

# [***Trump Defense Cross-Examines Star Witness; Soon: Michael Cohen Cross-Examination Continues; Trump Holds Slim Lead Over Biden; Trump Defense Cross Examines Star Witness***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6C21-J1W1-F072-X002-00000-00&context=1516831)

Fox News THE STORY WITH MARTHA MACCALLUM 3:00 PM EST

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**Guests:** Hugh Hewitt, Will Scharf

**Body**

MARTHA MACCALLUM, FOX NEWS CHANNEL HOST: Thank you very much, you guys. Good afternoon, everybody. I'm Martha MacCallum, and this is THE STORY. So, right now, Michael Cohen back on the stand face to face with former President Trump's attorney, and actually former President Trump, who is about 12 feet away from him throughout this whole process.

Now the prosecution's star witness admitted time and time again today that he lied under oath in many situations from being deposed, from being in front of Congress, all kinds of opportunities where he was facing legal jeopardy, and he lied under oath. All that's being laid out by Todd Blanche in great detail.

Also making it very clear that one of his deepest hopes is to see the former president locked up.

(BEGIN VIDEO CLIP)

MICHAEL COHEN, FORMER TRUMP LAWYER: We're going to be under the presumption that there's one tier of justice for all of us. What sent me to prison needs to turn around and to send this guy as well.

(END VIDEO CLIP)

MACCALLUM: The former president calling the case a sham and a scam and saying that he did not commit any crime. Watch.

(BEGIN VIDEO CLIP)

DONALD TRUMP, 45TH PRESIDENT OF THE UNITED STATES: The crime is that they're doing this case. This was a case that wasn't going to be done and then when I announced I was running they brought up -- they could have done it seven years ago. This could have been brought seven years ago. But they wanted it right smack in the middle of election. These are very dishonest people that we're dealing with.

(END VIDEO CLIP)

MACCALLUM: In fact, the underlying misdemeanors exceeded the statute of limitation years ago to the former president's point, but it was extrapolated into a felony, and that's how we got here, despite the fact that the FEC and the DOJ looked at all of this and never brought any charges, but here we are. So, I spent the day in court today. More on that with "THE FIVE" co-host Judge Jeanine Pirro. We'll get into this in just a second. But first let's go down to the courthouse, Fox Business Correspondent Lydia Hu, live at the courthouse in lower Manhattan. Hi Lydia.

LYDIA HU, FOX BUSINESS CORRESPONDENT: Hey there, Martha. That's right. That cross-examination, really scorching by Todd Blanche on Michael Cohen is still ongoing in the court just behind me. Todd Blanch pulling out those themes that are undermining Cohen's credibility that he's establishing that he's a known liar, a perjurer, and they had ulterior motives of money and seeking vengeance because he's angry about not bringing being brought into Trump's inner circle at the White House.

But Martha, I have to tell you about one stunning moment that occurred this afternoon when Todd Blanche was cross-examining Michael Cohen on a key moment of his testimony on direct examination under the prosecution. Cohen testified that he had a brief phone call lasting one minute and 36 seconds with Keith Schiller. That's Trump's bodyguard. Cohen said that this phone call happened in late 2016 and that he called Schiller specifically to reach Donald Trump because he knew that Trump would be with his bodyguard.

Cohen said he was speaking with both of them and told them on this phone call that the Daniels, Stormy Daniels deal was done. That's an important moment because that would be evidence, circumstantial evidence that perhaps Trump knew of this Stormy Daniels deal as it was in progress. And that's if you believe Michael Cohen. But what happened this afternoon on cross- examination, Todd Blanche, Donald Trump's lawyer, used text messages to show that leading up to the call, Michael Cohen had been receiving harassing text messages from some 14-year-old boy or girl, and Cohen texted Keith Schiller, the bodyguard, to ask if they could speak about these harassing calls.

The records show they then had the call, the one minute and 36 second call. And because that call was so brief, the suggestion on cross-examination is that Cohen is at worst lying about the call. That in fact they spoke about these harassing text messages that he's receiving from some 14-year-old, or at best the interpretation is that maybe they spoke about both the harassing text messages Cohen was receiving and maybe the Stormy Daniels deal.

But that's still bad because the information about the harassing text messages did not come out on direct examination, leading to this appearance that Cohen is perhaps hiding information, the prosecution not bringing forth the entire picture. And when you realize, and when the jury is sent back to deliberate and they realize that this entire case is strung together with information that relies on the veracity of what Michael Cohen is telling you, in moments like this where it makes the jury question, can we believe that Michael Cohen is telling us the truth or giving us the full picture, are really critical. You've got to wonder if the jury is wondering if they can trust Michael Cohen at all. Martha, I'm going to get back inside so I can keep giving you the very latest.

MACCALLUM: Great, all right Lydia, thank you very much. So, "THE FIVE" co- host, Judge Jeanine Pirro joins me now. Lydia laid that out beautifully.

JEANINE PIRRO, FOX NEWS CHANNEL HOST: She does.

