

# [***RPT: School Bars Boy From Giving Patriotic Speech; CA Bill To Combat Theft: Staff Up Self-Checkouts; Trump Jury Fails To Reach Quick Verdict; New York Man Arrested For Alleged Anti-Semitic Attack; Pier In Gaza Forced To Halt Shipments; Legal Win For N.J. Gym Owner Who Defied COVID Shutdowns***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6C4T-R6P1-JCS1-64VY-00000-00&context=1516831)

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**Guests:** Ashley Moody, Lydia Moynihan, Mehek Cooke, Pete Peterson, Julie Hamill, Bethany Mandel, Elizabeth Pipko, Cameron Hamilton, Houman Hemmati

**Body**

(COMMERCIAL BREAK)

GREG GUTFELD, FOX NEWS CHANNEL HOST: Wonderful show. Sage Steele, Chael Sonnen, Kat Timpf, Tyrus, our studio audience. "FOX NEWS @ NIGHT" with dreamy Trace Gallagher is next. I'm Greg Gutfeld. I love you, America.

TRACE GALLAGHER, FOX NEWS CHANNEL HOST: Good evening. I'm Trace Gallagher. It's 11:00 p.m. on the East Coast, 8:00 here in Los Angeles and this is America's late news, FOX NEWS @ NIGHT.

And breaking tonight. A middle school student running for commissioner of school spirit and patriotism was apparently told his speech could not have any reference to patriotism. We'll have reaction.

California lawmakers think the answer to skyrocketing retail theft is to put an employee at each self-checkout machine. Kind of defeats the purpose, right?

And a former New Jersey gym owner arrested for staying open during COVID just won a huge legal battle. But we begin with Donald Trump's fate now being in the hands of 12 anonymous New Yorkers, and after deliberating five hours in sending to cryptic notes, the jury was excused. The courtroom confused. Nate Foy is live for us outside the courthouse in New York with more on this. Nate, good evening.

NATE FOY, FOX NEWS NATIONAL CORRESPONDENT: Good evening, Trace. You mentioned the jury deliberated nearly five hours today. And at the end of court, they sent two notes. One has to do with revisiting testimony from Michael Cohen and David Pecker. And the other is a question about Judge Juan Merchan's jury instructions that he laid out this morning. In a key moment from that, Trace, Judge Merchan revealed that in order to convict former President Donald Trump, the jury doesn't even have to agree on the underlying crime that he's accused of.

So take a look at this. The jury has the pick of these three following options. They need to find that Trump unlawfully influenced the 2016 election by violating we mentioned last night, FEKA, the Federal Election Campaign Act, the falsification of other business records or a violation of tax laws. These are the possible crimes that elevate Trump's charges to felonies. Here's the former president talking about the ambiguity of the accusations against him.

(BEGIN VIDEO CLIP)

DONALD TRUMP (R) PRESIDENTIAL CANDIDATE: The confusion is nobody knows what the crime is because there's no crime. Nobody knows what the crime is. The D.A. didn't name the crime. They didn't know what the crime is. That's what the problem is. It's a disgrace. This thing ought to be ended immediately.

(END VIDEO CLIP)

FOY: So, Trace, tomorrow morning, jurors will revisit testimony from Cohen and Pecker. They'll specifically hear about the Trump Tower meeting in 2015 with former President Trump. Cohen is the only person directly connecting Trump to the Stormy Daniels deal. And remember, Trump's lawyers accused Cohen of lying on the witness stand during this trial. Of course, Cohen has admitted to lying several times under oath.

And that's important because Judge Merchan instructed the jury "if you find that any witness has intentionally testified falsely as to any material fact, you may disregard that witness's entire testimony." So, deliberations are set to continue at 9:30 tomorrow morning. Again, they're going to begin by addressing the two notes that the jury sent today. If they're inching closer to a verdict, the jury does have the option to stay late tomorrow until 6:00 p.m. Eastern Time. Trace?

GALLAGHER: Nate Foy live outside the courthouse. Nate, thank you. Let's bring in Florida Attorney General Ashley Moody. Attorney General, great to have you on the show tonight. So, CNN said this about the crime that Nate just talking about. Watch.

(BEGIN VIDEO CLIP)

ELIE HONG, CNN LEGAL ANALYST: The crime here is not easy to explain and understand. I'm interested to see what how they explain the tax crime. That one also was tough for me to understand. Falsifying business records in order to falsify business records.

(END VIDEO CLIP)

GALLAGHER: The theme here, Attorney General, is when CNN says the crime is hard to identify. You know, this is -- this is a tough one.

ASHLEY MOODY, FLORIDA ATTORNEY GENERAL: Yes. Not shocking that the jury came back and said we need further instructions on this law that you instruct us on. By the way, the judge instructed the jury today it was 55 pages of jury instructions. It took an hour and 40 minutes and numerous folks that were there said he was trying to speak very slowly, as if speaking more slowly, would make this this case make any more sense.

