

# [***Hearing Held in Trump Mar-a-Lago Documents Case; Final Arguments in Fani Willis Hearing***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BFS-WS11-F072-X2WV-00000-00&context=1516831)

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**Body**

ADAM ABBATE, FULTON COUNTY DISTRICT ATTORNEY'S OFFICE: And the credibility of those statements were provided by her father, Mr. Floyd, that he had only seen his daughter 13 times since all of these instances occurred.

The cyclical nature of the statements and the falsehoods that, for example, in these text messages that were purposefully leaked to the media as it relates to Ms. Willis' daughter, subjecting her position in school, that she flunked out of college, which isn't true, which, in fact, she has graduated from an HBCU.

But what's been leaked to the media is the fact that she flunked out of school and someone other than her father moved her, which, again, the validity of which was never shown.

And, all the while, Ms. Willis, facing these costs, has been able to continue to do the work unrelated to this case, which is shown in the fact that Atlanta's murder rate and violent crime rates have decreased while she has been in office.

What was shown through the testimony of all of the witnesses and through the evidence that Your Honor heard was that there wasn't an actual conflict, that the defense failed to provide any sort of actual conflict in relation to Ms. Wade's -- I guess, the relationship that transpired from the relationship between her and Mr. Wade, and that there was absolutely no evidence of a financial benefit that she gained as it relates to the prosecution of this case and the ultimate outcome of the case.

The corroboration of all of that is the things that Your Honor is very much aware that she could have, I guess, financially benefited from stretching out the case, for lack of better words, by the grand -- the special grand jury recommended that 39 individuals be indicted.

But through her sifting through the special grand jury's report and all of the evidence with the team that indicted the case, they only went with 19 of the defendants, which, had she gone to 30 -- had gone with all 39, there's -- based on the defense counsel's assertions, would have given her the opportunity to certainly find these financial gains that are claimed through the allegations of defense counsel.

More importantly, why would Ms. Willis repeatedly ask this court to set a trial date as soon as possible if her motive in prosecuting this case was to continue to financially gain, as alleged, from the prosecution of this case?

It doesn't line up. It doesn't make sense. And it doesn't make sense for a reason, because it doesn't exist. More importantly, this office has several multiple RICO and as well as large-scale cases like this one and much larger, and also there's a lot of high-profile prosecutions.

If Ms. wade's -- or -- excuse me -- Ms. Willis' ultimate goal by hiring Mr. Wade was for her financial benefit, then she would put Mr. Wade on every single one of those cases, so she could certainly revel in the riches and lavish lifestyle that has been referred to by defense counsel, which there's been absolutely no evidence of.

The evidence was she stayed at a DoubleTree in Napa, a DoubleTree. I don't know that to be a lavish hotel. Most people, when they go to Napa, if they want to lavishly experience Napa, stay at the Ritz-Carlton, the Four Seasons, things of that nature, not a DoubleTree.

So the allegations and assertions that Ms. Willis was living the lifestyle of the rich and the famous is a joke, an absolute joke.

As it relates to what you heard and the secondary issue is the forensic misconduct. And, for lack of better words, what has to be shown is that the statements that were made by here Ms. Willis were related to the prosecution of the case and ultimately the guilt or innocence of the defendants.

And we have none of those statements. There's been no evidence, nothing has provided to Your -- been provided to Your Honor as it relates to Ms. Willis' specific statements made about any of the defendants and in relation to the guilt or innocence of any of the defendants.

I forget which defense counsel referenced the fact that she said she had a 95 percent conviction rate. Well, what Ms. Willis' job is to instill confidence in the community as to how well she is doing as it relates to her constitutional duties.

And that was exactly what was done when she referenced that she had a 95 percent conviction rate in the previous year that she was serving as a district attorney. More importantly, it's been the allegations about race and religion being imputed in her speech, and that those comments were directed the defendants at this table.

And if you listen to the speech, those comments are directed at two elected or political officials. I believe it was Marjorie Taylor Greene and Ms. Bridget Thorne, who is a member of the Fulton County Board of Commissioners here. She specifically used their names.

I don't know that they -- my knowledge is, they're not supposed to be sitting at the table, and I haven't seen them in my work as it relates to this case, Your Honor.

So those allegations that Ms. Willis committed forensic misconduct are -- again, there's no validity to them. There's no evidence of them as it relates to any of those comments, which this is an issue that Judge McBurney has previously ruled on when these same allegations were alleged as it relates to extrajudicial statements made by Ms. Willis.

And it involved a statement that the words fake electors were said by Ms. Willis. And he found there was absolutely no conduct that was impermissible as it relates to forensic misconduct.

And I guess, to drive home the point, at no point in any of the statements that were made and that were -- that are alleged here as it relates to the speech that she made at the church, at no point did she mention the guilt or innocence of any of the defendants.

She, again, was merely responding to comments made by Marjorie Taylor Greene and Bridget Thorne, two other political officials, therefore making her comments not even close, in the realm of any sort of forensic misconduct.

What I find interesting is that defense counsel wants to make these allegations that Ms. Willis committed this forensic misconduct by the statements that she made in her defense as to unrelated, in this case, public officials, criticized the job that she was doing.

I find the hypocrisy interesting, in the sense that we have had video proffers released to the media by defense counsel, e-mails between counsel released to the media by defense counsel. Statements have been made by defense counsel in relation to this case.

We had the unredacted version of the cell phone records of Mr. Wade released to the media by defense counsel with his private and personal information, causing the threat of harm to both Ms. Willis and Mr. Wade to increase.

We -- the most recent instance was the text messages that Your Honor hadn't ruled on their admissibility prior to their release, and it was made clear during the hearings that the ability to get those, the full chain, was something that they were unable to do.