MACCALLUM: In terms of what is going on. Why is this Keith Schiller call, which we did hear about a bit this morning, then they went back to it this afternoon, so important, Janine?

PIRRO: This call on October 24th of 2016 is extremely important because Michael Cohen testified under oath, under penalty of perjury, and we know he doesn't take it seriously given his history, that he called Keith Schiller to speak with Donald Trump to talk about the Stormy Daniels case.

It appears now from text messages and the call logs, when you put them together, Schiller actually told Michael Cohen to call him because Michael Cohen had been complaining about a 14-year-old that's been harassing him. He said he didn't know what to do. Could Schiller stop it? So, what Schiller does is he says, call me.

So, Cohen then calls him, and apparently, they have this conversation about the 14-year-old. Now, those text messages were not given to, were not shown on direct. I don't know if they were even given to the defense, but you would have a witness go in and know that he's going to testify that this is a one-minute, 36-second phone call I had, and it was with Donald Trump about Stormy Daniels.

When the text messages at the same time, Schiller and he are talking about this 14-year-old, that can be the subordination of perjury on the part of the prosecution if they indeed did not give this and hand over these text messages because it is exculpatory.

MACCALLUM: So, it makes it look as if the, the prosecution is using that call to say this is the call --

PIRRO: This is the key moment.

MACCALLUM: -- where Trump was made aware that Cohen had paid Stormy Daniels and said, OK, this is done. It's all set. And because they're not giving the context of the text messages that swirl right around that phone call, they are denying the discovery of what was really going on at that time. But it could be that they talked about that for 20 seconds and then they switched over to the Stormy Daniels conversation.

PIRRO: You know what? That's interpreting a little more than you have to, because within seconds before, minutes before, Keith Schiller says, call me about this kid. Now, let's assume that he talks to him about, that Cohen talks to Schiller. He then has to say, let me talk to the boss. Schiller has to say, let me find out if the boss is available to talk to you. Let me find out where the boss is.

You know how much time elapses between a discussion of this 14-year-old kid and finding out that the boss is around, does he have time to talk to me? I mean, it is incredible. And the fact that these text messages were not brought out and that apparently Cohen didn't have them either means that they didn't give it to Cohen, that they were trying to hide something, or maybe it's just a mess-up. But this is when my sources in the jury room or in the courtroom tell me that the jurors looked at each other stunned. That's a big moment.

MACCALLUM: That is a big moment because so much of this hinges on Trump's knowledge of it. But even if he had knowledge of it.

PIRRO: So what?

MACCALLUM: So what, right?

PIRRO: Thank you.

MACCALLUM: So, even if, you know, just for suppose for a moment that that was what the content of the call, it still would not constitute breaking the law because an NDA was decided and agreed upon by two adult parties.

PIRRO: And an NDA as we all know now is certainly it's like a civil settlement it's got it's entered into all the time and not one person has put Donald Trump anywhere near the bookkeeping, the internal ledgers of the Trump organization. And you know what, you can even argue if it's a going to the attorney, it is a legal expense. But no one can prove what Donald Trump's intent was.

And Michael Cohen himself said, you know, I kind of did it on my own, Melania would be devastated. Well, where did he get that from? He doesn't have a relationship with Melania. He gets it from Donald Trump. Everything on the prosecution's case has helped the defendant, the former president of the United States.

MACCALLUM: I thought they did a very good job also this morning of portraying Todd Blanche, of portraying Michael Cohen as desperate to get back into the good graces of the former president. Denied a job at the White House, you know, thought maybe he could be attorney general, thought he could be chief of staff, then he says, oh no, that isn't what I wanted, I wanted a higher paying job than that, I wanted to still be an outside counsel.

I guess the jury can decide what they think about that. But there were a couple of pieces of podcasts that were played this morning where he sounds like an absolute lunatic. I mean, he's screaming and yelling about how he wants Donald Trump to pay and to suffer like he did. This one is back from October of 2020, just to give you a sense of what he was himself saying on his podcast, and you can decide for yourself what you think his state is.

(BEGIN VIDEO CLIP)

COHEN: I truly (BLEEP) hope that this man ends up in prison. It won't bring back the year that I lost, or the damage done to my family, but revenge is a dish best served cold, and you better believe I want this man to go down and rot inside for what he did to me and my family.

(END VIDEO CLIP)

MACCALLUM: So, the reason they played all this, judges you well know, is to sort of establish that when he, when it served him personally he was willing to lie about things, right? And then, Blanche said, and you want him to go to jail now, too, don't you? In other words, you, you're under oath, but you, you, this it would mean a lot to you. You'd be happy if he goes to jail right now. Explain your thoughts on that.

PIRRO: Well, obviously, I mean, what you have is a guy who is, he is angry, he's angry. Think about it, if he thinks he's Donald Trump's fixer, and all of a sudden, you know, Donald Trump goes to the White House, he's not even asked to go to be part of it. And then we heard also that he couldn't get tickets to the inauguration and Michael Cohen's daughter said, they're walking all over you, or whatever the quote was.