And that is what I think the jury is left with and that's why it's going to be Groundhog Day, tomorrow morning. When they get there they're going to have to listen to the jury instructions again, they're going to have to listen to testimony again. And then they're still going to go back there and have questions about what does this even mean? You mean, we don't have to agree on the unlawful means that the business records were falsified to try and achieve to alter the election. It's insane. It's insane.

GALLAGHER: And I want to put this up on the board because you make a good point here. Here are the crime options. Apparently, the jury can just kind of pick their favorite, right? Federal Election Campaign Act, falsification of other business records, violation of tax laws. You can go for four and four, you can go six and six. It doesn't matter. As long as you all come in guilty on something, it's totally fine.

MOODY: And, you know, I almost -- I almost feel badly smiling because it's feels so complicated and comical. But this is serious for our nation. I mean, this undermines so many assurances that our citizens have that our country was built on. That is an accused actually get the right to understand the nature of the charges that are being presented against them. And Donald Trump is right.

This is crazy that you have a judge going. You can pick. You don't have to agree, just pick. It's almost like he's saying find a crime and he'll do the time. And it's giving new meaning to the phrase trumped up charges.

GALLAGHER: Yes.

(CROSSTALK)

MOODY: -- history as really trumped-up charges.

GALLAGHER: What if Michael Cohen's testimony is tossed him in? He gave them the option. You can -- if you don't believe what he said, you can throw the whole thing out. What if -- and I've only got about 30 seconds for you. What if Michael Cohen's testimony gets tossed?

MOODY: This whole case is built on his testimony. And if they find that they can't -- that he is not credible, the judge is right. They toss out that testimony and it's like a house of cards and all falls down. So, we'll see what the jury comes back with. But I think today's questions bodes well for the defense based on my experience as a federal prosecutor and judge.

GALLAGHER: Yes. And that's a very good point. The questions sometimes bode well for the defense. Florida Attorney General Ashley Moody, thank you so much. We appreciate your time.

Meantime, actor Dennis Quaid now going public with his support for Donald Trump saying the Biden administration's weaponization of the justice system is pushing him into the former president's corner. The senior national correspondent Kevin Corke live with tonight's democracy 24 report. Kevin, good evening.

KEVIN CORKE, FOX NEWS CORRESPONDENT: Evening, Trace. Good to be with you as always. For famed actor Dennis Quaid, it's frankly pretty simple. Rather than ***politics*** it was actually the weaponization of the justice system and Joe Biden's policy record that ultimately convinced him to vote for former President Trump and this year's upcoming election.

(BEGIN VIDEO CLIP)

DENNIS QUAID, ACTOR: I think I'm going to vote for him.

PIERS MORGAN, HOST, PIERS MORGAN UNCENSORED: Really?

QUAID: Yes. In the next election. He makes sense. I was ready not to vote for Trump until I -- what I saw is more than ***politics***. I see a weaponization of our justice system and a challenge to our Constitution.

MORGAN: Are you ready for the blowback?

QUAID: Well, yes.

(CROSSTALK)

(END VIDEO CLIP)

CORKE: Yes. It's probably coming. Quaid was a guest on Piers Morgan Uncensored on Tuesday, and he will portray President Ronald Reagan and the upcoming 2024 biopic Reagan, which is set to premiere in August.

(BEGIN VIDEO CLIP)

QUAID: Trump is the most investigated person probably in the history of the world. And they haven't been able to really get him on anything.

People might call him a (BLEEP) but he's (BLEEP)

(END VIDEO CLIP)

CORKE: Ah, indeed for some, he is that. Meanwhile, with Vice President Kamala Harris by his side President Biden's campaign unveiled a brand-new campaign strategy today in Philadelphia, an effort to regain ground among black voters. You may recall Biden had an overwhelming amount of support among blacks in 2020, 92 to just eight. Well, a recent New York Times Siena survey finds that supports down to 69 to 18 with some polls showing even stronger support among blacks for former President Trump.

Biden's new plan will rely on black student organizations, community groups and churches and surrogates to improve his standing with black voters. He's got his work cut out, Trace.

GALLAGHER: Big time. Kevin Corke live for us D.C. Kevin Thank you. Well, the "FOX NEWS @ NIGHT" Common Sense Department is amused by the comments of liberal singer John Legend who says the reason more black and Latino voters are supporting former President Trump is because of disinformation and masculinity. Saying "Trump performs a form of masculinity that is appealing to some men."

He didn't go into detail. But legend says the real reason people are moving toward Trump is because they wrongly believe the economy is bad. Wrongly? Really? A guy who lives in an $18 million home makes tens of millions a year and is worth 100 million plus is telling black and Latino voters to suck it up because the economy is fine. Does anyone anywhere think John Legend cares about an 18 Buck burger? No fries no shake.

Legend believes the economy is good because of low unemployment and the return of manufacturing jobs. Manufacturing what? Hit records? Legend says if people would simply observe what's going on with the economy, they'd realize Biden is great. Common Sense is pretty sure the people forking over 20 bucks for bread, milk and Wheaties are observing what's going on. Because what's going on is money leaving their wallet in record time.

