

# [***FBI Informant Accused of Lying About Hunter Biden and President Biden; Interview With Former Acting U.S. Attorney General Matthew Whitaker; Judge Orders Trump to Pay $364 Million in New York Civil Fraud Case***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BBT-6WF1-F072-X0M2-00000-00&context=1516831)

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**Body**

NEIL CAVUTO, FOX NEWS ANCHOR: It is a big number. It is a staggering number. In fact, it is a record number we have never seen, let alone a former president, but anyone in a real estate industry or any industry in New York fined this much, more than $364 million now facing Donald Trump in a civil case that was 92 pages' long and left a lot of questions as to whether it was a hit job.

That is the view from Trump's legal folks. We're going to start picking apart exactly what happened here.

Welcome, everybody. I'm Neil Cavuto. And this is "Your World." And what in the world made this number so big, so fast, so confusing, and so polarizing?

It is a sign of our times, and we keep seeing it again and again. But this case has brought up rare nerves and real anger.

Eric Shawn has the latest on what went down and what it means for the Trump business empire -- Eric.

ERIC SHAWN, FOX NEWS SENIOR CORRESPONDENT: Well, Neil, it is a stinging rebuke of former President Trump and that business empire, Judge Arthur Engoron imposing a nearly $364 million fine on the former president, his sons Donald Jr. and Eric.

That's just about $6 million shy of what the attorney general, Letitia James, wanted. The judge said that they engaged in a yearslong scheme to dupe banks and others with false financial statements.

The former president is now barred from doing business in New York state for three years. The Trump companies must be run under a monitor, and that means they would be removed or are to be removed from the control of the Trump family.

In his decision, Engoron wrote -- quote -- "Defendants submitted blatantly false financial data to the accountants, resulting in fraudulent financial statements. Defendants' fact and expert witnesses simply denied reality and failed to accept responsibility or to impose internal controls."

The judge ruled that Mr. Trump boasted as being worth billions and billions, but that was not based on fact. He said of the former president's brief testimony -- quote -- "Overall, Donald Trump rarely responded to the questions asked, and he frequently interjected longer relevant speeches on issues far beyond the scope of the trial. His refusal to answer the questions directly or in some cases at all severely compromised his credibility."

The former president, for example, boasted that Mar-a-Lago's worth a billion or a billion-and-a-half. But the judge said that would require it to be a private residence, which it is not, worth more than 400 percent more than any other residence in the country. And Mr. Trump claimed that his penthouse apartment, the three-story apartment at Trump Tower, you see there, was worth three times than it really is.

So, the judge socked Mr. Trump and his entities with nearly $350 million in fines, sons Donald Jr. and Eric just over $4 million each. Now, the former president has heatedly disputed this case, saying he relied on accountants and lawyers.

But the judge noted that they were relying on false and fraudulent financial information that they got from the Trump companies.

Trump's lawyer, Chris Kise, responding, saying -- quote -- "The court ignored the law, ignored the facts and simply signed off on the attorney general's unjustly political crusade against the front-running candidate for president of the United States."

We expect Mr. Trump to speak out about this in a few moments from now. It's not over, though, yet, Neil, the defense expected to appeal. That process could take quite some time, but quite a lengthy opinion from this judge who saw Mr. Trump personally testify, and he disputing what the president said -- Neil.

CAVUTO: Yes, no love lost there, my friend. Thank you very much, Eric Shawn.

By the way, we are hearing right now from Trump's legal team, including Alina Habba on TRUTH Social. This is a bit lengthy, so, if you will bear with me.

"This verdict is a manifest injustice, plain and simple. It's the culmination of a multiyear politically fueled witch-hunt that was designed to take down Donald Trump before Letitia James" -- by the way, she's the New York attorney general -- "who ever stepped foot into attorney general's office. Countless times and countless hours of testimony prove that there was no wrongdoing, no crime and no victim.

"Given the grave stakes, we trust that the appellate division will overturn this egregious verdict and end this relentless persecution against my clients. Let me make one thing perfectly clear. This is not just about Donald Trump. If this decision stands, it will serve as a signal to every single American that New York is no longer open for business."

Others in the Trump team have sort of echoed this sentiment that New York is very unfriendly to successful businesses and they will heed what happened to Donald Trump as a sign, there but by the grace of God go I, and I don't want anything to do with doing business in the Big Apple.

