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January 12, 2024

## VIA ECF

The Honorable Lewis A. Kaplan  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Carroll v. Trump*, 20 Civ. 7311 (LAK)

Dear Judge Kaplan:

We write on behalf of Plaintiff E. Jean Carroll to propose certain prophylactic measures and curative instructions in anticipation of Defendant Donald J. Trump's attendance at the upcoming trial, the possibility that he will seek to testify, and the associated risk that he will violate Court orders if he does so.

Last year, the Court made clear that trial in this action would be limited to "damages only." ECF 214 at 4. Since then, Mr. Trump has repeatedly ignored that ruling and repeatedly sought to relitigate issues that were settled by virtue of the jury verdict in *Carroll II* and the Court's own decisions. *See, e.g.*, ECF 238, 245. But the Court's recent rulings leave no doubt about what is permissible and what is off-limits. ECF 252 at 17. Mr. Trump cannot testify that he did not sexually assault Ms. Carroll. He cannot claim that he did not rape her, or did not know her, or had never seen her before. He cannot question or attack her motives for revealing that he had assaulted her. He cannot say that he was defending himself from a false accusation. And he cannot point to *Carroll II* jury's determination that the plaintiff did not at this point prove rape within the technical meaning of New York Penal Law. ECF 251 at 3. He also cannot make reference to a wide range of other prejudicial, irrelevant, or otherwise inadmissible matters that have featured prominently in his recent public statements about the case. ECF 252.

In fact, it is not clear, at least to us, what Mr. Trump could permissibly testify to given these limitations. There is no basis for Mr. Trump to offer lay opinion testimony about the harm that Ms. Carroll has experienced. *See Fed. R. Evid. 701*. Any testimony that he might give with respect to his own common law malice for purposes of punitive damages would have to be consistent with the Court's rulings regarding actual malice, *see* ECF 252 at 17—a needle that Mr.

Trump's recent filings and public statements (which are rife with continued defamation and false denials) strongly suggest he could not thread. And while a defamation defendant could theoretically offer testimony about their lack of wealth in the hope of minimizing a punitive damages award, any such testimony from Mr. Trump here would run headlong into Mr. Trump's sworn testimony and public statements elsewhere. *E.g.*, ECF 239-3 at 3550 (Mr. Trump: "I'm worth billions of dollars more than the financial statements."); *see also* ECF 239-2.

Because the scope of permissible testimony that Mr. Trump could offer is very narrow, and because there are any number of reasons why Mr. Trump might perceive a personal or political benefit from intentionally turning this trial into a circus (including that the trial is focused only on damages, rather than any questions of his underlying liability), we are deeply concerned that Mr. Trump will pay no heed to the Court's recent rulings.<sup>1</sup> Indeed, Mr. Trump himself has promised to do so. Yesterday—after the Court's evidentiary rulings on January 9, ECF 252—he expressed at a press conference his intention to do exactly what this Court ordered him not to do: "I'm going to go to [the *Carroll v. Trump* trial], and I'm going to explain I don't know who the hell she is."<sup>2</sup>

The New York Attorney General's ongoing state court civil fraud action against Mr. Trump provides a potential preview of exactly what we might expect to see at next week's trial before this Court. In that case, Mr. Trump offered testimony contradicting the state court's own summary judgment ruling and used his time on the stand to attack opposing counsel and the legitimacy of the proceedings. ECF 233 at 5-6. He did so in contravention of facts that had already been established by the presiding judge. Moreover, Mr. Trump had originally sought permission to give his own closing argument in that case. *See* Ex. A at 8-9 (correspondence between Justice Engoron and Mr. Trump's counsel). The court informed Trump that he must agree on the record to "limit his subjects to what is permissible in a counsel's closing argument," and accordingly may comment only on "relevant, material facts," and may not "introduce new evidence," "deliver a campaign speech," or "impugn" the court or opposing counsel. *Id.* at 7. Mr. Trump's counsel rejected those conditions as "very unfair" and insisted that Mr. Trump must be allowed to "speak about the things that must be spoken about" regarding an "out of control, politically motivated Attorney General." *Id.* at 1. The court was unpersuaded by this request to violate the rules that ordinarily govern the presentation of closing argument in a civil case. Giving up the game, Mr. Trump refused to agree to those generally applicable limitations. *Id.*

Later, at the closing itself, however, Mr. Trump pleaded for an opportunity to address the court. Ex. B at 112-13. The court indulged the request, but only if Mr. Trump "promise[d] to just comment on the law and facts, application of one to the other and not go outside of that." *Id.* At 113. Mr. Trump immediately disregarded the court's instructions and the rules applicable to all

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<sup>1</sup> This concern finds further support in Trump's other conduct in this very litigation and elsewhere. Trump has repeatedly shown himself to be unaware or willfully blind to what is happening in this case. For example, he falsely told the public that he had filed a motion for recusal that Your Honor "quickly refused." @realDonaldTrump, Truth Social (May 10, 2023), <https://truthsocial.com/@realDonaldTrump/posts/110342704670441764>. He also gave sworn deposition testimony that contradicted his own interrogatory responses, feigning ignorance about those responses and arguing that the "deposition rules" because his responses were "signed by somebody else," ECF 192-2 at 111. It would be wholly improper for Trump to insist at this trial that he is somehow not bound by the Court's orders, or by the positions he has taken, because he is unaware of them.

<sup>2</sup> Brett Samuels, *Trump Says He Plans to Attend E. Jean Carroll Defamation Trial*, The Hill (Jan. 11, 2024), <https://thehill.com/regulation/court-battles/4403684-trump-says-he-plans-to-attend-e-jean-carroll-defamation-trial/>.

litigants in closing. He told the court that “this case goes outside of just the facts” and launched into a soliloquy. *Id.* He claimed, despite the court’s earlier summary judgment ruling, that the at-issue financial disclosures “were perfect.” *Id.* He called the case a “fraud on [him]” and a “political witch hunt,” and attacked the Attorney General. *Id.* at 114-17. And when the state court asked Mr. Trump for “[o]ne minute,” he attacked the judge too, saying, “You have your own agenda, I can certainly understand that. You can’t listen for more than one minute.” *Id.* at 116. Mr. Trump’s counsel (which included his counsel in this case) ignored the state court’s demand that they “control [their] client.” *Id.* Consistent with the understanding that this was all intentional—that it is was part of a strategy to delegitimize the proceedings and seek other perceived personal or political benefits from overt noncompliance with court orders—Mr. Trump and his counsel followed up with intemperate public statements and continued attacks on the court. ECF 254 at 5 & n.8.