Seventy-five percent of voters think the economy is fair or poor. Legend thinks they're not paying attention. Common Sense thinks they're paying too much.

Let's bring in New York Post reporter Lydia Moynihan along with RNC Surrogate and attorney Mehek. Cooke. Thank you both for coming on. I just want to know, Lydia, for you. What do you think of John Legend telling people to embrace the Biden economy?

LYDIA MOYNIHAN, NEW YORK POST REPORTER: I think tone deaf is an understatement. I mean, we're seeing especially among black men, in 2020, 87 percent of them supported Biden. And now we're seeing that dip to about 57 percent. And we're seeing from the Biden campaign, or at least trying to make an effort this go around. If you remember, Joe Biden last time said that if you didn't vote for him, you are not black.

So at least now he's realizing I need to offer something. I need to at least campaign among this cohort. But so far, it doesn't seem like he's been very effective. A lot of what he's doing is talking down to blacks, basically saying that they're all victims. And if you remember last week, when he was giving that NAACP speech, nine gaffes in the span of about 20 minutes, just reading a teleprompter speech.

So frankly, I think last time, his strategy of basically just staying in the basement might actually be a little bit more effective, because it seems like the more he gets out there, the more it backfires, frankly.

GALLAGHER: Meantime, after Dennis Quaid had this to say, Mehek and I'll get your thoughts.

(BEGIN VIDEO CLIP)

QUAID: I see a weaponization of our justice system and a challenge or our constitution says Americans, I don't think we're going to have. And, you know, Trump is the most investigated person probably in the history of the world, as they haven't been able to really get him on anything.

(END VIDEO CLIP)

GALLAGHER: Mahek, he is playing Ronald Reagan and now supporting Donald Trump. What do you think?

MEHEK COOKE, ATTORNEY: Well, I think that is quite as saying what many Americans are thinking today. You had Robert De Niro on one hand with Trump and derangement syndrome. And now you have Dennis Quaid. That is truly speaking what Americans feel today, which is that there's been a great indignity suffered by President Trump. The lawfare in this New York case is unheard of.

You have a bias judge that refuses to give jury instructions to said crime. So, a juror can elect any crime to convict President Trump on top of the unbiased -- on top of the bias -- unconstitutional gag order on President Trump. So, as we continue to see this bias coming out of New York City, more and more people like Dennis and just average Americans, middle class voters are saying we've had enough.

GALLAGHER: You can see them. They're just kind of moving that way. Here's the Roanoke College Poll, put this up. This is really deadlock. Now, Biden won this and 2020. Democrats have won this forever. It's not deadlock, Lydia. 42-42. The bad news comes in the next poll. I'll let Mehek answer that. But for you, the fact that this is tied, that's mostly bad, we'll let Mehek go that one.

The fact that this is tied at 42, Lydia, what do you think about that for the Republicans?

COOKE: I mean, if Virginia is in play, which there hasn't been for decades now. It kind of makes you wonder, could New York be in play? Could California be in play and the reality is that people are concerned about the economy and they're concerned about immigration and they think Dennis Quaid, frankly, speaks to the way a lot of people are feeling one of the things he said in the interview.

I thought that was really interesting is that he doesn't necessarily like Trump, but he likes everything that he did in office. And so, I think as people are going into those poll booths or thinking about the reality of where we are now and the record of both candidates and that's going to be on the top of their mind.

GALLAGHER: So, if California, Lydia, no chance. Not a chance at all California but I want to go back to the last poll. Roanoke College, Biden's presidency, your view of it. Mostly good, 25, mostly bad, 47. That number on the right, Mehek is big.

COOKE: It is big, Trace. But it isn't a surprise. Just go look at your bank accounts. Go look at your pocketbook. Go look at the border. We have a wide open border. 12 million illegal immigrants, 250 known on the terrorist watch list under Biden's presidency. He's a Hamas cheerleader, he's allowed CRT. He doesn't know what a woman is. And the list goes on. He has degraded the moral compass in America and the only way to bring greatness back is to elect President Trump in November.

GALLAGHER: Mehek Cooke, Lydia Moynihan, thank you both. Lawmakers in Sacramento think they know best about how California businesses should handle rising theft. And the mayor of Oakland is facing a recall vote in November for failing like to address crime and public safety concerns. Matt Finn live with a wrap on the California crazy. Matt, good evening.

MATT FINN, FOX NEWS CORRESPONDENT: Good evening, Trace. The group organizing the effort to recall Oakland, California's mayor says they've now collected more than enough signatures to get the recall on the ballot in November. The group known as Oust claims they've got more than 30,000 signatures so far. That's 5000 more than the 25,000 needed. The organizers say they'll continue until they get 40,000 signatures.

Recall supporters say they want to ask Oakland Mayor Sheng Thao over a number of reasons including the city's crime. A recent money geek reports as FBI data shows that Oakland has the country's highest robbery rate per 100,000 residents. A former judge is leading the Recall effort against the mayor.