But they figured a way. And the minute they figured a way, they released it, the information, to the media simultaneously with turning it over to the state and the court.

For all the reasons obviously stated before Your Honor that this motion should be denied, because the legal requirements by -- that are required in order for the district attorney to be disqualified have not been satisfied. The defendants have failed to raise any issue legally or factually to satisfy the legal standard for disqualification.

They must show an actual conflict. They have been unable to show that the prosecution of this case was at all a result of political bias, which has been accused, or accusations have been made, as well as demonstrated that the prosecution of this case was motivated by any means or any way because of malicious prosecution.

And they haven't been able to prove that this case was one of selective prosecution for political benefit or gain, all allegations that have been made during the course of different hearings and the procedures as it relates to this case.

What I would leave the court with and how the state started the argument is that courts have been generally unreceptive, if not hostile, to attempts to disqualify prosecutors based on pervasive and institutional conflicts, which makes clear that the burden that the standard is very, very high that must be met in order for a district -- an elected district attorney to be disqualified.

And that burden, that standard has not been met. An actual conflict has not been shown. And, more importantly, or in conjunction with that, there's been absolutely no evidence that the district attorney has benefited financially at all, but benefited financially in conjunction with any outcome, whether it be now or ultimately, as it relates to the prosecution of this case.

And because of all those reasons, Your Honor, we respectfully request you deny defense counsel's motion to disqualify the elected district attorney, Ms. Fani Willis.

JUDGE SCOTT MCAFEE, SUPERIOR COURT OF FULTON COUNTY, GEORGIA: All right, thank you, Abbate.

UNIDENTIFIED MALE: Your Honor, I believe we have five minutes and 44 seconds.

MCAFEE: That's what it says.

Mr. Cromwell...

(CROSSTALK)

MCAFEE: I will use it. OK, handing it over. Understood.

Mr. Sadow, all yours.

STEVEN SADOW, ATTORNEY FOR DONALD TRUMP: I'm going to do rebuttal, specific rebuttal.

One, state somehow makes an argument that we should have asked Mr. Wade questions about his relationship and his communications with Mr. Bradley, when they objected over and over and over, and Wade's counsel objected over and over and over, claiming that everything that Bradley was told by Wade was attorney-client privilege.

Your Honor made determinations thereafter to Bradley. We didn't get the opportunity to call Mr. Wade back to the stand. So to claim that you can't impeach him because you didn't ask him, when they objected to us asking him, is a -- obviously is a false position to take, is disingenuous as it can be.

Now, if the court wants to open it up, we will be more than happy to call Mr. Wade back to the stand. But, as the record stands, there could be no confrontation of Mr. Wade, when both his counsel and the state are arguing that it shouldn't be done.

Second, let's use a little common sense here. Forensic misconduct received about two minutes' worth of discussion. The rest of it is all on conflict. Forensic misconduct dealing with the way the state wants you to act is, if you don't accuse someone or you don't say that someone's guilty...

MCAFEE: Yes, assuming you can impugn someone's character to the degree of the constitutes forensic misconduct, why is that the case here?

SADOW: I'm sorry. Say that...

MCAFEE: Assuming you can impugn someone's character to the degree that it constitutes forensic misconduct, I think that -- I guess the state's primary position was that they weren't talking about you at the church.

SADOW: Right.

And if you go listen to it and watch it, it starts off by saying, why does Commissioner Bridget Thorne and so many others, and then it refers to they attack him for being black, they attack him, not anyone else, just they attack the black man.

They're not talking about Ms. Thorne or Marjorie Taylor Greene. They're talking about us. And you know how everybody knows that? Because not a single story from the media reported anything other than Fani Willis accused the defense and defendants of being racist.

Now, here's the commonsense part of this. If you follow the state's position on forensic misconduct, Fani Willis could all day long talk about race. She could say the defendants, I'm not saying they're guilty or not guilty, but they're racist. They're racist. They're racist.

And according to the state's position on forensic misconduct, that wouldn't be a problem. Obviously, that makes no sense whatsoever. The issue here that we have dealt with on forensic misconduct is not simply the church speech. It's why she did it, how she did it, calculated, and all the other things that we talked about with the testimony of Wade and Willis in this case.

Let's go to the relationship issues and the cell phone briefly. No one knew that there was a relationship between Wade and Willis, according to Wade and Willis. Not a soul was ever told that they were dating or that there was an intimate relationship ever. They concealed it from all parties, from daddy.

Daddy didn't even know they had a relationship. To suggest that somehow, in the beginning of 2021, January, to whatever it was, into April, that they couldn't have met in Hapeville, they didn't meet anywhere that would allow the public to see them. That's the reason why they were meeting at Yeartie's, because no one else was ever there.

Remember the testimony? Who else was there besides Mr. Wade and Ms. Willis? Both of them agreed, no one. No one ever went there except them. They didn't go to where daddy was in Ms. Willis' house, because daddy was there, and daddy would know. No other prosecutors knew. No one knows, except who?

The one person that knew was Bradley and Yeartie. Yeartie was the best friend at that time with Ms. Willis, and Bradley was the partner of Wade. Now, the only way that Wade can walk away -- sorry -- the only way that Bradley can walk away from the -- I have very little time.

I will skip that. Let's go to something, motive. That's at issue. Whose motive in this case is the strongest? Fani Willis. Nathan Wade. Because if they -- if they testify truthfully on every point, what happens if the relationship started before November 1?

They get disqualified. Who has the best motive of anyone to lie? They do. Who has the most at stake to lie? They do. Who wants to stay on this case for whatever the financial reason may be? They do.