It takes little imagination to think that Mr. Trump is gearing up for a similar performance here—only this time, in front of a jury. Indeed, as noted above, Mr. Trump promised a second round of this same scenario in his remarks to the press just yesterday. *Id.*

For all of these reasons, we therefore respectfully request that in the event that Mr. Trump does appear to testify at trial (which he has stated that he will), the Court may want to consider taking robust prophylactic measures to ensure that Mr. Trump does not present inadmissible, prejudicial, or otherwise improper information to the jury. Pursuant to its inherent discretion and Federal Rule of Evidence 103(d), before Mr. Trump takes the stand, the Court should consider:

- admonishing Mr. Trump with respect to the conclusions and testimonial implications of the Court’s collateral estoppel decision and the evidentiary limitations that it has detailed in various written decisions;
- informing Mr. Trump of the possible consequences for violating the Court’s orders;
- requiring Mr. Trump’s counsel to provide a detailed offer of proof in advance of Mr. Trump’s anticipated testimony, *see* Fed. R. Evid. 103(c); and
- requiring Mr. Trump to state on the record and under oath, out of the presence of the jury, but in open court—that he understands that it is established for purposes of the trial that he sexually assaulted Ms. Carroll, and that he spoke falsely with actual malice and lied when accusing her of fabricating her account and impugning her motives, and that Mr. Trump further understands and accepts all of the limits that the Court has imposed on his testimony in this action and will conduct himself in the courtroom in accordance with those limitations.

Should Mr. Trump nevertheless go on to give inappropriate testimony or otherwise engage in improper conduct, the Court would have various tools at its disposal to enforce its evidentiary rulings and related orders. Among other things, it may find Mr. Trump or his counsel in contempt, *United States v. Allocco*, 994 F.2d 82, 85 (2d Cir. 1993); it may issue punitive fines and monetary sanctions, *id.* at 86; *BOC Aviation Ltd. v. AirBridgeCargo Airlines, LLC*, No. 22 Civ. 2070, 2022 WL 17581775, at \*17 (S.D.N.Y. Dec. 12, 2022); it may refer counsel for discipline, *Hinds v. Cnty.*

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*of Westchester*, No. 11 Civ. 7265, 2020 WL 7046843, at \*5-6 (S.D.N.Y. Dec. 1, 2020); and it may preclude Mr. Trump from giving further testimony, *Mercado v. One Beacon Ins. Grp.*, 356 F. App'x 553, 554 (2d Cir. 2009). At a minimum, any future violation by Mr. Trump of a specific evidentiary ruling would justify an emphatic jury instruction that addresses the improper testimony and safeguards against prejudice. *See United States v. Aquart*, 912 F.3d 1, 35 (2d Cir. 2018); *United States v. Van Hise*, No. 12 Cr. 847, 2014 WL 956291, at \*4 (S.D.N.Y. Mar. 11, 2014); *see also United States v. Melendez*, 57 F.3d 238, 242 (2d Cir. 1995).

Accordingly, in addition to the proposed prophylactic measures described above, we attach for Your Honor's preliminary consideration two proposed curative instructions: (1) if Mr. Trump gives testimony in violation of the recent order limiting admissible evidence in accordance with the Court's collateral estoppel decision, ECF 252; and (2) if Mr. Trump refers to the *Carroll II* jury's determination relating to rape as defined under New York Penal Law, ECF 251. *See Exs. C & D*. Of course, if Mr. Trump violates one of the Court's evidentiary rulings in other ways, we can propose appropriate curative instructions at that time. As Your Honor has observed, however, some of the evidence that Mr. Trump has previously sought to introduce is so prejudicial that "once that bell rings, there is no way to unring it." *Carroll II* Trial Tr. 456.

If Mr. Trump appears at this trial, whether as a witness or otherwise, his recent statements and behavior strongly suggest that he will seek to sow chaos. Indeed, he may well perceive a benefit in seeking to poison these proceedings, where the only question for the jury is how much more he will have to pay in damages for defaming Ms. Carroll. This Court should made clear from the outset that Mr. Trump is forbidden from engaging in such antics and will suffer consequences if he does so.

Respectfully submitted,



Roberta A. Kaplan

cc: Counsel of Record

# **EXHIBIT A**

**Allison R. Greenfield**

**From:** Hon. Arthur Engoron  
**Sent:** Wednesday, January 10, 2024 12:12 PM  
**To:** chris kise  
**Cc:** Allison R. Greenfield; kevin.wallace@ag.ny.gov; Clifford Robert; Alina Habba; ckise@continentalpllc.com; Amer, Andrew; Faherty, Colleen  
**Subject:** RE: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Dear Mr. Kise,

Not having heard from you by the third extended deadline (noon today), I assume that Mr. Trump will not agree to the reasonable, lawful limits I have imposed as a precondition to giving a closing statement above and beyond those given by his attorneys, and that, therefore, he will not be speaking in court tomorrow.

As I previously indicated, this email chain will docketed on NYSCEF to preserve your appellate rights.

Justice Engoron

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**From:** Hon. Arthur Engoron  
**Sent:** Wednesday, January 10, 2024 11:54 AM  
**To:** chris kise <chris@ckise.net>  
**Cc:** Allison R. Greenfield <argreenf@nycourts.gov>; kevin.wallace@ag.ny.gov; Clifford Robert <crobert@robertlaw.com>; Alina Habba <ahabba@habbalaw.com>; ckise@continentalpllc.com; Amer, Andrew <Andrew.Amer@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>  
**Subject:** RE: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Dear Mr. Kise,

I won't debate this yet again. Take it or leave it. Now or never. You have until noon, seven minutes from now. I WILL NOT GRANT ANY FURTHER EXTENSIONS.

