

# [***Dow Tumbles; Jury Deliberations Continue in Trump Hush Money Trial***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6C4N-N161-JCS1-632P-00000-00&context=1516831)

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**Body**

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NEIL CAVUTO, FOX NEWS ANCHOR: All right Shannon, thank you for that.

We're at a point now, folks, we're getting so many notes in so little time, but they're all happening at the same time. You have heard about this new note making its way from the jury that they're requesting the judge's instructions again.

If I remember, those instructions lasted the better part of 90 minutes when he went through them. So I don't know whether that's going to be sort of replayed here. But they're also requesting some key testimony from Michael Cohen and David Pecker. So there's a lot going on here.

Welcome, everybody. Happy to have you. I'm Neil Cavuto.

So what a lot of people thought would be an uneventful news day, as the jury just started, has turned into sort of a double whammy with these note requests and everything else. They have to go right back into the courtroom to hear and get that all settled. How long it takes, again, anyone's guess.

Let's go to Nate Foy. I'm sure he has a far better idea than I do.

Hey, Nate.

NATE FOY, FOX NEWS CORRESPONDENT: Hey, Neil.

So the judge just suggested bringing the jury back in to go over some of these concerns. You mentioned the jury has two notes so far. The most recent came in just about nine minutes ago, the other just over an hour ago. So the most recent note, the jury wants some clarification about the jury instructions.

The first note, as you mentioned, has to do with testimony from David Pecker and Michael Cohen specifically relating to the 2015 Trump Tower meeting where prosecutors allege the conspiracy to unlawfully influence the 2016 election was born.

And, earlier, before deliberations, we learned through jury instruction that the jury has three separate options in regards to the underlying crime, which is unlawfully influencing the 2016 election.

But to meet the legal threshold of unlawful in that law, here are the three options for the jurors. They have to find the Trump falsified business records to conceal or commit a federal election campaign act, the falsification of other business records or violation of tax laws.

But what's really important, Neil, is that the jury doesn't need to agree on which one of these Trump is guilty of, only one of those three options.

Now, Judge Juan Merchan instructed the jury, in order to find Trump guilty, prosecutors must have proved that Trump falsified or caused the falsification of business records and that he did it with the intent to commit or conceal one of those three prior underlying crimes.

If the jury finds Trump violated federal election law, that would mean that he agreed to pay Stormy Daniels through Michael Cohen because of his 2016 presidential campaign.

But a key instruction from Judge Merchan to the jury reads -- quote -- "If payment would have been made in absence of candidacy, it should not be treated as contribution."

Now, remember, Neil, Hope Hicks testified that Trump worried very much about his wife Melania's reaction to the Daniels story resurfacing. She testified that he requested that newspapers not be delivered to their private residents.

So if the jury finds that Trump made a payment to protect Melania, it would not be a FECA violation. Here's Trump earlier today.

(BEGIN VIDEO CLIP)

DONALD TRUMP, FORMER PRESIDENT OF THE UNITED STATES (R) AND CURRENT U.S. PRESIDENTIAL CANDIDATE: Mother Teresa could not beat these charges. These charges are rigged. The whole thing is rigged.

(END VIDEO CLIP)

FOY: So, Neil, I'm just following minute by minute here the newest information.

The judge is reading the notes back to the jury right now. So we should be getting more information here shortly. A lot of people wondering what happens if Trump is found guilty. New York caps the maximum sentence for this level of felony to 20 years in prison.

But given the fact that Trump has no criminal history and this is a nonviolent offense, legal analysts say prison time is unlikely in this case -- Neil.

CAVUTO: So, just to clarify, Nate, when you're talking about the judge is reading the notes back to the jury, those are his instructions, the initial instructions.

But they took, I believe, originally close to 90 minutes. He's not going through the whole 90-minute thing again, is he?

FOY: No, he's not going through the entire jury instruction, Neil.

CAVUTO: OK.

FOY: He's reading the notes back to them. And one of those notes has to do with a clarification a specific point of his jury instruction.

So he's doing that and then also reading the note back in regards to the testimony from David Pecker and Michael Cohen, specifically regarding the 2015 Trump Tower meeting, I believe just doing that to make sure that they're all on the same page, so that then they can answer those questions and go over the testimony that the jury needs a bit of a reminder on.

CAVUTO: All right, thank you, my friend, very much.

Nate Foy at the New York state Supreme Court, all that going on back in the court here.

Katie Cherkasky back with us, former federal prosecutor. We have got Brett Tolman, former U.S. attorney. We have got Andy McCarthy, former assistant U.S. attorney, FOX News contributor, great guests all.

So, Andy, end it with you on the significance then on this and the judge sort of rereading I guess some of those instructions. Do you want to venture and guess which ones?