(CROSSTALK)

MCAFEE: Thank you, Mr. Sadow.

There it is. All right, thank you, everybody. I think it's been very much made clear by the argument and the -- made today is that there are several legal issues to sort through, several factual determinations that I have to make. And those are the ones I can make at this moment.

And so I will be taking the time to make sure that I give this case the full consideration it's due. I hope to have an answer for everyone within the next two weeks. Until that point, if there are any other issues that come up, counsel can reach out, and we will have an order posted on the docket.

Thank you all. We're off the record.

NEIL CAVUTO, FOX NEWS ANCHOR: All right, there you have it, Judge McAfee indicating that he's going to make a decision this over the next couple of weeks.

We just don't know what the decision can be. We know at least what the defense attorney arguing on behalf of former President Donald Trump are arguing, that this tests the credibility of Fani Willis and Nathan Wade. This was the outside attorney she had appointed back, I believe, in November of 2021 to lead this election interference investigation.

And then we got caught up in her affair and other details that came to light, some pleasant, some not so much. You might have noticed that every time the defense team or representative thereof had come up to state their case, Fani Willis would more often than not leave.

They're trying to pay attention to the fact that she had a pattern of lying and misstating the facts, going so far as to say, according to one of Donald Trump's lawyers, that prosecutors don't act like this. Lawyers don't act like this. These people need to go.

Steve Harrigan following it all in Atlanta right now and what the fallout is from this.

I guess, Steve, the judge is saying a couple of weeks, I will decide, maybe sooner, maybe not. But that's a long time to sort of be waiting on this. What do you think?

STEVE HARRIGAN, FOX NEWS CORRESPONDENT: That's right, Neil. The endgame isn't clear.

But it's clear that, for the past seven weeks, this has been the case, really a case within a case, where the prosecutors have been the ones on trial. Not a whole lot of talk about election interference, but a lot of focus on this case, focus on the DA, Fani Willis, and the man she hired, Nathan Wade, a case that mixes sex, money, ***politics*** and really some inflammatory statements from the podium as well.

It's not clear where it's going to go from here. The judge said he's going to take up to two weeks to think about it, but even then it could be in an appeal. And keep in mind, Fani Willis, who did appear today in a red dress in court and earlier made fiery statements from the witness box, she is up for reelection.

So this is a case that could be decided and then appealed. And what's the final effect on Fani Willis? Has her fiery presence in the witness box helped her possible reelection chances? Will this, in effect, even if she is removed, damage her political future? Not clear right now, Neil.

CAVUTO: So what they have to really decide, or the judge, more to the point, has to decide this, Judge McAfee, how far you can go, right, Steve?

Can he go so far as to say this whole case is blown up or more likely she goes or doesn't go?

HARRIGAN: He could pull her off, he could pull him off, he could pull both off, or he could pull neither off, and both sides are likely to appeal.

The defense witnesses really presented a pretty organized case today. They divided their territory and really attacked. They basically made the case that these two lied under oath, that the DA and the prosecutor both lied, that they used this case to profit, to make probably a million dollars and spend it on themselves and also to lie about when their relationship started.

That's the part they hammered home. If you looked at the state's presentation, it seemed to be halting, a lot of stammering, sometimes stumped by the judge's own questions. So if you based it on this performance alone today, the state really presenting a coherent case and the defense -- the state itself really back on their heels trying to recapitulate a lot of earlier testimony, not very impressive performance by the state.

You could see Fani Willis maybe was itching to take that microphone, but she did not do it today -- Neil.

CAVUTO: You know, Steve, your reporting has been top-notch from there, but you're also good at examining the local community and how things are going outside, where you are now.

How are Atlantans and others responding to this? Is it getting much traction, attention? Is there great pressure on the judge? What?

HARRIGAN: It's getting a lot of attention, and I think you could really see the emotions in the courtroom, especially the older white attorneys for the defense, really saying, these people don't belong here. These people made us a laughingstock. These people aren't attorneys, so really a sense of scorn for what they consider two liars, the DA and the prosecutor.

CAVUTO: Right.

HARRIGAN: On the other side, I think the defiance of Fani Willis: My daddy told me not to take money from a man. I rely on myself.

That sort of defiance, I think, is going to be supported by many who might vote for her, while others might be embarrassed by the performance so far, Neil.

CAVUTO: All right, Steve, thank you very much.

Steve Harrigan following all these developments.

Now the legal angle on all this and the possible repercussions of all of this.

For that, we're joined by Katie Cherkasky, the former federal prosecutor, constitutional law attorney. We have also got Andy McCarthy with us, the former assistant U.S. attorney, FOX News contributor, and last, but certainly not least, my friend Shannon Bream, the anchor of "FOX News Sunday" and our chief legal correspondent.

Shannon, I end it with you, if I could begin with you. Now, we already got a sense of where the defense is coming from here. We got a sense from the prosecutors that they were, that is, the defense, wasted its time in their argument, going so far to say that there's absolutely no evidence that the defendants in this case, their due process rights have been harmed in absolutely any way, even acknowledging this relationship in the first place that you had to drag out of them to get in the first place.

But what do you make of that, that this did not move the needle or affect the case that they're prosecuting?

SHANNON BREAM, HOST, "FOX NEWS SUNDAY": Well, this judge has really tough decisions to make on a number of fronts before he actually gets to his decision.

One of those is what he's going to apply here. Does he have to find an actual conflict, which would require more of that concrete discussion that you're talking about, those facts that the defense says they don't have? Or is it the appearance of a conflict?

And you heard that the attorneys who were arguing for some of the Trump co- defendants saying there's this 2005 case in Georgia from their Supreme Court that lets you look at the appearance of conflict. You don't have to actually have the conflict.