Justice Engoron

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**From:** chris kise <chris@ckise.net>  
**Sent:** Wednesday, January 10, 2024 11:40 AM  
**To:** Hon. Arthur Engoron <aengoron@nycourts.gov>  
**Cc:** Allison R. Greenfield <argreenf@nycourts.gov>; kevin.wallace@ag.ny.gov; Clifford Robert <crobert@robertlaw.com>; Alina Habba <ahabba@habbalaw.com>; ckise@continentalpllc.com; Amer, Andrew <Andrew.Amer@ag.ny.gov>; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>  
**Subject:** Re: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Justice Engoron

This is very unfair, your Honor. You are not allowing President Trump, who has been wrongfully demeaned and belittled by an out of control, politically motivated Attorney General, to speak about the things that must be spoken about.



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**From:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>  
**Date:** Wednesday, January 10, 2024 at 10:57 AM  
**To:** chris kise <[chris@ckise.net](mailto:chris@ckise.net)>  
**Cc:** Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>, [kevin.wallace@ag.ny.gov](mailto:kevin.wallace@ag.ny.gov) <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>, Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>, Alina Habba <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>, [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com) <[ckise@continentalpllc.com](mailto:ckise@continentalpllc.com)>, Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>, Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>  
**Subject:** Re: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Dear Mr. Kise,

As I have already indicated to you, if Mr. Trump wishes to speak, pursuant to CPLR 321, you will have to tell me NOW that he will agree to the limitations I have imposed, which go without saying and apply to everyone, and he will have to agree to do so tomorrow, on the record, which should take no more than a minute or two.

Justice Engoron

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**From:** chris kise <[chris@ckise.net](mailto:chris@ckise.net)>  
**Date:** Wednesday, January 10, 2024 at 10:51 AM  
**To:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>  
**Cc:** Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>, [kevin.wallace@ag.ny.gov](mailto:kevin.wallace@ag.ny.gov) <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>, Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>, Alina Habba <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>, [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com) <[ckise@continentalpllc.com](mailto:ckise@continentalpllc.com)>, Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>, Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>  
**Subject:** Re: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Justice Engoron

Despite the fact that his Mother-in Law, who he was very close to, passed away late last night, President Trump will be speaking tomorrow.

Respectfully,

Chris

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**From:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>  
**Date:** Wednesday, January 10, 2024 at 8:48 AM  
**To:** chris kise <[chris@ckise.net](mailto:chris@ckise.net)>  
**Cc:** Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>, [kevin.wallace@ag.ny.gov](mailto:kevin.wallace@ag.ny.gov) <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>, Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>, Alina Habba <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>, [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com) <[ckise@continentalpllc.com](mailto:ckise@continentalpllc.com)>, Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>, Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>  
**Subject:** Re: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Dear Mr. Kise,

I am sorry to hear the sad news.

The request to postpone tomorrow's closing arguments is denied. I'm sure you realize, although you may not realize to what extent, that every appearance of Mr. Trump requires court officers, court clerks, administrators, security details, technical people, etc. to rearrange their schedules and to plan for the day. The administration even had to "evict" the jury trial currently taking place in Room 300 for tomorrow. Of course, I am also anxious to hear a full day of closing statements as I consider the case as a whole.

On balance, going forward makes the most sense. Please tell Mr. Trump that I am sorry.

I still hope and expect to hear from you by 11:00 AM this morning as to whether all this is even an issue.

Justice Engoron

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**From:** chris kise <[chris@ckise.net](mailto:chris@ckise.net)>

**Date:** Tuesday, January 9, 2024 at 9:26 PM

**To:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>

**Cc:** Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>, [kevin.wallace@ag.ny.gov](mailto:kevin.wallace@ag.ny.gov) <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>, Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>, Alina Habba <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>, [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com) <[ckise@continentalpllc.com](mailto:ckise@continentalpllc.com)>

**Subject:** People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Justice Engoron

I am sad to advise the Court that Mrs. Trump's mother passed away this evening. Because of the challenges presented by this deeply personal family matter, President Trump has asked that I request the Court postpone the date for closing argument until on or after January 29, 2024, so that he may attend and participate in the Court proceedings. Respectfully,

Chris Kise

Please be CAREFUL when clicking links or opening attachments from external senders.



Allison R. Greenfield

**From:** chris kise <chris@ckise.net>  
**Sent:** Tuesday, January 9, 2024 4:18 PM  
**To:** Hon. Arthur Engoron; Allison R. Greenfield  
**Cc:** Solomon, Louis; Wallace, Kevin; Alina Habba, Esq.; Clifford Robert; ckise@continentalpllc.com; Faherty, Colleen; Michael Farina; Amer, Andrew  
**Subject:** Re: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

justice engoron

apologies as i did not see your deadline.  
additionally, my client is in the air so i have not yet been able to discuss your email with him.  
would therefore request you allow until tomorrow morning for any response.

thank you.

chris

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**From:** Hon. Arthur Engoron <aengoron@nycourts.gov>  
**Date:** Tuesday, January 9, 2024 at 4:16 PM  
**To:** chris kise <chris@ckise.net>, Allison R. Greenfield <argreenf@nycourts.gov>  
**Cc:** Solomon, Louis <Louis.Solomon@ag.ny.gov>, Wallace, Kevin <Kevin.Wallace@ag.ny.gov>, Alina Habba, Esq. <ahabba@habbalaw.com>, Clifford Robert <crobert@robertlaw.com>, ckise@continentalpllc.com <ckise@continentalpllc.com>, Faherty, Colleen <Colleen.Faherty@ag.ny.gov>, Michael Farina <mfarina@robertlaw.com>, Amer, Andrew <Andrew.Amer@ag.ny.gov>  
**Subject:** RE: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Dear Mr. Kise,

Not having heard from you or any of the other defense attorneys by the 4:00 pm deadline, pursuant to CPLR 321, and for the reasons stated below, Mr. Trump may not speak in Court on this Thursday, January 11, 2024.

