

# [***Now: Prosecution Closing Arguments In Trump Trial; Trump Attorney On Jury Reaction To Closing Arguments; Now: Break In Trump Trial; Prosecution 1/3 Done***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6C4J-M1D1-F072-X35X-00000-00&context=1516831)

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

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**Body**

TRACE GALLAGHER, FOX NEWS CHANNEL HOST: Sandra and John, thank you. Good afternoon, everybody. I'm Trace Gallagher in for Martha MacCallum. And this is THE STORY right now. The prosecution about an hour into closing arguments in former President Trump's criminal trial. Earlier jurors heard from defense attorney Todd Blanche who called star witness Michael Cohen, the GLOAT, the Greatest Liar of All Time. Outside the courtroom, a stark reminder that all of this is happening against the backdrop of the 2024 election. The Biden campaign holding a news conference featuring Robert De Niro, Team Trump quickly firing back. Watch.

(BEGIN VIDEO CLIP)

ROBERT DE NIRO, ACTOR AND FILM PRODUCER: We don't want to wake up after the election saying, what again? My God, what the hell have we done?

JASON MILLER, TRUMP CAMPAIGN SENIOR ADVISER: If you don't think this is ***politics***, then why do the Democrats wheel out a retread like Robert De Niro to try to change the subject.

(END VIDEO CLIP)

GALLAGHER: Shannon Bream has been inside the courtroom today. Her take in moments, but first to the correspondent, Nate Foy. He is live for us outside the courtroom as he has been for the past few weeks. Nate, good afternoon.

NATE FOY, FOX NEWS CHANNEL CORRESPONDENT: Hey Trey, so right now prosecutors are really addressing Michael Cohen's credibility concerns saying that former President Donald Trump picked Cohen and that they didn't pick Cohen as a witness. They only used him because they had to in this case. Joshua Steinglass with the Manhattan D.A.'s office also said that Cohen is understandably angry because he's the only one that paid a price in this conspiracy to win the 2016 presidential election.

Trump's lawyers objected to that but were overruled by Judge Juan Merchan despite signaling during jury instruction last week that Cohen's guilty plea could not imply Trump's guilt. Now, during closing arguments, Trump's lawyers relied heavily on Cohen's credibility concerns, and Donald Trump Jr. addressed that outside the courthouse this afternoon.

(BEGIN VIDEO CLIP)

DONALD TRUMP JR., FORMER PRESIDENT TRUMP'S SON: This is amazing. I think Todd Blanch summed it up best. If there was an MVP, if there was a goat of liars, it is Michael Cohen. Michael Cohen is the embodiment of reasonable doubt.

(END VIDEO CLIP)

FOY: So, Blanche laid out 10 reasons for reasonable doubt in this case. He said there's no evidence that Trump falsified any business records, no evidence that Trump did anything unlawful to influence the 2016 election. But Steinglass just now in court offered a much different perspective, saying there's a "mountain of evidence" connecting Trump to the scheme.

Now, Blanche said the only person doing that is Michael Cohen. He argued that Cohen lied several times during his testimony, including when Cohen claimed that he worked for free in 2017 and that all payments he received were in fact reimbursements for the Stormy Daniels payment. Blanche told the jury, "I don't know how many lies are enough lies to reject Mr. Cohen's testimony." Blanche said, all payments Trump made to Cohen were legitimate legal expenses.

Blanche also reminded the jury about former Trump aide Hope Hicks' testimony, where Hicks said Trump worried about his family and his wife, Melania, when the Stormy Daniels story resurfaced, which is important because during jury instructions last week, Judge Merchan said that if the jury finds that the payment was made for reasons other than ***politics***, that it cannot be considered a campaign contribution. Trace?

GALLAGHER: Nate Foy, live for us outside the courthouse. Back to you as the news warrants. Let's bring in "FOX NEWS SUNDAY" Anchor and Chief Legal Correspondent, Shannon Bream. She has been inside the courtroom today. Now she's outside. Some others are inside. And one of those, Shannon, who is now inside is Trey Gowdy. And he just said the following, quoting here, "If you are wondering about the definition of the word speculation, we just got it."

Going on to say the prosecution said Trump likely would not have won this had Stormy Daniels story not been suppressed. Trey saying, "Stupid me thought it might have been the number of times Hillary Rodham Clinton visited Wisconsin or maybe her e-mails." So, you can see this kind of pattern forming inside for closing arguments. What do you think about that, Shannon?

SHANNON BREAM, FOX NEWS CHANNEL CHIEF LEGAL CORRESPONDENT: Yes, so prosecution needs people to believe that this Stormy Daniels story was all about paying her off so that it would save the election for President Trump. But we, earlier weeks ago, in this trial heard that there was a lot of consternation within the team when the Access Hollywood tape broke. I mean, they say they were putting out fires all over the place, handling a number of things.

And so, they would argue this one thing, the Stormy Daniels payoff, the non-disclosure agreement, which is legal, everybody agrees, that couldn't have been the thing that tipped off this entire election, as Trey Gowdy points out, there are all kinds of other things that came to fruition. And here in New York, I think it was over 80 percent who voted for President Biden.

So, it didn't work here in New York if that was part of the plan. There are so many things going on in this trial between the defense and the prosecution now jamming these five, six weeks of arguments into these final summations. Both sides are spending a lot of time about Michael Cohen because listen, the defense said today if he's the guy that's the linchpin to this whole thing, because remember the other people in these critical meetings that have been named have not been called as witnesses.

