O'Dell, *supra*, perhaps nonconsensually.)

And that court mentions, *see* App.43A n.20, some uncharged child-molestation testimony being probative of the child's veracity since it corroborated aspects of the child's testimony (citation omitted); so, *see id.*, only *aspects* may need corroboration: there needn't be an all-embracing pattern whereby every last feature of the corroborator's, and corroboratee's, experiences must be identical. Thus, corroboration can make the Tape admissible under 404(b)(2).

Again, though, the close analysis of 5 cases, and

of Menashi's complaints re Nancy O'Dell etc., *supra*, may not even be necessary, since Rules 413-415 by themselves allow the *Access Hollywood* tape to serve as evidence, per the Second Circuit at App.249A-250A (does the Petition even mention that ruling?); so that 404(b)(2) isn't needed to approve the Tape, and Question Presented 3 about Rule 404(b)(2) thus needn't, or shouldn't, even have been posed in the first place. Amicus' analyses are from abundance of caution, not to claim 404(b)(2) is actually needed.

We now explore some relevant issues fit for independent treatment:

VII. MISCELLANEOUS ISSUES: "BIAS"; "HOAX"; JURY CREDIBILITY

First, as for Trump's allegations re "bias" of Carroll and her witnesses, Pet. at 6, 7: it may be natural, or even just and fair, for people who were raped/assaulted not to like the person who did that. Should we exclude all testimony from rape victims because they dislike their rapists?

Second, re defamation issues, if Trump assaulted Carroll—as was proven—, then there was no real evidence of a "hoax", whether she also wanted him not to be President again, or not. "The evidence that Mr. Trump sexually assaulted Ms. Carroll proved also the falsity of his statement", App.153A (Kaplan, J.).

On that note, Menashi says re "actual malice": "Because the purported conduct … allegedly occurred almost thirty years earlier and 'lasted just a few minutes,' … at the time of his statement

President Trump might not have even remembered any interaction", App.204 n.4 (citation omitted). However, if Trump raped/battered Carroll, Amicus is not inclined to give him a pass like Menashi does. Things like rape seem hard to forget. Carroll didn't forget, and Trump shouldn't be allowed to.

Finally, as for the jury's credibility, the jury seemed rationally skeptical about Carroll's claims, as opposed to being stupid or credulous. For example, they didn't find Trump liable for rape *per se*, App.261A, which may make sense, in that while Carroll felt something probing inside her, it might have been a finger or fingers, if she couldn't look down and be certain; too, there was no proffered Trump DNA (e.g., seminal fluid) which might've helped prove his male organ was inside of Carroll.

The jury's not automatically believing Carroll (her doubtless-good intentions aside) helps make them more credible re that for which they did find liability: defamation/sexual battery (digital rape).

VIII. TRUMP'S CASE IS A HIGHLY DEFECTIVE VEHICLE FOR EXAMINING HIS PURPORTED QUESTIONS OR CIRCUIT SPLITS

Given all the problems, *supra*, with Trump's petition, his case may be an extremely poor vehicle for exploring any of the issues or circuit splits he claims exist—and they may not even exist, or not be significant. If any such exploration still somehow needs to be done by somebody, there may be far cleaner vehicles available at some point, vehicles which needn't rely upon passing off a falsified

storyline of a TV show easily checkable on the Internet, *see* this brief's Part II, *supra* at 6-9 (Trump invents non-existent *SVU* character, or his profession, and distorts other details of analysis).

Too, even if any particular "leg" of Carroll's case is hypothetically found untenable, or even several, out of the Tape, or Leeds'/Stoynoff's testimony, etc., that still leaves many other legs on which the case stands, e.g., Carroll's own testimony, or Lisa Birnbach's and Carol Martin's, or Carroll's history of unwanted celibacy and suffering ("*rape ipsa loquitur*"), etc. Her case has many strengths.

* * *

"In the criminal justice system, sexually-based offenses are considered especially heinous. In New York City, the dedicated detectives who investigate these vicious felonies are members of an elite squad known as the Special Victims Unit. These are their stories." *SVU* Opening Monologue, *available at* https://www.youtube.com/watch?v=2vU2cvpX7ck (clickable, for those wishing to see/hear).

While Trump was not held criminally liable, still, his "especially heinous" and "vicious" "sexually-based offenses" against Carroll in New York City, and against others in other locations, are shameful: those women are "special victims" indeed, and "their stories" worth believing. Trump perhaps shouldn't have mentioned *SVU* here, because people can now point out that he himself could possibly be featured on *SVU*, as a villain.

Indeed, the *Theatre Tricks SVU* episode features a world of decadence and cruelty, where people, including a dissolute judge, purchase tickets to "interactive theater" bordering on being a sex club,

and a young actress, Meghan Weller, is actually raped, not pretend-raped, onstage, *see id.*; Amicus is reminded of Trump's cruelty and his decadent parties with sex offender/accused rapist Jeffrey Epstein, *see* Epstein Photos *supra* at 3-4. Horrifically, in *Tricks*, Judge Gerald Crane—despite his legal office—is the interactive-theater rapist, tricked into thinking the sex is consensual, *see id.*

On that note, one hopes that the judges (Justices) in the instant case will not be tricked or misled into letting real-life rapist/sexual batterer/defamer Donald J. Trump flout justice and our laws, any more than the Court let William J. Clinton go unpunished in *Clinton v. Jones*, 520 U.S. 681 (1997). Since "'women still suffer the degradation'", *2025 Y. End Rep. on the Fed. Judiciary* at 6 (footnote omitted), of rape, the Court should do justice for women, including E. Jean Carroll, and stop all the degradation they can.

CONCLUSION

Amicus respectfully asks the Court to deny review of the decisions below, although a summary affirmance might be understandable; and humbly thanks the Court for its time and consideration.

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