I mean, you have a guy who lies when it benefits him and now he's lying out of revenge and out of his feeling that because he went to jail, Donald Trump should. Here's the bottom line. You went to jail because you perjured yourself, you cheated on your taxes. Did Donald Trump tell you to cheat on your taxes too?

I mean, did Donald Trump tell you to do all the bad things that you've done in your life? So, I think that you've got a guy who is emotionally broken. He knows this is the end for him. He's got no law license, he's got no career, he's got nothing. And unless Donald Trump is convicted and then he can ride out as the guy, you know, I convicted Donald Trump, he loses everything. And that's why he is so desperate now.

And I think the jury is seeing that if you lie to Congress, and you lie to the court, and he's contradicting himself now, then you add Robert Costello to this and you say oh my gosh he was going to kill himself and Costello kept saying do me a favor what do you have on Trump, don't kill yourself.

This is this is a bad witness Michael Cohen is the linchpin of the prosecution's case and he is a broken human being who is not credible to me as a matter of law and what the judge should instruct is if you believe that someone lied about you on one fact you can assume and disregard his whole testimony.

MACCALLUM: Well, I'll tell you one thing before we go we're going to talk more about Robert Costello in a minute but the judge -- I was looking at the jury they are very good at deadpan they are not giving away in any way how they are interpreting Cohen, how they're interpreting all this. They walk in and out of the courtroom as you saw when you were there.

They just beeline right for the door. They're not looking at the former president. They're not looking at Michael Cohen. Very tough to read any sort of emotion from them at this. Some of them are taking notes diligently. Others, you know, I think get a little bored at times and that happens, of course, you know, better than any of us.

PIRRO: Yes. Yes.

MACCALLUM: So, you got to keep the jury's attention all the time and build that story for them and whether or not that's happening successfully, we'll see. Judge, thank you so much.

PIRRO: Thank you. Good to talk to you.

MACCALLUM: It's always great to have you here. Thank you very much. We'll see you soon. We'll see you on "THE FIVE".

PIRRO: Yes.

MACCALLUM: OK. So, former Cohen advisor Robert Costello, who Judge Jeanine just mentioned, throwing cold water on Michael Cohen's testimony. He says, Cohen swore repeatedly that he had nothing incriminating against Donald Trump.

(BEGIN VIDEO CLIP)

ROBERT COSTELLO, FORMER COHEN ADVISOR: I kept on going back and suggesting to him, listen, Michael, if you have something truthful on Donald Trump, now is the time to cooperate. And he kept on saying over and over again, 10 to 20 times, I swear to God, Bob, I don't have anything on Donald Trump.

(END VIDEO CLIP) MACCALLUM: But will the jury ever hear what Robert Costello is saying? That's one of the big questions here. Trey Gowdy and Jonathan Turley, next.

(COMMERCIAL BREAK)

MACCALLUM: OK. Breaking just moments ago, the House Judiciary Committee voted to hold Attorney General Merrick Garland in contempt of Congress, after President Biden asserted executive privilege over the audio recordings of his own interview with former Special Counsel Robert Hur.

You remember that, that interview was the basis for her writing that Biden was, "an elderly man with a poor memory." So, the president said, no audio. Don't release that audio and he took executive privilege on that. They've already released the actual transcript. So, more to come on that.

(BEGIN VIDEO CLIP)

UNIDENTIFIED FEMALE: Speaker Mike Johnson said that President Biden is "apparently afraid" for citizens to hear his interview with Special Counsel Robert Hur. How is the White House responding to that?

KARINE JEAN-PIERRE, WHITE HOUSE PRESS SECRETARY: I would say the transcripts are already out there. They have been out there.

UNIDENTIFIED FEMALE: If the transcript is already out there, why is it different to have the audio there?

JEAN-PIERRE: Like I said, there were determinations that the president -- that was made by the president at the request of the attorney general. And so, we took that very seriously.

(END VIDEO CLIP)

MACCALLUM: So, we are waiting to hear from former President Trump as his lawyer questions his former attorney and so-called fixer, Michael Cohen.

We're also waiting to see if the Trump team puts Cohen's former legal adviser on the stand. Robert Costello says the prosecution star witness could have flipped years ago when he was "suicidal and desperate to stay out of jail".

But Costello says that Cohen said he had nothing, he didn't have anything to turn on his recently former boss, the then-President Donald Trump. Watch this.

(BEGIN VIDEO CLIP)

ROBERT COSTELLO, FORMER COHEN LEGAL ADVISER: I kept on going back and suggesting to him, listen, Michael, if you have something truthful on Donald Trump, now is the time to cooperate. And he kept on saying over and over again 10 to 20 times, I swear to God, Bob, I don't have anything on Donald Trump.

He also said, more times than that answer. Guys, I want you to understand, I will do whatever the eff I have to do, I will never spend a day in jail. And then he'd slammed his hand on the conference room table. Well, he did go to jail. And who do you think he blames for that?

(END VIDEO CLIP)

MACCALLUM: A lot of drama. So, let's bring in "SUNDAY NIGHT IN AMERICA" host, Trey Gowdy, former federal prosecutor and former House Oversight Committee chairman.