You've got to ask why the prosecution has not called. What would they say on the stand? Would it be bad for their case? And then you hear the prosecution saying, oh, we've got mounts of evidence. It's not just about Michael Cohen. But a lot of folks are saying, where is it? We haven't seen it.

GALLAGHER: What do you what do you make, Shannon, of you talk about Michael Cohen and he, as we said earlier, the defense called him the GLOAT, the Greatest Liar of all Time. What do you think of the strategy where the prosecution comes back, and they are saying, listen Michael Cohen, Michael Cohen, you know is not the most honest guy in the world, but he does tell the truth sometimes. They're trying to rehabilitate him.

BREAM: Yes, and in both I have to be careful with how they try him and, and how they he's not on trial, but how they portray him. Because remember if the defense beats him up too much the question then becomes are this guy was sort of one of President Trump's right-hand men. He was the fixer, he was getting things done.

If you're saying he was just a lying, super shady guy who was handling all kinds of unseemly things, why did you have him in your orbit? So, the defense has got to be careful on that front. But at the same point, it's been very easy for them to say, by his own admission, he's lied in all of these cases we outlined last hour. To his bankers, to his wife, to his kids, to his boss.

He stole from his boss. He's lied to state and federal judges. He's lied to Congress. So, you know, for the prosecution now come back and say, well, sometimes he lies. The jurors have to ask themselves, is he lying now? Has he been lying on the stand here in New York? That's what really matters.

GALLAGHER: And you wonder, you read now these texts coming out from Jonathan Turley and from Trey Gowdy and from Andy McCarthy and they're all saying, hey, guess what? We just got to some, we got some clarity on the actual crime to cover up an election law violation. That's what the prosecution is now kind of weaving towards, Shannon, really for the first time.

BREAM: Yes, and the thing is, they're going to have to clarify that because otherwise, as we've talked about, this would be a misdemeanor situation when the statute of limitations would have run on it already. You've got to have that underlying crime to turn this into a felony, get past those statute of limitations, and get to a conviction in this case. I'm sorry, it looks like you might have something coming in.

GALLAGHER: No, here's the thing, but it's interesting here because they're going at this thing. You know, talk this, Steinglass seems, and this is Jonathan Turley, at times to be giving testimony without objection from the defense or interjection from the court. He has been explaining what is common in ***politics*** and the media, and they're talking about this catch and kill whole thing with David Pecker and what he's saying is, is that now they're trying to say this was, this was what really influenced the election. You take Stormy Daniels out of the mix here and there's no way that Trump wins this in 2016.

BREAM: And think about what we heard from Hope Hicks and others on the stand who essentially were saying this was something that wasn't just a campaign consideration according to them under oath that President Trump was very worried about how these things would play, with Melania he was worried about protecting his family.

And so, that is where these jury instructions are going to be so important, was this solely about quieting a story that would hurt the campaign, thus this argument it turns into a campaign violation, an election law violation, or was this also about other things protecting his reputation protecting his family shielding his wife many men would make the argument that would be the most important thing for them?

GALLAGHER: Yes, I'm being told we have like 45 seconds left, Shannon, but I want to know, going back to the defense closing arguments, did you think that they made an effective case for Michael Cohen really being the GLOAT?

BREAM: When they summed it up at the end and ticked off all of those places he's been caught or admitted to lying that's got to be a powerful thing to leave the jury, it's the last thing they'll hear from the defense, and it was laid bare. It wasn't a gray area, it was black and white this is where he's been caught and this is where he's admitted to it so you got to decide if he's now lying to you.

GALLAGHER: Yes, Shannon Bream, we'll get back to you as the information comes out of the court we appreciate your time. Thank you.

BREAM: Thanks, Trace.

GALLAGHER: Meantime, as closing arguments are made there is a lot of focus on the jurors and who is paying the most attention. Trump Attorney Will Scharf was inside the courtroom today in Manhattan and he will give us his insight coming up.

And as Americans share their own thoughts on the trial of former President Trump, watch.

(BEGIN VIDEO CLIP) UNIDENTIFIED MALE: I think it's a total farce and if it's not thrown out I'd be shocked.

UNIDENTIFIED MALE: If you break the law you should be held accountable. He's broken the law many, many, many times and has never been held accountable.

UNIDENTIFIED MALE: The feds looked at this case years ago and said we weren't going to charge him, and now it's being done in the state, completely for political reasons. You know, their star witness has fallen apart. There's no evidence. It's completely politically motivated.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

GALLAGHER: Well happening now, closing arguments at former President Trump's trial in New York City then comes a crucial step the judges' instructions to the jury before they begin their deliberations. Trump Attorney, Will Scharf, is standing by, he was in court today. But let's begin with Katie Cherkasky, Criminal Defense Attorney and former Federal Prosecutor.

Katie, great to have you. I just want to read this because this just came out from Andy McCarthy who's inside the courtroom right now, and he says quoting, talking about the prosecution's closing argument, "They are making up federal campaign law as they go along after giving the defense no notice in the indictment that this was part of the charges." And what he's talking about is overt election fraud saying that it was done to cover up an election law violation. So, we're starting to get some information about this underlying felony. Katie, what do you think about that?

KATIE CHERKASKY, CRIMINAL DEFENSE ATTORNEY: Well, I think that all along, there is been an insinuation that the idea of this escalating offense with some sort of election violation or campaign finance violation, but the judge did not force the prosecution to disclose that theory. And there is - - that's one of many reasons that this case has what we would consider reversible error for appellate purposes.

