

# [***Jury Deliberates 34 Charges Against Trump; Now: Jury Requests Cohen And Pecker Testimony; Now: Judge Merchan Left The Bench For The Robing Room After Jury Sent Note***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6C4S-M8M1-JCS1-64BF-00000-00&context=1516831)

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

May 29, 2024 Wednesday

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**Section:** NEWS; Domestic

**Length:** 11780 words

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**Body**

SHANNON BREAM, FOX NEWS CHANNEL HOST: Thank you, John and Sandra. Good afternoon, everyone. I'm Shannon Bream in for Martha McCallum. This is THE STORY. We are live at the Trump trial in downtown Manhattan where the jury is deliberating right now behind closed doors here. The former president charged with falsifying business records to cover up a payment to porn star, Stormy Daniels, before the 2016 election. He is facing up to four years in prison on each count. And he says he did nothing illegal.

(BEGIN VIDEO CLIP)

DONALD TRUMP, 45TH PRESIDENT OF THE UNITED STATES: Mother Theresa could not beat these charges. These charges are rigged. The whole thing is rigged. You have a trial like this where the judge is so conflicted he can't breathe. He's got to do his job. And it's not for me that I can tell you. It's a disgrace. And I mean that. Mother Theresa could not beat those charges, but we'll see.

(END VIDEO CLIP)

BREAM: "THE FIVE" co-Host Judge Jeanine Pirro is with me here at the courthouse. All right, Judge, what has struck you? The final arguments, the jury instructions, now we wait.

JEANINE PIRRO, FOX NEWS CHANNEL HOST: Well, there's so much that strikes me. I mean, on the one hand, I've been saying continuously that Michael Cohen is the linchpin of this case, and the judge gave an instruction, if you believe that someone has lied to you about a material fact, then you of course are free to disregard that person's entire testimony. If they go to that issue regarding Michael Cohen, most of the consideration of this case is done.

However, what the judge did was he muddied up the waters, and what was a relatively simple case has now been turned into a very complicated case by the judge saying, look, we've got these misdemeanors, but if you believe that any of these three things happened, a federal election campaign violation, a tax violation, or the third one is the falsification of records, we don't believe there were any falsifications.

And we don't really care whether or not you all agree on which one of these three things happened, then you can convict the defendant of a felony. And that, to me, was the most shocking part of this. And the judge clearly was in a situation where he said that the classification of income as a reimbursement when it's not is, it can be considered a tax violation. Even though you haven't underpaid, even though you paid as much as you're supposed to.

It was almost as though he was making this up as he went along and they answered the question which they refused to answer in the beginning in the indictment or the bill of particulars, which is what is the crime that resurrects these two dead misdemeanors and the judge said, hey, don't worry about it if you go to column A, B or C, well you don't even have to agree on them but we'll get them folks.

BREAM: Well and we didn't hear about what that underlying crime was. There were allusions here and there during the arguments, during the summations, but we were all waiting and I'm thinking if we're all lawyers sitting in there waiting and watching to figure out what this underlying thing is, how confusing do you think that is for the jury? We know they have two attorneys on the jury. How confused do you think they are, or do you think they see it clearly?

PIRRO: Well, one of the things that you hear in the courtroom, you know, is that the juror who had three notebooks filled with notes was the lawyer, the corporate lawyer. So, I'm saying to myself, the corporate lawyer is going to start, you know, standing up and talking about all of the notes. If he goes through all his notes in an effort to do what the jury could ask for a re-read of, then we're in for a long haul here. But at the same time, you know, you kind of say to a jury in cases like this, and I've tried these, nothing like this one, because this isn't real.

You know, sometimes difficult decisions are relatively simple. And based upon who the linchpin is here, this is a simple case. There were no records. No one put Donald Trump in touch with anyone vis-a-vis the voucher, the invoice, or the check. And we know that Donald Trump was concerned about Melania. So, you know, they would have to prove that he did it for the campaign to the exclusion of any other option. And they didn't even argue that.

BREAM: And I do think that that was a jurisdiction that was good for the defense where he said a campaign expenditure if it's something that could have been expended outside of the campaign if there was no candidacy which Trump supporters will argue, right, he didn't want his wife or his family to find out about this or be embarrassed.

PIRRO: Right.

BREAM: That was something that the jury could then take and say, oh, it wasn't a campaign expenditure, this, this isn't connected to any election law or that kind of thing, he still leaves them other doors, other places they could go.

PIRRO: Right.

BREAM: But that was a win for the defense in that sense.

PIRRO: But think about the fact that, Shannon, that you've got Michael Cohen talking about the federal election campaign violation. You've got David Pecker, the head of AMI, talking about a federal election agreement. And then the defendant in this case is not allowed the opportunity to bring in Brad Smith, I think his name is?

BREAM: Right, the former FEC Commissioner.

PIRRO: Right, to talk about what really is a federal election campaign violation. And yet, the jury is going to be ruling on that and voting on that when the defense was denied the opportunity to present evidence. There is so much reversible error in this. It could reverse a cruise ship.

BREAM: Well, and here's the thing. If there is a conviction, we have no idea where this story is going. If there's conviction, of course there's going to be appeal. And so many of the things that you brought up, that's what the Trump legal team is going to do. But you will have months, if not years, of him being referred to as a convicted felon all through election season, and something I would imagine the Biden-Harris campaign is looking forward to using if that happens.

PIRRO: Yes.

BREAM: So, there's the political along with the legal.

PIRRO: Yes, and you know, ultimately, Shannon, it's about ***politics***. I mean, you know, Robert De Niro was here yesterday, supposedly, you know, to rile people up against Donald Trump. All he did was rile up an audience and he told them to F off and called them gangsters. I mean, that was the Biden plan here. And as you say, Biden has said, we're going to refer to him as a convicted felon. We look forward to talking on the day that the verdict comes out.

BREAM: OK, judge, we are just getting some word. There are reports from inside the courtroom. There may be some kind of activity. Now, whether this is the jury saying to the judge, we have some questions, we want you to read back part of the jury instructions. We want a portion of testimony read back. We have no idea. But there is some kind of activity. So, we are trying to determine at this point what that may be, but you've seen this.

We've seen this when juries go out. Sometimes they have a question. We know there are 55 pages of jury instructions in this case, he did not give them to them in writing. But it said, if you have questions or you want me to read something else, come back. So, here's President Trump. This is live. Of course, he's staying around here, as he's got to do, and stay while the jury deliberations are underway.

But he and his legal team will go back into the courtroom if there's a question from the jury, if there is something that the judge needs to get involved with or if there's a verdict. Listen, I think we'd all be shocked to get something this early, but it wouldn't be shocking to have some kind of question from the jury.