Trey, always good to have you with us.

You know, this is really getting to the end here.

(CROSSTALK)

TREY GOWDY, FOX NEWS CHANNEL CONTRIBUTOR: Thank you.

MACCALLUM: You've got this cross examination of the star witness happening, the prosecution has really hung all of this on Michael Cohen. And now, you have this other individual, Robert Costello, who has a lot of central information to the conversations and back and forth surrounding Cohen, who is piping up. And we don't know if he's going to get called as the expert witness here, but he has saying that he has crucial information about Cohen's motivation. And Cohen telling him that he had nothing on Donald Trump. How do you take all this, Trey?

GOWDY: Well, if what Costello is saying is true, it is a -- it is an extraordinary development for two reasons. Number one, that is actual legal innocence. If Michael Cohen really said that, that is actual legal innocence.

And as you know, Martha, defendant doesn't have to prove that he or she is innocent, but it never hurts if they do. The other thing it is, is it is what? 20 prior inconsistent statements by Michael Cohen? 20 different times?

I mean, I think Costello said, quoting Michael Cohen is saying, I swear to God, that sounds a lot like the oath he just took in a New York courtroom.

So, 20 different times he quotes, swore to God that Donald Trump had done nothing wrong. And now -- and that gets to Michael Cohen.

Martha, I was a prosecutor for a long time. I had a lot of really bad star witnesses. I don't know that I ever had a witness with as much baggage as Michael Cohen has.

I mean, to be a convicted perjurer, to listen to the tape. That is the tape. I mean, he quoted the Count of Monte Cristo about revenge, but you can hear it in his voice, he has a pecuniary interest in seeing Donald Trump go to jail. He's made a lot of money off of it.

So, he hates the target of his testimony. He's going to get rich off of it. He has a motive for revenge. And there what? 50 prior inconsistent statements? I mean, would you believe Michael Cohen beyond a reasonable doubt? If he told you something to buy this stock --

MACCALLUM: Yes.

GOWDY: If he told you any piece of information, would you believe him beyond a reasonable doubt?

MACCALLUM: Yes, but you're in a New York City courtroom. As I said, I was trying to read the faces and body language of these jurors. They are not giving much away, they are taking it all in. They look bored sometimes. Sometimes, you know, that's completely understandable.

But Michael Cohen's up there saying, no, I never wanted a White House job. You know, I know I was lying then. But now I am telling the truth. I'm a different person now.

You know, it all depends on how this is falling on that jury, Trey.

GOWDY: Well, I -- you know, I -- look, I spent a lot of time staring at the -- at blank faces of jurors. And honestly, you may not want to know what they are thinking, because it may not be what you think they ought to be thinking.

MACCALLUM: Right.

GOWDY: We have no way of knowing how jurors make up their minds. But I'll tell you this, there is not a single one of the 12, they may find that there's other corroborating evidence that Michael Cohen's testimony is irrelevant.

I don't think they will, but they may.

But how would you like to be a prosecutor, in your case, depends upon someone who is a convicted perjurer, who hates the target of the investigation, who swore to get revenge, is making money off of it, and oh, by the way, wants to see him in prison?

(CROSSTALK)

MACCALLUM: Yes.

GOWDY: Not just convicted, Martha. Wants to see him incarcerated.

MACCALLUM: Yes. Says, he would be gleeful.

GOWDY: That isn't a good job in that witness.

MACCALLUM: Nothing would make him happier. He would be gleeful.

Trey, always great to have you on. Thank you so much for making time for us today. We'll look forward to seeing you on Sunday night. Thank you, sir.

GOWDY: Yes, ma'am. Thank you.

MACCALLUM: So, joining me now is Jonathan Turley, constitutional law attorney, GWU law professor and Fox News contributor. And obviously, folks at home you just saw the former president go back into the courtroom. So, they are going to put in the final hour and a half or so today.

Jonathan, I want to start by playing this soundbite from this morning on "AMERICA'S NEWSROOM," when Robert Costello joined Dana and Bill. And he was talking about the fact that he testified before Bragg's grand jury on this case. And that he was trying to give them what he saw as exculpatory information about the president, about former President Trump.

And he says they kept sort of trying to shut him up when he was doing that. And he doesn't know if they ever really saw the documents and all the information that he wanted them to know. Here is what he said this morning. We'll get your thought on the other side of it, please.

(BEGIN VIDEO CLIP)

COSTELLO: I told them all of the exculpatory material that I had, that they were supposed to put before the grand jury. But when I appeared before the grand jury, those questions they were asking me we're not going to elicit the exculpatory information that I had.

So, I began to expand upon my answers. And the D.A.'s office was trying to shut me down, saying that I had finished my answer.

(END VIDEO CLIP)

MACCALLUM: What do you make of that, Jonathan?

JONATHAN TURLEY, FOX NEWS CHANNEL CONTRIBUTOR: Well, it's very strange, because the grand jury has much more relaxed rules of evidence, anything can come in. It's one of the reasons why defense counsel, including myself, have tended not to have our clients go into Grand Jury rooms. You don't even have counsel. So, it's sort of the wild, wild, west.