(BEGIN VIDEO CLIP)

BRENDA HARBIN-FORTE, RETIRED JUDGE AND RECALL ORGANIZER: With respect of the 40,000, that sends the message that we already have more people signing to Recall you than who voted for you to get elected in the first place.

(END VIDEO CLIP)

GALLAGHER: Mayor Thao has previously said she is committed to tackling crime including the city's operation ceasefire program, which has been credited with reducing gun violence. And all across California including here in Los Angeles, retail theft has become alarmingly common. If you walk into a Target or a drugstore, any number of common items from toothpaste to cleaning supplies are now locked behind glass.

A new California bill called the Retail Reduction Act has passed the state house and is going before the Senate. It's aimed at reducing ramped shoplifting here in California. However, critics say it places an even greater burden on business owners by requiring them to have an employee overseeing the self-checkout counters. And the argument there is that many corporations have well documented policies in place that prevent employees from trying to stop any theft in the first place, Trace.

GALLAGHER: Matt, thank you. Let's bring in California Policy Center Attorney Julie Hamill and the dean of Pepperdine University School of Public Policy, Pete Peterson. Thank you both for coming on. Let's start at the top where Matt did. The San Francisco Chronicle -- which by the way, Oakland we should say, Oakland has lost its basketball team, its football team, about to lose its baseball team. Its best restaurants, its traffic lights, because there's too much copper in them.

And now the mayor, The San Francisco Chronicle says the following. Campaign to recall Mayor Thao says it has enough signatures to qualify for the ballot, Pete. I mean, this thing is -- it looks like it's going forward.

PETE PETERSON, PEPPERDINE SCHOOL OF PUBLIC POLICY: And Trace, it's worth pointing out that this is the third recall effort in the Bay Area in the last two years. Obviously two years ago we had the former city attorney for San Francisco Chesa Boudin was recalled. Then we had the San Francisco School Board members recalled. And now it's the third. So, we're actually seeing some sanity on the part of Bay Area voters who are seeing these progressive policies go way too far.

GALLAGHER: Yes, they're tired. I mean, they're just tired of living like. They should talk to people that they're like. I'm just done living like this. California Globe says the following. California lawmakers has met to try to tell retailers how best to address thief? They want to tell retailers how to operate self-service checkout terminals, Julie, supposedly as a means of addressing retail theft.

Under a new state Senate bill, such terminals will have to be manned by an employee defeating the whole purpose of the terminals. Has anybody not noticed that the thieves just don't go and go to the checkout places? They go in and they walk out the front door right by all the checkout centers.

JULIE HAMILL, ATTORNEY, CALIFORNIA POLICY CENTER: It's objectively ridiculous. All of America, by the way, is laughing at California constantly for things like this. This is actually Lorena Gonzale's brainchild, she is a Federation of Labor leader. This is to get more bodies and more money into the unions. If you want to stop retail theft, enforce the dang laws, put people in jail.

GALLAGHER: It's not a bad idea.

HAMILL: It's not hard.

GALLAGHER: Really not a bad idea. So, this is my favorite story of the night. This is a kid at St. Bonaventure Catholic school. He is running for, "commissioner of school spirit and patriotism." But he couldn't speak until he removed the patriotic language from his speech and here is the part they wanted cut out. Watch.

(BEGIN VIDEO CLIP)

JIMMY HEYWARD, ST. BONAVENTURE STUDENT: Sadly, some people take their citizenship for granted. Whether it is disrespecting the people who protect us or eating nachos during the national anthem at a sporting event. Many people recite the Pledge of Allegiance without understanding its meaning. If someone doesn't truly know what they're pledging to the United States of America, the minds will be recycling the lyrics to shake it off by Taylor Swift.

(END VIDEO CLIP)

GALLAGHER: Read the shake it up by Taylor. So the principal, Pete, responds by saying "this entire section needs to be removed" and it went on from that. Remember your audience's fourth to seventh graders who want to know more about pep rallies and spirit for their schools. Like this was so complicated. He's like listen, you sound like it's a shake it off Taylor Swift thing. This was good stuff and they wanted it out.

(END VIDEO CLIP)

PETERSON: Yes, well, I keep my eye on that boy because I think we're looking at a future political leader here for the country. But this happened in elementary school, I think so much of our attention is on colleges and universities and how progressive they become. Unfortunately, we're seeing that all the way down to high schools and middle schools and even elementary schools, as well.

GALLAGHER: We are going to get Jimmy Hayward on this show. We are going to get him on the show. It's going to be great. We're going to bring you both back talk to him. Lastly, foxnews.com California's proposed parental notification policy for gender identity changes fails to qualify for the ballot. A California policy that would have required schools to notify parents if their child wants to change their gender identity changes fails to qualify for the ballot.

A California policy that would have required schools to notify parents if their child wants to change their gender identity did not qualify as a ballot measure for the November election. Rob Bonta, remember, called this now changed it to the Restrict Rights of Transgender Youth and nobody wanted to sign it.