PIRRO: Well, there's no question. Juries come back with notes all the time. I mean, that could be -- you know what judge we want to work past 4:30 today. Where does the judge get off saying, 4:30 you can all go home, but I want your phones for the next three hours. I mean, none of it makes sense. Or it could be that they want a read back of something that, or maybe they're going to ask the judge, do we do 34 at once or do we do each for all kinds of questions. It could be we want soda.

BREAM: Yes, I really, I mean, in the beginning, what kind of clues should we look for from a jury this early when they've got questions or they want, I mean, whatever they ask, if we can find out what they ask, that's always super helpful for us trying to guess where they may be stuck.

PIRRO: They have to put it on the record for both sides. So, we will know what the note is. Generally, they're going to ask about a readback or to look at evidence. But I understand they took the laptop sets. So, they have the exhibits that have been marked into evidence in the jury room, in the deliberation room. I imagine it might be a readback based upon, you know.

BREAM: Think about how many weeks ago. OK, we're sitting in there.

PIRRO: Six weeks.

BREAM: The days of Hope Hicks and David Pecker and all of these early, early folks that we heard from it seems like ancient history. And so, for them as they're trying to piece the puzzle together as they have their deliberations, they may say, yes, we need something from week two, which was a while ago.

PIRRO: Yes, there's truth to the saying justice delayed is justice denied and the truth is that this has been drawn out for so long, there was no justification for a week off for this jury from Tuesday to Tuesday. There was no justification for them not to be sequestered. This is the former president of the United States of America, and the possible future president, probable. But and if any case there should be a sequestration, it's this case. I would have said to the jury, bring your toothbrushes, tell the clerk who you want us to call, and you get one call each, not two.

BREAM: OK, and by the way, we know that judges do different things and have different reasons for sequestering, for not sequestering certain trials. Why do you think this judge decided not to? To let them go about their business and go about their lives, and something that is such a critical trial.

PIRRO: Well, let me ask you this. We know already that that jury pool is from a group of people in Manhattan who are 85 to 90 percent anti-Trump.

BREAM: Just based on voting the last time around.

PIRRO: Based on voting. A lot of these -- but we don't know how these folks voted, but that's where, you know, jurors come from. They come from the voting booth.

BREAM: Yes, the pool.

PIRRO: The pool. And you know, so, I think that, that is a danger. I think that in a case like this especially, they should have had them sequestered because there is so much chance, because there is so much on the line. This is a top job in the United States of America and you're allowing the jury to go out and possibly be influenced or to even read a newspaper. I would say to a jury, you can't watch the don't, don't, don't.

BREAM: OK, judge, do not go far. We're going to check in with correspondent Nate Foy. He's also here live at the courthouse to see if he's learned anything more about what's going on. Hey, Nate.

NATE FOY, FOX NEWS CHANNEL CORRESPONDENT: Hey, Shannon. So, the prosecution and defense have entered the courtroom as we await to hear from our producers inside the courtroom if the jury has a question as they are deliberating right now, and they notably, the jury was not able to take copy of the jury instructions into their deliberations and if you go over the jury instructions to 55-page document and we've had people who are lawyers on our air all day saying how intricate it really is.

So, it's difficult to imagine how twelve normal people, although there are some lawyers as part of this jury, would be able to accurately understand and recall every intricate detail of the jury instructions. But of course, one big part of this that we're all sort of waiting to see how the jury will interpret are the three options that they have where Trump is accused of unlawfully influencing the 2016 election, and the unlawful part is the part where the judge gave the jury three separate options to essentially convict him of this crime.

And you see right here what could happen if Trump is, in fact, found guilty. Four years per count. There's 34 counts. So that adds up. That's quite a long time in prison. However, with New York law, the maximum here is 20 years. Trump, of course, if he's convicted, would be able to appeal and an appellate court judge may stay or suspend the execution of that sentence.

Judge Merchan told the jury as they deliberate that they cannot consider the sentence and that they can only consider the facts and the evidence that was presented at trial today entering the courthouse. Trump said that this is election interference and he blamed President Joe Biden for bringing this case and other cases against him. If he is convicted, the prosecution could request that Trump get locked up until his sentencing hearing, but that is considered unlikely considering that this is a nonviolent offense and that Trump does not have a criminal history.

But Trump's lawyers could request lifting the gag order after this is all said and done as well so we could publicly respond to the charges that have been laid out in this trial. We are just right now, Shannon, following minute by minute, waiting for an update on this possible note, but right now we don't have any answers quite yet. We'll send it back to you.

BREAM: All right, Nate, very much appreciate that. We'll keep checking in to see what this is about. And again, as the judge said, we are going to find out if there's a note, if something comes forward from the jury or juror, we're going to hear what they have to say. If they're asking questions, if they're telling the judge they've come to some kind of decision, we'll see.

But all of that will take a little bit of time and we'll make sure minute by minute as it happens, you will know at home. I also want to bring in "SUNDAY NIGHT IN AMERICA" Host, Trey Gowdy, and former State and Federal Prosecutor and House Oversight Committee Chairman, he's done it all; also Andy McCarthy, former Assistant U.S. Attorney and a Fox News Contributor.

All right guys, we have been in this for weeks now. We have something from the jury. We don't know exactly what it is. I want to play something though from a legal expert on another network and we do have a note from the jury. We understand that's what it is. We don't know what the note is yet. OK, so I want to play this from a criminal defense attorney, David Oscar Markus saying about how now that they've heard summation and got the case.

(BEGIN VIDEO CLIP)

DAVID OSCAR MARKUS, CRIMINAL DEFENSE ATTORNEY: The jury must be overwhelmed. I mean, to have all of these instructions just read to them without them getting a copy is, is going to be overwhelming for them. And also, it's crazy that the lawyers were not able to discuss the instructions in their closings yesterday. Typically, lawyers can go through the instructions and explain why they've met them or why the government hasn't met them, and they weren't able to do that yesterday, which I find bizarre.

(END VIDEO CLIP)

BREAM: OK, so they got the 55 pages of instructions but did not get them in writing. OK, so the note we have from Maria, our producer who has been a crack, just expert at everything that's going on in there during this whole trial. She says that the note came in at 2:56. There's a request from the jury.

They want to hear about Pecker testimony regarding the phone conversation with Trump, the decision not to fund the Karen McDougal life rights story that the AMI was talking about buying from her, the Pecker testimony on a Trump Tower meeting and the Cohen testimony on Trump Tower meeting.

And if I'm right, this is a meeting that other people were involved in, but we didn't hear from them. They weren't called in this case. So, Trey, what do you make about what they're requesting so far?

TREY GOWDY, FOX NEWS CHANNEL HOST: What I make having been on the receiving end of a number of those notes is it is absolutely impossible to make anything of it. What you don't know is if all 12 wants to rehear that testimony, or if 11 have already made up their minds, and one wants to hear that testimony, you don't know why they want to rehear that testimony.