The problem is, when you're at trial, the judge has the ultimate say in how this case proceeds. So, certainly that's not a huge surprise. But the defense was not formally on notice that, that was the specific theory, nor has there been an opportunity for them to present rebuttal evidence.

So, the idea that there was no campaign finance violations here, as we know that the FTC declined to take any action against President Trump for the payment in this case.

GALLAGHER: Right. And that's why you hear, you know, Andy McCarthy and Trey Gowdy, keynotes -- keep saying the strike zone seems to be different for the prosecution than it is for the defense.

Jonathan Turley writes, the following just out of court. "Steinglass is now directly claiming that the catch and kill was an illegal campaign contribution, despite the fact that the federal government rejected this claim, and did not find any basis for even a civil fine." So, the Feds rejected it, and now you have a state taking this up now. Your thoughts on that?

CHERKASKY: Well, I think, all along, the prosecution has wanted to use the fact that Michael Cohen ultimately pled guilty to a campaign finance violation for this particular payment. And there is a lot of discussion about whether that was even a valid charge, it was thrown into his plea agreement, he was kind of backed up against a wall with other charges against him.

So, there is a question about whether he would have even been convicted of that. And certainly, the conviction of another person has nothing to do with this particular defendant. So, I think it's a cheap shot by the prosecution here. I think that the -- should have been able to be rebutted in terms of what this other offense was, and they had an opportunity to do so. And unfortunately, they do not get the last word here that if the prosecution gets too close.

GALLAGHER: Yes. Well, are you surprised that there not more objections from the defense on this type of prosecutions and maybe a little bit of -- a little bit more input from the judge?

CHERKASKY: Well, I am a little bit surprised that you think that (INAUDIBLE) I think it's important to object when necessary. I don't think it matters to the jury. There is some argument that maybe you can annoy them or something along those lines. But the judge has also been very critical of the defense in terms of their objections, and when they do or don't need to preserve those things.

So, I think it's a strategic decision. However, there are some very openly objectionable things that the prosecution is saying that I think that they should probably jump in on.

GALLAGHER: Yes. And what about the rehabilitation of Michael Cohen for the prosecution? I mean, as we've said, all day, the defense is calling him the greatest liar of all time, and the prosecution is now semi-rehabilitating, but also saying, yes, I mean, he lies, but he also tells the truth sometimes.

CHERKASKY: Well, the prosecution has to concede that he has significant credibility issues, obviously. The only way that they could really use his testimony is that they get up there and they independently corroborate everything that he said, with some other piece of evidence, and they simply don't have that here. There is not corroboration for everything that he says he is undeniably a liar. So, I don't think that the jury can use his testimony directly on any of these elements.

GALLAGHER: Yes, it's going to be tough. Katie Cherkasky, great to have you on the show, as always. Thank you, we appreciate that.

Also, with us, Will Scharf, an attorney for the former president in his immunity case, who was on court today. He's also running for Missouri attorney general as a Republican. Will, it's great to have you on the show.

I want to know, because you were in court today. Did you get a chance to look at the jury? What was their reaction? Did they find the defense's closing argument compelling? What was your takeaway?

WILL SCHARF, REPRESENTING TRUMP IN IMMUNITY CASE: Well, I think what the jury witnessed this morning was a systematic dismantling of the prosecution's case by Todd Blanche.

Todd gave them 10 independent reasons why after hearing all the evidence after this entire trial, why they couldn't vote to convict, and what I saw from the jury was attentiveness was a serious attention to detail. I think they seemed interested by Todd's argument. And as a defense lawyer, that's really all you can ask for and hope for.

But again, I think this morning went extremely well for President Trump for our team. And we'll have to see how the afternoon wraps up.

GALLAGHER: Yes. And it's interesting. When you use these notes come out of the courtroom and we're going to talk to -- we're going to talk to Howard Kurtz about this in a minute. But your thoughts on the overflow room being amused, very amused, the media there by some of the prosecution's you know -- the prosecution's comical statements.

SCHARF: Well, I think the media has fundamentally misrepresented, and perhaps, misunderstood this case from the start. This is not a tabloid case. This is not a Stormy Daniels' case. This is ultimately a fairly mundane case about business records.

And I think what Todd Blanche did an outstanding job of this morning was showing that with respect to the records in question that the prosecution had failed to meet its evidentiary burden on numerous elements of the charged defenses. And I think all the laughter in the media room really doesn't matter, because I think the media doesn't get this case hasn't from the start. And I think that's ultimately going to be borne out once the jury comes back with its verdict.

GALLAGHER: I wonder what you think about the clarity of the underlying crime here. This felony where they are saying now in closing arguments, the prosecution that it was all done to quoting here, cover up an election law violation?

SCHARF: Yes, I think it's patently absurd. I think it's insane that we didn't have clarity on what the underlying crime was for this long. But again, without business records fraud, there is no case. And I think we have made the case, we have made the case quite persuasively, that there was no business records fraud. That the business records in question were accurate, that there was certainly no fraudulent intent with respect to how they were made. And for those reasons alone, any fair jury, I believe, would speedily acquit.

GALLAGHER: And I wonder, because there is been a lot of comments coming out of the court today that the prosecution now going into this underlying crime, right? That the thing they bootstrapped these 34, these 34 counts, too. I wonder if the fact that the jury is just now hearing this makes it so complicated, when really, the defense's is closing argument was fairly simple, saying, listen, Michael Cohen's a liar, and that's that.

SCHARF: Yes. I think that's exactly right that our argument here really is very simple. These records were not fraudulent. Michael Cohen is a liar, to believe the prosecution, you have to believe that they have proven beyond a reasonable doubt. This far-reaching conspiracy for which there really isn't evidence in the record.