In order to preserve the record for appellate review, I will docket this email chain on NYSCEF.

Justice Engoron

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**From:** Hon. Arthur Engoron  
**Sent:** Tuesday, January 9, 2024 1:23 PM  
**To:** chris kise <chris@ckise.net>; Allison R. Greenfield <argreenf@nycourts.gov>  
**Cc:** Solomon, Louis <Louis.Solomon@ag.ny.gov>; Wallace, Kevin <Kevin.Wallace@ag.ny.gov>; Alina Habba, Esq. <ahabba@habbalaw.com>; Clifford Robert <crobert@robertlaw.com>; ckise@continentalpllc.com; Faherty, Colleen <Colleen.Faherty@ag.ny.gov>; Michael Farina <mfarina@robertlaw.com>; Amer, Andrew <Andrew.Amer@ag.ny.gov>  
**Subject:** RE: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Dear Mr. Kise,

Your and your client's rejection of the reasonable, normal limits I am imposing on any argument by Mr. Trump, which are the same limits that the law imposes on any person making a closing argument, completely justifies the need to impose them. Closing arguments are for an advocate to comment on the evidence presented, on the relevant law, and on how the latter applies to the former to justify the result sought. Such arguments may not be used to testify, to introduce new evidence, to make a campaign speech, or to comment on irrelevant matters. People v Kennedy, 177 AD3d 628, 630 (2d Dept 2019) (“[T]he trial court may preclude summation arguments that are speculative and unsupported by any evidence”); People v Ramirez, 150 AD3d 898, 899 (2d Dept 2019) (“Summation is not an unbridled debate in which the restraints imposed at trial are cast aside so that counsel may employ all the rhetorical devices at his [or her] command”); People v Hightower, 176 AD3d 865, 867 (2d Dept 2019) (“Counsel must, among other things, ‘stay within “the four corners of the evidence” and avoid irrelevant and inflammatory comments”).

Anyone can comment on the arguments of an opposing party or counsel, but may not seek to impugn their character. Of course I will apply common sense if there is any issue or doubt, but I will not let anyone violate the normal rules of courtroom procedure that govern closing arguments.

The limitations I am imposing, in my absolute discretion, are not subject to further debate. Take it or leave it. Please let me know which by 4:00 pm today.

Justice Engoron

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**From:** chris kise <[chris@ckise.net](mailto:chris@ckise.net)>  
**Sent:** Tuesday, January 9, 2024 11:10 AM  
**To:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>; Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>; Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>  
**Cc:** Solomon, Louis <[Louis.Solomon@ag.ny.gov](mailto:Louis.Solomon@ag.ny.gov)>; Wallace, Kevin <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>; Alina Habba, Esq. <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>; Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>; [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com); Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>; Michael Farina <[mfarina@robertlaw.com](mailto:mfarina@robertlaw.com)>  
**Subject:** Re: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

justice engoron

thank you for your response and proposal below.

first, i agree that, in a non-jury trial (and especially this trial) your inclination to let everyone have his or her say is the best approach. also agree that the more reasoned analysis you receive, the better you will be able to decide the case correctly. additionally, and as you note, president trump has by far the most at stake in this enforcement action. therefore, allowing him to make a statement is not only the best course of action, it is the fair and correct approach.

however, he cannot agree (nor would i recommend he do so) to the proposed preconditions and prior restraints.



as an initial matter, under the present circumstances where the AG seeks the unconscionable and draconian penalty of prohibiting president trump, who has contributed both professionally and personally to the economic development, job growth, and real estate footprint of new york for some fifty years, from ever again engaging in any lawful business activity in new york even though the evidence at trial established he did nothing wrong. given same, he most assuredly should be accorded an opportunity to address the court.

further, the preconditions and prior restraints you propose are fraught with ambiguities, creating the substantial likelihood for misinterpretation or unintended violation. for example, the notion he could not comment on the AG, *the plaintiff*, is simply untenable. moreover, given the history of these proceedings, agreement to such ambiguous limitations will no doubt simply create further disagreements.

therefore, while as noted i agree with your stated conclusions that the fair and best approach is to allow president trump to make a statement, he cannot agree to the proposed limitations and prior restraints. the existing gag order, although on appeal, remains. but there should otherwise not be further prior restraints on any statement he provides at closing.

please advise as to whether you will permit president trump to speak at closing without the proposed limitations.

thank you.

respectfully,

chris

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**From:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>

**Date:** Friday, January 5, 2024 at 1:18 PM

**To:** Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>, Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>

**Cc:** chris kise <[chris@ckise.net](mailto:chris@ckise.net)>, Solomon, Louis <[Louis.Solomon@ag.ny.gov](mailto:Louis.Solomon@ag.ny.gov)>, Robert Apicella <[rapicell@nycourts.gov](mailto:rapicell@nycourts.gov)>, Wallace, Kevin <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>, Alina Habba, Esq. <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>, Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>, [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com) <[ckise@continentalpllc.com](mailto:ckise@continentalpllc.com)>, Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>, Michael Farina <[mfarina@robertlaw.com](mailto:mfarina@robertlaw.com)>

**Subject:** RE: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Dear Counselors,

In the email to which this email responds, Mr. Kise announced that defendant Donald J. Trump "plans to present argument at closing." Pursuant to CPLR 321, "If a party appears by attorney, such party may not act in person in the action except by consent of the court." Mr. Trump obviously "appears by attorney." Thus, and as far as my research has revealed, whether he may present a closing argument is completely at my discretion.

Particularly in a non-jury trial, I am inclined to let everyone have his or her say. Moreover, the more reasoned analysis I receive, the better I will be able to decide the case correctly. Furthermore, Mr. Trump is the person with by far the most at stake in this enforcement action.

