

# [***Trump Jury Deliberates After Rehearing Judge's Instructions, Pecker, And Cohen Testimony; Now: Jury Deliberates, Awaiting Notes Or Verdict; Jury Deliberates 34 Charges Against Trump***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6C50-KKH1-F072-X02F-00000-00&context=1516831)

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

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**Guests:** Kevin Walling, Doug Burgum, John Yoo

**Body**

SHANNON BREAM, FOX NEWS CHANNEL HOST: Hey, guys. Thank you, John and Sandra. Good afternoon, everybody. I'm Shannon Bream in for Martha MacCallum. This is THE STORY.

We are waiting to see what the jury does next here in New York City as we enter our 10 of deliberations. Now earlier, remember the jury requested that Judge Merchan re-read portions of the jury instructions. They also wanted to hear back testimony from Michael Cohen and David Pecker about that crucial 2015 Trump Tower meeting as well as testimony surrounding Karen McDougal. Now, we're told the jurors were engaged, they were taking notes, and now we wait for them. Here's the former president before deliberations began today.

(BEGIN VIDEO CLIP)

DONALD TRUMP, 45TH PRESIDENT OF THE UNITED STATES: It's a very sad day for America. The whole world is watching. And it's a very sad day for New York. I've gone through two of these trials already. It's a very -- with the same kind of a judge. It's all worked, it's all rigged. The whole thing, the whole system is rigged.

(END VIDEO CLIP)

BREAM: OK, "THE FIVE" co-Host, Judge Jeanine Pirro is here with me at the courthouse. And Judge, you were pouring over your notes. So, let me talk about a couple of things we know the jury asked for and then get your impression. They wanted to hear this rain metaphor the judge gave yesterday. It says this, suppose you go to bed one night when it is not raining. And when you wake up in the morning you look out your window, you do not see rain, but you see that the street and sidewalk are wet. Under those circumstances, it may be reasonable to infer that is conclude that it rained during the night. What's your problem with that? You don't love that instruction?

JEANINE PIRRO, FOX NEWS CHANNEL HOST: Well, you know, I used to tell jurors the same thing you could have said but I would say snow. OK. Because the problem with rain is maybe there was a sprinkler system you never know. But it goes down to the fact that you cannot draw an inference unless you clearly have a fact that is established from which you can draw some kind of inference. It's really as simple as that. And you know, juries try to find out whether or not there's some special way to draw, you know, an inference as opposed to regular.

Yes, they want a formula and they want to know if you're a juror, if it's any different than everyday life that you and I engage in. And I would tell jurors, it's no different in terms of trying to assess the truthfulness of someone. You know, does it ring true to you? Does it make sense in light of all the other things that you've heard? And I think that maybe the jurors just wanted to hear it again, but at the same time, it tells you that they're already honing in on what inference they can draw from what proven fact.

And so, I like it. I do like it. I like that they're thinking about things and they're going back and asking questions.

BREAM: OK, so another thing they asked about, and this is something that caught our attention when we were in there listening to the judge yesterday, is this reference to Michael Cohen as a "accomplished." So, then this is what the jury instruction says, a defendant may not be convicted upon the testimony of an accomplice unless it is supported by corroborative evidence tending to connect the defendant with the commission of that crime.

In other words, even if you find the testimony of Michael Cohen to be believable, you may not convict the defendant solely upon that testimony but even just this reference to using the word accomplice with Michael Cohen, that's got to stir up some things for jurors because it's language that suggested them, hey, these two committed some type of crime together and Michael Cohen's already been found guilty as part of that.

PIRRO: Right, and you know what as I looked away I'm looking at page 22 of the court's instructions to the jury and the judge has charged this jury that under our law, Michael Cohen is an accomplice because there is evidence that he participated in a crime based upon conduct involved in the allegations here against the defendant. What the judge is doing here is the judge is telling you Michael Cohen is an accomplice.

That means he aided and abetted in the commission of a crime. He was complicit and he's basically sending a charge to the jury that the accomplice was Michael Cohen along with this defendant. And I think that this is where the judge is going to get into trouble if there is a conviction. To me, this is reversible error because the defense was not put on notice that this is an aiding and abetting an accomplished testimony case.

None of the indictment alleges aiding and abetting and complicit, you know, and complicity in terms of this defendant. All of a sudden, you hear it in the charge of the jury? I mean, that right there is reversible error. But what it does Shannon, is it tells us that they allowed the testimony to come in that Michael Cohen pled guilty to a federal election law violation, and that David Pecker had a non-pros with the Federal Election Commission.

That didn't need to come in. But now they're saying Donald Trump possibly through the federal election law committed this felony that then makes these misdemeanors alive and well today. He is, this is like a magic show of smoke and mirrors where they're saying, look, he's an accomplice, it's on those federal election campaign violations, and whoa, you can find it Trump was responsible under that.