Now, that's just one group's personal view of this, but we have seen many lead New York as a result of high taxes and what they feel is sort of like a liberal agenda. You can play the ***politics*** back and forth on this until the cows come home, but, again, this is now part of this polarizing atmosphere that I want to go in legally first with John Yoo, the former deputy assistant attorney general, the U.C. Berkeley law professor, former Thomas law clerk, Tom Dupree also with us, former deputy assistant general, get his view of this.

Tom, end it with you, and the tone and tenor is such that the Trump legal team is saying this shall not stand, we're ready to appeal. Do they have a case?

TOM DUPREE, FORMER JUSTICE DEPARTMENT OFFICIAL: Yes, Neil, look, I mean, I think they're going to have reasonable arguments on appeal. I mean, this is obviously a stunning verdict. It is one that the appellate judges will give very close attention to.

I mean, it's a verdict that got national attention. The judge gave 92 pages of findings that the appellate judges will scrutinize very carefully. And so, look, the Trump team lost today. It's not a shock. We kind of knew this is where the judge was going. You will recall before the trial even began he already announced he had concluded that former President Trump committed fraud.

So today's decision wasn't a surprise. It's obviously a huge number. But, again, it's the first battle in what I suspect will be a long war as this case works its way up through the appellate courts in New York state.

CAVUTO: John, my first knee-jerk read when this case was first brought by Letitia James, the attorney general, was there a damaged party? Was there an aggrieved party? Was there a party that was screwed financially, let's say? No, no, and no.

Now, I understand that is not the litmus test. But if you're talking numbers like this, shouldn't it be the litmus test?

JOHN YOO, FORMER DEPUTY ASSISTANT ATTORNEY GENERAL: Neil, I think screwed financially should be part of every first-year law student's dictionary from now on, because this is what really happened here in this decision.

(LAUGHTER)

YOO: This is really interesting, as you put your thumb on it, is, one half of this case is, did Donald Trump intend to defraud and lie? And so the judge said that. He said that even before the trial started.

The second part of it, the hard part is the thing that you just mentioned. Who was harmed and how do you get a figure like $350 million dollars when nobody said they were harmed? That I think is a difficult question.

Now, the problem for President Trump is going to be this is because of the way New York state wrote the law. This is because of the way New York's higher courts have interpreted the law. They have already allowed these kinds of lawsuits before, where people didn't have to be harmed in order to show harm and damages.

The problem is, it was never a number this big. And so I think some of the comments you read there, Neil, are correct that -- and we discussed this on your show before -- that if you're going to start imposing hundreds of millions of dollars in penalties and fines on major businesses in New York City, other corporations, other businesspeople, other entrepreneurs and innovators are going to take note and they're going to see, gosh, what have I said or what have I ever exaggerated?

That means I could be put out of business for three years by the attorney general and by the courts of New York state?

CAVUTO: Guys, when I look at some of the particulars of this, what stands out is not across the board, but an ignorance about how businesses work and how one person or entity's valuation of a particular property is obviously at conflict with the one who wants to lowball that property value as much as possible and settle their differences and move on.

So when a Deutsche Bank or some of these other banks were involved in sort of chronicling what to them seem like high valuations, I did find it interesting that the valuation, not only of Donald Trump's Trump Tower penthouse, but even in the case of Mar-a-Lago with the billion-dollar valuation and how they'd exceeded the national norm, well, New York is a very expensive city.

It's way beyond the national norm. Mar-a-Lago, you could argue, with that kind of valuation, there are properties around there going for obscene amounts. It is what it is. It is one of the hottest real estate markets in the world. I only point that out to show, did they kind of reveal maybe their ignorance about business and evaluations and how real estate entities work?

In other words, for them to come up with an estimate on their valuations, someone else has to either concur or dispute and do their due diligence, as it appears that Deutsche Bank and some of these other entities, I believe Republic Bank, did, and settled on a middle ground and business went forward, no one lost money.

Tom, what do you think of that?

DUPREE: Well, Neil, I think that you would make a fine appellate lawyer, because I think that actually is maybe the most vulnerable aspect of this opinion, is that the Trump defense team can go to the Court of Appeals and say, look, this trial judge fundamentally misunderstood the nature of evaluation, that he thought valuations are very concise and that people who value property all will do so within a very, very narrow range, when, in fact, it can actually be different.

And you can have two professional evaluators look at the same property and come to widely different conclusions. And the fact that they put different numbers on the value of a particular property doesn't necessarily signal that there's a fraud going on. It could just be a difference in professional opinion.