(CROSSTALK)

BREAM: True.

GOWDY: I would imagine if I were the prosecutor, I would think if I had to pick something for them to hear, that might be something good. But I would be lying to you if I said, any lawyer may be the one sitting to the right of me. But if I were a prosecutor or defense attorney, I have no idea what is on a jury's mind based on a note whether it's 11 or one.

BREAM: OK, and let me walk through this again. So, the no comes in. They want to hear David Pecker testimony regarding a phone conversation with President Trump. So, remember, David Pecker was running the National Enquirer, AMI. There were conversations about catch and kill. He testified that this happened for a lot of celebrities and politicians. It wasn't just something for President Trump.

He also said, this kind of stuff started happening with President Trump, I believe, 1988. I mean, this was decades -- this is the way the business works, this is what they do. So, that who David Pecker is.

Now, they want something about the decision not to fund the Karen McDougal life rights story. Now, remember, she's the one who said she had a longer- term relationship with President Trump. She said something in the neighborhood of 10 months, she is been out there and given interviews where she said they were in love.

This was not a casual physical affair that it was more than that. We've also heard from her in the past, saying she didn't really want to sell the life rights to her story in the sense that she did not want to tell the story about Trump. She wasn't threatening, but she saw this. She has said in the past, and we cheating take the stand here, which you saw this agreement with the National Enquirer as a way to restart her career as a model, to write articles, to be on magazine covers. So, they want to know about that. And they also want to hear Pecker testimony on the Trump Tower meeting and Cohen testimony on the Trump Tower meeting. What does that say to you, if anything? Andy?

ANDREW MCCARTHY, FOX NEWS CHANNEL CONTRIBUTOR: Well, let's assume -- I agree with Trey that juries are always a wildcard so it could be one juror. But since this is the first note, I want to hark back to something I think you said earlier, which is that it's a long trial. Pecker was the first witness. If they are working their way through the evidence, then they might want to be refreshed, especially since they heard a lot of argument in the last day about what Pecker's testimony was and the meaning of it, they may want to go back themselves over what that testimony was.

Now, what I wouldn't like about this, if I were a defense lawyer, and again, taking all Trey's caution about, you know, not reading too much into this. If I'm a defense lawyer, I want them to focus on the records, because the charges in the indictment are falsification of the business records.

If they are looking for Pecker story, that's the prosecutor's version of events. The prosecutor's portrayed this case to the jury as a conspiracy that went back to 2015 to influence the election. And Pecker was a key player in that.

So, it could be that they are refreshing their recollection of the testimony. It could also be that there is some buy into the prosecution's theory of the case. We'll just have to see.

GOWDY: Although, I will say, just playing the devil's advocate, because everybody needs a lawyer. If Andy and I were debating this over a glass of sweet tea back in South Carolina --

(CROSSTALK)

BREAM: And did you know what sweet tea is?

GOWDY: Yes, I know. He is -- yes.

MCCARTHY: I don't know what South Carolina is.

BREAM: He is a New Yorker.

GOWDY: All right. So, I'm the defense, I may be emboldened because he did this all the time. Pecker killed stories all the time to say marriages, to say business reputations. Maybe the members of the jury are sitting there thinking This wasn't about an election, it was about something else. It was about preserving his relationship with Melania or preserving his business reputation.

So, there is literally no way of knowing who wants his testimony replayed. and for what reason?

BREAM: OK. I want to note a couple of things from the closing arguments from both sides here, because we had -- we had that the jury wants to hear something about Cohen's testimony about the Trump Tower meeting as well.

So, let me put this up here. Todd Blanche, attorney for President Trump.

Oh, excuse me, I lost it there. We have got him talking about Mr. Cohen and what he means to this prosecution. Maybe you just have to put it up on the screen and I'll read it from there. There you go. Sorry.

"He is the human embodiment of reasonable doubt. Literally, he lied to you repeatedly. He lied many, many times," many times, "before you even met him. His financial and personal well-being depends on this case. On the other side, we also have a full put this up, from prosecutors talking about Cohen and just how much does or doesn't depend on him? Because you guys remember, during the closing, they really tried to say we've got mountains of evidence besides him.

Here is part of the closing from the prosecution. This case is not about Michael Cohen. He's like a tour guide through the physical evidence, but those documents don't lie and they don't forget. Andy.

MCCARTHY: Michael Cohen is a terrible witness. Do you think you call him if you don't have to? If he is not essential to the case -- he is a guy I don't want anywhere near the stand tainting my case.

So, I think anytime they spend on Michael Cohen is probably good for former President Trump. But one thing I would say about the Pecker aspect of this that I think underscores some of the unfairness that the Trump defense has tried to, to highlight for us, and that is, they ask about the McDougal and D.A. and how that -- how that broke down.

Remember, Trump and Cohen, or at least Cohen says, with Trump, they were going to pay that. And then, Pecker at the last second said, you know, we're not going to take reimbursement from that. And what he testified was he talked to their general counsel.

(CROSSTALK)

BREAM: Right.

MCCARTHY: And he suggested that there might be something criminal about that, and therefore, they decided not to pay. So, Trump is arguing that on the one hand, he wanted to make an advice of counsel defense, and the judge said, no, I'm not going to let that happen.

And yet, on this very important aspect of the so-called scheme, the conspiracy to influence the election, they injected the, what we infer is the opinion of a lawyer that what they were up to was criminal, which seems to me to be unfair.

BREAM: So, again, the jury has asked, they have -- they put out a note they want to hear some of the testimony from David Pecker and from Michael Cohen regarding a payout or possible buyout of Karen McDougal story of her alleged affair with President Trump. And also, they want to hear about the Trump Tower meeting.

Our colleague, Jonathan Turley says this about that note. He says, notably, Joshua Steinglass, the prosecutor, emphasized with the jury that David Pecker met Donald Trump at Trump Tower in January 2017, and they discussed Karen McDougal.

One of the most notable elements of the closing was that Steinglass said that Pecker testified that Trump thanked him for his help on the McDougal story. She is not part of this case. I mean, it's coming as irrelevant information, but there are no charges related to Karen McDougal in this case, or any payout to her.

GOWDY: Yes, it is one of many baffling evidentiary rulings, it is propensity evidence, which usually is excluded. So, this case had both propensity evidence the fact that he may have engaged in wrongdoing in the past should not be evidence of your current wrongdoing. It's also proximity evidence. Because you're around somebody who pleaded guilty, because you're around somebody who signed a non-prosecution agreement. Therefore, you must also be guilty. Most judges don't let you do propensity or proximity and this judge let them do both.

MCCARTHY: If Bragg were here, I think what he would say is it's absolutely in the indictment. And what he would say is that what we've charged him with is falsification of business records with intent to defraud. And under the statute, the intent has to -- has to include the commission or concealment of another crime.