It's very strange. It's never been done in the history of this state where you take two dead misdemeanors, you allege that one of the one of the column A, B, and C is a federal election campaign violation over which a state court has no jurisdiction, and you say Michael Cohen is an accomplice as a matter of law. This is riddled with error.

BREAM: It's got to be so confusing for the jury and we know you and I have talked about the way it's set up here in New York, it does give so much power to the judge. This is like this in some other jurisdictions too. If he alone holds on to those jury instructions, they have to keep coming back to him for help.

As a former judge, you're like, I don't mind, I don't mind. As a judge, that's so much. But this judge does have a lot of power. We are waiting now on the jury. They came back. We'll see. So far, no word of any note from them, but we'll try to draw whatever information we can if they come back with another one or they come back with a different notification. But Judge, I know we'll be here together.

PIRRO: Yes.

BREAM: Thank you very much.

PIRRO: They'll be in there working, hopefully.

BREAM: Yes, we hope they are. OK, coming up a new poll showing strong support for President Trump among a key group of voters as some in the media tried to sue the Democrats reportedly in "full-blown freak out mode" over President Biden's flailing supports.

(BEGIN VIDEO CLIP)

JOE SCARBOROUGH, MSNBC HOST: I'm here to tell you the freaking out, the Democratic freaking out, is just so tiring.

(END VIDEO CLIP)

BREAM: Kellyanne Conway, Marc Thiessen, and North Dakota Governor Doug Burgum, they are all still on tap ahead as we await the jury's next move here in Lower Manhattan.

(COMMERCIAL BREAK)

BREAM: As we wait for the jury's next move here in New York v. Trump, President Biden is in Delaware. That's ahead of Hunter Biden's federal gun trial. That starts on Monday, and Team Biden will reportedly be, "deliberately low-key" as they watch the trial for any moments that could be challenging for the president's campaign.

White House Correspondent Peter Doocy reports from the North Lawn. Hey, Peter.

PETER DOOCY, FOX NEWS CHANNEL WHITE HOUSE CORRESPONDENT: And, Shannon, this trial is a little bit different because President Biden is not being charged with anything, but it could reveal some very unflattering details of the Biden family dynamic. When you look at the filings from the government about text messages that they would like to admit in this trial beginning on Monday, one of them has Hunter's ex-wife texting him:

"I also found a few crack pipes. I took them out because our daughter was driving the car." There's another text from Hunter to Beau's widow, then his girlfriend, Hallie. It says, "I'm a liar and a thief and a blamer, and a user, and I'm delusional, and an addict unlike anything beyond and above all other addicts that you know. And I've ruined every relationship I've ever cherished." Hallie, who was on the receiving end of that text, is expected to take the stand on behalf of the government's case.

(BEGIN VIDEO CLIP)

DOOCY: Hallie Biden is a key government witness who allegedly disposed of a gun that Hunter is accused of buying illegally. President Biden was at her house this week.

KARINE JEAN-PIERRE, WHITE HOUSE PRESS SECRETARY: I think the American people should also be told the full breadth of this. He visited her days before the anniversary of the passing of his son.

DOOCY: So, they did not talk about her testimony.

PIERRE: This was not about that.

(END VIDEO CLIP)

DOOCY: Republican critics, though, are not satisfied with that answer.

(BEGIN VIDEO CLIP)

SEN. TED CRUZ (R-TX): We're going to talk about the rather astonishing fact that right before the Hunter Biden trial, Joe Biden decided a little witness tampering is a good way to start that trial.

(END VIDEO CLIP)

DOOCY: President Biden is in Delaware right now. There is no distance between him and his son, the defendant, on Monday. They were together on Marine One today. Shannon.

BREAM: All right, Peter Doocy at the White House. Peter, thank you very much. OK, Andy McCarthy joins us, former Assistant U.S. Attorney General. U.S. Attorney, not Attorney General, although we could promote him, who knows? Fox News Contributor -- with this comment now in a new National Review article.

Here is what he has to say. "From start to finish, the judge, Merchan, has put his thumb on the scales in the former president's Manhattan criminal trial. So, yes, Andy McCarthy joins me now, not yet promoted to A.G. We'll see along with his "SUNDAY NIGHT IN AMERICA" Host, Trey Gowdy, former State and Federal Prosecutors both, and also Mr. Gowdy was House Oversight Committee Chairman. Great to have you both with us.

TREY GOWDY, FOX NEWS CHANNEL HOST: Thank you.

BREAM: OK, let me get to this Hunter case real quick before we get back to what we're waiting on here, which is this verdict. Trey, you had some points this morning about this. A prosecutor has handled these kind of cases, because there was a plea deal of some kind. There were conversations that the Hunter team wants to argue are still in place, but he's going to trial two different federal trials, this first one next week on guns.