And so I think that's going to be a big theme of the Trump team going forward in this case, as they try to get this verdict overruled. They're basically going to say that this judge didn't understand the nature of the valuation process. He wasn't familiar with how businesses operate, with how people value property. And for that reason, you just can't sustain this verdict.

CAVUTO: John, another thing, too, from Letitia James' office, it claimed that the banks would have charged Donald Trump interest rates several times higher than they ultimately did had a more accurate accounting of his wealth been provided and demanded that he pay the state back the difference.

And I'm thinking about myself in these kind of stories. When I applied for my first mortgage and follow-up mortgages, my wife and I could say all sorts of things about our financial position. But they're going to check it out. And they're going to check it out mercilessly.

So when I claimed that my bocce ball set was worth $10 million, which I didn't, they could say that, say, wait a minute, Cavuto. Sol, in other words, if Donald Trump were making egregious exaggerations, they'd catch that in a New York second. I know accountants at brokerage firms and big banks. They're the most ruthless people on the planet.

And I mean that in a good way, but they know how to check someone's B.S. And they checked it. They did business with him. They probably renegotiated some aspects of some of these deals and merrily went on, but they didn't lose anything on this result. And I know, as you both pointed out, that is a different matter when it comes to these types of issues, but on appeal, is it a credible matter?

What do you think, John?

YOO: Neil, you are far more scrupulous about your mortgage applications than I was, but luckily I paid mine off years ago, and I can't be...

(CROSSTALK)

CAVUTO: I was just shocked they said yes, John. I was shocked they said yes. That's it. That was a long time ago.

(LAUGHTER)

YOO: Let's not look at our credit card applications now. That would be truly dangerous.

CAVUTO: There we go.

YOO: So, look, this is -- I think you really -- I think you got a great point. It plays to and against Trump, because that's the basic question, is why should this trial judge or even the appeals courts substitute their judgment for what is financially reasonable or not, rather than these very sophisticated counterparties, like Deutsche Bank, like other investment banks?

They're not in it to lose money. They're dealing with billions of dollars in loans and assets. You think they will be very careful. In fact, you think they'd be more careful with that than they would be reviewing your mortgage application or my mortgage application.

But on the other hand, I think this hurts Trump in the sense when regular people hear about the amount of damages, they're going to be shocked. But when you explain it the way you just did, Neil, why can Donald Trump lie on his mortgage applications, essentially, and say that he has assets which are 400 percent or whatever more than their real value?

Why should he be able to get away with that when, Neil, you and I, if we ever did that in our applications, we would never get a mortgage and we'd be in big trouble?

CAVUTO: Well, they did say no on the bocce ball thing, but that's a separate story.

One of the things guys that Letitia James brought up, apparently, if this is right, she originally sought $250 million in penalties, but ratcheted up to the $370 million she was seeking. She got darn close to that just by a few million she alleged constituted all the ill-gotten financial gains that filtered down from these financial deceptions.

But again and again, what comes up here, guys, is -- and this is coming from Judge Engoron himself -- ticked off that Donald Trump was evasive or argumentative. So if he had not been as argumentative, if he had not been doing these sessions with the press right outside that courtroom, is the judge intimating, is Letitia James intimating that they would have gone lighter on him?

Because that's a little weird.

DUPREE: Yes, and Neil, that to me was one of the more interesting aspects of this opinion today, is that you don't have to read between the lines that closely to see that the judge was expressing a lot of really personal frustration and resentment of Donald Trump.

And from my perspective, at least, I think that does make his decision maybe a little more vulnerable on appeal than it would otherwise have been. In other words, you have to say, was this judge able to put aside the frustration that he felt? And, in many cases, it's understandable.

I mean, there's no question that the former president was a handful in the courtroom to say the least. But a judge has to be able to put all of that aside and decide a case based on the facts and the law. And so the fact that you do have this theme woven throughout his opinion, I think, is going to cause the appellate court to maybe raise a suspicious judicial eyebrow.

CAVUTO: So-, guys, help me out with the math here. You're also good at that. But that's more my turf than the legal stuff.

So I'm looking at the $83.3 million judgment stemming from the defamation lawsuit regarding E. Jean Carroll. I'm looking at this $350 million-plus penalty. And how much does he have to put up for both while he pursues appeals or appeals or second chances in court?

John, I will go to you first on that.

YOO: I'm not an expert on this, but I think that he has to post a bond to appeal that's roughly the same amount of the decision.