He says the other crime is this conspiracy to influence the election. Now, any sensible person looking at the four corners of the indictment would not see the word conspiracy in there. But that's what Bragg would say. He'd say it's absolutely in there. And unfortunately, Merchan agrees that it's in there, even though no one can see it.

BREAM: Yes, because technically, there is no charge for conspiracy, Bret. I get what you're saying that that's been kind of woven through their argument the whole time.

And we're going to check in with Nate Foy. He is also monitoring what's going on in the courthouse. He is here with us in lower Manhattan. Nate?

FOY: Hey, Shannon. So, yeah, the jury has three questions about David Pecker's testimony, and one, on Michael Cohen's testimony from that Trump Tower meeting, where prosecutors allege that this conspiracy began where David Pecker, the former CEO of American media promise to be the eyes and ears of the Trump campaign, and to promote positive stories about former President Donald Trump and to suppress negative stories about him and also to publish negative stories about his opponents, including former Secretary of State Hillary Clinton at the time.

This is key because this is one of the few moments where Trump is accused of directly being involved. And of note Shannon, as part of the jury instructions, despite the fact that it was allowed to be brought up by the prosecution several times during their closing arguments and throughout the trial.

Judge Merchan did say that Michael Cohen's 2018 guilty plea of a FICA violation, and David Pecker's non prosecution agreement are only -- they were only able to be brought up to provide context for the jury, but that they can't actually imply Trump's level of guilt.

So, this Trump Tower meeting, of course, is the one conversation where these three people were in the same room. Prosecutors allege berthing this conspiracy to unlawfully influence the 2016 election.

We are waiting for more details to come out but that's the latest that we have right now, Shannon.

BREAM: OK. Nate Foy, thank you very much. So, our panel is standing by here. Trey Gowdy and Andy McCarthy are with us too. We've got another note from Maria inside. She says that Merchan has briefly stepped out.

Todd Blanche, the president -- former president's attorney is standing flipping through some papers. They are waiting for the jury to be brought into this testimony, can be read back to them.

So, as that's happening, Trey, what would you be watching for as a member of the prosecution or the defense on those jurors faces.

GOWDY: Where the eyes are looking in, where the heads are nodding. What I - - what I used to see is the jurors who don't have questions would look down at the ones who did, and kind of say, see, we told you, that's what was said, or I just -- I'd be paying attention who's sitting with whom? Are the same juror sitting with the same folks I've been sitting with for the last several weeks.

But it is uncanny. Andy, you may have had a different experience. You can sometimes tell who has the questions based on where the eyeballs go when the testimony is being played back?

MCCARTHY: Yes, I have similar experience with Trey. The other thing I would just note, if you want to know what it's like to be a lawyer in the room, right now, when a jury has a note like this, asking for testimony, you are frantic, because you're going through the transcript, and trying to make sure you accounted for everything that might be helpful to your side that is relevant and answers the question.

So, yes, you're very anxious to see the jury. And you want to serve them quickly. If the jury has a question, you want to answer it like fast. But you also want to make sure you haven't missed anything that they should be right back.

GOWDY: You know, this judge did something strange. Most judges don't do it. He essentially invited them to ask questions. He didn't send the jury instruction back. I don't recall them sending the exhibits back, maybe you have a different experience.

(CROSSTALK)

BREAM: Well, did they put those on the laptop?

GOWDY: Right.

BREAM: Here they said.

GOWDY: And they are going to train two people?

BREAM: Within the jury, to be able to share the exhibits from the laptop.

GOWDY: Who access it. You know, good luck, it would take a little more than 15 minutes to train the two of us to be able to do it. But he essentially invited the jury.

Look, if you have a question, I'm right here. When you ask the jury -- most judges don't do that. They want you to work it out yourself. No keep coming back in the courtroom asking me to replay stuff. He took a different approach.

BREAM: Well, and he did. As we talked about before the summations yesterday, He admonished both teams of attorneys kept saying I am the one who has to instruct this court on the law to instruct the jurors on the law. You don't do that.

So, what about that, Andy, the fact that he is now saying, you're going to have to come back to me for all these questions. If you haven't, I didn't give you the written jury instructions. But I'm the only one who can tell you how to apply the law in this case. So, you're going to have to come to me for that interpretation or that prism.

MCCARTHY: With all due respect, that's boneheaded. as anything I've heard of, because Trump has a right to make a defense, right? So, if his defense is that there is a lack of proof beyond a reasonable doubt about an essential element of the offense, and he needs to walk them through what essential elements mean, and what reasonable doubt means, and how the legal instructions match up to the evidence in the case, and the judge interferes with that and says, leave the law to me.

I like -- no, leave representing President Trump to me. You know, you sit there, we went along with all your rulings all this way, you get to instruct the jury at the end. But this is my time. Now, if I'm not violating the law, let me explain to the jury why they should acquit this guy.

BREAM: So, knowing that they have left these three possibilities, maybe others for the underlying crime, do you think at some point, the jurors may come back with a question to say like, OK, if we want to find an FEC violation, what would that mean? Because I didn't see anywhere that he enumerated the elements for that. There was some explanation of what's a campaign expenditure, and those kinds of things.

But not the same way in the way I've prepared jury instructions in the past with elements one, two, three, you got to get to those.

GOWDY: Well, one of the questions I keep asking Andy, but he keeps sending me a bill is doesn't have to be --

(CROSSTALK)

BREAM: It's just expensive.

GOWDY: -- the reason for the expenditure or a reason for the expenditure.

BREAM: Right.

GOWDY: If I'm a member of the jury, I don't have any idea. I mean, ***politics*** is about plussing up positive stories and suppressing negative stories. I mean, I don't want to like ruin it for political scientists out there. But that's what politicians do.

So, is that really like a federal election law violation to try to suppress a story that would be damaging for your campaign? You need to build more prisons if that's actually a federal election law violation.

BREAM: People not telling the truth on campaigns and suppressing nasty stories. OK, guys, don't go far. Let's bring in Andrew Cherkasky, criminal defense attorney and former federal prosecutor.

All right. Andrew, what did you make of this that we got to today before we heard an enumeration of what that potential underlying charge is that turns this whole thing in to a series of felonies that escapes the statute of limitations?

ANDREW CHERKASKY, FOX NEWS CONTRIBUTOR: Well, I don't think it's any surprise. We have seen this train coming for a long time. The defense has been begging for clarity about what this escalating offence really looks like.

And now, we see that the judge all along was going to let the prosecutors essentially have these three different prong approach to that escalating offense. So it's offensive as a criminal defense attorney, I think that the idea of representing a client necessitates that you have adequate notice of exactly what you're defending your client against. I think it's a major issue, in this case, one that would be certain to go up on appeal if there's any sort of conviction.