And for the prosecutors to be cutting off a witness to try to keep information from the Grand Jury is quite telling. And it says a lot about what we're seeing in this case.

Maybe Costello is a powerful witness, obviously. He was the deputy chief of the criminal division at the Southern District of New York. He has got the chops. He is -- he is a major player in the New York legal scene, and he was shocked, and I don't blame him.

MACCALLUM: You know, what, what does it tell you? Because there's a lot of speculation that this is the crescendo, that what Blanche is working towards today, with Cohen is to establish that Cohen had motive, that he hated the former president, and that he -- and Costello says, look, he didn't have anything on him, and he said he was -- he would do anything not to go to jail.

So, those two things put together, Costello is saying tell you that he was telling me the truth when he had nothing on Trump. He's claiming that he has basically put this story together, Cohen, in order to make it sound like Trump was part of this whole -- this whole thing.

But would he be doing interviews, and would he be going out there, if he is the expert witness that they are about to call, Jonathan?

TURLEY: Well, he wouldn't be an expert witness, he'd be a fact witness. So, unless they change what they are been saying to the court about who they might call, I don't think they would be calling Costello as an expert witness.

They are more likely to call an expert witness in federal election violations, or bookkeeping issues, like denoting something is illegal expense. That's more likely the subject matter.

Costello is a wild card. And I have to say, as a criminal defense attorney, I might be in a minority among our experts, I tend to be risk averse. If I think I've won a case, I don't go any further. I don't like running a risk.

Costello is not a risk, in one sense. He's a seasoned lawyer. But there is still a risk there. You could bring in his communications with Giuliani, telling him that this is a back channel that Giuliani wanted to use.

That's going to create a new dimension, when -- I don't think that they have made the elements of the crime. So, I think that this is dead on arrival. Even if the jury issues a verdict, it would be overturned, I would hope, in a nanosecond, because there's no crime that has been established.

MACCALLUM: Yes. Well, that's a really interesting angle on Costello, and what might happen on cross examination for him, and you can bet that the prosecution is working to get ready for that possibility. He is been a little bit cagey about whether or not we do expect him. And obviously, thanks for clarifying that he'd be a perfect witness, not an expert witness. Then, we'll see if he's called.

Jonathan, thank you very much. Always great to see you.

TURLEY: Thank you, Martha.

MACCALLUM: So, former President Trump locked in a dead heat with his 2024 rival, Joe Biden, as he stands trial here in New York City. Kellyanne Conway, Hugh Hewitt and Robert Wolf. What a panel we have coming up. Stick around. We'll be right back.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Do you think Trump should be convicted in the hush money case?

SEN. JOE MANCHIN (D-WV): I think that then, there's two really solid cases: January 6th, and Georgia. Everything else doesn't make sense.

UNIDENTIFIED MALE: Even the hush money case?

MANCHIN: Everything else doesn't make sense.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

REP. MIKE WALTZ (R-FL): This isn't justice, This is ***politics***. It's political warfare. And we see it happening in third world countries, all over the world. I never thought I'd see it happening in the United States of America.

(END VIDEO CLIP)

MACCALLUM: Former President Trump's largest show of support yet from Republican allies at court today, doing some of the talking for the former president outside the courtroom as the trial gets back underway for the final part of today's session downtown in New York. So our new Fox polling shows that the Trump lead over Biden is eroding slightly down to just a one point advantage in the very latest Fox poll. Obviously, that's within the margin of error.

Let's bring in our panel, Kellyanne Conway, former senior counselor to President Trump, president of KAC Consulting, and a Fox News Contributor. Hugh Hewitt, nationally syndicated radio host who just spoke with former President Trump the other day, and Robert Wolf, former Obama economic advisor, founder and CEO of 32 Advisors, and a Fox News contributor. Great job, all of you with us.

I just want to pull this up first. This is another part of the Fox poll that goes to intensity on each side of the aisle. Biden supporters, 51% say my vote is for my candidate, 48% say it is against the opponent. Trump supporters, 71% it is for my candidate, 29% only against his opponent. Kellyanne, weigh in on the tightening of these polls for us.

KELLYANNE CONWAY, FOX NEWS CONTRIBUTOR: Sure. So national polls are important, Martha, because they show us mood and trend lines, and a lay of the land. I think the statistic you just showed is incredibly important, is not that different from what Hillary Clinton was doing in 2016 when Trump won the first time. Meaning that if your campaign and your voters, half of them think that this is really about the other guy. That's perilous territory because elections are about two things. They're about the future, not the past, and they're about you telling me what you can do to improve my life, not just how bad the other guy is.

And I do feel that when you look at the disapproval rating of Joe Biden on core issues, like his handling of Hamas in the Middle East, handling of the border, handling the economy, their answer to that still seems to be Trump, Trump and more Trump. And he has to be more affirmative.