He's also got to make a decision about all those cell phone records that one of the co-defendants is trying to enter into evidence, all of the texts, the phone calls, the location, thousands of bits of information. Whether that gets in or not is also a big piece of this case. So the judge will have to get through a lot of factual and legal issues before he actually gets to making a decision about whether it means disqualification here.

CAVUTO: All right, is that it, though?

Katie, the one thing I was curious about, it's one thing to say, all right, Fani Willis, you have to go, and this is just deplorable behavior. It makes everyone look bad. Nathan Wade, you too. Or can he go even further than that? This case is exploding. We start from scratch. I mean, what are his sort of ground rules for himself?

KATIE CHERKASKY, FORMER FEDERAL PROSECUTOR: Well, the issue that he's deciding at this point is a motion to disqualify specifically. So it's not necessarily a motion to dismiss.

But the decision he makes could have collateral impacts on what happens moving ahead and whether this case can even move forward. One of the questions that the judge asked that I thought was very interesting was, if he is to find some sort of forensic misconduct, such as perjury or lack of candor to the court, would that then impact every other indictment that Fani Willis as the district attorney signed in the county?

And that is an astronomical thought to have in terms of what kind of damage control would be to be done. But, certainly, that would apply here, even if another DA's office were to pick this up. So the ethical mess is very complex. But for the purposes of what he's deciding in this motion and in the order, it will be a determination of whether they are disqualified from this proceeding in particular.

CAVUTO: So let's say you're part of Donald Trump's legal team here, Andy, and let's say she was dismissed. And bottom line, she's gone. Nathan Wade is gone. But the trial continues.

Do they still have grounds for appeal to say, look, this started out as a circus and we're not sure it's going to resume any less?

ANDY MCCARTHY, FOX NEWS CONTRIBUTOR: Well, a big question, Neil, would be, is it just Fani Willis and Nathan Wade who would be out of the case? Or is it the entire Fulton County district attorney's office?

It occurred to me watching this -- and, obviously this has been an issue throughout these proceedings. But there may have been a couple of different ways you could have handled this. The way the Fulton County DA's office decided to handle it was to jump in with both feet as the advocate for Fani Willis and Nathan Wade.

And it just seems to me that they have kind of attached themselves at the hip to their principals. And maybe that was the way that the boss wanted it. But it's hard for me to believe, at this point, the way this was all conducted, that you could potentially disqualify one or both of Wade and Willis and not also disqualify the office.

I think they either all have to go or -- I think the office will go if Willis has to be disqualified. The other thing I would just think about in the Trump camp, if I were in it, is the practical effect of this. You have -- March 25, we're going to have what looks like a four-to-six-week trial, as it's now being estimated, in New York in connection with the case, the Manhattan DA's case.

And in South Florida today, they're having argument over when they're going to schedule the Mar-a-Lago documents case, where they seem like they have a window because of the complications of the Washington case. You do get to a certain point where you say to yourself, when on earth is this case going to be tried?

There's no trial date here on the horizon and you're running out of days on the calendar, especially if you have Willis looking at a reelection campaign.

CAVUTO: You know, another thing that comes up, guys, is just the timeline on this relationship and more and all the other parties who might or might not have been aware of that, but now are.

And I don't know how that confuses things, but I did note, with the timeline that, oh, wow, this was a lot more involved than I thought. I went -- Shannon, if you could just respond to the series of timeline bites on who knew what and when. Take a look.

(BEGIN VIDEO CLIP)

MCAFEE: How does the timing of the relationship impact a financial interest?

JOHN MERCHANT, ATTORNEY FOR MIKE ROMAN: Because it's part of the scheme she created intentionally in order to give benefits to her boyfriend.

They know that, if Your Honor finds that that relationship started in 2019, that the appointment of Wade itself was improper. And if that was improper, then he had no business, as an average citizen, along with the fact that he didn't have approval from -- they didn't have approval from Fulton County to appoint him in the first place. That undermines the indictment.

It creates a structural impairment in the indictment, because he had no more business being in the grand jury room than I did. So that's what they're worried about. And the reason why it's important for the financial peace, Judge, is it's how the money ended up going back to her. She put her boyfriend in the spot, paid him, and then reaped the benefits.

(END VIDEO CLIP)

CAVUTO: All right, so it actually starts earlier than was assumed. And does that timeline actually sound worse for the prosecution than we earlier believed

What do you think, Shannon?

BREAM: Well, what Willis and Wade have said under oath on the stand is that, no, it did not start earlier and that it only happened after he had been assessed and hired for this particular job to do this specific work as a contractor.

But you have Robin Yeartie, the old friend of Fani Willis', and you also have Terrence Bradley, who used to be a law partner of Nathan Wade, both saying at one point that, yes, this started much earlier. Now, when Terrence Bradley was put onto the stand, he had had these texts back and forth with Ashleigh Merchant, who's one of the attorneys for the co- defendant.

She had said, did it start earlier? He said -- quote -- "Absolutely." He then went on to offer unsolicited details about when and where, the timeline of the relationship. But when he got on the stand this week, it was, I don't recall, I was just speculating, much less definitive information.

So this judge has got to make an assessment about the credibility of all the people he's heard from on that timeline and what he believes is actually factually truthful about it.

CAVUTO: You know, Katie Cherkasky, one of the things I get said from listening to the prosecution is that, yes, they had a relationship, yes, it might have gone on a little bit earlier than we might have acknowledged or thought -- they didn't go that far, by the way -- but what difference does it make?

That they're saying, we were prosecuting Donald J. Trump. That never got in the way. Their relationship never got in the way of that. Nothing in their presentations demurred from that. We were prosecuting Donald J. Trump. That never got in the way. Their relationship never got in the way of that. Nothing in their presentations demurred from that.