Thus, in my sole discretion, I will consent to let Mr. Trump make a closing argument if, and only if, through counsel by 1/9/2024, and by himself, personally, on the record, just before he speaks, he agrees to limit his subjects to what is permissible in a counsel's closing argument, that is, commentary on the relevant, material facts that are in evidence, and application of the relevant law to those facts. He may not seek to introduce new evidence. He may not "testify." He may not comment on irrelevant matters. In particular, and without limitation, he may not deliver a campaign speech, and he may not impugn myself, my staff, plaintiff, plaintiff's staff, or the New York State Court System, none of which is relevant to this case, and all of which, except commenting on my staff, can be done, and is being done, in other forums. If Mr. Trump violates any of these rules, I will not hesitate to cut him off in mid-sentence and admonish him. If he continues to violate the rules, I will end his closing argument and prevent him from making any further statements in the courtroom. If he violates the current gag order against him, I will immediately direct court officers to remove him from the courtroom forthwith and will fine him not less than \$50,000. Finally, he must state on the record before he begins to speak that he also understands that, without exception, defendants, collectively, have only from 10:15 to 12:45, with one 15-minute break, to present their arguments, meaning that whatever time he speaks is time that other defense attorneys will not have.

Plaintiff will also have two hours and 15 minutes, from 2:15 to 4:30, to present closing arguments.

Mr. Kise, please respond.

Justice Engoron

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**From:** Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>  
**Sent:** Thursday, January 4, 2024 5:13 PM  
**To:** Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>; Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>; Garth A. Johnston <[GAJOHNST@nycourts.gov](mailto:GAJOHNST@nycourts.gov)>  
**Cc:** chris kise <[chris@ckise.net](mailto:chris@ckise.net)>; Solomon, Louis <[Louis.Solomon@ag.ny.gov](mailto:Louis.Solomon@ag.ny.gov)>; Robert Apicella <[rapicell@nycourts.gov](mailto:rapicell@nycourts.gov)>; Wallace, Kevin <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>; Alina Habba, Esq. <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>; Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>; [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com); Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>; Michael Farina <[mfarina@robertlaw.com](mailto:mfarina@robertlaw.com)>  
**Subject:** RE: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Justice Engoron, Ms. Greenfield, and Mr. Johnston-

Plaintiff opposes Defendants' plan to have Mr. Trump present any portion of their closing argument.

Mr. Trump is certainly not permitted to do so as of right. Under the CPLR if a party "appears by attorney such party may not act in person in the action except by consent of the court." CPLR 321(a). Even in criminal proceedings where the Sixth Amendment and the State Constitution afford a defendant the right to counsel or to self-representation, they do not guarantee a right to both. *People v. Rodriguez*, 95 N.Y.2d 497, 501 (2000). "These are 'separate rights depicted on the opposite sides of the same [constitutional] coin. To choose one obviously means to forego the other.'" *Id.* (quoting *United States v. Purnett*, 910 F.2d 51, 54 (2d Cir. 1990)). There is no right to "hybrid" representation, in which a defendant is "represented by counsel from time to time, but may slip into pro se mode for selected presentations." See *Clark v. Perez*, 510 F.3d 382, 395 (2d Cir. 2008); see also *U.S. v. Rivernider*, 828 F.3d 91, 108 (2d Cir. 2016). "By accepting counseled representation, a defendant assigns control of much of the case to the lawyer, who, by reason of training and experience, is entrusted with sifting out weak arguments, charting strategy and making day-to-day decisions over the course of the proceedings." *Rodriguez*, 95 N.Y.2d at 501-02. Accordingly, a defendant who chooses to defend through counsel in criminal or civil actions cannot, as of right, present closing arguments. *People v. Richardson*, 4 N.Y.2d 224, 227 (1958).

Nevertheless, the Court has the power, in the exercise of its discretion, to grant a specific application for limited participation of a defendant as counsel, but only when doing so will not unduly disrupt the orderly administration of



justice or unfairly prejudice the prosecution's interests. *See Richardson*, 4 N.Y.2d 224 at 229; *People v. Powell*, 98 Misc.2d 460, 461, (N.Y. Sup. Ct. Kings Cty. 1979). Allowing Mr. Trump to present even a portion of Defendants' closing argument would do both. The Court has already found that Mr. Trump is prone to giving irrelevant speeches, lacks self-control, is evasive in responding to questions (Tr. 3493:05-3495:04), and has repeatedly violated court orders for which he has been sanctioned. Allowing Mr. Trump to present closing argument will invite more speeches that will "unduly disrupt" the proceedings. *Richardson*, 4 N.Y.2d 224 at 229. Moreover, Mr. Trump had the right to present testimony on Defendants' affirmative case but elected at the last minute not to do so (explaining in a subsequent social media post that he "already testified to everything and [has] nothing more to say"). Allowing Mr. Trump to participate in closing arguments would effectively grant him an opportunity to testify without being subject to cross-examination, thereby depriving the People of a fundamental right to their significant prejudice – especially in light of the Court's prior determination that Mr. Trump was not a credible witness (NYSCEF No. 1598 at 2). *Cf. Barnes v. City of New York*, 44 A.D.3d 39, 46 (1st Dep't 2007) ("By avoiding his obligation to testify at a trial in which he was seeking millions of dollars, plaintiff was able to frustrate the City's fundamental common-law right to cross-examine a witness.").

Mr. Kise's email should be treated as an application to allow Mr. Trump to present closing argument and, for the reasons above, should be denied.