ANDY MCCARTHY, FOX NEWS CONTRIBUTOR: No, Neil.

I don't know enough to know which one. What I would say is that it's not uncommon. Lawyers -- we happen to have two lawyers on this jury, but very often juries don't have lawyers on them. The notes are not always crystal clear about exactly what they're asking for, or it could be that what would be responsive to questions is answerable by multiple things in either the instructions or the evidence.

So he may simply be asking them to go back and clarify exactly what part of the instructions they want to hear and what other evidence they might want to hear.

CAVUTO: On that same issue then, Katie, we're hearing from Jonathan Turley that it looks like Merchan is going to excuse them for the day and address all of this presumably in the morning, even though this has started now, I guess, again, keeping to that 4:30 deadline timeline.

What do you make of that?

KATIE CHERKASKY, FORMER FEDERAL PROSECUTOR: Well, I think it might be a good sign that there's a dispute amongst the jurors about what the instructions said. They all took notes about this, but maybe there's some internal disagreement about the specific instructions of the judge.

So it's hard to really read into these sort of things. Obviously, it's a loser's game, probably. But, from my perspective, it might indicate some sort of division between the jurors. And, as we know, President Trump only needs one juror for a hung jury, although I don't know if that's his best outcome, but certainly better than a conviction.

CAVUTO: We now have heard that the judge has gone ahead and dismissed the jury. So that was fast. I don't know if there's a delay when Nate Foy tells us that the judge is meeting with them from the time that they requested to go back to the courtroom and hear all of this.

It doesn't seem like a great length of time.

But, Brett, what do you make of all of this?

BRETT TOLMAN, FORMER FEDERAL PROSECUTOR: You know, Neil, I'm a little surprised that they're being dismissed. Most jurors want to get a case behind them.

What I think it tells us is, they're in for a much longer deliberation and that they don't have the optimism that they could reach the verdict this evening. So, they probably sent the signal. There is probably -- nine out of 10 times, when a note comes out and they're requesting a transcript, it's a difference of opinion the recollection of what a witness stated.

So, not surprising, very typical. I think we will see more notes. We will see more interaction with the jury. But I think it means we're in for a much longer deliberation.

CAVUTO: All right. Now, they're particularly interested in, as far as I understand, in what David Pecker had to say and certainly Michael Cohen had to say. I don't know specifically what points in that leading to this meeting with Donald Trump or at Trump Tower.

I am curious what you make that this goes back, certainly in the case of Pecker, to the first big witness. Are they starting from the beginning? Because then I'm doing the timeline in my head. If we go by order of who's said what and when, this could be quite the deliberation.

Andy, can you hear me?

MCCARTHY: If that's to me, Neil, I --

CAVUTO: Yes. I'm sorry, Andy.

MCCARTHY: Yes, I think -- I think it's entirely possible that they started from the beginning.

It has been -- for example, Pecker was the first witness in the case, and it's been five or six weeks since they heard his testimony. So that makes sense if they're working through it.

On the other hand, if you're looking for tea leaf reading for what it's worth, it means that they are at least testing the argument of the prosecution that this is all about a conspiracy to influence the 2016 election, because Pecker's testimony is really not relevant to the 34 charged alleged misrepresentation of what the business records are.

They all relate to Stormy Daniels, who Pecker didn't pay. So if I was trying to read something into it, I would probably say that they're looking at the possibility that this conspiracy, as it was portrayed to the jury by the prosecution, actually is the central thing in the trial.

CAVUTO: So, if I'm on the defense team, Katie, would I be worried about the Pecker request more than even the Cohen reread?

CHERKASKY: Not necessarily.

I think that they could be looking at the history of paying these nondisclosure agreements, because, as the judge instructed them, if payments were to be made irrespective of a campaign, for any other reason, then that would lead to finding that there was not a violation of an alleged campaign finance law.

So, again, hard to read into what they're doing, and maybe they just are having discussions about each of the witnesses and having disputes about what the recollection was.

But, certainly, all of this comes down to whether they can come to a unanimous decision at all. And it seems like, if there's early disagreement, that might be less likely as time goes on here.

CAVUTO: All right, Brett, I'm just wondering about what we glean from the first day of jury deliberation.

I know, in the case of former Labor Secretary Ray Donovan, of course, he faced more than a dozen counts of misappropriating funds and malfeasance and all that, going back to the Reagan years. That was expected to last a long, long time. I believe the jury back then, I'm going back to 1987, I believe, deliberated for all of 10 hours and that was over two days.

Night and day, I grant you, but is that in keeping with what you think this could be, longer? What do you think?

TOLMAN: Yes, I think my longest jury deliberation lasted for about four days.