And I think ultimately, the jury is going to see that and that's why we're very confident heading into deliberations.

GALLAGHER: Yes, I just also, lastly, here, I want to bring this up, because this was something that happened right before the break where the judge lashed out of the defense. He was very upset where they said, you know, you can't send somebody to prison, meaning the former president on this and the judge lashed out at that. What was your take on that comment and the judges' response?

SCHARF: I think a lot is being made of it, Trace. But at the end of the day, Todd Blanche had a 2-1/2-hour long summation. There are bound to be some things that come in and a summation like that, that maybe you regret saying. But again, I think that's a very minor footnote on what was an outstanding summation by Todd. And I think it also underlined the stakes here.

I mean, what we're talking about here is President Biden's political allies attempting to throw his principal political opponent, who is wrecking him in every national poll in this presidential race, potentially in prison.

GALLAGHER: Yes.

SCHARF: And I think that underlining those stakes is very important. And I think everybody in the courtroom knows that.

GALLAGHER: And because you say the stakes were so high, you were in the courtroom, what was the jury's response when this back and forth was going on?

SCHARF: Well, the back and forth between Judge Merchan and Todd happened after the jury had left the room.

GALLAGHER: Right.

SCHARF: So, what they really just heard is a quick objection, which was sustained and Todd moved on from there. So, I don't see this having any meaningful impact on jury deliberations.

GALLAGHER: And when the jury actually heard the statement, that you can't send somebody to prison for this, was their reaction. Did you notice?

SCHARF: I didn't notice any particular reaction. Again, I think everyone in the courtroom is well aware of what the stakes are here. But again, I think the key takeaway from this morning is the systematic dismantling of the prosecution's case.

There is no evidence that business records fraud occurred here. There is no evidence that these business records were even false. And I think Todd just did an outstanding job laying that out with crystal clarity.

GALLAGHER: Yes, Will Scharf, great to have you on the show. Thank you, sir.

SCHARF: Thanks, Trace.

GALLAGHER: Meantime, actor Robert De Niro, among those lashing out against former President Trump today, as the race for the White House spills out on the streets of New York. Next.

(BEGIN VIDEO CLIP)

ROBERT DE NIRO, ACTOR: If Trump returns to the White House, you can kiss these freedoms goodbye, that we all take for granted. And elections, forget about it.

KAROLINE LEAVITT, TRUMP 2024 NATIONAL PRESS SECRETARY: What you just heard from is a desperate and failing and pathetic campaign, who knows that they are losing.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

GALLAGHER: Well, we are now getting updates on closing arguments of former President Trump's trial in New York City. And we're keeping an eye on the White House briefing, both campaigns bringing some big names to the courthouse as well today. Watch.

(BEGIN VIDEO CLIP)

DE NIRO: I love the city. I don't want to destroy it. Donald Trump wants to destroy not only the city, but the country, and eventually he could destroy the world.

DONALD TRUMP JUNIOR, ELDEST SON OF FORMER PRESIDENT DONALD TRUMP: This is a sham, it's insane, and it needs to stop. Because if you think for one second that this ends with Donald Trump, you have not been watching what's going on in the Democrat Party in the last few years.

(END VIDEO CLIP)

GALLAGHER: Let's bring in Lisa Boothe, the host of "The Truth with Lisa Booth" podcast and a Fox News contributor. Sean Duffy, co-host of "THE BOTTOM LINE" with Dagen and Duffy on Fox Business, and a former Wisconsin Republican congressman. And Richard Fowler, host of the "FOWLER SHOW" and a Fox News contributor. Welcome to all of you.

Lisa Boothe, to you first. You just heard Robert De Niro there. Do you think the campaign -- do you think the Biden campaign knew what Robert De Niro was going to say? I mean, he doesn't often make very cogent arguments, but this one was just way off the rails.

LISA BOOTHE, FOX NEWS CHANNEL CONTRIBUTOR: Yes. Well, I think that they're feeling some desperation here. I mean, look, Joe Biden's campaign strategy this entire time was for Donald Trump to be tied up in the courts, to be able to potentially label him as a convicted felon, heading into 2024, heading into this November.

I mean, look, Donald Trump is doing better on the polls now than he was in 2016, than in 2020.

GALLAGHER: Yes.

BOOTHE: And so, Joe Biden is not left with a lot here. But I think that we should take a moment and recognize the significance of what's happening right now, that we have the Democrat Party trying to jail, the Republican nominee.

And the precedent that that could send, the fact that they are trying to get him on 34 felonies, 136 years in jail, and that all hinges on the testimony and the word of a convicted felon, Michael Cohen who admitted to stealing from Donald Trump on the stand.

GALLAGHER: Yes. And back to the --

(CROSSTALK)

BOOTHE: So, we should forget are down downplay the historical nature of what we are saying and the disgusting nature of what Joe Biden and the Democrat Party what they are trying to do right now.

GALLAGHER: Meantime, Richard Fowler, back to the whole campaign, the courthouse kind of thing here, and Robert De Niro coming out. What did you think? Did you think it was a mistake for the Biden campaign to enlist Robert De Niro's help? We know he's a Trump hater, but when you come out with one of these things and you kind of keep tilting your head like, what is he saying? Is that a helpful thing for the Biden campaign?