HAMILL: Well, it was the Protect Kids of California Act and they, without any money without any professional backing all volunteers, they gathered over 400,000 signatures. So, they woke up a lot of Californians, they got a lot of support. I'm looking forward to this coming back for another round of signature gathering. But the problem that we have in California is we have a state law that allows boys to self-identify as girls and use the facilities and play on those sports teams. And so, we need a ballot initiative to undo that law that we need to protect girls and girls sports.

GALLAGHER: And we should know that the majority of Californians are in favor of what Julie was just talking about. The majority of the state, the state for Nagle's things around so nobody wants to sign it. Julie, Pete, thank you both.

Coming up. A Jewish actress now says anti-Semitism comes from people on the right. Late Night host Bill Maher corrects the record at least somewhat.

And later in The Nightcap. Has a trip through the drive thru become an extravagance with the price of many fast food items increasing as much as 200 percent? A majority of Americans apparently think a trip to Mickey D's is a splurge. Let us know X and Instagram @TraceGallagher. We will read your responses in The Nightcap.

Meantime, 8:21 here on the West Coast. Here's a FOX NEWS @ NIGHT trip across America. Live look at Fremont, California. Speaking of the Bay Area, birthplace of former MLB shortstop Bud Harrelson. Live look, Kansas City, Missouri where the Chiefs fans are the true record holders for the loudest crowd roar in a sports stadium. 142.2 decibels. We said Seattle last night. We screwed that up. It's Kansas City but go chargers anyway.

Finally, Annapolis Maryland. Home to the United States Naval Academy. Last night we said Seattle had the noises football, again we correct it. If you cannot join us live don't forget set your DVR. Watch us anytime. We're coming right back.

(COMMERCIAL BREAK)

GALLAGHER: Well, liberal comedian and T.V. host Bill Maher temporarily making sense again. Correcting democratic booster Sandra Bernhard on his podcast about where the recent rise in anti-Semitism is coming from. Let's bring in RNC Spokesperson Elizabeth Pipko and the co-author of Stolen Youth, Bethany Mandel. Thank you both for coming on. I want to play this soundbite if I can. This is Bill Maher with Sandra Bernhard. Watch.

(BEGIN VIDEO CLIP)

BILL MAHER, HOST, CLUB RANDOM PODCAST: There is an anti-Semitism afoot in this country that we haven't had in a very long time. And I never thought I'd see the day --

SANDRA BERNHARD, AMERICAN ACTRESS: I tell you where it comes from. It comes from the right wing. The right -- the extreme --

MAHER: No, it doesn't.

BERNHARD: You think it's left? You think --

MAHER: Well, there's anti (INAUDIBLE) on both sides.

(END VIDEO CLIP)

GALLAGHER: What do you -- what do you think about that, Bethenny? I mean, clearly she is not paying attention and some part he isn't either.

BETHANY MANDEL, CO-AUTHOR, STOLEN YOUTH: No, no, I mean, it's wild that this this realization that anti-Semitism exists happens to these folks when it -- when it hits more secular Jews like on college campuses. But for average Jews that are visibly Jewish, this has been a phenomenon in America for unfortunately a very long time. You know, there was a Muncie attack, there was a supermarket attack.

But they're unwilling to look at -- like in the mirror and see, you know, this is endemic in their side of the aisle and not necessarily in the right side.

GALLAGHER: Yes. I think you're right. Now for online hate, to you Elizabeth Pipko because this is kind of up your alley. Administrators of popular pro- Palestine, the USA Today says Palestine groups are spreading anti-Semitic hate on Facebook and parent company Meta isn't doing enough stop them. That's the finding of a new study from the Center for Countering Digital Hate. I mean, it's kind of weird.

You have this thing where you criticize the vaccine mandate, will shut you down, but you call for the eradication of Jews and well, you know, it's OK, it's acceptable.

ELIZABETH PIPKO, FOUNDER OF LEST PEOPLE FORGET: You're absolutely right. Trace I think for a lot of people, especially those like Bethany and myself, for Jews here in this country, we've unfortunately had to learn over the course of the last seven or so months that there's just never going to be the same kind of outrage, the same kind of -- I want to call it honestly, because it's just blatant disrespect.

There's no honesty when it comes to those having to stand up for what we're seeing all around us. And that's anti-Semitism. There's no accountability anywhere. There's simply nothing compared to what we've seen from minority groups around the country who have had to unfortunately face their own hatred over the years. I think Jews have had to learn that they stand on their own. And when it comes to social media, it's incredibly sad because we're realizing how many young people, only in recent years are we noticing this, get most of their information from social media.

So, that means that they're on these web sites, college students, high school students, even middle schoolers, and they're being fed these blatant lies about Jewish people days after days, after days, and then we see them in the streets screaming them, and that's where they're getting it, and no one is seeming to want to put their foot down and stop this.