And, at that time, I really felt like it was more a desperation of wanting to get back to their normal life than it was their ability to continue, their stamina to continue. I think there's a -- there's certainly an increase in the importance of this case in the minds of the jury.

They have a chairman or a foreperson or a forewoman, and I think they're going to plow this very difficult case in a methodical way until they really have neither the patience nor the stamina to finish. And when that is, who knows?

CAVUTO: You know, Andy, I keep mentioning the Raymond Donovan case, not just because I covered it as a young reporter at the time, but I thought it was interesting that everyone thought it would go a certain way or that he would -- the former secretary would be indicted on something, because there's certainly a number of counts against them that made that look inevitable.

Everyone was caught with egg on their face, didn't happen that way. Further, nor was it expected that the jury would wrap up essentially in two days and come up exonerating all the players. Now, maybe, going back then, it had something to do with the clarity of the charges. They weren't vague or off-putting. Those were charges on fraud, grand larceny, the kind of stuff that's easily definable.

Here, it's not. What do you make of that?

Andy, can you hear me? OK, we might have lost him.

Let me go to that very question with Katie.

And, Katie, it's this notion of what you know and what can be easily defined. I'm wondering if the judge might have complicated things for this jury by being so vague or by allowing different issues to come up, not as black and white as it was in the labor secretary, Ray Donovan.

And, by the way, he was the former labor secretary years after the fact in that case. But what do you make of that?

CHERKASKY: Well, I would say, typically, any sort of confusion should inure to the benefit of the defense, because, if there's confusion, there might be reasonable doubt about whether something was or was not established.

That being said, I think that the jury could come to a very clear analysis of this case if they just go down the elements of each of these offenses and ask whether the evidence supported the finding of guilt on the minimal element, which is the falsification of the records themselves. Was it false to call these payments legal expenses?

If the answer is no, which there hasn't been any evidence presented that was in fact false, then that's a not guilty on all those charges. So maybe they will get there. There's always some jurors that want to go excruciatingly slow in some cases through everything, even though they may ultimately come around.

So that could very well be the case as well here.

CAVUTO: All right, so there might be a Henry Fonda or "12 Angry Men" in that group there.

(LAUGHTER)

CAVUTO: But let me get your thoughts on that, Brett.

When you see or you hear a jury come back and requesting certain testimony, certain clarifications, a judge's instructions over again, people jump and try to read into that so much, myself included. But you guys are the experts. So I will first go to you on this.

Do you read any significance into the material they're looking for today?

TOLMAN: I think they're just getting started. I think you nailed it when you said that they're starting from the beginning.

There's probably some discussion and some disagreement on what was said by the witnesses they have asked about. And then it is very standard for jurors to ask for the law to be able to look at it, refer to it. I have seen judges hand them all of the law that was read to them so that they could reference it. I have seen them give them full transcripts.

Not surprising. They can come out either way. But what you have is a jury, I think, at this point that is -- as you indicated, they're dealing with a messy case. This is not discrete. It's not fine. It's not been proven.

It is the exact case that a directed verdict was intended for, where you don't have the defendant on notice of what the underlying crime is. And then you can't instruct the jury on which crime they are to assess unanimously. And, instead, you have this messy, messy case that's been presented.

And then it's been made worse by the law that's been instructed. So this is an impossible situation for these juries. I feel for them. It's a fatal flaw what the judge has allowed and what he's done in this case, and I expect that it'll be reversed fairly quickly.

CAVUTO: You know, I jokingly -- not too jokingly -- mentioned the Henry Fonda case in "12 Angry Men," the movie, and off the book and all.

But one of the things that stood out then is there is always -- there was that one juror who just wasn't convinced. Different case, different type of thing, I get -- I grant you.

Is that the kind of thing that happens when you follow these things, Katie, one or two jurors who aren't going along with the others or are parting company from the others or just scratching their heads and saying, no, no, I need to know a little bit more, I need to go back and study this a little more?

And if that is the case, doesn't that pretend the possibility of lengthy deliberations?

CHERKASKY: Well, sure.

And I think, obviously, everyone has their own personality and their own style when it comes to going through these things. But if it comes to a point where they're just at an impasse, where they're just hopelessly deadlocked, then they're going to have to indicate that to the judge.

But before they indicate that, of course, there will be efforts to explain everything, see if they can come to some sort of consensus. And if there is a mistrial, though, I would wonder if Alvin Bragg is going to retry this case, because I think that could be done relatively quickly.

CAVUTO: Ah.

All right, guys, thank you very much.

We are -- the jury has been dismissed in this. They will obviously go through these instructions tomorrow morning in that same courtroom. And they will also get to the bottom of some of these other requests they have had of David Pecker and Michael Cohen's key testimony.