RICHARD FOWLER, "THE FOWLER SHOW" HOST: Look, I'll be honest with you. I think whether you take the De Niro press conference or the Trump children slash RNC press conference that happened earlier today, it's all a wash, right, at the end of the day, unless you were watching this trial or the transcript from a trial on the side of your screen, like we have to do all day because we do this for a living. Most of the American people are not doing that. And so they didn't see either of these press conferences. And thus this will end up being a larger wash.

And I think the main news coming out of today will be the trial is now over and we now wait for a verdict, which will not be determined by myself, Sean, Lisa, or you, Trace, even though I think you're very smart, I think it will be determined by the 12 jurors in that courtroom --

GALLAGHER: Yes.

FOWLER: -- who have no political bias. They were both picked -- they were picked by both sides, and they'll be the ultimate determiners of what happens here.

GALLAGHER: You're exactly right, yes, but you go back to this thing being awash. And I think, Sean Duffy, when you look at this whole thing, you're like, well, maybe, but the Democrats clearly feel like they're behind. You have former Obama speechwriter Jon Favreau writing on X, "Let's face it, if the election were held today, Trump probably wins." He goes on to say, "Trump probably wins. Only way to stop that, persuade as many people as we can to vote for Joe Biden.

Yes, that's Biden's job. It's also ours because we'll have to live with the consequences. So what can we do?" And it does appear when you're bringing De Niro out, you're running out of options, Sean.

SEAN DUFFY, "THE BOTTOM LINE" CO-HOST: By the way, you want credibility if you're De Niro. And to say that Donald Trump's going to ruin the city, has anybody walked in this city with the immigrants and the drugs and the crime?

GALLAGHER: Right.

DUFFY: Liberals have ruined New York City. Donald Trump actually helped build it up and make it great. But again, this is the Democrats throwing a fastball at Donald Trump with his trial, trying to rejigger the race, call him a felon. That's what this is all about. But I got to tell you what, in regard to the summation, I think to make a case simple and straightforward, which is what team Trump has done with five weeks of testimony, is brilliant because the jurors get confused.

So, smart on team Trump. But just one quick comment, Trace, that you get the prosecution to go last, right? They're the last ones to talk to the jury.

GALLAGHER: Right.

DUFFY: They're the ones that get to rebuff the defense's arguments. It's a really powerful tool. And by the way, good on team Trump for talking about a prison sentence. It's against the rules. Any prosecutor knows, any defense attorney knows you can't say that --

GALLAGHER: Right.

DUFFY: -- but they did. But push the rules cause Judge Merchan has not been fair. What's the judge going to do? Once it's in the jury's ears, nothing you can do about it.

GALLAGHER: No, but you have Will Scharf, who was in the courtroom, Lisa Boothe. And he's saying, well, when the jury said there was really no reaction, right? I mean, they were intently watching, and they were all in. But when they say, listen, you can't send anybody to prison on this basis, not really a big -- not really a big juror reaction, Lisa.

BOOTHE: Well, you know, we'll see what ultimately happens. But, I mean, they haven't even demonstrated that a misdemeanor took place, right? Michael Cohen's the only one alleging that Donald Trump had anything to do with the falsification of business records. So they haven't even been able to demonstrate that. But what could potentially happen here is that the only trial that's dominating headlines heading into November is Hunter Biden's gun trial.

And so I think that's why you have Joe Biden freaking out right now. That's why Joe Biden is paying a visit to the widow of his son or paying, you know, paying a visit to her ahead of this trial as well. I think he's really nervous about that. And then you look at how Donald Trump and his campaign have handled all of this. I mean, holding those massive rallies in New Jersey and New York, two states where he's been able to, you know, close the gap significantly in polling since what he saw in 2020, and also forcing Joe Biden to spend money on T.V. and radio ads in the deep --

GALLAGHER: Yes.

BOOTHE: -- blue Bronx before that rally. So you've got to give credit to the Trump campaign in really handling this brilliantly and taking a terrible --

GALLAGHER: Yes.

BOOTHE: -- you know, terrible thing and turning it into a campaign positive.

GALLAGHER: Richard Fowler, now to you, Trey Gowdy from the courthouse just said, quoting here, and there you go, an objection from the defense and a quick overrule from the judge. Prosecution is both arguing and testifying without guard rails. And you have Trey Gowdy over the past week or so saying, listen, he's never seen the strike zone so big for the prosecution and so small for the defense.

FOWLER: Well, look, ultimately, this will be a determination of what happens with this jury, right? I think there's been a lot of murkiness around whether or not we think that this judge could or should or is or isn't corrupt. And there isn't really no clear evidence of that. What we do know that their evidence is obvious, the evidence that the jury is deciding right now. Is there enough evidence to determine whether or not the former president of the United States committed a misdemeanor or he committed a felony?

It will be on them. On that jury sits two lawyers, right, who understand the rule of law, that understand the New York criminal code. And they will probably use that as part of -- they will probably be -- I think they're going to be the two key jurors in this case, not any of us sitting here. And I think what we've seen over the past six weeks, we've seen a lot of media speculation about a jury trial which has not been televised, so we don't know any of the body inflection, we don't know any of the pregnant pauses, all the things --

GALLAGHER: Right.

FOWLER: -- that would help us make that determination.

GALLAGHER: Yes, but, you know --

BOOTHE: Trace, can I -- but Merchan --

GALLAGHER: Let me go Sean.

BOOTHE: -- the judge donated to Joe Biden.

DUFFY: That's right.

GALLAGHER: Yes, we all know that.

BOOTHE: His daughter made money from this.

GALLAGHER: Yes, the judge did that. Go ahead, Sean.

BOOTHE: Sorry, I had to.