GALLAGHER: -- and then, it becomes really this kind of tragic reality, because I want to put up this video this is in Brooklyn, this is about a person going after Jewish students. I mean, you talk to him and he's literally going after people here trying to kill Jewish students, Jewish people and the New York Post as you saw the video writes the following, "Maniac screams which you couldn't hear, I'm going to kill all the Jews, as he tries to run down students outside New York City Jewish school in anti- Semitic hate attack." And that's the fear, Bethany, is that, you know, we talk about all this from the river to the sea. This is the real fear -- that all of a sudden, the words become violence.

MANDEL: Yes, absolutely. I mean, unfortunately, this has been a situation in Brooklyn for sometime, this, this hatred that erupted into serious violence has been hitting visibly Jewish residents in Brooklyn far earlier than October. I think that a lot more people are paying attention and thank God. But this has unfortunately been the situation for anyone who is visibly Jewish for many years.

GALLAGHER: Yes, I think that's right. And I wanted to get your opinion on this as well, Elizabeth, because the video is just so stunning, and you think, wow, what you're watching here is happening in a major American city, and it's not on a college campus.

PIPKO: You're right, it's actually incredibly painful for me. Both my parents escaped the Soviet Union and came straight to New York City, thinking that they would be safe as open, proud Jews. I wish to God the leadership in New York would spend less time on phony political trials, less time on appeasing those that hate Jews and scream for the eradication of the State of Israel in the streets, and more time bringing the city back to the kind of place that people around the world, like my parents, seek refuge in.

GALLAGHER: Yes. Elizabeth Pipko, Bethany Mandel, thank you both. Meantime, in the face of fierce global criticism, the Israeli military today showed evidence that Sunday night's deadly airstrike in Rafah actually hit almost one mile away what the IDF designated as a safe zone.

The tent camp where displaced Palestinians were killed, that's a big settling. Let's bring in the former Navy SEAL who trained with Israeli Special Forces Cameron Hamilton. Cameron, great to see you. I want to play some sound because Benjamin, Benjamin Netanyahu called this a tragic mistake. Well, now, the IDF is saying this, watch.

(BEGIN VIDEO CLIP)

REAR ADM. DANIEL HAGARI, ISRAEL DEFENSE FORCES SPOKESMAN: Contrary to reports, we conducted a strike outside the area that we designated as a humanitarian area and called civilians to evacuate to. Our strike was over a kilometer and a half away from the Al-Mawasi humanitarian area, what we call the safer zone.

(END VIDEO CLIP)

GALLAGHER: But once again, because of global pressure, Cameron, that Israel is forced to apologize before all the facts are even in.

CAMERON HAMILTON, FORMER NAVY SEAL: Yes, it's very unfortunate. Look, I know that they're going to do a thorough analysis and find out all the information, but as they said earlier, this strike was conducted outside of the humanitarian zone.

So, I'm sure that we'll find out more, and I'm sure that they're digging very deeply to the bottom of it. But once again, Israel is put on the defensive on a narrative where they never started this conflict and they're continually pressured by the international community to restrain their military when it gets the most appropriate course of action.

GALLAGHER: Yes, it really is. The Daily Wire, meantime, right, speaking in Gaza, this is off the coast of Gaza, the U.S. military forced to halt shipments on Biden's Gaza pier after it falls apart. The pier, by the way, for those who don't know, $320 million. Very few supplies got in because they were all hijacked and put on the black market here. And now the pier itself is just kind of falling apart, Cameron.

HAMILTON: Some of these tools that were used to construct this pier system is actually very sophisticated. They're not really designed for very, you know, turbulent waters and so I think people underestimate the Mediterranean with what it can bring. There's also been a series of storms recently that have also complicated it. So, the Corps of Engineers will bring this bridge in, they'll try to repair it and put it back in place. But once again, I think this is a failed effort that we should have abandoned altogether.

GALLAGHER: I wanted to get your take on this, this is Forbes the headline, it reads following: "Israel-Hamas war will last another seven months as Rafah fighting intensifies." Do you think that's a fair assessment? Are we, are we at that kind of a timeline?

HAMILTON: I think, unfortunately, this will be a protracted war that will last for a significant period. The seven months period, I think, is subject to some interpretation, but I definitely think this is a conflict that will not be subsided within the next few months, two to three months. I think that's too short. I think Israel is going to have a heck of a time still rooting out Hamas.

I think ultimately the way we could pursue peace at a very rapid basis is if, number one, Hamas frees all the hostages; and number two, the Palestinians call for the removal of Hamas from their legitimate government. Until that happens, unfortunately, Israel is in this for the long haul.

GALLAGHER: Cameron Hamilton, great to have you on as always, sir. Thank you.

And coming up, a pair of gym owners in New Jersey are pumped about a ruling that clears them of all charges related to keeping their gym open during COVID. We talked about this, right? It turns out everybody was wrong about COVID -- wrong, wrong, wrong. Dr. Houman Hemmati is on deck to talk about that.