But I found it sort of to be a specious argument, but I'm no lawyer. What do you think of that?

CHERKASKY: Well, the issue with the relationship is not necessarily that there was some sort of relationship. The issue started arising when there was lies being told about when it began.

And I think the judge has very credible circumstantial evidence before him, based upon the testimony of both Yeartie and Bradley, who were both very close with these individuals at the time that the relationship was going on, that it began earlier.

And the point is, that was never disclosed. And, certainly, I think that, even if it had been disclosed, it probably would have presented a conflict of interest because of the financial gains that she stood to get from having her romantic partner in that role.

But, nevertheless, it's been exacerbated by the purported lies about the timing of it, which I do think the judge has seen established before him. The question is whether they can close the loop and determine that there's an actual conflict there. But that's only one ground upon which she could be disqualified.

There's other issues that the defense also raised that wouldn't even necessarily require that the judge affirmatively find that they perjured themselves and still find that they could be disqualified.

CAVUTO: So when I'm looking at who said what and when, I know that Donald Trump's lawyers are saying that they played -- these lawyers were playing the race card, essentially, that they were being attacked based on their race and that attorneys had argued that the speech that Fani Willis had given in an Atlanta church only furthered that.

And it potentially gotten the way of what was something that they were debating in that courthouse going after Donald Trump, that she played the race card and the God card at once. What did you make of that, Shannon?

BREAM: Well, they -- it's interesting, because it's extraneous, meaning it was a separate conversation that happened outside of these proceedings, that conversation, those statements she made in the church.

And one of the attorneys stood up and said, it wasn't just the race issue, but it was also that she talked about, God is on my side, or suggesting that there was a religious aspect to this too. And he said, those things are inflammatory, and that's not supposed to be the way that you talk about these cases when you're prosecuting them.

And remember, separately, she was disqualified from another branch of this case back in 2022 regarding the lieutenant governor when she'd been involved in some way or connected to a fund-raiser for his Democratic opponent. And what the judge said in that case is, we don't expect the DA has to be apolitical, but her prosecutions, her investigations cannot be.

So this outside conversation about how she was talking about this case in other places, meaning in that church service, that was brought up quite a bit by these attorneys today, numbers of them.

CAVUTO: So let's say, Andy, the prosecutor's office, the whole office, I think you had debated that they could all go or be dismissed in this case.

If they knew very early on, oh, yes, Willis and Wade are an item or whatever, and this proceeded, what is their culpability here?

MCCARTHY: Well, I think, Neil, the reason that they'd have to be out is simply because they have joined arm in arm with Willis and Wade in this cause.

I don't think there's a sensible way to disassociate them. So I can't see the office staying if Willis has to go. The thing that really piqued my interest, particularly when Shannon was running through the timeline, is, we have talked an awful lot about the conflict and the ethical basis for asserting that there is a conflict that would have them have to get out of the case.

I thought it was very interesting that the lawyer for Trump raised the possibility that Wade was illegally hired, that is, without the consent of Fulton County, which apparently is county law. They needed to approve his hiring as a special prosecutor.

That's the first strand I have heard that really could lead to something where you would have a possible argument that the case should be thrown out. It's one thing to talk about the ethical obligations of the lawyers. You just get rid of the lawyers, get new lawyers and the case goes on.

But the law, certainly, in federal law with respect to the grand jury, they're very persnickety about who's authorized to be in the grand jury. And that can go to whether the bringing of the case was legitimate or not. That's really the first strand I think I have heard that would give you at least something to argue from that the actual indictment should be dismissed.

CAVUTO: You know, it's kind of weird too, because I remember, when Fani Willis was on the stand, she was very indignant, not only of the accusations, but even in her tone and tenor about how anyone would dare question her ethics and morals. This is from Fani Willis a couple of weeks ago.

(BEGIN VIDEO CLIP)

FANI WILLIS (D), FULTON COUNTY, GEORGIA, DISTRICT ATTORNEY: You're confused. You think I'm on trial. These people are on trial for trying to steal an election in 2020. I'm not on trial, no matter how hard you try to put me on trial.

I don't need anything from a man. A man is not a plan. A man is a companion.

Let me tell you which one you lied in. Right here. I think you lied right here.

(CROSSTALK)

WILLIS: No, no, no, no. This is the truth, Judge. It is a lie.

(END VIDEO CLIP)

CAVUTO: That was surreal. And I'm beginning to think, all right, the case, whatever you're trying to make, has just been completely knocked off its tracks with those statements.

But what did you think, Katie?

CHERKASKY: I think it was a terrible defense strategy. She's not on trial, but she's certainly in a defensive position.

You heard the prosecutors today -- basically arguing reasonable doubt about why these timelines and these text messages don't tell us what they obviously tell us, which is that they were in a relationship. They were clearly communicating tens of thousands of times. There's no reasonable way to explain that away.

But, certainly, she has done herself no favors with how she's handled this. There's been no answers to the mail, as it were, on many of these very direct questions. And the judge does seem to have evidence of actual perjury in front of him. So in terms of her future here, she's obviously going down with the ship.

She's made that decision. She didn't see herself out of this earlier when this might not have blown up to such a level. But I do believe that this is going to be not only an issue for this case, but for her professionally and maybe even politically.

CAVUTO: Yes, I'm thinking about that too, Shannon.

You're in the prosecutor's office. You see some of the salacious comments that have come out and allegations, and you're probably wanting to -- Fani, you are killing us here. It's one thing if you have to go, but if we're all blacklisted by the same scarlet letter, sorry equating the two, we're all doomed. And you're embarrassing us to no end.