DUFFY: If your daughter (inaudible) for members of Congress raising money for them. And then to Trey Gowdy's point where the strike zone is so large for the prosecution and so small for the defense, it begs the question, Richard, has this been a fair trial? And I think most fair observers will go, this is -- no one who spent time in a courtroom has ever seen anything like this from a judge. The judge is there to protect the defendant's rights and make sure he has a fair trial. This is not what this judge has done, which is why so many people are scratching their heads and why we all think it will be overturned if there's a conviction on appeal.

GALLAGHER: Yes.

DUFFY: But the problem is Democrats get to run a campaign on Donald Trump with a conviction --

GALLAGHER: Right.

DUFFY: -- even though it could be overturned on appeal.

GALLAGHER: And just to note on this thing, Sean Duffy, for you, because your former colleague in Congress and was also a very successful prosecutor, Trey Gowdy, who has said many times, the worst thing you can do is go after a judge because it just comes across as whining. And he has gone after this judge because he says it is very stark to see what's happening in the courtroom. Richard Fowler, Sean Duffy, Lisa Boothe, thank you all.

Meantime, Howie Kurtz on the media's portrayal of today's closing arguments in New York versus Donald Trump, next.

(BEGIN VIDEO CLIP)

LAWRENCE O'DONNELL, MSNBC HOST: The strongest point that the defense had this morning by far is the idea that you simply cannot believe Michael Cohen, especially, especially about what Donald Trump knew in 2016, in October about the payment to Stormy Daniels.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

GALLAGHER: Well, we just got word of another objection from the defense being swatted down by the judge as the prosecution gives closing arguments. Here's what some of the media had to say about how the defense did. Watch.

(BEGIN VIDEO CLIP)

ANDERSON COOPER, CNN ANCHOR: This is not as impressive as I thought it was going to be.

KATY TUR, MSNBC ANCHOR: I was struck by his tone and by his manner. He didn't seem fully confident.

UNIDENTIFIED FEMALE: Too long, too meandering.

UNIDENTIFIED MALE: The defense really failed to make certain key arguments.

ANTHONY SCARAMUCCI, FORMER WHITE HOUSE COMMUNICATIONS DIRECTOR: Todd Blanche did a good job defending President Trump, but it's just not enough. The evidence is overwhelming that the law was broken.

(END VIDEO CLIP)

GALLAGHER: Let's bring in Howie Kurtz, host of "MediaBuzz."

Howie, it's great to see you. Listen, I was there. I was watching all the e-mails, the same thing, the defense had one goal. The defense's goal was to say Michael Cohen is a liar. He is the biggest liar on the planet.

He has lied. He has admitted lying. That was their case, and they were pretty effective doing that.

HOWARD KURTZ, "MEDIABUZZ" HOST: Yes, I think the defense absolutely scored some points. But having taken a lot of notes, let me share with you where I thought the defense was being highly selective, and the prosecutors as well, which I'm sure we'll get to, Trace. The Trump lawyer, Todd Blanche started out by saying Trump and Stormy have repeatedly denied that this took place. That was to please the client, I believe. But obviously stormy now testifies that the alleged encounter in 2006 very much did happen.

Todd Blanche said that Trump may have been too busy to focus on the 11 checks he signed to Cohen as reimbursement for the money to Stormy. He said there's no e-mail showing there's a conspiracy. Well, even incompetent criminals who've seen a couple of mob movies know you don't leave a paper trail. And the biggest hole I thought for the Trump defense is they didn't touch the e-mails, the texts, the encrypted signal messages, the banking records that back up Cohen because they don't really have an alternative version of events.

GALLAGHER: Yes. And meantime, we had this coming from the overflow room. This came at 1:44. I forget whatever the time was from Andy McCarthy. He says Steinglass talking about the prosecution makes the argument.

That is the reason I've described Cohen as a double edged sword for Trump. Prosecutors didn't choose Cohen. We didn't go to the witness store and pick him up. It was Donald Trump who chose Cohen. The witness store line draws laughter in the overflow room.

That's the whole thing is you have the media in the overflow room that are laughing at some of the prosecution's jokes. What do you think about that, Howie?

KURTZ: Well, that's the best insta reaction I can give you. That our team there reporting on the laughter at the anti-Trump digs. There were some chuckles on MSNBC, but some of which you've shown, they attacked the defense and largely defended the prosecution.

Now, Trace, when it comes to the prosecution, also highly selective. Josh Steinglass, as the prosecutor saying, they tried to storm Shamie (ph).

GALLAGHER: Yes.

KURTZ: They tried to shame Stormy. Excuse me.

GALLAGHER: Yes.

KURTZ: He said she never changed her story. That's preposterous. She lied for a long time after getting the $130,000 from Michael Cohen. Cohen did Trumps bidding for years and the defendant cut him loose. Excuse me.

It was when Cohen started cooperating with prosecutors that he cut Donald Trump loose. Also, Cohen is angry. He's lied a lot. He stole from the Trump Organization. He paid the price by going to prison.

But don't feel bad for him. Its not really about him. Well, it is about him because he is the star witness, like it or not.

GALLAGHER: Right.

KURTZ: And then finally, this bit of absurdity, Trace, where Josh Steinglass reenacted this 92nd call in which Cohen has claimed that he both discussed harassing phone calls, that he was getting from a 14-year-old with Trump's bodyguard and talked about Stormy with Trump just to show --

GALLAGHER: Yes.

KURTZ: -- with a timer that it could be done. That went a little far.