So I think he -- put the E. Jean Carroll case, which we talked about, this case. He, I think, is supposed to bond for $300 million. Now, after this decision, after -- who's going to loan him the money to challenge a decision that says he lies when he borrows money?

And if you loan him money, even for posting the bond, he's lied to...

(CROSSTALK)

CAVUTO: And, by the way, he can't apply -- he can't apply -- I'm sorry.

YOO: Exactly. Yes.

CAVUTO: He can't apply for any loans for up to three years.

And the collateral that he would likely use for these loans is the very real estate that they said you better not touch -- quote -- "use," or do anything with.

YOO: Exactly.

CAVUTO: So he's kind of like penniless in that situation, that the money he presumably could tap or collateralize, he can't, right? '

YOO: Yes, he'd have to look for personal assets, maybe something in Florida. Maybe he could borrow it from a Florida bank, find $300 million in liquid assets. I think even Donald Trump would have trouble raising this.

But here's what I put to you, Neil. And this is a -- I think you raised it with your previous question, was, Donald Trump pursued a very hostile strategy with the judge. The judge had already said he was going to lose, and this was just about how much it was going to cost. I think Donald Trump made a calculated decision. OK, I'm going to lose anyway. Maybe it'll be $300 million, but I'm going to dominate the primary airwaves.

And so Donald Trump, you could ask him -- and it's sort of like what we're asking with E. Jean Carroll. Is it worth $20 million every time you insult E. Jean Carroll? You could say, Donald Trump, was it worth $300 million to win the Republican primary by dominating the media, by going to the courtrooms, by turning it into a circus?

You knew you were going to lose. You knew by doing that you're going to lose the maximum. But now you're stuck, because how is he going to be able to appeal? How's he going to be able to raise the money to post the appeal bond in order to get up to the appeals court?

CAVUTO: Yes, it is weird.

Now he could -- to your point, gentlemen, he could seek to secure bonds during the appeals process. But, again, much of that would be based on the very properties in question they're claiming that he inflated in the first place, so I imagine are untouchable, but I could be wrong. There is this other possibility, I don't know what you think, Tom, of him saying to hell with it. I'm moving to Florida.

Jeff Bezos did. Elon Musk did. Or I think Elon Musk just went to Texas, but my point being that they're saving a heck of a lot of money. There, the focus was on state taxes. But the fact of the matter is, can he do something like that? Can he say everything I have in New York, guess what, now I'm headquartered in Florida?

What happens then? Or is it after the fact he can't do that now?

DUPREE: Well, I mean, he certainly can still move to Florida. I mean, in fact, if he's prohibited from doing business in New York, assuming that sanction stays in place, it might make sense for him to move to Florida and run his business there.

That's, of course, assuming that he doesn't get reelected president. And I can't imagine that the organization didn't have a contingency plan in place for something like this to happen. It was fairly clear the judge was signaling where he was going with this case. So I can't imagine it came as a surprise to Trump that he is barred from doing business in New York.

I suspect he's immediately going to run to the appeals court and ask them to stay that prohibition to allow him to continue doing business in New York while this case is on appeal. But if that effort fails, you have got to imagine, Neil, that they have some sort of contingency plan in place to allow these businesses to continue to operate, again, from outside the confines of New York.

CAVUTO: You mentioned now going to the New York Court of Appeals.

I -- John, I noticed and our Shannon Bream is reporting that all seven of the judges on the New York Court of Appeals -- that's the highest state court -- they are appointed by governors to 14-year terms, and all the current judges in this court were appointed by Governor Cuomo or Governor Hochul, last time I checked, both Democrats.

So I don't want to imply that that will make it an uphill battle for Donald Trump, but I wonder. What do you think?

YOO: Yes, I think the precedents, the existing case law is already against Trump, and I think it's going to be hard for this appeals court to reverse those precedents and say, no, we're going to change the existing law and order to, right, benefit Donald Trump, who this trial judge -- and this is an important distinction between what appellate courts do and what trial judges do.

Appellate courts only there to settle questions of legal interpretation. The judge -- trial judge, Judge Engoron, is there to find the facts. This is really a case mostly about the facts, like how much money is at stake, which properties.

And important questions like, did Donald Trump lie, you will notice in the opinion that the judge goes through every witness, every defendant and gives his evaluation of what they were like on the stand, whether they lied, he thought they were credible, which is to what -- really for the nonlawyers out there, is whether he was lying or not.