I'm just wondering then how that sinks in now to an entire office that could be sort of shunted aside. And then what?

BREAM: Yes, it's possible that they are.

There is a state agency in Georgia then that would decide whether or not this moves to a different DA within the state. And, listen, a different DA may handle this completely differently, not frame it as a RICO case, not have multiple, multiple co-defendants. I mean, somebody else could handle it completely differently.

I think it's important to note though, too, that you saw one of the attorneys today, John Merchant, I believe it was, who was talking about what happens even if Fani Willis stays on the case. They have got to consider that possibility as well. And he said, listen, if we can establish that she has developed a personal interest in this case, even if you don't disqualify her, we can move for a completely new trial.

So they're already thinking the steps ahead and maybe people within her prosecuting office are thinking steps ahead. If it goes the other way, you got to consider that you're no longer on this case. But those co-defendants have to think about what happens if she stays on the case because that's a very real possibility too.

CAVUTO: This was a state case, right, Andy? I mean, there was a move afoot early on that the Trump people wanted it to be a federal case. Maybe they had built into that the possibility he returns to the White House, it can just be dismissed or can go away.

What happens now? Let's say if they start from scratch, the RICO thing notwithstanding that Shannon touched on, the state case versus maybe making it a federal case. All that's up in the air as well, right?

MCCARTHY: Well, for the moment, they have lost on that one. They tried -- Mark Meadows, who is a co-defendant in the case, tried to get it moved into federal court. He lost at the district court level. He's now lost at the 11th Circuit.

So the question is whether they will try to appeal that to the Supreme Court. It's interesting because I think you could see that issue being intermingled with the fact that the Supreme Court has taken former President Trump's immunity claim.

And they're going to make a decision on that, because if they make the ruling in that case or reason in that case about what the ambit of federal immunity is, what's the outer perimeter of somebody's federal responsibilities, that could actually affect the arguments that Meadows was making to say that I was within the ambit of my federal responsibilities when I was doing the things I have been charged with.

So, they...

CAVUTO: All right. Well, Andy, I don't want to interrupt you, my friend, but I want to go.

Andrew Evans, Nathan Wade's attorney, is speaking outside the courthouse. Then I do want to go back to all of you. This is Nathan Wade's attorney.

ANDREW EVANS, ATTORNEY FOR NATHAN WADE: (INAUDIBLE)

QUESTION: And you're saying he was not in the area to see her?

EVANS: She wasn't (INAUDIBLE) There was roughly the same amount of cell phone calls from the three-month span being Fani lived in the area than there are in the six-month span after she lived there.

It shows that he was already going there for other reasons. Plus, there were plenty of times that she wasn't down there at all. So, the cell phone records don't prove anything.

QUESTION: What about the cell phone data showing that he was staying in that area overnight?

EVANS: All right. (INAUDIBLE) I don't know anything about that.

QUESTION: Do you think next steps would be to try to challenge this data?

EVANS: Yes, I mean, it's -- well, for all the reasons that were mentioned in the court about the foundational problems, about the lack of testimony supported (INAUDIBLE)

QUESTION: What do you think your next steps are in this case?

EVANS: He's going to have a ruling within the next couple of weeks, so (INAUDIBLE)

CAVUTO: All right. It's hard for me to hear. Maybe you heard better at home.

But I think what he was saying was, there's nothing to see here. We can move on, but, of course, Nathan Wade's attorney, Nathan Wade, of course, the romantic interest of Fani Willis here.

Andy, on that particular issue -- and I know I was going to the state versus the federal case -- does something like this give wider parameters to changing, not only the venue? It could be in another case, in another area of Atlanta or somewhere in Georgia, but changing what type of case it is, period?

MCCARTHY: Well, if they have to be booted, that is to say, if the whole office has to be booted, then it's going to be a new prosecutor from a different office with fresh eyes that will look at this.

And it seems to me that Fani Willis is the one who was invested in doing this case as a RICO. She was talking about doing it as a state RICO case for, I think, about a year before she even brought the indictment. A lot of us who've looked at this don't think that she has much of a conspiracy case.

Personally, I think this is not a RICO. I did a lot of RICOs in federal prosecution. I don't think this is an organization that in time and space is something that you would regard as something like a mafia family or the like.

I doubt that another prosecutor who wasn't, for some reason, invested in that theory looks at this case and says this is a RICO. What this case should have been was probably about five or six smaller cases. And that's being reflected, Neil, in the pleas that have been taken. Not a single one of the four people who pled guilty have pled guilty to RICO.

And they haven't even pled guilty to a serious offense. No one's going to do an hour in prison for what's been pled to so far.

CAVUTO: If you can all stay in place here, you're obviously referring to the Racketeer Influenced and Corrupt Organizations Act.

I believe Rudolph Giuliani, an attorney going after Wall Street titans, he had used that with great effect to get them behind bars. Sometimes, that was overruled and a lot of them were exonerated. But it goes back to that, where you can at least draw multiple acts of racketeering activity that would certainly raise eyebrows.

Having said that, though, I want to go to David Spunt on the other big court development today. And it was well south of this one in Florida. And it concerned former President Donald Trump and that court hearing regarding the documents case.

David, how did that go?

DAVID SPUNT, FOX NEWS CORRESPONDENT: Yes, Neil, it was a big deal today.

We know that Judge Aileen Cannon, who is the judge that's overseeing this documents case, is likely going to be moving this trial back from May 20. We don't know the exact date at this point, because both Jack Smith, the special counsel, and Donald Trump's attorneys have agreed that May 20 is probably not going to happen. They say it's unlikely.