GALLAGHER: Yes, it really did. And that whole thing was he was explaining the NDA, was going to explain it to Donald Trump and that was the call. And you're like, it was 104 seconds and that was the call. Lastly, what the media, because we are watching all the monitors. So you're watching MSNBC and CNN and when they get to this and closing arguments for the prosecution, the cover-up, an election law violation, there's nothing really made about that. I mean, that -- this is the first time we have heard anything that is actually giving us clarity at the crime, Howie, you're flashed up and the media is like, oh, yes, yes, then whatever.

KURTZ: We have waited and waited and waited to find out what this other crime was because that has to be connected. Otherwise it's just a misdemeanor. And look, a lot of people think Alvin Bragg --

GALLAGHER: Yes.

KURTZ: -- brought this case from partisan reasons and there's some evidence of that. And it's a very thin case. But also the whole business, if I could just come back for a second on catch and kill, which was discussed at that meeting with the National Enquirer, they didn't use that term.

GALLAGHER: Right.

KURTZ: Subversion of democracy, illegal campaign contribution? I don't think so.

GALLAGHER: No.

KURTZ: It's not illegal to conspire --

GALLAGHER: No.

KURTZ: -- with a friendly media outlet.

GALLAGHER: Yes.

KURTZ: You think the Biden campaign doesn't talk --

GALLAGHER: Yes.

KURTZ: -- to friendly media outlets, Trace?

GALLAGHER: Yes. And by the way, the court is on a break now. You see the former president walking out of the courthouse. Howie Kurtz, thank you for your insight. We very much appreciate that.

Meantime, his closing arguments head into their final hours. A look at the argument for reasonable doubt that could undo Alvin Bragg's case against former President Trump. Kerri Urbahn joins us from the courthouse next.

(BEGIN VIDEO CLIP)

RANDY ZELIN, FORMER PROSECUTOR: There is reasonable doubt all over this case. It's simply about did the former president know that books, his records for centuries for legal fees? Michael Cohen was his lawyer. Did he intend to cover up the election or to protect his family? It's everywhere.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

GALLAGHER: Well, court is now on a short break. The prosecution delivering closing arguments for about 90 minutes so far. And they say they are only about a third of the way through. Kerri Urbahn has had a front row seat to closing arguments today. She is a Fox News legal editor and former counselor to Attorney General Bill Barr.

Kerri, great to have you on the show. In fact, just to kind of reinforce what we just said there, Jonathan Turley just texted the prosecutors just said they are only a third of the way through. Yikes. If that's true, we are looking at four more hours. The final judgment could be accomplished in half that time. Four more hours, Kerry?

KERRI URBAHN, FOX NEWS LEGAL EDITOR: Yes, I know. It's crazy. It feels like we're going to be here forever. And then, of course, once we finish with that, the judge needs to instruct the jury to likely happen tomorrow. And then we don't know how long the jury is going to take to deliberate. But it'll be interesting. The jury said they were willing to work past the normal close time at 4:30 today. So, we'll see how long we end up staying here.

GALLAGHER: Yes, it's, it's incredible because, you know, Trey Gowdy was texting earlier, you may have known this, that another objection by the defense, overruled by the judge. He says, I honestly cannot remember the last defense objection that was sustained. I realize it's closing in broad latitude is given, but there are still some guardrails. He did text a few minutes later saying that, you know, he hasn't seen the rapture or anything, but there was -- the judge did sustain one objection by the defense.

URBAHN: Yes, one. It's -- the judge in general when it comes to these objections throughout the trial, there's been a lot of overruling of the defense. So again, we'll see how this continues throughout the day. But I thought it was remarkable, Trace, that the prosecution said with a straight face that the only reason Stormy Daniels wanted the world to know about her NDA, or I'm sorry, her encounter with Donald Trump was because she wanted to get the story out around the election time so people could know. Well, we know that's not true.

GALLAGHER: Right.

URBAHN: Because years earlier, she had tried to shop it around. This is by her own testimony, couldn't get anyone to buy it. And then, of course, if she really wanted the story out, she wouldn't have turned around and sold her silence in a perfectly legitimate legal agreement to Michael Cohen. But that's exactly what she did.

GALLAGHER: Yes.

URBAHN: So the prosecution is making a number of arguments right now that I think are hard. You know, it's hard to sit here and listen to with a straight face.

GALLAGHER: And the biggest one, you know, the one you have been talking about Kerri for weeks, is the fact that there was never any clarity on what the underlying crime was. And now they're saying, you know, the crime, apparently this was all done --

URBAHN: Right.

GALLAGHER: -- to cover up an election law violation. What do you think?

URBAHN: Yes, right. We're finally finding out what the underlying crime is halfway through the closing argument. I mean, that's pretty disgraceful. Just as far as fundamental notions of due process, you know, in this country, the accused has the right to know what they're being accused of. These are fundamental concepts enshrined in the fifth and sixth amendment of our constitution.

And yet here we are learning basically on the fly what exactly the prosecution has been doing for all of these weeks. As far as the election law violation is concerned, you know, keep in mind, it seems like they're really pointing to a federal election law crime.

GALLAGHER: Right.

URBAHN: How they're doing that is unclear to all of us, considering we're not in federal court. This is not their jurisdiction. And SDNY declined to bring the same charge. You know, you would think the Department of Justice, whose jurisdiction it is, if they wanted to bring this case, they would have. They did not. And yet somehow here we are years later, and the state is constructing this thing and we're somehow supposed to sit here and believe that Donald Trump committed a crime that's not even within their jurisdiction to bring?