We don't know specifically what they are looking for. We just know that they are looking at someone, certainly in the case of Pecker, who was the first key witness. So, if they're working backwards from the beginning, you can again play out this theme that some have repeated that maybe this could be a lengthy deliberative process.

Then again, it might not be. Remember what I told you about the Ray Donovan case back in the 80s. They thought that would drag on and on, that he would almost certainly go to jail and spend the rest of his life in jail. Neither turned out to be the case. It was very quick, and he was exonerated on everything.

We'll have more after this.

(COMMERCIAL BREAK)

CAVUTO: You know, I, like you, probably learn something new every day of this trial, but the one that just flummoxed me the most is, even though Donald Trump as a home in Manhattan, is relatively nearby, he has to just hang out at the courthouse all day as long as the jury is deliberating.

I don't know why that is the case. Maybe, with the entourage and the security, it's just easier. But it is a little novel, but, again, I'm no legal expert. I just find it that will be the case, as this jury continues to deliberate.

And some people say it could wrap up early, it could go on for days, could go into next week. And then we have the political impact of all of this. Of course, some will argue, thanks to all the attention, notoriety, and some say the pile-on that some believe Donald Trump is getting here in this, that his poll numbers have held up and he's actually doing better than at the start of the trial, leading Joe Biden in all the key battleground states.

Julia Manchester is following all of this, The Hill national ***politics*** reporter.

Julia, it is amazing that he has to stick around the courthouse, as does everyone else, to be fair. But this could go on for days. I don't know why that is the case. It is what it is, I guess. But we do know that he is sort of like a prisoner in that courthouse until this is resolved one way or the other. What do you make of it?

JULIA MANCHESTER, NATIONAL POLITICAL REPORTER, THE HILL: Yes, Neil, I don't know why that is either.

But one thing is for certain. If Donald Trump was allowed to leave the courthouse, he would be free to campaign and meet with voters. And we have seen that he's been able to do that. I mean, he had that one rally in the Bronx. He went to New Jersey. He's done some fund-raising trips here and there.

But for the most part, he has very much used this trial to campaign. I mean, there's that one hallway outside of the courtroom where he's spoken to television cameras and reporters. And that's been his way of effectively communicating with his base.

It's interesting to see how he's come with an entourage for certain days. You saw Byron Donalds, Doug Burgum, Vivek Ramaswamy --

CAVUTO: Right. Right.

MANCHESTER: -- lots of lawmakers that support Trump.

And it's been a way for him to campaign. Now, that certainly works with his base voters. But I am curious to see how that works with independent swing voters, because, looking at polls, those independent swing voters aren't following this as closely.

CAVUTO: Yes, very good point.

It attracts a number of entourages. I found it interesting that the Biden folks wanted to put Robert De Niro out there. So, De Niro spoke his mind. Today, Donald Trump spoke his mind about De Niro speaking his mind. Anyway, I want you to react to this.

CAVUTO: One second. One second.

(BEGIN VIDEO CLIP)

ROBERT DE NIRO, ACTOR/PRODUCER: This thing, Donald Trump has created this. He should be telling them not to do this, but he just -- he wants to sow total -- he want -- he wants to sow total chaos.

TRUMP: And then they have a protest with Robert De Niro yesterday. He is a fool. He's a broken-down fool, standing out there.

He got -- he got MAGAed. He got MAGAed yesterday. He got a big dose of it.

(END VIDEO CLIP)

CAVUTO: What did you think of all that, Julia?

(LAUGHTER)

MANCHESTER: Well, I haven't heard that phrase he got MAGAed. That's a new one for me.

(CROSSTALK)

CAVUTO: Well, we left out -- we left out the stuff that impressionable audiences shouldn't hear from Robert De Niro.

So we did our fair and balanced thing there. But it was odd, right? Because each one is getting into entourages now and they're going at each other.

MANCHESTER: Well, it's one presidential candidate on the Republican ticket, Donald Trump.

CAVUTO: Right.

MANCHESTER: And then you have the Biden campaign enlisting Robert De Niro as a surrogate.

Now, this wasn't necessarily on our bingo cards. We know that Robert De Niro had been in an ad released by the Biden/Harris campaign. But it's just -- I mean, it was interesting to see that, because the Biden campaign, the administration has been very careful not to touch this trial.

They, rightfully so, are focused on those kitchen table issues, the economy, health care, prescription drug prices, et cetera. But there has to come a point, because this is such an unprecedented trial, because it is the person Joe Biden is running against, that they have to address it.

But it was surprising to see them address it for now by bringing Robert De Niro out front in the courtroom -- courthouse.

CAVUTO: Have they doubled down on this? So that, is the White House.