GOWDY: I mean, I think it is entirely legitimate to go forward on any allegations of tax violations. If you have allegations of corruption, go forward on it. I don't know about Andy, I never prosecuted someone for trying to buy a gun or possessing a gun who was a drug addict. And I'd be curious how many cases DOJ made.

So, point number one, I don't think Donald Trump ought to be the victim of a novel, rogue prosecution, and I don't think Hunter Biden ought to be one either. Go after him for all the other stuff, but addicts being prosecuted for possession of a firearm, I'd be curious how many other people suffered that.

The other point that is worth making, 50 intelligence experts said his laptop was Russian disinformation in the throes of the campaign -- 50 of them. John Ratcliffe said, no, it's not. Chris Wray said, no, it's not. Guess what Exhibit A in Hunter Biden's criminal trial is, that laptop, that was allegedly Russian disinformation. 50 people owe the American people an apology.

BREAM: OK. So, let's get to this case here. Would you also think, you've got serious problems. Most of you have problems with this. And, Andy, you're writing about this today? What's your latest take as we now wait on the jury, will we get another note? Will we get a decision?

ANDY MCCARTHY, FOX NEWS CHANNEL CONTRIBUTOR: Trey and I were talking about this a few minutes ago. I think, we've said again and again, that it's 34 counts. And I think that puts the idea in people's mind that there is an awful lot to work through.

I mean, any of us have had cases with the lengthy indictments, it's not surprising that a jury takes a long time. But this really isn't 34 count, Shannon. It's one count 34 times. It's really -- every single count is the same count, to the point where logically you would think, if they could work their way through one, they should be able to get the other ones really quickly.

So, my tendency would be to think the longer that it goes on, the better it is for the defense, because we shouldn't delude ourselves into thinking they're having a hard time working for 34 counts.

They really only have to answer one.

BREAM: Yes.

MCCARTHY: And if that, that really shouldn't be the answer.

BREAM: They've got some factual differences in dates and times, and those kinds of things. But the underlying essence of what they are is yes, essentially saying.

Let's play this now from James Comey, because he's got a feeling about how this trial is going to go.

UNIDENTIFIED MALE: You fucking suck, Trey Gowdy. You --

(BEGIN VIDEO CLIP)

JAMES COMEY, FORMER DIRECTOR, FEDERAL BUREAU OF INVESTIGATION: I've tried a lot of jury cases. And I know you can't fully tell, even if you've been in the courtroom the whole time, but it seems to me a very strong case. I think a high likelihood of conviction, some likelihood of a hung jury, almost zero of an acquittal.

(END VIDEO CLIP)

BREAM: OK. Is that kind of where you guys are at here to? Do you think, you know, good chance of hung jury, no chance of acquittal, chance of conviction?

GOWDY: I think an acquittal would be tough. That's my judgement. And that's not a comment on the facts. So much as it is where we are in terms of the jury instructions and the -- and the rulings that took place pretrial, and during the trial, I just think it's headed that way.

I've always thought it would be a hung jury. I think, Andy and Professor Turley and I we're debating whether it will be 10-2, 11-1, 9-3, but I don't see an acquittal. But that's not a common all the facts. That is more common all the way Judge Merchan ran the court.

BREAM: The process. OK.

MCCARTHY: So, I think, a conviction is much more likely for that reason, but I think Jim Comey is wrong about the corroboration.

BREAM: All right. Gentlemen, thank you very much. Don't go far. We need you.

MCCARTHY: OK.

BREAM: All right. The coverage of New York v. Trump continues.

Coming up, we also got former deputy assistant attorney general, John Yoo, Marc Thiessen and Kellyanne Conway on why she believes a non-conviction for former President Trump would make him, she says, unstoppable in November.

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: Donald Trump had a slight lead before the trial began. Now, he continues to have a slightly -- look, it's still very much a winnable race for Joe Biden. But at this particular point, that Trump train that's been moving faster than it's ever moved before in a general election doesn't show any signs of slowing down, despite the criminal indictments against him.

(COMMERCIAL BREAK)

BREAM: As we wait for verdict here at the Trump trial, a new poll shows it may not have much impact on how Americans actually vote come this fall. Two-thirds of registered voters say it makes no difference if the presumptive GOP nominee is found guilty in this case, as President Biden's former press secretary Jen Psaki sounds the alarm over the state of his campaign.

(BEGIN VIDEO CLIP)

JEN PSAKI, MSNBC HOST: They know they need to make up ground here. All is not lost. It might be OK. We have some time to go here.

Everything they are doing out there right now is about gearing up for the debate. It's in the less about the trial that we're all watching.

JOE SCARBOROUGH, CO-HOST, MORNING JOE, MSNBC: OK. So, calm for now, right? Just --

PSAKI: I mean, don't be too calm.