Look, the state, the swing state polls are incredibly important. This election will come down to between 19 and 22 counties, not even states, counties. And there you do see some movement toward the former president. If I were the former president, Trump, I would look at a couple things and improve upon them in this Fox News poll. One is, among those who say Trump is better on handling the economy and immigration, roughly 10% to 12% still want to go for Joe Biden. Among the so called double haters, I don't like the term, let's call them double doubters, about 15% of the Fox News poll. Biden is slightly leading there right now.

MACCALLUM: Yes.

CONWAY: And finally, among those who softly disapprove of Biden, 41%. He's still doing well enough. So I think there is still room for both of them. Last point, all the people are saying, look at my poll. What happens if Donald Trump is convicted? We're asking a different question in the field right now. What happens if he is acquitted or has a hung jury or has a directed verdict? Then I think he's unstoppable.

MACCALLUM: And as we just heard, it's likely to be overturned on appeal and Jonathan Turley just said it could happen very quickly. Hugh Hewitt, your take, you know, on what is sort of the next catalyst in this, because we do see very tight national polls. And when you look at the likely voters versus registered voters in swing states, those get very tight as well, Hugh.

HUGH HEWITT, NATIONALLY SYNDICATED RADIO: I listened to Kellyanne when it comes to polling, and I have for more than two decades because she's the expert. But I'll tell you what, as a journalist, I thought was interesting yesterday. President Biden doesn't want to debate but he has to debate. President Trump wants to debate so he eagerly accepted the debate.

I think what we saw unfold yesterday was President Biden looking at the numbers, consulting with his team, and panicking, especially about that, Sienna-New York Times poll coming out of Nevada that shows Donald Trump up --

MACCALLUM: Yes, that's a whopper.

HEWITT: -- twelve points, 12 points.

MACCALLUM: Biden won Nevada last time, I want to remind everyone. Yes. Go ahead, Hugh.

HEWITT: I just think it means Latinos are breaking to the former president rather significantly as well as some African American men, and that Joe Biden is debating because he has to debate because he's in free fall.

MACCALLUM: Robert Wolf, your take?

ROBERT WOLF, FOX NEWS CONTRIBUTOR: Well, obviously, Hugh is very bright, as is Kellyanne. I would disagree with both of them on a few things. First of all, with respect to the excitement around President Biden, I mean, when you see the stock market is an all time high, when you see a lot of the Republicans calling for recession, but instead we've had growth outperform President Trump. When you see unemployment at lows and the job market just on fire, and then when you see things like in Wisconsin with the new AI plant with Microsoft, or in Arizona with the new chips plant with Intel. I would just say that these polls really don't show where this country's going and I'm very excited about the direction we have.

And more importantly, I would say, 30 polls have had Biden up both in Michigan and other states. And then lastly, I think, as Kellyanne knows, because she's the pro at this, since Dobbs, I think Democrats have been outperforming both on ballot initiatives and on elections by six to eight points, whether it's Kentucky, Kansas, Ohio, Wisconsin, Pennsylvania. And those aren't all blue states so, you know, I think it's a -- we still have six months to go.

MACCALLUM: Yes. I mean, it's interesting. We did see that, Kellyanne, for a while. It feels like there's a little bit of a momentum shift that has happened since we saw those ballot initiatives, but we haven't seen anybody, you know, really vote since then. I'm interested in these stories about Minnesota potentially being in play because we always focus on the same states and the ones that you pointed out, Kellyanne.

But there's Virginia, Minnesota, there are some other places. If the shift that we're seeing in Nevada is real in some other places, this could get very interesting.

CONWAY: No question, Martha. In fact, it's only Donald Trump talking about expanding his map now. There was a little murmur a few weeks ago about Biden being able to compete in Florida because the abortion initiative, no one thinks that that's true. That state is solidly read.

By the way, Ohio, Iowa and Florida were three states that Obama Biden carried twice that now are solidly ready. Nevada is interesting. It's only six electoral votes but we haven't won it presidentially as Republicans since 2004. I wouldn't be surprised if the Biden people pull out of there at some point and try to make it more competitive. I would ask Robert and the Democrats very politely name the state where you think you can expand your map. We're going to go into Virginia and Minnesota.

MACCALLUM: Yes, that's great point.

CONWAY: Where can you expand?

MACCALLUM: Yes. Hugh, I want to get a quick thought from Hugh on that because, you know, you're looking at some of these states and some of the shift that we see in Nevada. You know, do you think that we're going to see a different dynamic in five months?

HEWITT: Absolutely. I think Minnesota is in play, the former president brought that up as well in my conversation with him yesterday. I think New Hampshire is in play that went to Joe Biden four years ago. I think a lot of things. Virginia even, a lot of goes with the running mate if you put Governor Youngkin in there in the second position.

But I go back to these debates. Debates change everything. And I'm very happy that we've got to because I think former President Trump excels at this medium when he's one on one, if and only if the moderators don't throw curveballs at him all day at his head.

MACCALLUM: Yes. Kellyanne, are you OK with the parameters that were set? I got to go so I need a quick answer but I know that a lot of people are not.