Donald Trump was in court today. Jack Smith, the special counsel, said that the date that they would like would be July 8. Donald Trump's attorneys say they don't even want this to happen before the election. They say it's not fair, as you see Donald Trump leaving in his motorcade earlier today.

They would like it to be after the election. But they said they could settle on August 12, perhaps at the earliest to get everything together.

But, Neil, no major headlines as far as a ruling today from Judge Cannon. She simply just said that she would be willing to look at some dates and eventually get back to people in the coming days.

Now, I will say that Donald Trump's trial up in Washington, D.C., this is the trial for his attempt -- alleged attempts to overturn the election, that right now is totally on pause because the Supreme Court has agreed to hear this immunity issue, whether or not he can actually face charges or be prosecuted.

Here's what he said last night about the Supreme Court and immunity. Watch.

(BEGIN VIDEO CLIP)

DONALD TRUMP, FORMER PRESIDENT OF THE UNITED STATES (R) AND CURRENT U.S. PRESIDENTIAL CANDIDATE: If you don't have immunity for a president -- and I'm not talking about only me. If you don't have immunity for a president, you're going to -- you will not be able to function properly. You will not be able to do the right thing for the country.

(END VIDEO CLIP)

SPUNT: So, Neil, while we don't have an official order by Judge Cannon here, it appears that, yes, May 20 is not going to happen in Fort Pierce, for this case, but Jack Smith, the special counsel, says he's ready July 8.

Donald Trump's team begrudgingly said they could do August 12 if they have to, so it remains to be seen what Judge Cannon will do. She kind of just dismissed everybody today and said, thank you very much. I appreciate everybody coming, and it ended around 3:00 this afternoon. It didn't even go a full day, Neil.

CAVUTO: And Donald Trump was there himself, right?

SPUNT: Donald Trump was in the courtroom. Jack Smith was in the courtroom. Neither spoke. Jack Smith had people speaking for him. Donald Trump had speaking for him -- people speaking for him.

And something interesting is that in the Southern District of Florida, there are four different locations where this trial could be held. It's been in Fort Pierce because this is Judge Cannon's chambers. She lives and works near here. But it's possible she could move it to West Palm Beach. And I say possible because Donald Trump is commuting 70 miles from Palm Beach in a motorcade.

And if there's a trial that lasts 10 weeks, each side said it could take about five weeks apiece. That means he's going to be motorcading theoretically every single day.

CAVUTO: But if it's an August time, if they get a timeline for the Trump team wishes of August, that still means a case before the election and a case that could be adjudicated and done before the election, right?

SPUNT: Yes, before the election. But if you add on the 10 weeks in the middle of August, and this is another important point, you have middle August, so mid-September, mid-October, and then another two weeks, it could end with a verdict like end of October, early November, right near the actual election.

So we really just have to see what Judge Cannon says. But she didn't come out with a banner date today or any major news to say, OK, we're going to do this on this date or we're not going to do this. It just right now is all up in the air. But both sides seem to agree they could do a summer trial.

But the Trump team wants really this to be after the election. August 12 is the earliest they say they could be available.

CAVUTO: Got it. Thank you for that, David Spunt.

Back to our great legal eagles.

Shannon Bream, if I can pick your fine brain on this, the Supreme Court is going to be taking up an oral arguments, I believe, around April 22, this whole immunity defense that Donald Trump has that stuff I do as president, I shouldn't be fingered for or punished when I step down.

And I'm wondering, in the case of this Florida case, the documents case, whether that could be among other factors that has the judge saying, all right, I'm going to wait to hear what the Supreme Court is going to say about this and push back even further. What do you think?

BREAM: Yes.

And there are multiple things the Supreme Court is handling this term that could impact multiple Trump cases. So we're still waiting on the Colorado ballot case. I mean, they're part of Super Tuesday. And we have talked about this week. We don't have a ruling yet on whether or not these state entities were allowed to kick him off the ballot.

We have also got a case that's going to be argued in April by a January 6 defendant, who says the Justice Department wrongfully charged them under this obstruction of an official proceeding and the justices are going to decide whether that was rightly done or not.

And, remember, that's part of Jack Smith's case here in D.C., that January 6 case against President Trump. So his lawyers have argued as well, listen, we got to wait to see what the Supreme Court's going to do on that. But the biggest question is going to be this question of immunity.

And the court has sort of more narrowed the question about what the two parties came to the court with and said the question. This is how they phrase it, whether and, if so, to what extent, does a former president enjoy presidential immunity from criminal prosecution for conduct alleged to involve official acts during his tenure in office?

So it's a long question, but the justices are going to tackle that, we're told the week of April 22. They will not make a quick decision that. So it's likely to be at the end of the term, which is the end of June, which pushes everything -- remember that Jack Smith trial was supposed to start Monday. It's not going to.

CAVUTO: That's right. I forgot about that.

The scary thing guys about having three brilliant lawyers with me, and I pretty much just read a prompter, but I have watched enough episodes of "Law & Order" to qualify as an expert here.

So, Katie, all kidding aside, I get a gut feeling, I could be wrong, that none of these cases emerge before the election. Now, obviously, the two civil cases and the hundreds of millions of dollars that Donald Trump has to raise to make good on them, as he appeals both of them, the case of E. Jean Carroll, of course, the finance case of the New York state attorney general.

But these cases, these criminal cases, you get the feeling that not a one will start before the election. What do you think?

CHERKASKY: I agree with that. I'm a criminal defense attorney. I think we have to remember these are criminal cases. There is a huge deference to a defendant's ability to prepare for trial.

A defendant can do many things to get delays. It's not just gaming or strategy. It is seriously for preparation purposes and they do have significant constitutional rights that are at stake here. And if a judge is reversed for denying them the rights or violating those rights, that is a significant hit on the case altogether.