(END VIDEO CLIP)

BREAM: OK. Let's bring in, Kellyanne Conway, former senior counsellor to President Trump. Now, she is president of KAC Consulting and a Fox News contributor.

Marc Thiessen, former chief speechwriter for President George W. Bush. Now, an American Enterprise Institute senior fellow, Washington Post columnist and a Fox News contributor. And Kevin Walling, former Biden 2020 campaign surrogate, now, partner and HGCreative.

OK. We have fancy titles for you, because you bring a wealth of knowledge all of you to this conversation.

So, let's start with this interesting new polling we have here. This is from NPR/PBS/NewsHour/Marist, a poll that says President Trump hold the big league with -- the big lead with independent, test him at 54 percent; President Biden at 42 percent.

Kellyanne, is it really going to come down to these independents? Because it seems like the really hardcore bass on either side, they are locked in with where they are going.

KELLYANNE CONWAY, FOX NEWS CHANNEL CONTRIBUTOR: For me, yes, that's the highest lead that Donald Trump has had among independents --

(CROSSTALK)

BREAM: Kellyanne.

CONWAY: -- since Marist has been asking the question about these two.

And I think it's significant, Shannon, because why does someone call himself or herself an independent? They are not moderates. Independents are naturally suspicious of government and of our institutions for better or for worse.

They don't like the two parties. They don't like those who have been in Washington for over 50 years like Joe Biden. And I think Donald Trump is presenting himself as a quasi-incumbent, and mostly insurgents. Still an outsider to the system like the rest of us.

The other thing that struck me in the Marist poll is that Trump is only behind by 11 points among non-white voters. That would suggest that even this 11th hour push of Joe Biden to reclaim, "black voters" in Philadelphia yesterday isn't working.

You've got Joe Biden. He served as vice president to the first black president. He has a black woman as his vice president, and yet, he feels he has to go to Philadelphia and announce a, "black voter initiative".

Whatever happens in this case, because we released a poll today too, showing in Michigan, Pennsylvania, Wisconsin, similar results to Marist, about two-thirds are dug-in won't affect their vote either way if he's not guilty, or if he is acquitted.

But about seven -- 22 percent in those states, particularly young men, people of color and urban voters, say they would be more likely to vote for Donald Trump, about 20 percent. Doesn't seem high, but it's huge in contests that are -- that are -- that are won or lost by just a handful thousands of votes across a few swing states.

So, Biden's got some work to do, I think, among these core constituencies. Last point, the one thing that won't change regardless of the verdict in New York is Biden's strategy. And that's really the problem here.

It's all Trump, Trump, Trump, Trump, Trump. Biden's not out there touting his agenda, his accomplishments. It's all Trump all the time.

BREAM: Well, and Marc, to that point, we have people close to the Biden campaign, who say they're frustrated, because they feel like the White House is not taking their advice. And they do think it's time for the campaign to have a pivot. But with all of that in mind, the chief political analyst over the New York Times says this is very much still a campaign that President Biden can win, saying this: "Biden's two-point deficit in the key states makes this election closer than those heading into Election Day in 2020, 2016, 2012, and 2008. If the election were held tomorrow, it wouldn't be especially surprising if Mr. Biden won by narrowly sweeping Pennsylvania, Michigan, and Wisconsin.

So, we know polls are going to tighten, Marc. How should we temper and digest all of these numbers?

MARC THIESSEN, FOX NEWS CONTRIBUTOR: Also, first of all, that Donald Trump is leading in all of the swing states, so, you have to take into account. I mean, he never had that kind of a lead before in previous -- in previous polling, so that's significant. He is favored to win.

But he is only outside the margin of error in three of the swing states, and that doesn't get -- that gets him to 268, not 270. So, it will be fought out in the other three swings -- the three swing states. And those are all basically statistically tied, and it's going to get tighter as the election comes.

So, you know, I don't think this case is going to have much of an impact on him. Because, look, first of all, Trump is not a new challenger that the Democrats can define for the American people. That he is pretty well already defined himself. People either love him or they hate him, they have strong opinions about him. And this conviction or acquittal is not going to make much of a difference in that.

But the reasons they -- and they dislike both Joe Biden and Donald Trump, but the reasons they dislike Joe Biden are much -- have much more of an impact on their daily lives.

They -- if -- maybe if the world was at peace, inflation was low, crime was low, the border was under control, they would have the luxury of voting on this -- on this court case.

But inflation is out of control, they -- with, you know, they are paying $125 for $100 basket of groceries. We just had credit card debt, reach over a trillion dollars for the first time in history, because people are racking up their credit card debt in order to get to keep up with Biden's inflation. So, they don't have the luxury of voting on this court case of on what happened a decade ago with a -- with a hush money payment.

They are voting about what's happening to their pocketbooks right now. They are voting about their credit card debt. And all those issues tend to favor Donald Trump, which is why he is leaving narrowly.