Respectfully,

---

**Andrew Amer | Special Counsel**  
New York State Office of the Attorney General  
Executive Division  
28 Liberty Street  
New York, NY 10005  
Tel: (212) 416-6127  
Email: [Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)

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**From:** chris kise <[chris@ckise.net](mailto:chris@ckise.net)>  
**Sent:** Thursday, January 4, 2024 12:47 PM  
**To:** Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>; Wallace, Kevin <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>; Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>; Alina Habba, Esq. <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>; Solomon, Louis <[Louis.Solomon@ag.ny.gov](mailto:Louis.Solomon@ag.ny.gov)>; Michael Farina <[mfarina@robertlaw.com](mailto:mfarina@robertlaw.com)>; Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>; [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com); Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>  
**Cc:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>; Garth A. Johnston <[GAJOHNST@nycourts.gov](mailto:GAJOHNST@nycourts.gov)>; Robert Apicella <[rapicell@nycourts.gov](mailto:rapicell@nycourts.gov)>  
**Subject:** Re: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

ms greenfield

happy new year!

at this time the defense anticipates that closing arguments will take approximately 2 hours – 2 hours 15 minutes total.

i will present the more extensive argument, and then ms. habba and mr. robert will also present more limited arguments.

additionally, president trump plans to present argument at closing as well.

but we anticipate all such arguments will be completed within the above time estimate.



as a practical matter, this means the defense will be done before the lunch break, leaving ample time for the attorney general the remainder of the day.

please advise if you have any further questions.

thank you.

chris kise

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**From:** Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>  
**Date:** Thursday, January 4, 2024 at 11:24 AM  
**To:** Wallace, Kevin <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>, Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>, Alina Habba, Esq. <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>, Solomon, Louis <[Louis.Solomon@ag.ny.gov](mailto:Louis.Solomon@ag.ny.gov)>, Michael Farina <[mfarina@robertlaw.com](mailto:mfarina@robertlaw.com)>, Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>, [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com) <[ckise@continentalpllc.com](mailto:ckise@continentalpllc.com)>, chris kise <[chris@ckise.net](mailto:chris@ckise.net)>, Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>  
**Cc:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>, Garth A. Johnston <[GAJOHNST@nycourts.gov](mailto:GAJOHNST@nycourts.gov)>, Robert Apicella <[rapicell@nycourts.gov](mailto:rapicell@nycourts.gov)>  
**Subject:** RE: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Dear Mr. Wallace,

Thank you for your response. The Court is currently operating under the assumption that we will follow the normal practice of defendants going first and plaintiff going last. We will, however, wait to hear back from defendants.

Allison R. Greenfield  
Principal Law Clerk to Hon. Arthur F. Engoron  
New York County Supreme Court  
60 Centre Street, Courtroom 418  
New York, New York 10007  
(646) 386-4374

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**From:** Wallace, Kevin <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>  
**Sent:** Thursday, January 4, 2024 11:05 AM  
**To:** Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>; Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>; Alina Habba, Esq. <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>; Solomon, Louis <[Louis.Solomon@ag.ny.gov](mailto:Louis.Solomon@ag.ny.gov)>; Michael Farina <[mfarina@robertlaw.com](mailto:mfarina@robertlaw.com)>; Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>; [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com); chris kise <[chris@ckise.net](mailto:chris@ckise.net)>; Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>  
**Cc:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>; Garth A. Johnston <[GAJOHNST@nycourts.gov](mailto:GAJOHNST@nycourts.gov)>; Robert Apicella <[rapicell@nycourts.gov](mailto:rapicell@nycourts.gov)>  
**Subject:** RE: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

Ms. Greenfield –

At this time, we anticipate that closing argument for OAG will take an hour and be conducted by one person from our team; either me or Mr. Amer. That estimate could change depending on the arguments from Defendants in their proposed findings of fact and conclusions of law and in their closings. This is also based on an assumption that closing arguments will follow standard practice with Defendants presenting first and Plaintiff presenting second. If any of those assumptions are incorrect or if more time is required we might divide up the argument. We will let the Court know if we think that becomes necessary. We also anticipate that other members of our trial team could address specific questions from the Court if they involve areas of their expertise.

Best regards,

KCW

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**From:** Allison R. Greenfield <[argreenf@nycourts.gov](mailto:argreenf@nycourts.gov)>

**Sent:** Wednesday, January 3, 2024 11:57 AM

**To:** Amer, Andrew <[Andrew.Amer@ag.ny.gov](mailto:Andrew.Amer@ag.ny.gov)>; Alina Habba, Esq. <[ahabba@habbalaw.com](mailto:ahabba@habbalaw.com)>; Solomon, Louis <[Louis.Solomon@ag.ny.gov](mailto:Louis.Solomon@ag.ny.gov)>; Michael Farina <[mfarina@robertlaw.com](mailto:mfarina@robertlaw.com)>; Faherty, Colleen <[Colleen.Faherty@ag.ny.gov](mailto:Colleen.Faherty@ag.ny.gov)>; [ckise@continentalpllc.com](mailto:ckise@continentalpllc.com); chris kise <[chris@ckise.net](mailto:chris@ckise.net)>; Clifford Robert <[crobert@robertlaw.com](mailto:crobert@robertlaw.com)>; Wallace, Kevin <[Kevin.Wallace@ag.ny.gov](mailto:Kevin.Wallace@ag.ny.gov)>

**Cc:** Hon. Arthur Engoron <[aengoron@nycourts.gov](mailto:aengoron@nycourts.gov)>; Garth A. Johnston <[GAJOHNST@nycourts.gov](mailto:GAJOHNST@nycourts.gov)>; Robert Apicella <[rapicell@nycourts.gov](mailto:rapicell@nycourts.gov)>

**Subject:** RE: People v. Trump, et al., No. 452564/2022 - Closing Arguments January 11th

**Importance:** High

[EXTERNAL]

Dear Counselors:

I write to advise you that we will be back in Room 300 on January 11<sup>th</sup> for closing arguments. However, as the NRA trial will already have started, the Courtroom will be set up differently than it was for trial testimony. I have copied Rob on this email so that you may clear any tech questions with him.

Additionally, Justice Engoron would like to know how many people, and who, will be speaking for each side, and how much time each person, or each side, wants. Please keep in mind we only have the one day.

Thank you,

Allison R. Greenfield  
Principal Law Clerk to Hon. Arthur F. Engoron  
New York County Supreme Court  
60 Centre Street, Courtroom 418  
New York, New York 10007  
(646) 386-4374

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# **EXHIBIT B**

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NEW YORK: CIVIL TERM PART: 37

3 -- -----X

4 PEOPLE OF THE STATE OF NEW YORK, BY  
5 LETITIA JAMES, ATTORNEY GENERAL OF THE  
STATE OF NEW YORK,

6 Plaintiff,

Index No.