But this is what I think they all saw coming when the judge was so hesitant and reluctant to require the prosecution to provide that additional clarity.

BREAM: So let's talk about that. If there is a conviction, we have no idea if that's where this case is going to lead. But if so, we're going to have an appeal. Does -- is this judgment state on appeal is that up to the appellate judge at the next level? I'm not really sure here in New York but if there's a conviction, it's going to take a while before you would get through the appeals process, months, maybe years here in New York.

CHERKASKY: It would take at least many months to get through an appellate process. Typically on a first time offense, especially where there's not a violent crime, it takes three or four months to do kind of a pre-sentencing assessment period. There is the opportunity to appeal to the appellate court to stay the sentencing until after the appeal is complete. So I don't see there being a sentencing ahead of the November election under most the most likely circumstances here, although the appellate court could punt on that require sentencing to be done, and that the sentencing be done right ahead of the November election essentially.

BREAM: OK. So there's been talk of the lack of knowledge of that underlying crime being something you mentioned there could be appealable, potentially reversible error. Under our system obviously, a defendant has to know what they're trying to defend themselves against. Are there other things you've seen in the case, whether jury instructions or rulings, other decisions the judge has made, that you would think would be top of mind for the Trump team, if there is a conviction and they launched an appeal?

CHERKASKY: I think you go from the beginning all the way to the end. So at the beginning, you have the judge who's on the case and the bias that he, of course, has had throughout this case, and obviously the defense has made a big deal of that. You've talked about Stormy Daniels and the way that Stormy Daniels was brought into the case.

But it's not just Stormy Daniels with regard to this kind of idea of other wrongs, crimes or acts, the idea of showing other bad conduct of Donald Trump in order to prove his criminality here has been pervasive throughout this case. And so that's a real issue. Obviously, the testimony of Stormy Daniels and some of the prosecution's deep dive into the sexuality allegations that occurred between her and Donald Trump, after specifically having instructions from the judge not to go into that information.

Then, of course, we have legal based issues, are these in fact crimes that are legitimate in the first place in consideration of the statute of limitations, and the charging scheme that the government brought here. So there's a cornucopia of appellate issues here. I know the Trump team wants nothing to do with this case, having to move forward to appeals. But if it goes forward, there's certainly many issues that can be brought.

BREAM: What about the issue of the FEC commissioner, former commissioner Brad Smith and the fight to get his testimony included, to give the jury more of an explanation of what a federal election issue would be? Because this court, you know, they're putting out to state election law. This is not a court that can be the arbiter of federal law, certainly not at that point that the defense wanted to call Brad Smith for.

CHERKASKY: I think that that's a huge error in this case. You know, you look at the prosecution but to bring so many peripheral witnesses to the trial, and essentially argue that it has some connection to the case, one way or the other. And the defense has a very limited case. They try to bring the FEC expert in to talk about federal election campaign. And the judge says no, he's not allowing somebody, essentially, to come into the courtroom to tell them the law.

Although you can have legal experts, I've seen many over the years and different types of trial. So he didn't allow that but then we see in the jury instructions today that the judge is essentially giving this very broad stroke approach to how to consider a federal election campaign violation so broad, in fact, that I think it's very difficult to even say that the judge's instruction is consistent with what the FEC would see with this.

And so, you really have to look at what the charges require here. And that's a specific in attempt to engage in criminal conduct and without allowing the defense to call an expert in federal campaign violation law, how can the jury fairly and accurately view all of the evidence and consideration of the right to present expert witnesses, a real issue here.

BREAM: OK. Andrew, thank you very much. We appreciate your expertise on this. We're going to bring in now criminal defense attorney Mark Eiglarsh. Mark, always good to have your perspective on these things.

Where do you think that offense got this right where do you think they fell short? How would you be feeling if you were part of this defense team now waiting on this jury?

MARK EIGLARSH, CRIMINAL DEFENSE ATTORNEY: I feel like I felt every single time, one of my juries went to deliberate, it's hell. It is horrible. You put in years of your life and, ultimately, your entire fate, you and your clients lies in the hands of 12 people that you really don't know. They're strangers.

You really have no idea what side of the political aisle they're on, you have no idea what kind of baggage they bring to the courtroom, you absolutely have no idea. And anyone who thinks that they know what the verdict is going to be, they really don't know. One of the things I loved about the defense was saying, you need Cohen. This case is about Cohen. It's not what the prosecution said, a mountain of evidence, and you don't even have to consider Cohen, there's plenty without him. That's just not the case. That's not intellectually honest.

BREAM: But we know the prosecution, those are the last attorneys that this jury has heard from. Now they've heard from the judge. So here in New York, defense goes first, prosecution goes second. That's the way that it works. So they leave their impression with the jury, as they now have heard from the judge.

What do you make of what we know about this note so far? The questions about testimony from David Pecker and Michael Cohen, about the Trump Tower meeting, that is kind of described as sort of the linchpin for this whole group to get together and come up with. As Andy said, essentially, what they're hinting at is a conspiracy although there's no technical conspiracy charged in this indictment.

EIGLARSH: There are so many things that could mean nobody knows with certainty. The only thing we know is it looks like they're doing what they swore to do, which is not rush to judgment. It's to go through and first determine what the facts are, what were proven, and did those facts and the evidence that was proven meet the elements of the crime. So they're not rushing through it, they're going through step by step and maybe one person, or maybe the group had a disagreement over what the facts were. And they're not expected to know weeks of testimony by heart, especially because the judge took a week off for closing. It's not uncommon for them to say, yes, read it back. We'd like some clarification on those issues.

BREAM: I want to play something from Ty Cobb, he's a former Trump White House lawyer about what he thinks on what the verdict may be, the timing may be. Here's what he said on Tuesday as we were going into closing arguments that day.

(BEGIN VIDEO CLIP)

TY COBB, FORMER TRUMP WHITE HOUSE ATTORNEY: I think we'll have a verdict Friday afternoon at the latest. It could be Monday.

ERIN BURNETT, CNN ANCHOR: You also think the jury will find Trump guilty, how come?

COBB: I do. I think -- well, I think it's a combination of things, but primarily it's because the jury instructions almost required.

(END VIDEO CLIP)

BREAM: Mark, your reaction to that because we've all sat here and tried to parse through what Judge Merchan put together. Of course the two parties that two sides fought and fought over these jury instructions, but they're now -- they've been delivered. He's made his decision. Do you agree with Ty Cobb that the way that they were written, his argument, his opinion is essentially leads the jury to a conviction.

EIGLARSH: Not necessarily. Look the jury instructions, you know, I wouldn't be happy with them if I'm on the defense side. I certainly wouldn't like to have heard what the criminal charges were essentially what they're trying to prove in their closing argument. That would have made me nuts.