And this judge is very careful to make it as factual as possible, so then appeals court, when it looks at the decision, it's not going to find a lot to overturn. The only real question is the one you started with, Neil, I think that appeals court will look at, which is, can you impose a $350 million judgment in a fraud case where no counterparty, no one on the other side of the deal, said they were harmed or raised an objection?

That's more of a legal claim. But all these other findings, that Donald Trump was lying, that he intentionally committed fraud that, it cost $350 million, those are usually the kind of things that an appeals court doesn't want to touch.

CAVUTO: All right, gentlemen, I want to thank you both very much. And thanks for educating us with a sort of a ticktock on this on what happens now, 30 days to take this up in this New York State Appeals Court.

That is the highest court. It's not the New York State Supreme Court. This court is the highest court in New York would weigh in on this. But it's seven justices, or judges, I should point out, serving 14-year terms. They were all appointed by Democratic governors, Governor Cuomo, and now Governor Hochul.

So that does appear to make it an uphill battle if you're concerned about bias. Of course, justice is blind, I'm told. But, sometimes, she can peek.

I want to go to Jonathan Turley on this and what happens if that court slaps him down.

In other words, Jonathan, we get to that point where he's taking it up, urging them to drop this, reverse this, and they say no, or refuse to consider any change. Then what?

JONATHAN TURLEY, FOX NEWS CONTRIBUTOR: Well, Neil, usually, these type of state court cases end with the highest state court.

The Supreme Court tends to defer to state law. There are exceptions. The Supreme Court can occasionally find due process violations in the size of damage awards. That happened in a case with BMW, where the Supreme Court took up a case involving punitive damages against BMW for repainting cars without telling owners.

And the court said that the level of damages were simply excessive, and, at some point, they can violate the federal Constitution. This award is just otherworldly. And I do think that judges on appeal, and possibly in the Supreme Court, are going to look askance at this as to, what is your basis for imposing over $350 million in damages, when there is no apparent victim who lost money?

And even though this law in New York has been criticized for years, it has been on the books, it's been used, but never in this way. And so the question is, will they take a fresh set of eyes on this one, and possibly hit that award, as opposed to the underlying law, as problematic?

CAVUTO: So, Jonathan, what happens in the event that they don't take it up, they don't address any of the things that you smartly pointed out are at least worthy of addressing, and Donald Trump gets the Republican nomination, is elected president in November?

This is a civil matter. It's a civil fraud verdict. Does he or would he have any power as president to make it just go away?

TURLEY: No. No, he wouldn't. If the verdict stands, this is a state judgment. He doesn't have any power to change that.

But it is adding, obviously, to the whole dimension of this election. A lot of people are beginning to agree with his long narrative that he's being pursued pillar to post, that this is a campaign of death by exposure.

And that could very well factor in. We don't know if he is going to face any type of conviction. But, even then, this is a choice that most voters don't relish. Many people view this as a choice between senility and criminality. That's not something that a lot of folks want to go to the polls to vote on.

But I think that Trump is winning the political argument now with all of these different types of cases. This case, I got to tell you, when you read it, it seems at points cathartic, that the judge is lashing out at Trump over his conduct in his courtroom.

I had hoped that the judge would show a modicum of restraint, because I am concerned about what's happened to the New York legal system. These are really troubling cases. The case brought by Alvin Bragg, I think, is raw partisan. And, in my view, it's not well-based legally.

This was a case brought by someone who ran on a pledge to bag Donald Trump. And now you have this really over-the-top verdict. And at some point, the New York bar is going to have to ask, is this who we are? I mean, is this where we have come as one of the oldest bars in the country?

Because it seems like there is a supplemental code, both criminally and civilly, for Trump. And it's going to impact not just the integrity of their legal system. It's going to impact their businesses. Yes, this probably could be reduced to don't be Trump if you commit any of these violations.

But for a lot of businesses, what is viewed as an increasingly hostile environment in New York just got perfectly terrifying.

CAVUTO: Yes, you talk about rising to the occasion or rising above the fray. Those weren't your exact words, Jonathan.

But I think of Judge Arthur Engoron, and the particular petty comments he made about Donald Trump's behavior. If that's your focus and you're angry about it and you want to voice it, I guess have that. But it's not exactly a Churchillian moment for this judge or, for that matter, Letitia James, who clearly made it her goal when she became the New York attorney general to go after Donald Trump.

So there seems to be a little too much zeal for what went down, and these guys roll with it. Now, does an appeal court take up that type of sentiment or just the attitude of it?