Plus, a Cincinnati Reds crew member gets eaten by the tarp monster. And a dapper-looking penguin waddles into a wedding. The day's best "VIRAL VIDEOS" next.

(COMMERCIAL BREAK)

GALLAGHER: As New Jersey gym owner Ian Smith scored a huge legal victory today, Ashley Strohmier is live in New York with that story. Ashley, good evening.

ASHLEY STROHMIER, FOX NEWS CHANNEL CORRESPONDENT: Hi, Trace. A pair of New Jersey gym owners have been cleared of more than 80 municipal charges after refusing to shut down their business during the state mandated COVID-19 lockdowns in 2020. One of the owners, Ian Smith, celebrated the decision writing on X, "Four years ago today, we reopened Atilis Gym in direct violation of an unconstitutional order by Governor Philip Murphy. I'm thrilled to announce that we have achieved a major victory in the long hard fight against the state."

Charges included violating a governor's orders, creating a public nuisance, and disturbing the peace, and could have reportedly put the pair in jail for six months if convicted. Well, now Frank Trombetti, the gym's other co- owner during this tumultuous time, is vowing to fight back, telling a local news outlet, "I wanted someone to be held accountable for it, what they've done, because everything that we said from day one has been validated."

And Trace, the New Jersey Attorney General's office tells us tonight that these charges are separate from the State Department of Health's enforcement action, which cost the gym owners nearly $260,000 in contempt sanctions and attorney's fees. The gym owners tried to appeal those penalties in March 2023 and lost. Trace.

GALLAGHER: Yes, Ashley Strohmier live for us in New York. Ashley, thank you. Let's bring in Ph.D. Research Scientist, Board Certified Medical Doctor Houman Hemmati. Dr. Hemmati, I want to play one of the gym owners. This is back in 2020 for Atilis Gym. He said this to Stu Varney and it's interesting what Ashley just said because it meshes. Watch.

(BEGIN VIDEO CLIP)

STUART VARNEY, FOX BUSINESS NETWORK HOST: -- destroy, and can you come back?

IAN SMITH, FORMER ATILIS GYM OWNER: Absolutely not. They tried to. Frank and I, when we opened back in May, we promised each other that we were going to see this all the way through and that we were going to fight until we had nothing left.

(END VIDEO CLIP)

GALLAGHER: Until they just about had nothing left and they ended up winning. I mean, that's the whole thing, is that's how many mistakes were made during COVID.

DR. HOUMAN HEMMATI, BOARD CERTIFIED MEDICAL DOCTOR: There were a lot of mistakes made, Trace, and this is justice well served. Unfortunately, too little, too late. These guys lost a lot of money. And when you look at Phil Murphy's policies, same as Gavin Newsom's policies in California, they were based in nothing. No common sense, no scientific fact.

This is a government that allowed liquor stores to stay open, that allowed veterinary practices, cell phone repair shops, you name it, but they consider gyms the one place you want people to actually go and try to get healthy, mentally and physically, and prevent all the problems we saw happening during COVID, they shut those down. And then they punish the people and threaten to imprison them for it, even though there was no law, really. This was just a policy made up out of nothing.

GALLAGHER: They shut down parks, they put sand on skateboard ramps, they wanted people to stay inside. I mean, they just couldn't have screwed it up anymore. Trans-identifying women on testosterone suffering menopausal symptoms in their 20s. The Daily Wire writes the following, quoting here, oh there, this is the same thing, we've got the 94 percent experience some type of pelvic floor dysfunction, 87 percent experience urinary symptoms, 53 percent sexual dysfunction, 74 percent of the women had bowel issues. I mean, this is significant.

HEMMATI: It is, but it's not unexpected, Trace, right? When you have someone who has, you know, when you're born as a woman and you have female anatomy, that female anatomy, the pelvic floor, it's a set of muscles that hold everything up, right? They contract, they relax, it's what you need to be able to have bowel function, bladder function, et cetera.

And when you have testosterone there and when the estrogen is gone, what happens? Those muscles are no longer getting the stimuli that they need to function the way they do, and this is not uncommon for women normally going through menopause, but when you had pharmacologic factors like testosterone, it accelerates that process.

All of a sudden, bowel and bladder function begin to dissipate, and you see these things. So, it's not unexpected. The problem is that there are many people who aren't doctors who are not giving informed consent. And when people ask for these treatments, they don't know necessarily what they're getting into and then they're experiencing regret.

The problem is that doctors have to really explain and get them to understand what they're getting.

GALLAGHER: And it echoes that. The Daily Wire also says it's really sad when we hear people say, nobody ever told me this and they should have been more informed of the risks in gender clinics.

HEMMATI: And what we're starting to see is there are a lot of malpractice lawsuits now from people who are alleging that their doctors didn't warn them about the potential risks involved and the alternatives involved. And they're regretting it and they're going to court because there are a lot of problems that are now irreversible and their only way of dealing with it is by going through the court system. This may change how a lot of these things are practiced and I hope that it forces docs to be more ethical about it.