Now that said, I like the idea of possible verdict Friday. Jurors would rather enjoy their weekends, if at all possible. They're not going to sacrifice their decisions just to get it done. But if they come to a consensus, usually Fridays as opposed to Mondays, I predicted 3:47 in the afternoon. I have no idea and no one has any idea, but that was my suggestion.

BREAM: Well, yes. We don't know. We just sort of little over under here, as we all sit and wait. It feels like too many of us this will be sooner rather than later. And as you say, I mean, Fridays and weekends are very motivating to juries. They've been at this for weeks and weeks.

Mark, thank you very much for your time. Don't go far. We're going to check in with Lydia Hu from Fox Business Network, who has been in the courtroom more than I have. And she's had excellent notes and insights as to where we go from here.

Lydia, any tape that you have on what the jury has asked to hear back as we understood it will be reread to them?

LYDIA HU, FOX BUSINESS CORRESPONDENT: You know, after getting this note, you know, the jury was discharged to begin their deliberations just a little after 11:30 today. So their first note coming in before 3:00, I think really isn't that bad. And I'm not surprised that they have questions where they want to read testimony back.

This has been a long trial with a significant break in between the end of testimony and then closing arguments. And as you may have possibly already been pointed out, Shannon, when you and I were sitting in the overflow room earlier today, we listened to roughly an hour's worth of jury instructions. They span more than 50 pages. Justice Juan Merchan read them to their jurors. They don't get to take those with them into the jury deliberation rooms.

So now they're forced to apply those instructions to testimony that they're also recalling. I think this might be the first of several series of questions that we can get from the jurors. And I think that's to be expected in this process.

BREAM: Yes. I think you're right because they were such involved instructions. It was a long read out this morning. And because you when you and I started covering this trial weeks ago, it's hard to remember exactly, even for us, what David Pecker said on the stand.

But clearly, if they're starting from the beginning and working their way back through, there's something significant to them about the Karen McDougal story. What do you make of that? Because this is about payments to Stormy Daniels, not Karen McDougal, but her story has featured prominently even though she was not called to the stand.

HU: Yes. And you know what, I am so glad you point that out because it's good to remind everyone that the charges and the indictment actually relate to Stormy Daniels. And the reason we even had testimony about Karen McDougal being admitted into this case, it was because it was part of an alleged pattern and practice. It's part of it helps show that there was this alleged catch and kill scheme.

So it's interesting that the jurors are, you know, have this desire to hear more about that. You know, they want to know about David Pecker's phone call with Donald Trump in which they discussed whether Donald Trump should move forward with trying to buy Karen McDougal story rights. They want to know more about why was it that Donald Trump actually did not pay for the life rights to Karen McDougal story, that it was just American Media, David Pecker's company for the National Enquirer. They were left paying with the $150,000.

And then finally, they want more information about those two meetings at Trump Tower, one from Pecker talking about the meeting and another one Cohen talking about the meeting. All of that seems to suggest that they're really interested in learning more about the context surrounding, you know, this alleged conspiracy, whether there was truly a meeting of the minds to go out and buy the story rights and why.

That seems to suggest they've moved beyond the question or that at least at this moment, they're not entertaining the question of were documents falsified with an intent to defraud. They're thinking more about was there maybe a conspiracy to influence the election perhaps?

BREAM: Well, Lydia, your analysis has been excellent and so helpful for all of us covering and understanding, and sitting together in the trial. Thank you very much.

I want to bring in Andy McCarthy and Trey Gowdy again. I want to play something from Andrew Weissmann. Now our audience will recognize and remember, he was part of the Muller investigation. Here's what he said about how he feels about the judge in this case.

(BEGIN VIDEO CLIP)

ANDREW WEISSMANN, MSNBC LEGAL ANALYST: With respect to Judge Merchan, I mean, I am I'm like now, you know, I felt like a man crush on him. He is such a great judge that it's hard to see that the jurors wouldn't have the same impression. And he's just, you just keep on thinking, if you looked at a dictionary for like judicial temperament, that's what you get. And it's just been such an impeccably fair trial.

(END VIDEO CLIP)

BREAM: Trey, I'm guessing that you don't feel the same way. But you made a point earlier that jurors really look to that judge, that is the person they identify with. They trust them. They think that they are the neutral arbiter. And the judge said this morning, I have no bias or opinion on this case and as a juror, you should not think otherwise.

GOWDY: Yes, he did say that. He spent about 15 seconds saying if you think I have an opinion, you're wrong and he spent about five weeks expressing his opinion. It's a little bit like your mom making your sister tell you that she loves you. It's just not terribly heartfelt.

The fact that Andrew Weissmann thinks that Judge Merchan was really fair, and has a man crush, the prosecution rest. That's all you need to know about this judge. And Andrew Weissmann, I don't think they're coming for me. I think they're coming for Andy. You have a Fifth Amendment right not to answer their questions.

The fact that Andrew Weissmann absolutely loves this judge, the guy that absolutely hates Donald Trump, should tell you all you need to know about this judge, and whether or not the strike tone has been the same for both sides.

BREAM: Well, Andy, as this judge has made decisions on objections overruling, or sustaining and we have talked about did the defense at some point yesterday, just decide it's not worth objecting anymore, because we're drawing attention to the fact that this judge is overruling nearly everything that we're trying to do. And does it make us look sort of battered or like we're in the wrong or we don't know what we're talking about. A judge has enormous impact on a trial.

MCCARTHY: Totally, you know. Look, this judge told the jury, which is a correct propositional law, that Michael Cohen's plea of guilty to the election law crimes is not admissible against President Trump, right? He says it in a bland way out of the side of his mouth. And then he says now prosecutors, you mean for another 27 times remind the jury of those guilty pleas.

And then yesterday, when they yet again, I don't know if it was 10 times, 20 times that they reminded the jury that this guy had pled guilty, which again is not admissible evidence against Trump.

BREAM: As to the guilt of President Trump.

MCCARTHY: Correct.

BREAM: It can be into evidence but it can't be used for looking at the guilty. I know you think that --

MCCARTHY: It could be in --

BREAM: You have strong arguments --

MCCARTHY: It could be in for credibility. Who wants to challenge -- the prosecutors don't want to challenge his credibility, right? They want the - - they want the plea in. But the thing is, Shannon, when at the end of the argument, when they again repeated this the like the 127 time, the prosecutors objected, and the judge says, overruled.

So that conveys to the jury that it's the defense lawyers who were trying to do something, you know, keep something from them. When --

BREAM: And again, using the language today that would give us proper but referring to Michael Cohen as an accomplice, I think that also can be confusing to the jury, OK. We want to go to Nate Foy, here at the courthouse in Lower Manhattan with an update from him as well. Hey, Nate.