TURLEY: Well, they live in the real world.

It's harder to make a judgment on that basis. It's a type of civil selective prosecution type of claim, and courts don't like to get into motivations. But people in New York, frankly, are enjoying this too much. I mean, there is a real type of release that comes from rage. It's addictive.

And this opinion, unfortunately, sort of looks that way. When you look at these numbers, you try to find out where they came from. And it's true that he really iron-plated this almost 100-page opinion with fact-findings, because he knows it will be harder on appeal, because you have to defer to findings of fact, unless they're clearly erroneous, on the trial level.

But when you actually drill down, there's nothing there. I mean, for example, he says, well, you know what, if you had told the truth, they would have required a higher interest rate. Well, that seems pretty damn speculative, in my view.

I mean, the Trump Organization was notorious for squeezing banks to getting the best possible conditions and contracts. I don't think you can assume that they would have done any worse. Neil, years ago, when I was working for a different network, they found some documents of the Trump Organization and they had me review it.

And one of them was a page of how much Trump was worth. And I looked at the bottom line and it was like clearly twice as much as I thought he could possibly claim his worth. And then I found one piece of paper, and on this long list of properties, there was one entry that basically said, name value, brand value, and had like $3 billion.

And I laughed and raised it with the network and they said, well, isn't that fraud? And I said, I don't think it is, because he told them that. He actually said, I'm counting in all this money because of my brand.

So the question for businesses is, where's the line here? If you say don't rely on these figures, these are my estimations, where is the line to convert this into what is an existential fight in a case like this?

CAVUTO: Amazing. Well-explained, Jonathan. Thank you very much, Jonathan Turley.

He's earning his overtime pay today.

Jonathan, thank you for that.

By the way, this wasn't the only court case. Just keeping track of these is, like I say, watching planes piling up at La Guardia. There's the Trump- Georgia election case. Fani Willis, she opted not and didn't have to return to the witness stand, but that is not over and the controversy over how she handled that and the lover and all of that.

Then there's the March 25 Stormy hush payment, a whole jury selection in that, that slated, so many trials, so little time. We're going to try to sort them out, and a separate legal effort now to go after that guy in a particular case that was pounding Joe Biden on business relationships. He might have lied.

Uh-oh -- after this.

(COMMERCIAL BREAK)

CAVUTO: All right, the video is a little jumpy here, but the president has arrived in East Palestine, Ohio, site of that train to braille, more than a year ago.

We're always monitoring this, because some are wondering if he responds to the legal problems for Donald Trump.

More after this.

(COMMERCIAL BREAK)

CAVUTO: Robert, if we could just show the president in East Palestine, Ohio, again.

The reason why I'm mentioning that is, he is not only addressing a train derailment that happened more than a year ago, but he hopes, in meeting with them, a lot of people affected by that, he can make good on some criticism that at the time he forgot about them.

But the reason why we're putting this in the context of all the developments today is, he might respond to this whopper of a civil suit against the former president of the United States to the tune of more than $354 million.

So he could say something about that or respond to questions on that.

Bob Cusack, the head and chief of The Hill, with us right now.

Bob, so many court cases, so little time. And one of the things I always think when stepping back from this is, all of these court matters, when they have appeared, including indictments and the like, they have only lifted his poll numbers, that is, Donald Trump's poll numbers.

This is a different kind of a situation, but it is kind of akin to the E. Jean Carroll thing, even though it's substantially more expensive. It has not put a dent. That didn't put a dent in his popularity, hasn't put a dent in his poll numbers. I suspect this won't either.

But there's got to be a sort of a nick, nick, nick effect on him, whether you keep nicking away at him. What do you think?

BOB CUSACK, EDITOR IN CHIEF, THE HILL: No, you're right.

I think that's -- everything you said is right, Neil, that this has not hurt him to this point. But we have been talking about a Republican primary that the former president is dominating and is likely going to win. But this drip, drip, drip, it's not going to be good.

Let's see where his poll numbers are come spring or early summer. I think going after prosecutors works certainly in a primary, but he's going to have to shift to general election mode and convince independents. And I think this is not a great thing for Trump.

And, obviously, Biden has his own issues, and independent voters are like, where do we go?

CAVUTO: So, let me ask you a little bit about the impact here. The former president is going to fight it to the nth degree.

He's been posting on TRUTH Social, if I can get the latest on that, that this is unfair. "Both the trial and this unprincipled decision have certainly diminished public confidence in the integrity of the legal system."