BREAM: Yes. Yes, and Kevin, you and I have talked about these issues. We know that people have that daily reality check for themselves on how they are doing with paying all of those bills and filling up a car and paying rent and all of those things. So, a lot of uphill climbing for the White House to do and overcoming some of those perceptions, and the polling that consistently says -- even though the White House says, we don't feel like we're getting credit for some green shoots in the economy and things they say are happening.

Listen, voters at home are not getting it. They are not feeling it. And now, we have the president now walking into this first federal trial for Hunter Biden. That certainly is going to be in the headlines and is going to be impacting potentially conversations he has to have.

Wall Street Journal editorial board says, "Mr. Biden is better advised to say nothing," about this trial -- what happens here with President Trump. Because, "Mr. Biden's son Hunter is slated to go on trial on felony charges in early June. Will he comment on that proceeding, too? The issue here is presidential decorum and political judgement."

Kevin, you know, you've seen these columns, that they're having conversations about how President Biden would language message this, if President Trump is convicted. But knowing if he is going around calling people convicted felons, I mean, Hunter could soon face that same fate possibly do.

KEVIN WALLING, DEMOCRATIC STRATEGIST: Well, it's certainly, Shannon, interesting dichotomy with those two cases playing out.

I'll note in that Marist poll that we just talked about at the outset, President Biden is actually leading the former president by two points in that poll.

I agree with Marc and Kellyanne that this trial really isn't going to make a difference we see in the polling throughout. It may make a difference, though, with independent voters. We saw in a poll last week from Quinnipiac that 23 percent of independent voters would be less likely to support the former president if he is convicted, compared to 11 percent that might support him -- that are more likely to support him if he is convicted. Those will make the difference in the margins.

The other thing that will make the difference in the margins, Shannon -- and you're right, folks are already locked in with their perceptions of President Biden and former President Trump. That's why the ground game is so important.

That's why you see that the campaign touting 500 district offices in all the battleground states. Thousands of field staff on the ground. I don't know if you have any field offices, yet, opened by the RNC and the Trump campaign. That's going to make a difference five months out. It's going to be getting those folks to the polls.

They have already made up their minds years ago about these two guys, but making sure we have that turnout operation, and that's what the Biden campaign is bill.

BREAM: Yes. These two parties have got to be serious about that turnout, day and night, 24 hours, seven days a week, 365 days a year going into the fall.

Kevin, Kellyanne, Marc, thank you all very much. Good to see you, guys.

THIESSEN: Thank you.

WALLING: Thanks, Shannon.

BREAM: So, North Dakota Governor Doug Burgum and the very first reaction from former President Trump, since jury deliberations restarted in his New York trial, next.

(COMMERCIAL BREAK)

DONALD TRUMP (R), FORMER US PRESIDENT: I haven't seen one legal scholar or expert in the law say that this case should have been filed. It should not have been filed or at a minimum, they should have it filed seven years ago.

BREAM: As deliberations continue, former President Trump active on Truth Social today, as he often is, railing against this trial with a number of posts. They include this one, "Can anybody believe that our government would be spending tens of millions of taxpayer dollars on prosecuting this ridiculous case? I did nothing wrong. In fact, I did everything right. The testimony in court was amazing for the defense."

So let's bring in North Dakota governor and former Republican presidential candidate himself Doug Burgum. He's been coming here to the courthouse, in New York, to support the former president and as we wait for that jury verdict. Here you are. Welcome, governor.

GOV. DOUG BURGUM (R-ND): Yes. Shannon, great to be here. Good to be with you.

BREAM: OK. So clearly, the president has felt from the beginning, this is completely unjust. You hear legal scholars across the spectrum who, even once ago, were saying this was the weakest of the cases to come after him. What do you make now that we've wrapped up? Do you have faith in a New York jury to come to what you will believe is a fair decision?

BURGUM: Well, Shana, first of all, I'm not a lawyer but I see you --

BREAM: You can play one on TV.

BURGUM: -- this is what I am my whole life. And I have to tell you, from anybody, you know, the average working American has already acquitted Donald Trump. They've already decided. So the jury can keep deliberating but they've already decided. And I think it's so political and there's simple questions, common sense, you'd ask yourself, OK, if this is a business records filing case, that's what this -- the core of this case is that. And then, how many millions, and 10s of millions of business filing happened in Manhattan. And has there ever been a CEO of any company in New York who's had an alleged filing error that's been dragged into court for six weeks. And, of course, the answer is no, that's never happened.

It's never happened because these are a two year statute of limitations, misdemeanor if there was actually something wrong. If you've done nothing wrong then, you know, how would that happen? So can President Trump get a fair trial? He hasn't gotten a fair trial because you have a judge who's tipped the playing field towards the prosecution every single day they've been in court.