FOY: Hey, Shannon. So yes, we're awaiting more information as the jury is going to revisit some of the testimony from both David Pecker and Michael Cohen during that Trump Tower meeting in 2015. Prosecutors allege that the conspiracy to unlawfully influence the 2016 election began. And specifically the jury is asking about the purchasing of the Karen McDougal story, which is not part of the criminal case here against the former president. That relates to the Stormy Daniels payment but prosecutors brought up the Karen McDougal story just to establish a pattern.

And that was a story that David Pecker ended up purchasing. And Michael Cohen was set to reimburse Pecker until Pecker eventually backed out of that deal because of legal concerns. But other than that Trump Tower meeting as I mentioned, that's one of the few instances where former President Donald Trump is directly involved in something as to what exactly happened in that meeting differs based off which witness you're hearing from at that time. But that's why this Trump Tower meeting back in 2015 is so important, where David pecker promised to be the eyes and ears of the campaign, and to suppress negative stories about former President Donald Trump promote positive stories and then also post or publish negative stories about his political opponents.

I mentioned Hillary Clinton earlier but also his Republican opponents in the primary leading up to the 2016 nomination. So we continue awaiting more information shed and then we'll get back to you as soon as we have more.

BREAM: OK, Nate. Thank you very much. With me now outside the courthouse woman, former President Trump's attorneys, Alina Habba. She is here supporting President Trump but not representing him as part of the legal team in this case. You wait now how is the President feeling? How are you feeling about this case in the hands of the jury?

ALINA HABBA, TRUMP LEGAL SPOKESPERSON: I think it's business as usual, nothing's really changed in terms of our perspective. Listening to the jury charges was concerning, to be honest. I think that they were, and it's been widely reported since we came out of the jury charges, that there is clearly any of the four underlying crimes that he could have done. They don't care what it was. The judge said, basically, all you have to do is figure out whether there was intent or not. And there has been no proof of that.

But the judge gave a very, very generous bandwidth to the prosecution. And I think that's why the President's comments and sentiments are exactly accurate. You know, Mother Teresa really couldn't get out of this one because if you set a, you know, if you have intent for a scintilla of a second, and it could be for anything, for any one of these four things, taxes, campaign, all the things that frankly they showed no evidence of, but they gave them so much breath, that I have concerns.

BREAM: Do you have faith, though, in fellow New Yorkers, as a jury, a jury of your peers? I don't know that it's possible to find a jury of your peers for somebody like a former president, but faith in the system here and these New York jurors is now -- his fate is in their hands.

HABBA: Shannon, I haven't had faith in the state of New York, since I saw what they do to President Trump and started working for him. I'll be honest with you, what I've seen over the past few cases, what I've seen in some of the other cases, in the state of New York, what I've seen with the coordination with DAs and AGs. And we have some information that's come out today, obviously about judge's affiliations and other things like that. I mean, it's corrupt as can be.

And unfortunately, the state of New York has failed its citizens and we're seeing it time and time again, but it's failed to citizens for one party and that's silencing the Republican Party. And it's not right, it's un- American. And frankly, at this point, you know, I've had enough a angry sound bites in these courthouses now, I could say almost entire block. I was down there for 11 weeks. I was at another courthouse behind me for three weeks. And now I'm here.

It's a disgrace to the American people. We should all pray to save our country, frankly, at this point.

BREAM: Well, do you think, though, that the jury can parse through that? Can consider all of those things? They were told to quiet the outside noise, quiet outside voices. But listen, the whole world is watching this. They're watching and waiting this jury. They must feel the pressure of that.

And do -- we know there are at least two attorneys on the panel as well? Do you trust that they're going to work through this in a responsible manner, though?

HABBA: You know, I don't think it matters what your profession is, I think that it's a good thing they asking questions. It's a good thing they're trying to look at testimony credibility. I think that's very important here. I think credibility is the one thing that they absolutely have shown that they have none of, from the top to the bottom, frankly.

And if the jury considers that and discredits any testimony that was frankly false, then -- and it all was in my opinion, then we're going to be fine and we should get an acquittal. But we're in the state of New York. Like I said, the jury charges I thought were a bit unfair, very unfair frankly. And President Trump is President Trump, and what they're doing really is not about books and records. It's a sideshow. It's a way to stop the American people from looking at President Biden's policies that are failing. It's a way from distracting.

And if you look at what happened yesterday with Robert De Niro, that is a low state of our country. We've got a old timer actor coming from California as a spokesperson for a campaign, the current administration running America, what a sad state of affairs. It is just pathetic.

BREAM: Let me ask you this. It seems like and President Trump, he predicted this when the first -- before the first indictment even happened here with Alvin Bragg more than a year ago. He said it would be good for him, he thought. It has been in the polls, it has been in fundraising. So was there a net positive to him from this whole thing?

HABBA: Well, if you want to look at it from a political standpoint, I think then yes, that's different. We have Americans, we have people that were Biden supporters. I can't imagine how or why but they're now waking up and saying, whoa, this is not America. This is very un-American and we can't survive another four years of this.

So if you want to look at it that way, sure, but I don't think countries need to hit rock bottom. I don't understand why we couldn't have continued on an upward trajectory of American morals, of America -- of the Constitution. I'm not sure why we had to hit this low point, to be honest, but if that's what gets President Trump back in office, sure.

BREAM: But you know when you talk about things like morals, people will say, this is a case about a former president, somebody was running for president, paying off a porn star who alleges that she had a relationship with him. I mean, that sparks a whole another conversation about morality, who's running the country. Obviously, voters in 2016, it was not a problem, where they factored in what they knew about the Access Hollywood tape and other things. And they were comfortable sending President Trump to the White House.

They've had for years to think about the way he performed, now four years of President Biden. But some of them will always now have this vision with President Trump, that these kinds of dramas and things will be just part of his package, part of what comes with him as president.

BREAM: Yes, it's called extortion. Extortion is something that happens with people when they're powerful, when they are strong voiced, and when people listen to them. It is a natural consequence of being a very effective human being in this unfortunate culture that we have. It is litigious. That is what America has become.

And Joe Biden, unfortunately, can't really do anything in office, so he's got to use the same means as somebody who's just trying to have a quick slip and fall and make money. And that is frankly, what we're seeing right now. This is exactly a Biden show because he's got to distract the American people.

Listen, the Biden administration is not responsible for this trial.

BREAM: How can you say the Biden administration is not responded to state?

HABBA: It's a state trial. It's Alvin Bragg. What do you think there's a political motive for him? It's not connected to the DOJ. I mean, the feds passed on these election charges.

BREAM: Shannon, you should look at how many logs they have of state officials, Leticia James, Fani Willis, visiting the White House and then telling me that this is not a Biden trial.

HABBA: The fed pass on these cases is the point I'm making.