We're told that President Biden is preparing a national address when we know the ultimate verdict. Good idea? Bad idea? You mentioned before that they were eschewing this, ignoring this, now going full throttle with this.

MANCHESTER: I think he has to do this. It makes sense that he hasn't really addressed this, because he's trying to speak to his supporters and the average American voter.

And the average American voter, those persuadable voters who are trying to decide between Trump and Biden, I mean, they may be paying attention to this trial and following the coverage, but they're also paying attention to inflation, to the economy, to prescription drug care -- prices, to those kitchen table issues.

So we have seen Biden try to talk about those issues more. But, like I said, this is his opponent. It's a former president. It's coming at a time when the nation is extremely divided coming into this election. So I think there is an opportunity for Biden to sort of strike, I don't want to, I guess a chord of unity in a way.

I mean, I don't think he's going to be extending an olive branch to Donald Trump, but it is an opportunity to look presidential for Biden.

CAVUTO: I wonder, if the former president is exonerated and he's not convicted of anything, whether the president will be magnanimous.

MANCHESTER: Yes, that's a good question.

CAVUTO: Right.

MANCHESTER: And I'm sure -- I'm curious to see what's happening with Biden's speechwriters right now, because I'm sure the tone could depend on the verdict.

CAVUTO: And will there be a statement or address if that is the case? So we will have to see, a lot we don't know, Julia.

Thank you so much. Good seeing you again.

MANCHESTER: Thanks, Neil.

CAVUTO: All right, we mentioned the former president. He is still in that courthouse. So he had to just sort of cool his jets, wait it out. I don't know where he was in the courthouse. They had a room set up for him.

But, again, he couldn't go campaigning, couldn't even go outside that building and do something in New York, maybe go to a bodega. Maybe there's a fire department, maybe talk to police, whatever. What he has done, he can't do.

But he is about to leave that building, and it is possible he could speak when he does -- after this.

(COMMERCIAL BREAK)

CAVUTO: All right, looking outside New York State Supreme Court, where Donald Trump has been since 9:30 this morning. The jury took the case at 11:30 this morning, five hours-plus.

Still waiting to see the former president -- after this.

(COMMERCIAL BREAK)

CAVUTO: All right, like clockwork, if the judge said the workday ends for the jury at 4:30 p.m. Eastern time, it will end at 4:30 p.m. Eastern time. That is exactly what happened.

In fact, they let out a little bit early. The jury, you might recall, wanted some testimony, namely, from Michael Cohen and David Pecker, replayed or reread, whatever the legal definition is of that.

Shannon Bream is here right now to help me with all of that.

And then there's a note about the judge maybe sort of re-giving his instructions, I don't know all the instructions. But, again, thank goodness for Shannon Bream, whose coverage has been excellent on this, on "FOX News Sunday."

Shannon, the timeline for this has me wondering whether these latest note requests -- and they're very different, I get that -- it's a sign of things to come. There might be one, two, several on the jury who will have questions and will be wondering and will be demanding more clarification, more information.

How -- what do you make of how this is going and what this might be signaling?

SHANNON BREAM, FOX NEWS CHIEF LEGAL CORRESPONDENT: Yes, Neil, it's always tricky for us to try to extrapolate these notes into what they could mean, because it could be just one juror who is fighting the other 11 jurors and saying, I remember it this way. I need it reread because I remember that this is what happened, and another juror saying, no, that's not how I remember the testimony.

It could be just one or it could be several jurors who say, yes, I need to re-hear that. This was weeks ago. If we're asking for David Pecker testimony, that was weeks ago if they want to revisit that.

CAVUTO: Right.

BREAM: They have since heard from Michael Cohen. He was more recent, but maybe they want to compare and contrast. Maybe they have found something they think is a conflict, or maybe one bolsters the other on that particular section they have asked for.

They do want to re-hear some jury instructions. We have been saying all day they're 55' pages long.

CAVUTO: Wow.

BREAM: It took more than an hour for the judge to read them in there.

And so he's not given them the written copy. He's going to expect they're going to have to come back with him -- to him with questions. So, it looks like what he's going to do is let the attorneys agree on what portions are going to be read back and then, in the morning, do that fresh for the jury as they come back into deliberations, and also answer whatever question they have about the jury instructions.

And then, with all of that fresh, send them back into the room for a second day of deliberations.

CAVUTO: So, these instructions are 55 pages? When I open up like some furniture that you can assemble yourself, and it's 55 pages, I'm just going to say, well, that's not going to be built.

(LAUGHTER)

BREAM: Yes.

CAVUTO: So what are we to make of just that? I mean, there's a lot of criticism of Judge Merchan that he's made this overly complicated, added some new wrinkles that now obligates the jury to consider things I guess they weren't supposed to consider or thought they would consider.