BREAM: What do you make of this underlying decision that because as you said, these would be misdemeanors, the statute of limitations would have been run. They have to be connected to another crime, that that elevates them to the felony, that gets us to this trial that we're in here today. And we waited for weeks to find out what that underlying crime was.

And now, it seems the judge has given the jurors a selection of multiple options. And they don't have to be unanimous on that underlying issue. How concerned is that make you as we're now waiting to hear from the jury?

BURGUM: Well, every -- it makes me very concerned but every American should be scared and every business leader or CEO in America that's ever done business in New York should be terrified. Because what you're facing here is a situation where like, in the old Soviet Union there's that story, which is, you show me the personnel show you the crime. And we always knew that this judge was leaning in that direction, but with a 55 pages long of jury instructions, which basically said what you've just said.

Oh, it's a menu, pick what you want. I mean, they're not trying to decide guilt or incident. They're trying to figure out if there was actually a crime here. After five weeks of testimony, the jury has got to go figure out what crime it is. I mean, this has never happened before in a trial, and anybody from a business lens would just go, why would I -- why would I ever do business in New York? They're using the legal system to prosecute someone who not only helped rebuild the city, has probably paid more taxes in this community than anybody who's ever been in this courthouse. And they're attacking him.

I mean, the whole thing is absurd and that's why he's leading in the polls, and that's why you're going to see that he -- when he gets out of here and can get back on the trail, and talk about inflation, the border, stopping the wars overseas, that's what Americans care about.

BREAM: Well, and in the meantime, you and others are serving essentially as surrogates. And yes, this is in New York City. Sorry, folks. You're going to hear him as they're coming through here. This is live.

Listen, at one point, you guys were on the stage battling. You were going after the nomination. Now you are regularly on the shortlist for VP. What would a governor, and you don't have to say it's you, who knows? But what would a governor bring to the ticket that's different than say a senator or someone else?

BURGUM: Well, I think the good thing for President Trump is he is so strong across every demographic. It doesn't matter whether it's is with the black community with, you know, young people under the age of 30. Whether it's Hispanic Americans, I mean, you pick the group. He's leading by engaging in those groups that more than he ever has before. And of course, with independence, that poll that was out this morning. He's up in double digits. So he's so strong, it doesn't really matter who is vice president is. That's the amazing part.

But I think that what President Trump brings, what he brings us, he was successful in business, then he was successful as a president. This isn't theoretical. He was fantastic. You look at the results that he achieved. Americans get to choose on this most important question. Are you better off today than you were four years ago? And the answer for all Americans is no, I was better off four years ago.

Joe Biden can't run and hide from that. And that's why President Trump is going to win this election. He's going to win it by a landslide.

BREAM: Do you think your connection, his attraction to you as a person and potentially as a running mate is that connection you have as businessmen who have built things, who have forged through what America provides you a lot of opportunity?

BURGUM: Well, President Trump and I didn't know each other before we both got elected on the same night, on that same beautiful day back in November of '16 when he built Hillary Clinton. That was a fantastic evening. We were celebrating that night. And having served as a governor under President Trump and serve as a governor under President Biden, I can tell you it's night and day. So I've got so much respect for what he did as a president, how he respected the states, how we cut regulations, not just act as he cut regulation, and our economy was thriving and our nation was prosperous, and the world was safe. And under Joe Biden, his weakness is actually inviting wars.

And so, it doesn't really matter but I think having, you know, having someone that can help him govern is what -- is the best thing that he can do and he's got a lot of great people to choose from.

BREAM: Well, we'll see if it's you. Governor, always good to see you. Hope to see you again soon.

BURGUM: Great to see you, Shannon. Thank you.

BREAM: We are nearing 11 hours now during deliberations here in New York for Trump. We're going to look at what every passing minute means for the former president and his fate as he awaits with former Deputy Assistant Attorney General John Yoo and also this.

(COMMERCIAL BREAK)

BREAM: We are waiting for a verdict here at the Trump trial but a conviction may not be the end of the legal battle far from it because the former president can, of course, immediately appeal. He's got some avenues. Former Deputy Assistant Attorney General John Yoo is standing by for us to talk about that, but first to CB Cotton reporting live from New York. Hey, CB.

CB COTTON, FOX NEWS CORRESPONDENT: Hi, Shannon, so great to see you. Yes.

Former President Donald Trump would have 30 days to file a notice of appeal to New York's Appellate Division and their Trump's legal team but likely requests for any sentencing penalties to remain on hold as the appeals process plays out. As for the grounds that Trump's team may appeal to have the conviction overturned, one of the theories, which has been discussed by Fox legal experts is for Trump's lawyers to argue that testimony from adult film star stormy Daniels was prejudicial.