But I'm also wondering what you think happens now with this, because then it gets into, he's got to put up all of this money. He's got to counter the claims that he made stuff up. He's been able to successfully do that with his base. He's been able to say that this is all politically driven, that Letitia James had this as a goal very early on when she was campaigning for this office.

So he has a credible case to make on the political witch-hunt here. But there's also then that vast independent voter majority out there, or plurality, I should say...

CUSACK: Yes.

CAVUTO: ... that's going to say, there's got to be something there. What do you think?

CUSACK: Yes.

I mean, this does coincide with Nikki Haley going after Trump, especially this year, really taking the gloves off and saying Donald Trump is followed by chaos. And, obviously, you're going to hear that. You have already heard it from Democrats and President Biden.

So I do think there's a real risk for the president here that, obviously, he's going to be appealing every decision. And polls show that if he -- there's a recent poll, Harvard/Harris showing, listen, if he -- if he's indicted on the January 6 case, actually, Biden would go ahead of him, on other counts, not so much.

But, certainly, I think, in a general election, these legal problems for Trump are piling up, and they're not good for independents. Remember, Biden did win independents in 2020, but, since then, independents have moved away from Biden. So, both Trump and Biden have a problem with independent voters.

CAVUTO: Bob, I think I misquoted something I assumed was from Donald Trump.

That was his legal team. This is from Donald Trump himself on TRUTH Social: "The justice system in New York state and America as a whole," he goes on to say, "is under assault by partisan, diluted, biased judges and prosecutors. A racist, corrupt A.G. -- he's referring to the attorney general, Letitia James -- "has been obsessed with getting Trump for years and used crooked New York State Judge Engoron on to get an illegal, un- American judgment against me, my family and my tremendous business.

"I helped New York City during its worst of times. And now, while it is overrun by the violent Biden migrant crime, the radicals are doing all they can to kick me out."

Goes on to say -- I think it's important I read the whole thing, so you don't have to worry whether we took things out of frame here. "This decision is a complete and total sham. There were no victims, no damages, no complaints, only satisfied banks and insurance companies, which made a ton of money, great financial statements that didn't even include the most valuable asset, the Trump brand-, ironclad disclaimers, buyer beware, and do you own due diligence" -- or your own due diligence -- "and amazing properties all over the world.

"All the other side was a ridiculous $18 million valuation of magnificent Mar-a-Lago, and an unconstitutional gag order, consumer fraud statute, never before used for this purpose, no jury allowed and a refusal to send this disgusting charade to the commercial division, where it would have been put to a deserving end."

So I'm going to put that down as a little stronger than a maybe on that decision.

(LAUGHTER)

CAVUTO: What did you make of it?

CUSACK: Yes, another subtle statement from the former president.

Listen, when you're dealing with taking Trump's money away, obviously, he's fired up over this. He's fired up from a financial perspective because he's paying an enormous amount in legal fees, and some of that is obviously picked up by campaign funds, but on actually paying what he's going to have to pay, he can't do that.

So, overall, yes, this is something. We're going to hear this rhetoric from Trump. He's fired up. I don't think Biden should be spiking the ball too much. He's got his own issues. Obviously, he had the special counsel report, so I don't think he -- spiking the football is going to help him.

But I do think that Trump really just lashing out at prosecutors, I don't think that's a winning strategy going into the general election, at least as much as he does it.

CAVUTO: And does this go further than Donald Trump? The reason

I ask is, the Justice Department has charged that this former FBI informant who claimed that Republicans used to bolster these allegations of a corrupt bribery scheme, including Joe Biden and Hunter Biden, that individual is charged on two counts of making false statements to federal authorities, and that, furthermore, Alexander Smirnov falsely claimed that, during two business meetings in 2015 and 2016, executives associated with Burisma admitted to him that they hired Hunter Biden to protect us through his staff from all kinds of problems.

If that turns out to be a lie, as that does seem to be the reading here, for Chairman Comer looking into this, that's a big nothing-burger now. Your star witness has sort of imploded on you. Now what?

CUSACK: Yes, the pressure is definitely on Comer. And the new speaker, Mike Johnson, has had a rough stretch as well.

Listen, I mean, with the special election victory in New York, Neil, all it takes is three Republicans to say, I don't see the evidence to impeach Biden and they don't have the votes if everyone shows up. So that's a problem for Johnson and Comer. Comer said he's got other evidence, but he's going to have to present it real soon.