Where are we on that?

BREAM: So, our colleagues, who have done way more trials than I ever did as a young associate, have said they think it's actually unusual, that, normally, in their estimation, and what I'd seen in the trials I did, is that the judge did give the jury instructions to the jurors, because that's their road map.

So, when they get stuck on something, they work it out. They hash it out. They open those jury instructions and say, oh, no, no, no, here on page 17, the judge said, this is how we handle that question. This is how that word is defined.

But, remember, Judge Merchan has been very adamant in the courtroom that he is the only one to give any question, any answer on the issue of the law. He told the attorneys repeatedly on the day of the summations of the closing arguments yesterday, that is not your territory, that is my territory.

So, by not giving them the written instructions, he guarantees that any question they have over how to interpret something, what the law says, will go through him. It will be filtered through him. He has to know that's going to happen, and it's going to happen first thing tomorrow morning, on day two of deliberations.

CAVUTO: What do you make -- and you know this far better than I -- but the judge directing all parties to remain in the building?

So that includes the former president. That includes all the people around him, his security, I -- you name it, but it would also include the jury. I don't know where they're deliberating, how close it is to the courtroom itself, but it took forever, it seems, for them to get from wherever they were deliberating to the courtroom.

And that was in the same building, I assume. Well, what's the deal with it?

BREAM: Yes, it is all here in the same building, but you have got to get everybody on the same page. The judge comes back in. And you have got to have some agreement.

The parties have to find out what the question is. Everybody gets to know that.

CAVUTO: Right.

BREAM: And then you have got to have some agreement from those parties about actually which sections will be reread back. Is it going to be the direct and the cross of whatever particular witness they want to hear from again? Is it a specific section or question that they want to hear about?

So it takes a lot of -- to get everybody on the same page, but they are all very close here. Listen, the elevators are slow. It's an old building. We have been in the 15th -- on the 15th floor for most of this when we have been inside.

CAVUTO: Huh.

BREAM: I have taken the stairs many times. I'm getting my steps in, because it's actually quicker to take the stairs in many cases than it is to use these elevators. So maybe that was part of it.

CAVUTO: But when they clear jury out of a room, right, I mean, they must be saying, all right, you're going to push the button on the elevator. We're going to probably need a couple of elevators.

I just was amazed how long that took before they were even in the courtroom.

BREAM: Yes, and you have got to make sure that no other extraneous people around would see this jury in transit.

CAVUTO: Ah, OK.

BREAM: You're going to try to minimize that as well.

And, listen, a lot of us press folks are running around in there. So there's a protocol to make sure that the paths do not cross.

CAVUTO: I got it.

BREAM: And maybe that takes the extra time too.

CAVUTO: Yes, I'm sure they're all in the elevator, saying, quiet, Shannon Bream is in here. Ixnay on the jury thing.

(LAUGHTER)

BREAM: Don't say a word.

CAVUTO: Yes, don't say a word.

Shannon, thank you. I learned a lot just from that.

BREAM: You got it.

CAVUTO: But it does seem to take forever.

The former president of the United States, the former leader of the free world has to wait out and chill in that building as the jury is deliberating, no matter how long it takes -- after this.

(COMMERCIAL BREAK)

CAVUTO: You know, when we originally asked Nate Foy to go to the New York State Supreme Court, we sold it to him this way. It's only going to be a few days, Nate. Nothing to really worry about. It's not as if you're going to live there for six or seven weeks and probably have to get a condo near there.

(LAUGHTER)

CAVUTO: So we fooled him. And he's there. And he's still there.

And we're in day one of jury deliberations. I don't know how much longer they're going on, but Nate is there. And we're always happy he is.

(LAUGHTER)

CAVUTO: So, Nate, this is dragging on. And now people -- not that there's anything wrong with that, but now people are interpreting some of these early jurors' requests as a sign it could drag on a little longer.

What do you think?

FOY: Well, it's definitely going to drag on until at least tomorrow, Neil.

The jury deliberated for 4.5 hours today. They will come back tomorrow morning to continue. There's an indication that possibly they will stay until maybe 6:00 tomorrow night. The jury will have to decide on that.

But we have been talking about these two notes that came from the jury. And the judge read those notes to the jury to confirm that they were accurate, which they were. What's happening right now inside the courtroom is, lawyers on both sides are huddled around and sort of discussing, it appears, what they are going to share with the jury tomorrow.

The jury instructions question was the most recent note. The jury could decide to have Merchan read them the entire instructions again. That was something that you asked me earlier. They don't actually have to decide right now. The entire instruction sheet, Neil, is 55 pages' long.

So it could just be one little part of the jury instruction. It could be more extensive. And then regarding the Trump Tower meeting in 2015, that's the clarification on the actual testimony that the jury wants to learn more about.