BREAM: You're right. The feds passed on this case, also DA Cy Vance passed on this case.

HABBA: Years ago and then it came back.

BREAM: And they came back.

HABBA: And Bragg pass on this case, you know, when it came back, when he decided to run for office. So tell me how that's not an indication that Joe Biden who just sent his campaign down here with Robert De Niro yesterday, isn't a part of this. Frankly, any question that we had of that was squashed yesterday. And if you have even more concerns about whether he's involved in this look at the fact that he is publicizing, literally publicizing for tonight to have a speech if a verdict comes out.

That's a sad state of affairs. Meanwhile, our country is falling apart. He's got bigger fish to fry.

BREAM: Don't you not think, though, that any president would want to weigh in on something that's this historic, a former president, his predecessor, whatever the verdict or decision may be.

HABBA: I wish that Biden had that same sentiment about the border, fentanyl and our children being mutilated. I would prefer that he would focus on the real things instead of trying to attack his political opponent who he just cannot beat.

BREAM: Well, we'll see what the jury does and how quickly they do it, Alina. Thanks for stopping by.

HABBA: Thank you.

BREAM: OK. Let's bring in at Lee Zeldin, former New York Republican Congressman. Lee, I'll ask you this question. You are gubernatorial candidate who, by the way over performed here in New York. According to a lot of people thought, the state of New York would vote. We've also got my Byron York, chief political correspondent for the Washington Examiner and also a Fox News contributor. So welcome to both.

Lee, I'll start with you. What do you make of New Yorkers? They make up this jury, they're Manhattanites, they have known about President Trump for a long time if they've lived here, unless they've been living under a rock. Lee, how do you think a New York jury reacts to what we've heard so far in the courtroom?

LEE ZELDIN (R), FORMER NEW YORK REPRESENTATIVE: Inside of Manhattan, it's impossible to find a fair jury of your peers. This has been one of many critiques with the design of this entire case, whether it is the prosecutor who campaigned on a pledge to take down President Trump, not knowing what the charge with the crime was going to be that he would pursue. With a judge here, Juan Merchan, who not only is presiding over this case, but also presided over one of the Trump Organization cases, over the Weisselberg case, over the abandoned case. There are many different dynamics here for New Yorkers that work against President Trump and being able to obtain a fair trial.

And I think that you can't look at the Manhattan County jury as a county that is reflective of the rest of America or the middle of America.

BREAM: OK. Byron, I'm going to put up some poll numbers as we look at how this may, you know, be impacting or playing out potentially politically as well as we touched on with Alena. This is from the New York Times, Philadelphia Inquirer and Siena College, Trump is leading in five key swing states. We've got Arizona, Georgia, Michigan, Nevada, Pennsylvania, Wisconsin. Trump leading in all of those except for Wisconsin.

Do you think that this drama that surrounds some of these legal cases, is already baked in for voters?

BYRON YORK, FOX NEWS CONTRIBUTOR: You know, it appears to be. Last year, we were all wondering what would happen with -- If Trump were indicted, what would that do to his chances and the Republican primary contest? Well, it turbocharged him and he won easily.

So the question here is, what's going on with his trial and voters. And, you know, what are we in seven -- week seven now of this trial, it has been covered wall to wall in the media, and it has not made a bit of difference in his polls nationally, or in those swing states that you mentioned, which are really going to decide the election.

So really, what we have is one more question, which is, if he is convicted, are there some people who otherwise might vote for Trump who say no, I won't vote for him because he was convicted. And will those people make a difference? That's the question we just can't answer right now. But so far, it has made zero difference.

BREAM: So, Lee, I read this from Politico. It says the Biden campaign makes a guerilla style pivot on the Trump trial. It says many close to Biden have expressed private frustration that the media is obsessed with Trump, that's nothing new, making it difficult at times to garner attention for the incumbent. But the people familiar with the decision disputed that the stunt was born out of desperation, even as Biden has narrowly but consistently trailed Trump in the polls meaning, Robert De Niro showing up here yesterday.

And you heard what Alina said, they're able to characterize this as, hey, that looks like the Biden administration is in some way involved in this case, though it's a state proceeding here. Was it an unforced error by the Biden administration -- excuse me, the Biden campaign to send an actor down here. They said they sent him because they knew all of us and all the media would be here. It was a campaign related issue. Not related to this trial.

By the way, we're getting word that there is another potential note or other activity in the courtroom. So, Lee, I'll let you answer but we'll keep folks updated on what we can find out about that too

ZELDIN: Yes. I don't think that Robert De Niro was making a credible, grounded, reasonable presentation of facts. He was hyperbolic. You know, he was saying that President Trump was going to destroy the world. Is that really what President Biden and this campaign want to be putting out, and then he ends up getting into this back and forth engagement, screaming and cursing at other New Yorkers who there who don't share his opinion.

It clearly wasn't unforced error. And I'm pretty sure that they're not going to be bringing out Robert De Niro again. And they shouldn't be bringing out any other of their celebrity friends who aren't represented of America.

BREAM: OK. We're getting a little bit more information from Maria, our producer inside the courtroom, about a note number two. It says there's a request to rehear the judge's instructions. Keep in mind they were 55 pages long so we don't know what portion they want. The judge suggests bringing the jury back in and tells them they're looking for testimony. They were quested and asked if they need instructions reread.

So we will continue to try to find out what we can about the jury, what these notes mean, what they are looking for and how the judge will handle each of these things. They're looking for testimony that asked for from Pecker and from Cohen. And they want to know a little bit more about that Karen McDougal story too so. And in addition to that --

All right, Shannon, thank you for that. We're at a point now, folks, we're getting so many notes, and so little time, but they're all happening at the same time. You've 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 on Neil Cavuto. So what a lot of people thought would be an uneventful news day as the dirt just started as turned into a 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 Foyt. I'm sure he has a far better idea than I do. Hey, Nate.

Hey, Niels. 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 that Trump falsify 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, Neal 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 his reaction to the Daniels story resurfacing, she testified that he requested that newspapers not be delivered to their private residence. So if the jury finds that Trump made a payment to protect Melania, it would not be a FICO violation. Here's Trump earlier today.

Mother Teresa could not be these charges. These charges are rigged. The whole thing is rigged.

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, Neal,

so just to clarify, Nate, when you're talking about the judge is, you know, 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?

No, he's not going through the entire jury instruction, Neal. He's reading the notes back to them. And one of those notes has to do with a clarification on a specific point of his jury instructions. 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 All right, thank

you, my friend, very much. Boy at the New York State Supreme Court, all that going on back in the court here. Katie Cassidy back with its former federal prosecutor. We've got Brett Tolman A former US Attorney we've got Andy McCarthy the former Assistant US Attorney Fox News contributor great guest on so Andy and with you and the significance then on.

**Load-Date:** May 29, 2024

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