7 -against-

452564/2022

8

9 DONALD J. TRUMP; DONALD TRUMP JR.;  
ERIC TRUMP; IVANKA TRUMP; ALLEN  
WEISSELBERG;JEFFREY McConney; THE  
10 DONALD J. TRUMP REVOCABLE TRUST; THE  
TRUMP ORGANIZATION, INC.; DJT HOLDINGS  
11 MANAGING MEMBER; TRUMP ENDEAVOR 12,  
LLC; 401 NORTH WABASH VENTURE, LLC  
12 TRUMP OLD POST OFFICE, LLC; 40 WALL  
STREET, LLC AND SEVEN SPRINGS, LLC,,

13

Defendants.

14 -----X

15 60 Centre Street  
16 New York, New York 10007  
January 11, 202

17 B E F O R E:

HON. ARTHUR F. ENGORON,, JSC.

18

19 A P P E A R A N C E S:

20 FOR THE PLAINTIFFS:

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK -  
LETITIA JAMES

21 28 Liberty Street  
New York, New York 10005

22 BY: KEVIN WALLACE, ESQ.  
COLLEEN K. FAHERTY, ESQ.

23 ANDREW AMER, ESQ.  
ERIC HAREN, ESQ.

24 LOUIS SOLOMON, ESQ.  
MARK LADOV, ESQ.

25 SHERIEF GABER, ESQ.

ALEX FINKELSTEIN, ESQ.

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A P P E A R A N C E S: (Cont.)

FOR THE DEFENDANTS:

CONTINENTAL PLLC.  
101North Monroe Street, Suite 750  
Tallahassee, Florida  
BY: CHRISTOPHER KISE, ESQ., ESQ.  
JESUS SUAREZ, ESQ.

FOR THE DEFENDANTS:

ROBERT & ROBERT, PLLC  
526 RXR Plaza  
Uniondale, New York 11556  
BY: CLIFFORD ROBERT, ESQ.

FOR THE DEFENDANT: DONALD TRUMP, et al

HABBA MADAI & ASSOCIATES, LLP  
1430 US Highway 296, Suite 240  
Bedminister, New Jersey 07921  
BY: ALINA HABBA, ESQ.

DINA M. LUDWICKI, RPR  
Senior Court Reporter



**-Closing Statement-**

112

1 had done anything wrong. If that doesn't speak volumes, I  
2 don't know what does.

3 So with 15 seconds left, Your Honor, I would  
4 respectfully request that all the counts against my clients  
5 be dismissed and that there be no order of disgorgement  
6 against him.

7 Thank you.

8 THE COURT: So, Mr. Kise, not only is he an  
9 expert on the CPLR, but he can present a very enthusiastic  
10 argument.

11 MR. KISE: Again, they just put all the weight on  
12 my shoulders and then decided to travel on.

13 I would ask Your Honor, I think I would ask you  
14 reconsider, allow President Trump to address the Court for  
15 two or three minutes. The reason that I didn't feel that  
16 your restrictions were appropriate because, frankly, your  
17 restrictions stated in the email went beyond what was  
18 required under the law. They do have ambiguities. None of  
19 us today have commented on anything outside the appropriate  
20 bounds of closing argument. I don't believe President  
21 Trump will either. I think, under the circumstances you  
22 should hear from him.

23 All these people back here certainly want to hear  
24 from him, and I think as you say in your own email, you  
25 would benefit from hearing everything. There is no one

**-Closing Statement-**

113

1 person more impacted by the decision you're going to make  
2 than President Trump here. So I would ask that the Court  
3 allow him to speak now briefly now and address the Court  
4 and present his views to you.

5 THE COURT: Well, this is not how it should have  
6 been done.

7 Mr. Trump, let me address you directly and  
8 Mr. Kise at the same time. If I let you speak for five  
9 minutes, I think that's what I will do, if you promise to  
10 just comment on the law and facts, application of one to  
11 the other and not go outside of that?

12 Mr. Kise, is that reasonable?

13 PRESIDENT TRUMP: Well, I think, your Honor, that  
14 this case goes outside of just the facts.

15 The facts are that the financial statements were  
16 perfect. That there was no witnesses against us. The  
17 banks got all their money paid back. They were great  
18 loans. The banks are happy as can be.

19 I mentioned the name Zurich, and Zurich, one of  
20 the most prestigious property and most prestigious  
21 insurance company in the world. They represent us right  
22 now. Supposed somebody said we defrauded them? I spoke to  
23 an executive at Zurich and they said: You didn't defraud  
24 us. If you defrauded us, we wouldn't be representing --  
25 they represent us right now. They weren't defrauded.

**-Closing Statement-**

114

1           There wasn't one witness against us, and this  
2           does go outside of the bounds of what we're talking about.  
3           This is a political witch hunt that was set aside by --  
4           should be set aside. We should receive damages for what  
5           we've gone through, for what they've taken this company  
6           through. We have millions pages of documents and they  
7           don't have one document. They have nothing. They do have  
8           a triplex where they made a mistake and they corrected it  
9           immediately when it was made, and it was di-minimus,  
10          because the amount of the money they're talking about  
11          compared to the billions of dollars of net worth is  
12          irrelevant. It's virtually irrelevant. It's a very small  
13          number. It was a mistake that was corrected. That's the  
14          only thing I ever read in the papers, their triplex. They  
15          made a mistake, it was an honest mistake, some broker told  
16          them 30 because he took -- the floors are approximately  
17          10,000 feet, they heard, as you say, triplex, and they  
18          multiplied times three.

19                 Something like that can happen. When they found  
20                 it was the mistake, they immediately corrected it. I'm not  
21                 so sure that the dollar amount would have been so far off,  
22                 frankly, if you want to know, whatever the amount was. It  
23                 was around the 250 number. But it's a -- it's a very  
24                 small, it's a very small number.

25                 But when you say don't go outside of these

**-Closing Statement-**

115

1 things, we have a situation where I'm an innocent man.