During Daniel's testimony, Trump's lawyers called twice for a mistrial but were denied by Judge Juan Merchan. Legal experts say Trump's lawyers may also try to seek an appeal on what's being considered a novel legal theory in this case. Trump again is charged with 34 counts of falsifying business records. This charge is typically a misdemeanor under New York State law, but the DA charged these counts as felonies, alleging that those records covered up a second crime, a violation of a New York State election law, which makes it a crime to promote a candidate selection through "unlawful means." Those unlawful means were not clearly specified until this week.

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JEANINE PIRRO, "THE FIVE" CO-HOST: In terms of those underlying crimes, for which we they don't have to be unanimous. One has to do with the Federal Election Campaign violation. The other has to do with the federal tax crime, over which no state court or judge, or prosecutor has jurisdiction. And so, not seeing the, you know, the verdict sheet, and not requiring a unanimous verdict on whether it's A, B or C is even more egregious in terms of if there is a conviction.

(END VIDEO CLIP)

COTTON: And, Shannon, as you know, if there is a conviction and an appeals process follows, it could take months or even longer, likely wouldn't be completed before the November election but you never know. Back to you.

BREAM: All right. CB, thank you so much. Let's bring in John Yoo, former Deputy Assistant Attorney General. He is now a UC Berkeley Law Professor. John, always good to see you.

As we sit here and we wait, we don't have any new notes from the jury. We're standing by who knows what we're going to get. What's your assessment of where we are at about 11 hours into deliberations?

JOHN YOO, FORMER ASSISTANT ATTORNEY GENERAL: The longer this goes on, the better it is for President Trump because it reflects the lack of unanimity in the jury. And it seems to me that all you need is one or two jurors to disagree with any kind of move for conviction, you get a hung jury. It's a mistrial. The DA has to start all over again. That's great news for President Trump, one, because he doesn't have to go to jail, he's not been convicted. But, two, likely pushes this whole thing past the election.

I think the other thing is, if you look at what's been asked for by the jury. They've asked for the facts having to do with the beginning of what was the alleged conspiracy. They've asked for the jury instructions. It seems to me to suggest that there are people on the jury for not taking the prosecution's word for things. They want to see the evidence for themselves. They want to go over again. It seems to me the judge's instructions that you can't rely solely on Michael Cohen's testimony to convict the former president, that reflects again, lack of unanimity, which may suggest you're headed towards a mistrial.

BREAM: So, John, you have a piece out today that you say this trial has already affected essentially the office of the presidency. And you suggest that there may need to be some pushing back you say from the other side of the aisle. But do you worry now that we've kind of crossed a line at which that ***politics*** has always been difficult, but much more of a blood sport? And do you worry that our legal process is being pulled into that and, you know, the idea that both sides should consider using that as a weapon?

YOO: Yes, Shannon. I think for all of us, all of us, Americans, it's not as important what happens to President Trump as a person, what's important is what happens to the presidency in our constitutional system. What does this mean for future presidents? And the weaker that these cases are, the weaker that Bragg's cases, the weaker that Merchan allows a case like this to go forward and get to the jury, the bigger the door is open for any DA in the future to bring charges against the president from the opposite party that they don't like.

That kind of harassment of presidents is going to cause them to worry about their legal liability when what they should be doing is focusing on making the toughest decisions on behalf of the American people, on behalf of protecting the country. And so yes, I really do worry.

And I think that the only way to put a stop to this, sadly, is for some Republican bas to prosecute Democratic office holders, Democratic executive branch officials, Hunter Biden, maybe even Joe Biden. That's the only way, I think, to put a stop to this. Otherwise what we've seen is a crossing of a constitutional Rubicon where suing presidential predecessors is going to just be the norm.

BREAM: Well, and so much of what you had to say in that answer, John, touches on those immunity arguments we had at the Supreme Court about, you know, the possibility that incumbents, who was running again or loses, and worries about what is going to come from his predecessor. We'll have to see because we wait on the Supreme Court for that decision. We'll get opinions again next Thursday, could be that soon. John, thank you very much.

YOO: Great to see you, Shannon.

BREAM: You too, all right. Fox legal editor Kerri Urbahn has made her way out of the courthouse. She's been in there as the deliberations continue. She joins us here live next. Jurors now into 11 hours in their final hours today of deliberations here in Lower Manhattan.

(COMMERCIAL BREAK)

BREAM: Delibe

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BREAM: Well, deliberation is heading into hour 11. The judge, giving the jury the option of going until 6:00PM Eastern if needed. Now, moments ago former President Trump posting on Truth Social, "the jury instructions given by highly conflicted Judge Juan Merchan were unfair, misleading, inaccurate and unconstitutional. They were also very confusing, just what the judge wanted, because there was no crime."