GALLAGHER: I hope so too. Dr. Hemmati, great to see you. Thank you. First up in tonight's "VIRAL VIDEOS," baseball doesn't like rain, neither do the groundskeepers apparently when a thunderstorm rolled into a Cincinnati Reds-L.A. Dodgers game in Cincy. The ground crew rolled out the tarp in record time, but maybe a little too quickly. See the ground crew member found herself swept beneath and had to army crawl all the way out.

More than 8,000 visitors at Colorado State University's conservatory had the pungent opportunity to witness a rare 8-year-old corpse flower bloom for the first time. The corpse flower can grow up to eight feet and is the largest unbranched inflorescence in the plant kingdom. Did you know that? But when it blooms it emits a pretty horrific odor compared to the smell of rotting human flesh that lasts for like 48 hours.

We've seen doggy ring bearers but have you seen a penguin ring bearer? This penguin walked down the aisle dapper as can be in his black and white birthday suit causing a commotion among the guests and the penguin-loving bride.

And if you have a viral video to share, share it with us @TraceGallagher or @FoxNewsNight on social media.

Coming up, fast food looking a little more like fine dining these days, at least when you look at the menu prices. Are your trips to a drive-thru becoming more of a luxury than just a quick inexpensive way to feed your family? Let us know, X and Instagram, @TraceGallagher. We'll read the best responses, your responses, in the "NIGHTCAP."

(COMMERCIAL BREAK)

GALLAGHER: We're back with the "NIGHTCAP" crew: Kevin Corke, Ashley Strohmier, Matt Finn, Dr. Houman Hemmati, Julie Hamill, and Lydia Moynihan. Tonight's topic, lavish living. Has a trip through the drive-thru become an extravagance for you? The vast majority of Americans say so.

The recent survey finding nearly 80 percent of consumers now considering fast food to be a luxury item. Basic items like McDonald's cheeseburgers, Chick-fil-A nuggets risen as much as 200 percent in less than five years. Are you among those who consider fast food a luxury? Julie Hamill with Children, let's go to you first.

HAMILL: I'm going to spill a little secret here. Trader Joe's is very cheap still, and it's super fast, and it's much healthier than all the other fast food places.

GALLAGHER: Wow. Are you shilling for Trader Joe's?

HAMILL: I will accept payment, Trader Joe's.

GALLAGHER: For TJ's, it is good, though. Houman Hemmati?

HEMMATI: I was just at Trader Joe's today, but you know where I was before Trader Joe's? Was Taco Bell. Because, and I'm going to teach the people something, they have a secret menu on the app only called the Cravings menu. And for $6.00 to $8.00, you can get a whole thing with three dishes and a drink. Not bad.

GALLAGHER: Wow.

HEMMATI: Cravings bucks.

GALLAGHER: So, Kevin Corke, do you want to keep the kickback train going here? You got something to promote that you --

CORKE: What can I tell you? I'll just say very quickly, if you have Royal Farms where you live, you can get fast food right there while you get gas. It's actually pretty good. It's a lot cheaper than running to some of these other places. Although Chick-fil-A is still number one in my book.

GALLAGHER: Yes. And before I go to Ashley Strohmier, I should say, in our neighborhood, there's a place I'm not even going to name names because I'm not getting kickback. And by the way, it's like a small mortgage payment to go in there and get fast food, Asher Strohmeyer.

STROHMIER: Yes, I feel like I missed the memo for this kickback thing. No, I don't personally eat fast food, but I think food in general, whether you're at a fast food chain or a restaurant or the grocery store, is just out of control right now. It's hard for people to afford it.

GALLAGHER: That's exactly right. Lydia?

MOYNIHAN: Not to be morbid, but I think the cost of health care as a result of all that fast food is going to cost way more. I think the real luxury is a healthy home-cooked meal.

GALLAGHER: Matt Finn.

FINN: I'm going to join at the Trader Joe's kickback train because I go there all the time. There's one not far from the studio that I walk to frequently. But I will say, I remember the days of like five or six-dollar value meals. Right now, you can't even walk out of Chipotle for under like 15 bucks.

GALLAGHER: Yes. There we go. The "NIGHTCAP," sponsored by Trader Joe's.

Here we go! Do you consider fast food a luxury? Yes, 72 percent. Instagram, yes, 55 percent.

Jo112, "All food becoming a luxury in Biden world."

Keith, "The shrinkflation and the price that just make it uneconomical to buy restaurant food fast or sit down."

Andrea, "No, but my fish wallet or fish filet was $12.00 the other day, and I was hungry 45 minutes later."

Scott says, "$19.00 for a Big Mac fries and a drink at a rest stop in Connecticut. I'm surprised the clown isn't wearing a tux." Nicely done.

Janice, "Not at all. It's a bargain compared to other restaurants in Arlene. It's expensive and not all that good. I'll spend a little more for Chipotle."

Thank you all for watching America's late news, FOX NEWS @ NIGHT. I'm Trace Gallagher in Los Angeles. We'll see you right back here tomorrow.

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