So, obviously, things have to be done meticulously. And I think that if he doesn't want these cases to go to trial before the election, they won't go. If that includes firing defense teams or just getting the judge to agree altogether, there's many ways to go about that, for sure.

CAVUTO: You know, there's another camp out there, I don't know how reliable it is, Andy, that says, all right, well, that's great that you're running for president, but we're not going to treat you any differently than someone who isn't so well-known or running for the highest office in the land. So we're not going to let that affect our whole strategy to speed these trials or to get them going sooner, rather than later.

What do you think of that, Andy?

MCCARTHY: I think that's been one of the most offensive things about the lawfare campaign, because there's not a single right in our federal system, certainly, but I think in the state systems as well, that has absolute priority over all other rights.

All -- no right lives in a vacuum. Everything competes with everything else. And the thought that the administration of justice, which actually is not a constitutional right of anyone, that that takes precedence over the public interest in not having criminal proceedings decide an election, which is actually an important constitutional proceeding, I find it baffling that these judges think that they can just cite administration of justice and all the concerns about the First Amendment and the elections go out the window.

I just think that's offensive.

CAVUTO: Hmm.

Very interesting, guys. I want to thank you very much. We are trying to get a gauge of not only the legal fallout from all of this, but the political fallout. As any of you know who have been following the polls and the election thus far, Donald Trump is running away with it. Come Super Tuesday, he could very -- be close to just locking down the Republican nomination.

Developments like this and people being reminded of these developments play a large role in all of that. We're going to explore that angle right after this.

(COMMERCIAL BREAK)

CAVUTO: All right, we have raised it with our fine lawyers, the possibility that Donald Trump might not see any of these criminal cases come to light before the presidential election.

It is distinctly possible, given the aggressive timeline and balancing out a guy running for president of the United States.

Bob Cusack joins us, The Hill editor in chief.

Bob, always good to see you.

That would be big advantage Donald Trump. And everything seems to be coming together, not these incredible payments and these civil suit issues that were raised, but, by any measure, he's dodging some other criminal bullets for the time being.

BOB CUSACK, EDITOR IN CHIEF, THE HILL: Yes, that's right, Neil.

I mean, things are going well. Certainly, the Supreme Court decision this week, which a lot of legal scholars did not expect the Supreme Court to take up the immunity case, that's potentially a huge win for Trump, because he could win the case, or at least it delays it past the election, and then potentially he wins.

And not every case here is federal, but, at the same time, he can have a lot of power. And, listen, if he's president, I don't think Jack Smith's going to be around for that much longer. Do you?

CAVUTO: Now, you have got Super Tuesday coming up. You have got better than, what, 800-plus delegates at stake. I mean, he could win a large chunk of them. He's well on his way to this nomination, unless Nikki Haley does something.

But, again, this idea that she can fall back on the possibility something explodes legally for him, he's got a little bit more time necessarily to raise money or more avenues to raise money to cover these penalties that he's facing that he's appealing in New York.

But outside of that, it's kind of all skies blue.

CUSACK: Absolutely, Neil.

And, listen, even if that occurs, I don't think Trump world, if there's a health issue, if there's a legal issue, I don't think they're going to accept Nikki Haley. So I don't think she's much of an insurance policy, because the convention's not going to accept her. I think they would look to whoever Trump picks as V.P. and we don't know when that's going to be coming.

So, listen, things are looking good for Trump and it could all be over next week.

CAVUTO: You know, I'm looking at all these legal cases he's dealing with, and then I -- maybe because I'm just the money nerd here at FOX, I think of all the money for those lawyers and a lot of lawyers all over the country.

And a lot of these campaign funds went to pay those legal bills, and a lot more probably will. There's nothing illegal about it. You can do that.

CUSACK: Yes.

CAVUTO: But he is going to be at a financial disadvantage with Joe Biden, who has about a $700 million cash fund going right now.

CUSACK: That's right. I mean, Biden really doesn't have a primary. The DNC has basically said there is no primary and they have kind of fixed it for the incumbent president, which is somewhat normal.

So Biden is able to raise money. And, listen, the president has been struggling. Immigration is a number one issue, according to most polls, and people don't think he's handling it very well. So -- but he's raising money. And that is an advantage for Biden.

CAVUTO: Got it.

Always Great talking to you, my friend, Bob Cusack, The Hill editor in chief.

CUSACK: Thanks, Neil.

CAVUTO: Well, if the markets were worried about any of this today, they had a funny way of showing it.

In case you want to know, we picked up in March where we kind of left off in February, continuing our winning ways. Now, on the week, the Dow was down a little bit, but, today, all the three averages were up, the Nasdaq, the S&P 500 hitting records.

A lot of that has to do with technology. A lot of that has to do with optimism that interest rates aren't going up any time soon, growing hope that they will go down maybe by late summer or early fall. No guarantee there, but that's a lot of the juice that's been getting the Wall Street buying, to say nothing of what's been happening with Nvidia and all these other high-tech names that are making money and have the revenues and the big profits to prove it.

That is very different and a big distinction from the Internet boom we saw in 1999 and suddenly imploded in 2000. A lot of the people I talked to on the Street say that is not going to happen this time. Now, they could be wrong, but that is, again, the propellant behind a lot of the activity today.

And that is something we will be exploring a lot more this weekend, beginning at 10:00 a.m. Eastern time on my weekend show, when we explore how the markets have resisted this, how Donald Trump has resisted constant legal attacks on him, to the point right now where he's running away with a Republican nomination and right now his lawyers are running away with court cases that could be delayed substantially. Advantage, Donald J. Trump.

Here now "The Five."

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