2 I've been persecuted by somebody running for office, and I  
3 think you have to go outside the bounds, because people,  
4 and you could read all the articles you want to read, but  
5 you look at the legal prognosticators, the legal scholars  
6 talking about this case, they find it disgraceful. The  
7 first time for a reason like this where there's -- you've  
8 ever used this statute. This statute is viscous. It  
9 doesn't give me a jury. It takes away all my rights. And  
10 it is, in fact, a statute used for consumer fraud. This is  
11 not consumer fraud. This is no fraud. This is a fraud on  
12 me.

13 What's happened here, sir, is a fraud on me. You  
14 know, other companies leave, they did it with Exxon. Exxon  
15 pays billions of dollars in taxes and they're now paying to  
16 Texas, and I went out and forced them that they want to  
17 make sure I'm never --

18 I just added up the other day the amount of taxes  
19 I've paid over the amount of the period that these people  
20 say, which, by the way, is absolutely limited by the  
21 Statute of Limitations. We won that case in the Court of  
22 Appeals. But I said how much tax have I paid over this?  
23 It's close the \$300 million in tax. They don't want me  
24 anymore. They don't want me here. I have done a lot of  
25 great things. I have built buildings all over the City.

**-Closing Statement-**

116

1 I've never had a problem. All of a sudden I have a  
2 problem. I guess because I ran for office I have a problem  
3 because they want to make sure that I don't win again, that  
4 this is partially election interference. But, in  
5 particular, the person in the room right now hates Trump  
6 and uses Trump to get elected. And if I'm not allowed to  
7 talk about that, I think it really is a disservice because  
8 that is a very big part of this case. I would say that's  
9 100 percent.

10 Without all of that, Your Honor, with all of  
11 these days and months and years and millions and millions  
12 pages, big company, they found nothing. And now she comes  
13 in and says, we want to make a \$250 million fine, \$370  
14 million. For what? I borrowed money from the bank, much  
15 smaller than the number you are talking about, much smaller  
16 than 370. One of the reasons I borrowed money is the bank  
17 wanted me to. That's how they make money. The bank said  
18 you should actually have -- the head of Deutsche Bank came  
19 to see me -- I know this is boring for you.

20 THE COURT: One minute, Mr. Trump.

21 PRESIDENT TRUMP: You have your own agenda, I can  
22 certainly understand that. You can't listen for more than  
23 one minute. This has been a persecution of somebody that's  
24 done a good job in New York.

25 THE COURT: Mr. Kise, please control your client.



**-Closing Statement-**

117

1                   By the way, you said you never had a problem;  
2 haven't you been sued before?

3                   PRESIDENT TRUMP: I have been sued. Sure, I've  
4 been sued.

5                   THE COURT: Isn't that a problem?

6                   PRESIDENT TRUMP: Most suits, but this is a suit  
7 that it seems I should have won many times. We've asked  
8 for directed verdict almost every time a witness took the  
9 stand. We've asked for a directed verdict and we were  
10 immediately shut down.

11                   Your Honor, look, I did nothing wrong. They  
12 should pay me for what we had to go through, what they have  
13 done to me reputationally and everything else. We have a  
14 great company. It's a successful company, a liquid  
15 company, like a lot of real estate companies are.

16                   We sell the best assets in the world, and she  
17 sued me to try to get publicity to run for office, and that  
18 includes running for governor, where she failed.

19                   THE COURT: It's 1:00 o'clock. Mr. Kise, we have  
20 to go anyway, the court officers are looking at me.

21                   Thank you, Mr. Trump.

22                   PRESIDENT TRUMP: Thank you.

23                   THE COURT: See you all at 2:15.

24                   Continued on next page.  
25

# EXHIBIT C

### **Proposed Curative Instruction re Collateral Estoppel**

Members of the jury, in the testimony that was just given by Mr. Trump, Mr. Trump made a statement that implied that Mr. Trump did not sexually assault Ms. Carroll or defame her when he denied doing so.

I'm directing that the testimony be stricken from the record and that you completely disregard it.

As I instructed you at the outset of this case, a jury of nine individuals previously sat for over two weeks, heard testimony from eleven witnesses, and determined that Mr. Trump knew Ms. Carroll, that Mr. Trump sexually assaulted Ms. Carroll, and that Mr. Trump defamed Ms. Carroll when he later denied that he had sexually assaulted her. As a matter of law—pursuant to the oaths that each of you swore as jurors in this case—you **must** accept that Mr. Trump's June 2019 statements were defamatory and false, and that Mr. Trump knew they were false or acted with reckless disregard as to whether they were false when he made them. There is no dispute about these facts. They have been established as true as a matter of law. And so you are required to accept these facts as true for purposes of this case and your deliberations.

Mr. Trump understands that these facts are proven as true, that these facts are not and cannot be disputed by him in this court of law, and that the prior jury unanimously found him liable on Ms. Carroll's claims of sexual assault and defamation. The testimony that Mr. Trump just gave was therefore not only false, but in violation of this Court. Again, you must disregard Mr. Trump's false testimony completely, other than to the extent that his false testimony may affect your evaluation of Mr. Trump's credibility as a witness.

# **EXHIBIT D**



### **Proposed Curative Instruction re Rape Finding**

Members of the jury, in the testimony that was just given by Mr. Trump, Mr. Trump made a statement that implied that Mr. Trump did not rape Ms. Carroll.

I'm directing that the testimony be stricken from the record and that you completely disregard it.

As I instructed you at the outset of this case, a jury of nine individuals previously sat for over two weeks, heard testimony from eleven witnesses, and determined that Mr. Trump sexually assaulted Ms. Carroll. Specifically, the jury found, as the Court itself has determined, that Mr. Trump "raped" Ms. Carroll as that term is commonly understood. There is no dispute about these facts, and you **must** accept these facts for purposes of this case and your deliberations.

Mr. Trump understands that these facts are proven as true, that these facts are not and cannot be disputed by him in this court of law, and that the prior jury unanimously found him liable on Ms. Carroll's prior claims of sexual assault and defamation. The testimony that Mr. Trump just gave was therefore not only false, but in violation of the orders of this Court. Again, you must disregard Mr. Trump's false testimony completely, other than to the extent that his false testimony may affect your evaluation of Mr. Trump's credibility as a witness.