CONWAY: Yes. I wish it were Fox News. I think that when you reward people who spend their entire days calling you a liar and not giving you a platform, and would prefer to see you in jail if not dead, that's questionable. But I do think that everything has been said about the debate availability to both Trump and Biden is important. They want to do this for different reasons. That's a sweet spot for Donald Trump. I'm happy to see him debate.

I think democracy deserves it. We deserve an opportunity to see these people shoulder to shoulder, free of charge. And I hope that they'll agree to do one on Fox News.

MACCALLUM: So do I. That would be great.

CONWAY: With Martha McCallum.

MACCALLUM: Exactly, with Martha and Bret would be fantastic. Kellyanne, thank you. Robert, thank you. We'll give you the first round next time. Hugh Hewitt, always great to see you, sir. Thank you all.

HEWITT: Thank you.

MACCALLUM: So will former President Trump's defense throw a curveball at this trial? One of his attorneys, Will Scharf, on what the defense will do when they get rolling next.

(COMMERCIAL BREAK)

MACCALLUM: Alrighty. As we wait to hear from former President Trump when he leaves today, which we expect probably in the next 45 minutes to an hour, we're also waiting to hear if his attorneys are going to call any rebuttal witnesses. Robert Costello, an attorney who once advised Michael Cohen, says that Cohen told him that Trump had zero involvement in the payoffs, that Michael Cohen had taken it all on himself. And Costello believes that he wanted to do that because he wanted to ingratiate himself to the former president. So would he be a good witness, Mr. Costello, listen.

(BEGIN VIDEO CLIP)

ROBERT COSTELLO, FORMER LEGAL ADVISER TO MICHAEL COHEN: I have not been subpoenaed. Whether I will be called to testify hasn't been decided yet. It probably depends a lot on what's going to happen today in court.

DANA PERINO, FOX NEWS HOST: If you were in Todd Blanche's shoes, would you calling you to testify?

COSTELLO: Yes, because I'm a reliable person.

(END VIDEO CLIP)

MACCALLUM: All right. So let's bring in Will Scharf, an attorney for the former president, part of his larger team. He is not specifically involved in this case. He's also running for Missouri's attorney general as a Republican. Will, welcome back to the program.

So tell me how you would break this down. What are the pros and cons of calling or not calling Robert Costello for the defense?

WILL SCHARF, DONALD TRUMP'S ATTORNEY: Well, first of all, I think it's really important to remember that in a criminal case like this, the prosecution bears the burden. The prosecution in this case bears the burden of proving beyond a reasonable doubt each and every element of every charge in the indictment. In this case, business records, fraud. And I think based on the trial record thus far, they haven't come close to meeting their burden.

They haven't shown that there was any underlying fraud here. They certainly haven't shown that these business records were intended to cover up any other crime, which they have to based on the way that they've charged this case. So I think there's a good argument that if the prosecution hasn't met its burden, first of all, a fair judge would impose a directed verdict and dismiss the case altogether.

But if the prosecution's case is as deficient as it is, there's an argument not to put on any more evidence at all. I think ultimately that's going to be a decision for the trial team after the final close of the prosecution's case, likely at the end of today. But based on the trial record so far, I don't think we need anything more to win this. So we'll see how that proceeds in the next day or so.

SCHARF: OK. Here's Robert Costello talking about another person who a lot of people -- his name's been invoked so much that many people are asking, why haven't we heard from Allen Weisselberg, who is currently serving his second term in prison. Watch this.

(BEGIN VIDEO CLIP)

COSTELLO: We are presuming that Allen Weisselberg does not have any information that would be helpful to the district attorney. Because if they thought he had helpful information, they would immunize him and bring him from Rikers Island over to the courthouse and have him testify. The fact that they haven't done that leads one to reasonably conclude that maybe Weisselberg doesn't have information that helps him, rather it helps Donald Trump.

(END VIDEO CLIP)

MACCALLUM: So Allen Weisselberg was the CFO of the Trump Organization for decades, very close to the former president. He has held the line in assisting on the president's innocence, and he did time once already and he is back in jail, so extraordinary story. Would it beneficial to have Allen Weisselberg there, and especially there in an orange jumpsuit most likely?

SCHARF: Well, we haven't heard from him yet but we have heard from other Trump Organization employees, Jeff McConney and Deb Tasaroff most notably. And I think their testimony was incredibly damaging to the DA's case. I mean, McConney basically testified that these expenses were booked as legal retainer payments because that's how essentially every payment to a lawyer in his 30 plus years with the Trump Organization had been booked. Tasaroff testified essentially similarly.

So maybe the DA is just sick of calling Trump Organization officials up to the stand to gut the heart out of their case.

MACCALLUM: Yes.

SCHARF: But again, I mean, the legal deficiencies, the factual deficiencies with this case are so profound and just ring through with all the witness testimony we've seen so far. I think the DA's Office may frankly just want to get this thing over with.

MACCALLUM: Yes, maybe. Thank you, Will. Always good to see you, Will Sharf. And I just want to remind people that court's going to end a little early today. It's going to end at 4:00 which means if they are wrapping up a line of questioning, they may walk out any moment at this point. Jonathan Turley standing by as we await the former president.