Let's bring in Kerri Urbahn, Fox News legal editor and former counselor to Attorney General Bill Barr. She has been in the courtroom for a lot of this and been in the courthouse today as we now sit and wait. And listen, what the former president is saying about these jury instructions is what a lot of us have been saying, and people all across the legal and political spectrum. And wherever you're coming from, we're all having a little bit of a rough time figuring these all out. So I can't imagine for jurors, some legal experience others without this is a lot to wade through. They've had a lot of questions.

KERRI URBAHN, FOX NEWS LEGAL EDITOR: It's so confusing. We've said this, as you know, you just said we've been talking about this for weeks, and I'm sitting there in the overflow room staring out the walls, it's very quiet, thinking, are we ending at 4:30, are we ending at 6:00 today? But I keep thinking about those jurors and thinking how in the world they listen to all of those jury instructions that Judge Merchan read yesterday and then reread some this morning.

How can they possibly retain all of that and as they make this incredibly consequential decision that could be life altering for the former president and possible future president. I just don't know how any human being could retain all that information, go inside the room make the decision, which is why I think that the New York State legislature should consider perhaps changing some of the criminal procedure rules here in New York, Because I just think it makes it difficult for a jury to wade through all of this and make these yet and make --

BREAM: Yes. Because as we understand those rules, neither one of us practice here but we're learning a lot in covering this case --

URBANH: Yes.

BREAM: -- is that those jury instructions don't go to them. So it's 55 pages. They had questions today and some 29, 30 pages were reread to them today. And you're right, we see them taking notes and that kind of thing to take back into the room. But when there's such technical legal language and instruction, are you surprised we haven't had another question from them yet, because we knew sort of get 2:15 sort of that lunch break for everybody was formally closed, and they could come back with more notes. We're almost at 4:00 and no notes yet.

URBANH: Yes. I am surprised by that. I'm wondering what they're thinking through. And, of course, the former president is cooped up in that building behind us as well. I read reporting that he managed to get a TV, so he's watching something they -- "The Source," I wouldn't say what he's watching. And I think that his son was putting a video of him up on TikTok.

But, you know, he has to keep himself occupied. But, you know, we're seeing his post but I'm sure it must be very frustrating to him when he wants to go out and campaign, and do all these kinds of things. And yet here we are still trying to understand what this case is even about. I thought that smorgasbord option that was given the instructions, I was just flabbergasted, to be honest with you. I don't -- I've never heard of such a thing, you know, pick the crime at the very end that you think fits his behavior. That's just seemed like such an undercutting of due process. But I guess we'll see how it turns out.

BREAM: Well, and the interesting thing is we had Kellyanne Conway on earlier. And she, of course, is always digging into the polling numbers and has new things out. But she thinks that if he's acquitted here, or there's a hung jury, if there's something short of a conviction, which he said is a non-conviction, she called him unstoppable. Like, you'll actually be able to take this as a badge of honor. I made it through and go forward.

Now, we know there's a small percentage of voters who tell us in the polling that if he's convicted, they will think twice about their vote. And in a something that's going to be as tight as this is, politically, how do you think that this place?

URBANH: You know, I've seen those polls about if he's convicted, people may change their minds. But when I --

BREAM: And it's a tiny number.

URBANH: Right. But anecdotally, when I speak to people about this, they are so incensed about what they're seeing here, which they see as a travesty of justice and miscarriage. That it's -- I think even making people change their minds who weren't necessarily Trump fans, or maybe they were then they weren't. And now they're saying, you know what, if this is how he's going to be treated, how could they treat me? I hope he wins.

I hope, you know, I hope that there is some justice and maybe in their minds justice is him prevailing at the polls in November. So I, you know, we've talked about this a lot. I do think it's had a backfiring effect, you know? If the Democrats were waging this lawfare campaign against him, it's backfired to somebody. And I think that it's actually causing within people this rising up, this stirring up. This is not just, this is not right, this is not how it's supposed to be in America. And you know what, even if I don't like this guy, now I want him to win.

BREAM: Can ask you too because you have been part of a messaging team with a very important agency at DOJ. How do you think the White House is trying to digest this engage what messaging they go out with based on what happens here, also knowing that the president's son is facing two federal criminal trials of his own.

URBAHN: Yes. They have a lot to deal with right now. One, Joe Biden has been experiencing very bad news cycles, which is why I think they sent Robert De Niro down here to, you know, dangle the shiny object that all the press would go you're running to --

BREAM: Maybe didn't work the way they hopes.

URBAHN: Didn't work the way they wanted to, although here we are still talking about it. And, you know, so I would say that I think Hunter Biden's trial next week could be an issue for them for sure. But, look, I think they're seeing that this is backfiring for them as well, so it's quite an interesting political situation all around us.

BREAM: And we continue to wait on that jury. Kerri, thank you very much for popping out with us. That's "The Story" of Thursday May 30, 2024. But as always, "The Story" goes on. We will see you back here tomorrow at 3:00. Your World starts right now.

**Load-Date:** May 30, 2024

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