GALLAGHER: And what I don't understand, Kerri, and I'm not a lawyer, so I don't know, so maybe you can educate me on this. But when you get to the jury instructions from the judge, how does he explain this? I mean, they were never told about this underlying crime, this cover up, an election law violation. So how does he explain that when he gives jury instructions?

URBAHN: Right. And that's why there was such frustration on the part of the defense for not being able to bring in their election law expert, a former FEC commissioner, to explain the context around the law. And the judge had said, well, you can bring him in, but he can only basically talk about his job. Well, what's the point of that? You know, he's retired from that position.

And the point of bringing in an expert is to explain the context, educate the audience, educate the jury. So if there -- if he wasn't able to come in and explain to your point what we're all --

GALLAGHER: Right.

URBAHN: -- learning about right now, how in the world is a jury, you know, non-lawyers, non-experts, even if you're a lawyer, you're not an expert in this field, how are they going to be able to piece this together in a way that will allow them to come to a just and fair outcome?

GALLAGHER: I know it's maybe kind of boilerplate stuff, but I'm just wondering, jury instructions, just to begin with, how important are they when you're talking about maybe four and a half, maybe this goes five and a half hours, the closing by the prosecution, how important are the jury instructions tomorrow morning?

URBAHN: Extremely important, especially because the New York law at issue is vague. And two, we're just learning exactly what the prosecution is trying to do this afternoon. So those jury instructions where the judge informs the jury what the law is, what it's not, the context, the explanation is everything, really, when it comes down to it, as far as what happens to Donald Trump.

GALLAGHER: And I wonder, Kerri, you know, does the defense, can they make a motion? Is there anything they can do for somebody to say, hey, wait a minute, your honor, we just learned about the underlying crime. We've never been told about this. We didn't know -- we didn't know how to fight this because it was never on the table. So do we get -- is there some kind of remedy for the defense to be able to have this brought up in court with the jury?

URBAHN: Well, that's why it's important they continue to make objections because they have to preserve these issues for appeal, and that's how you do it. So if the jury were to convict Donald Trump and find him guilty, then we'd go back, the defense would go back and look at all the times they objected. They'd look at the record, and that's how they would appeal this case.

GALLAGHER: Do you think the defense made its case? Do you think the defense, in closing arguments, just going after Michael Cohen saying, listen, Michael Cohen is a gloat, greatest liar of all time. Do you think that was enough? Do you think that sows reasonable doubt?

URBAHN: Well, I think it's even simpler than that. I think what sows reasonable doubt is the very basic question of whether payments to a personal attorney can be categorized as legal expenses. You know, to a personal attorney who continued to do work, legal work, throughout the time that he was getting reimbursed. And that's a very basic, simple question. Couldn't reasonable minds agree that they could categorize it as legal expenses and another person might categorize it as reimbursement plus payment for --

GALLAGHER: Right.

URBAHN: -- you know, the services of a personal attorney? So that's the very basic question that they need to get past before they even go to intensive fraud or an underlying crime. And I think the defense's strategy, in part, is to keep the jury --

GALLAGHER: Yes.

URBAHN: -- there as much as they can. And if they -- and if they say, look, if you think it should have been labeled something different, that's fine, but then you have to believe that Donald Trump was directly involved in how that was labeled. And two, that he had an intent to defraud. That's part of this crime. And then, of course, the million dollar question, Trace, is, well, who was he intending to defraud?

The American public? Because if it's the American public, then we have a real problem with the way ***politics*** are run in this country when --

GALLAGHER: Right.

URBAHN: -- people who are running for office make promises that they don't keep and they never intend to keep.

GALLAGHER: Yes.

URBAHN: So are they going to be held criminally liable, you know, after the fact? If someone doesn't fulfill, will a person, a voter say, you know what, I feel defrauded because my taxes weren't, you know, lowered. And so that's not just, you know, a thin case at best, if you'd even want to call it that. It opens a Pandora's Box for all kinds of things that can come in with politicians in the future.

GALLAGHER: Yes, and stand by, Kerri. I just want to bring in your colleague Shannon Bream very quickly.

Shannon, the question to you would be, I'm curious, does this mean, did they muddy this up by bringing in this, you know, cover up, an election law violation? We finally learned the underlying crime. Does this muddy it up for the jury? Because the defense was very clear, Michael Cohen's a liar. And now you have all these different things from the prosecution. Does it muddy, does it make it more difficult for the jury?

SHANNON BREAM, FOX NEWS LEGAL CORRESPONDENT: Well, I got to say, we always keep going back to this. It is the prosecution's burden all the time. They are the ones who have to prove this case. And so I can say when I was in there in the courtroom earlier today during the defense arguments, they were very clear in trying to boil this down because they know this has been confusing for the jury. They had a couple of slides up that took you on very simple steps.

They had -- here are the invoices. They came from Michael Cohen. They said what it was for. That went through the accounting department --

GALLAGHER: Right.

BREAM: -- had vouchers that went to the checks that came from the accounting department saying President Trump was never connected to any of this. Michael Cohen's the only connection and so you have to decide if you believe him or not. I do think there's got to be some confusion amongst the jurors. But remember, there are two attorneys on the jury, which is unusual --

GALLAGHER: Shannon, we got to go.

BREAM: -- and they will definitely guide the rest of them.

GALLAGHER: Yes. Shannon Bream, thank you so much. Kerri Kupec, thank you.

That is THE STORY of Tuesday, May 28, 2024. As always, THE STORY goes on. I'll see you back here, "FOX NEWS @ NIGHT" 08:00 in the West. Here's "Your World."

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