(COMMERCIAL BREAK)

MACCALLUM: OK. The jury has been dismissed. They have walked out of the courtroom and we expect that we're going to hear from the former president any second here as the day wraps up at the criminal trial at the Supreme Court.

His lawyer cross examining his ex attorney, Michael Cohen, it got quite heated in there at times today. The big questions right now, what happens now? Remember, this is the last witness for the prosecution.

So will the defense put on a case? The burden of proof is on the prosecution, did they or did they not prove their case beyond a reasonable doubt? And still a question about whether or not the former president will decide that he wants to take the stand. He said again today that he has done nothing illegal. Let's bring in Jonathan Turley while we wait for the former president to walk out here.

Jonathan, your thoughts on what happens next?

TURLEY: Well, first of all, if the indications are true that cross examination will continue to Monday, that's a very good move by the defense. I was -- I expressed alarm when the defense suggested they'd be done today because that would allow a long weekend to pass. And the last discussions of Michael Cohen would be the prosecution's redirect. And I don't think that's a good thing.

So that is a strong showing by the defense to carry this into Monday. I think they are scoring points here. Blanche is really going methodically through this. People, you know, they seem to be a low bar for Michael Cohen, that if he wasn't clucking like a chicken or some freak on a leash, that it was a successful performance. He's obviously well-rehearsed. But I don't think people are realizing how many of these shots are below the waterline.

That doesn't come together until the closing argument, when the attorneys bring all of this together. And it is a very bad set of facts for the prosecution. I mean, you have, as was just noted, a Trump official saying, look, anytime we paid an attorney, we put it as a legal expense. It wasn't Trump. There's no showing that Trump had any knowledge of the core fact that is supporting this entire case. That alone would seem to damn the case.

But then you have everything writing on a witness who's already been caught in a couple of statements in the last two days that seem hard to square with the truth. And you know, the jury's going to hear an instruction that very likely that if a witness lies on any aspect, you really have the right to disregard every aspect of the testimony. I don't see how any witness could listen to Michael Cohen and not see a number of glaring errors and possible perjury, and that includes the phone call that he said was the key moment when he informed Trump that the stormy Daniels deal was done.

All indications is that rather brief phone call was about a 14-year-old who was harassing Michael Cohen.

MACCALLUM: I just want to remind everybody, as we wait former President Trump to come out here, there's no trial tomorrow. Trial will not meet tomorrow because the president did receive the day off to go to his son, Barron Trump's graduation from high school. So that's why they're not going to do it tomorrow.

And as you just pointed out, Jonathan, the defense has made clear that on Monday they're going to continue their cross examination of Michael Cohen. So the long weekend will have them come back and likely wrap up. Any indication in anything that you have seen, Jonathan, that former President Trump will take the stand?

TURLEY: I haven't but it would be an act of lunacy. The judge has already ruled that the prosecution would have this huge scope for cross examination if the president takes the stand. That ruling all but doomed any chance that Trump could take the stand. If I was his lawyer, I'd say that's it.

I mean, if the judge is going to let any of these -- let basically this sort of broad scope to go forward, there's no way to prep you and the risk is too high. They have won this case, in my view, at least legally. I don't know. I can't speak for the jury.

MACCALLUM: Right.

TURLEY: But as I've said before, New Yorkers don't like to be treated like chumps. They may hate Donald Trump but they hate being played. That's the one thing I've noticed about New Yorkers. And they're being played and I could resent it.

MACCALLUM: I know. I got to tell you in court this morning, you just have to love the people of New York honestly. The court officers, everybody in that place, they're just so great and strong, and polite to everyone, honestly. And, you know, they're doing their best to run a very safe and efficient courtroom here.

You know, I'm thinking, Jonathan, as you say this, the instructions that were given or the parameters that were given, if Trump testifies in his own behalf, we're basically going to allow every single act in the widest scope to be brought into this. That in and of itself is potential grounds for appeal, right? Especially after the Weinstein case just got overturned on similar grounds.

TURLEY: Right. We have so many layers of reversible error that I don't know what an appellate court would ultimately base it on because this judge has committed, in my view, a successive series of reversible errors, one of which was to allow the prosecutors to keep on referring to election violations, leaving the impression that Donald Trump committed election fraud or campaign violations. That's not true. But I would think that these jurors probably think it is true. But there are a lot of reversible errors.

The only problem for the president, in my view, is not the outcome of the trial. Even if he's convicted, I just cannot imagine that this could be upheld. The problem is just time. It will take time to get it to be reversed. And the question is, do you want to take a further risk to try to take down this case right now?

I would caution the defense, you're winning, in my view, on the law hands down. I wouldn't go rolling the dice too much because you never know when you're going to come up with snake eyes.

MACCALLUM: Jonathan, thank you. It's so great to have you with us as we watch all of this unfold. Todd Blanche wrapping up his, for today, his questions for Michael Cohen, and we wait for the former president to come out.

That's "The Story" for right now. I'll see you right back here tomorrow at 3:00. Fox goes on after this.

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