And of note there, David Pecker, the former American Media CEO, testified that Trump never expressed any concern about his family with negative stories coming out, which is the opposite of what former Trump aide Hope Hicks testified. She said, when the Daniels story resurfaced, that Trump was very much concerned about Melania and that he asked her to ensure that newspapers were not delivered to their home.

Now, the jury must reach a unanimous decision, Neil, to either convict or acquit former President Trump. The jury cannot discuss a possible sentence or punishment for Trump during their deliberations. They can only consider the facts and evidence presented at trial.

A lot of people wondering what is going to come after a decision, but because Trump does not have a criminal history and this is a nonviolent offense, legal analysts say that jail time, Neil, is unlikely.

We will send it back to you.

CAVUTO: Thank you, my friend, Nate Foy, following all of that from the New York state Supreme Court.

Well, the Dow tumbled today more than 411 points. Now, I know your first thought would be, did it have anything to do with what's going on left of that screen there, the courthouse? No, it did not.

But we know what was behind it -- after this.

(COMMERCIAL BREAK)

CAVUTO: All right, still waiting me here from the former president outside the courthouse in New York here now.

Now, then you see on the right side of your screen the big sell-off on the Dow. The two are not at all connected. I only mention that because there were some we're actually hearing that we're trying to connect that, not that we know of.

Art Hogan is the B. Riley Wealth expert extraordinaire. I have known Art for decades. He has not aged. I have. I don't know how he does that.

But, Art, helped me with why the Dow was tumbling today. Some were saying, oh, because they don't look legally good for Donald Trump or he could get convicted. And I don't believe that in anything to do with it. But fill me in.

ART HOGAN, MARKET STRATEGIST: Yes.

No, I would tell you the movement in the market really this week and clearly most of last week as well, where the Dow was down a couple percentage points, really has a whole lot more to do with the fact that the Treasury has to sell a lot of bonds and bills and they had three major auctions this week, two yesterday and one today.

CAVUTO: Yes.

HOGAN: And the uptick from that wasn't great. You would call it mediocre.

So what that does is, bond prices come down, and the yield on the U.S. treasuries went higher. And investors don't like what Treasury yields start creeping through significant resistance levels. So, 4.6 percent is where we closed today on the 10-year. And we have seen this happen before. Back in April, we saw the same thing. We got to 4.75. The market sold off 5.5 percent on the S&P.

Saw that last October when we had a drawdown and the yield of the 10-year got up to 5 percent. So I think it's the creeping higher Treasury yields sort of hustles in what is much more of a risk-off attitude with investors. We saw that.

A couple of the household name companies had a rough report this morning and then again this afternoon with Salesforce.

CAVUTO: Right. Yes.

One of the things that's interesting too, you mentioned some Dow components there that were getting hit badly, but this notion that the market has been unnerved by some things now and then, but it has climbed this wall of worry.

Well, let me just posit, I'm just throwing it out there, if there are convictions for Donald Trump, in other words, he has some trouble here. Would there be a market impact? I don't see it at all. I mean, he's climbed this through indictments that number 90-plus right now, and he's doing just fine, markets, today notwithstanding, just fine.

So what do you think?

HOGAN: No, I think the markets, I think, look at this as a -- more of a side story.

I think that what they do look at are things like economic growth and earnings. And, certainly, they will look at some of the polls. It's early for that, but look at some of the polling. And that probably has more of an effect in an election year, certainly. How's the economy doing? How was the first-quarter GDP? How's the second quarter tracking? And, in general, how is the earnings reporting season?

Those are much more fundamental to what investors are looking at right now. And to -- you know, as much as we make of ***politics***, and especially in a presidential election year, the market is much more concerned about those fundamentals necessarily than who may be in the White House at the end of this year and into next.

I think it's more focused on, how's the economy doing in general? Do we have an unemployment rate below 4 percent for the last 26 months? Did the S&P just have a great first-quarter earnings reporting season? And do we continue to see economic growth? And I think that's what's been driving things here.

CAVUTO: Yes. As you and I have discussed over the many decades, Wall Street is really not red or blue, contrary to popular belief here. It's all about the green, making money. And if the environment's good for making money, they're happy, right?

HOGAN: Yes, it's such a good point. And I think it's -- and it's been true historically.

CAVUTO: Yes.

HOGAN: I mean, if you tracked every election for the last 50 years, the market doesn't really care who's in the White House.

(LAUGHTER)

CAVUTO: Yes, exactly.

HOGAN: What the market cares about are really the major changes in fiscal or monetary policy. That's it.

CAVUTO: Right. All right.

Well, just so you know, Art, we have these fancy graphics and music to go along with the Trump court case. So minimize it though you will, we're going to stick with the graphics and the music.

HOGAN: OK.

(LAUGHTER)

HOGAN: All right.

CAVUTO: Always good seeing you, my friend. Thank you very much.

HOGAN: Thank you.

CAVUTO: Art Hogan, an uncanny read of these markets.

All right, we're trying to get a good sense of what we can look forward to tomorrow. Jury's going to be busy, back in that courtroom, I guess -- after this.

(COMMERCIAL BREAK)

CAVUTO: All right, we just had a brief Donald Trump citing heading back into the courtroom, did not talk to reporters one way or the other, just a fist pump there, and back into the courtroom he goes, obviously maybe to meet back with his lawyers.

It's all wrapped up for today, though.

Back with Andy McCarthy, Katie Cherkasky.

Katie, spell out what we're looking at tomorrow morning. I guess the jury is back in that courtroom, right?

CHERKASKY: Well, the jury will be back, and the judge is going to be able to essentially answer their question after he discusses the appropriate response with the counsel for both sides.

But, ultimately, he will make that choice about what would be responsive to the question. And I think just in terms of the questions that we're getting from the jury, they may very well be looking for some sort of corroboration of Michael Cohen's testimony, because, if they're doing their job, they should know that they cannot rely upon anything Michael Cohen said that isn't otherwise corroborated.

So perhaps that's why they are interested in David Pecker's testimony as well.

CAVUTO: And, Andy, I understand that it has to be read to them. They can't read it themselves? What's the rules on that?

MCCARTHY: Well, generally, Neil, they bring them in and read it to them so that there's a court record of exactly what was read to the jury.

And I think one of the things, as we think about timing here, to bear in mind, is, this episode shows the jury is not in complete control of the pace of deliberations, because I think the reason this got hung up this afternoon and they got sent home early is not that they didn't want to work. It's that the lawyers couldn't agree on what testimony in the record was responsive to their note, which is why they're still working now.

That could happen. We have no idea how many times that could happen in the next day or two.

CAVUTO: All right, now, I know that someone told me, Katie, that it's 56 pages of instructions that the judge, Merchan, gave to the jury. And that reminds me of the hellish Ikea assembly catalog.

(LAUGHTER)

CAVUTO: I don't know if I'd be so interested in all 56 pages.

So, obviously, they wanted certain things isolated. Could you explain that process for me?

CHERKASKY: Well, in many cases, the judge will actually give the jury a written copy of their instructions, but since he failed to do that in this case, the specific question will need to be kind of delineated in terms of what would be responsive.

They obviously need to have a certain question. It can't just be, I don't understand any of the instructions at all. It has to be something more pointed than that. So, I would imagine that it would lead to one particular section or certain sections of the instructions, not the entire reading another time.

CAVUTO: Andy, I caught you -- I caught both of your appearances and comments throughout the day, but, Andy, one of the things that struck me as interesting, when you got first word of this note and this request for hearing from David Pecker and Michael Cohen, that it didn't look good.

I don't want to mischaracterize what you said, but that it didn't look good for the defense. What did you mean by that?

MCCARTHY: Well, I think there's two ways of interpreting this. One is that they could just be going back to the beginning, Neil, because Pecker was the first witness, and that would just suggest diligence.

But if it's substantive, what they're doing, you would think, is buying into the prosecution's theory that this case is about a conspiracy to influence the 2016 election, because Pecker really has no relevance to the 34 counts in the indictment, which are about falsification of business records pertaining to the Stormy Daniels payment that Pecker was uninvolved in.

CAVUTO: So, obviously, they will get some of this stuff clarified tomorrow, Katie, but it's possible there will be a lot more requests for information from the jury, whether it comes from one or two members.

But this could signal that it's not just a one-off. What do you think?

CHERKASKY: Sure. We just don't know.

And, obviously, every time we hear something from the jury, people start to get anxious that maybe they have a verdict. But then it turns out to be a note. We just can't really predict what will be the next move of these jurors. And I think that they understand the gravity of the decision that they're making.

And, again, it could be one of them, for all we know, that's causing all of these disruptions and requests. But, for sure, they are entitled to get clarity on the issues that they seem to be struggling with.

CAVUTO: You guys know that Henry Fonda was that one juror in "12 Angry Men." He got the 11 to change --

(LAUGHTER)

CAVUTO: That's the extent of my legal knowledge here, guys.

But I will spare you the Henry Fonda impression, which I think I do quite well, but I'm not going to burden you with that.

Andy, Katie, thank you both very much.

So, again, whether it's Henry Fonda or someone else, but these jurors get another chance to get back in that courtroom, get some questions answered, and maybe some clarity. We will see.

Here comes "The Five."

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