They have got a math problem to impeach Biden. They had a math problem to impeach Mayorkas and needed a do-over, which was embarrassing. Let's see if they get the votes after this news now has broken this week.

CAVUTO: No, it could still be early, but Republicans do have a history of spiking the ball a little bit prematurely and botching. For example, what should have been a red wave a couple of years back that didn't materialize.

So they seem to be stumbling and bubbling their way through this, certainly on legislative matters where they're coming up short again and again. And now on some of these cases that they thought they had locked down solid, and the Hunter Biden and other investigations, might continue, might find other avenues, it's too soon to say, but they're in a world of political hurt right now, aren't they?

CUSACK: They are.

But the one thing that Republicans, and it's a big thing, have going for them is the Senate map. So many Democrats are defending their seats and Republican incumbents are all but basically safe. So they're going to lose the West Virginia seat, Democrats, because Manchin is not running now for president or the Senate.

So I think Senate Republicans, who kind of blew it in the last cycle, have things going their way. And, honestly, the party that has the best shot to win all three, the White House, the House and the Senate, are Republicans because of that Senate advantage.

But Democrats could obviously easily win the White House and take back the House. And maybe they hold the Senate, but the odds are with Republicans right now.

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

With us now is the former acting Attorney General Matt Whitaker, what he makes of this.

Matt, some are saying this is a pile-on against the former president, but it's getting to be an expensive pile-on for the former president. What do you think?

MATTHEW WHITAKER, FORMER ACTING U.S. ATTORNEY GENERAL: It is, Neil. It's good to be with you.

Well, first of all, that sound you hear are New York companies fleeing to other jurisdictions, just like Elon Musk left Delaware. I think you're going to see New York lose a lot of companies and reincorporate somewhere else.

But what I think about this case is kind of -- everything's been said, but not everybody said it, is what a federal judge once told me. It probably applies to this as well. But it's a fundamental fairness.

If the left -- and, remember, it's only Democrats bringing these cases, whether it's in Fulton County, whether it's in New York, whether it's the special counsel for the Biden administration. I think each case is just trying to tie up and bind up, take away President Trump's money, take away his time to campaign as he's stuck in the court in all these proceedings.

And I think it's -- it just seems to me fundamentally unfair. The American people should decide this, Neil, and not the courts and not these judges in these blue states and blue jurisdictions.

CAVUTO: It's very unlikely, at least according to a couple of lawyers in this past hour, and you're a darn good one, think it's a difficult matter to get past seven appointed by Democratic governors.

They will surprise you. Not everyone votes or rules to their party persuasion. But it would be an uphill battle for Trump to get rid of this, at least for the time being. What's your interpretation?

WHITAKER: Yes, my interpretation is quite simple, is, you expect that the justice system should work, that it shouldn't be based, as Don Jr. said today, on your political beliefs and the jurisdiction.

And so there's some of us that actually think this system should work. I mean, I'm becoming more and more cynical with the day, and especially with these types of things. But I think one of the things that we should watch very carefully is, if there were no damages and no basis for really anybody losing any money, what is this $370 million based upon?

What is it tethered to? And the law requires, in my understanding in New York, is that it be related to something tangible. And if no one lost any money, no one was defrauded, then where does this damage come from, other than just trying to put a big enough number on the scoreboard to put Donald Trump out of business and to take away his assets?

I think it's just -- again, most ordinary Americans in places where I'm from, like Des Moines, Iowa, see this for what it is, which is just a blue state punishing Donald Trump for his beliefs.

CAVUTO: It is interesting.

But I want to thank you very much for appearing with us.

By the way, as he was wrapping up there, and very eloquently, I should point out that the attorney general, Letitia James, is posting right now on this case and the decision. She is going to address the press, I believe, about an hour and 15 minutes from now.

But she says: "In a massive victory, we won our case against Donald Trump for engaging in years of incredible financial fraud to enrich himself. Trump, Donald Trump Jr., Eric Trump, and his former executives must now pay over $450 million in disgorgement and interest. Trump, Allen Weissenberg -- Weisselberg," I should say, "and Jeff McConney are banned from serving as an officer or director of any New York company for three years.

"Weisselberg and McConney are banned for life from serving in any financial role at a New York company. Donald Trump Jr., Eric Trump are banned from serving as an officer or director in any New York corporation for two years."

By the way, each -- goes on to explain that they also are going to have to pay $4 million in fines, each of them. But, again, it's too early to tell how that will be sorted out, even if it is sorted out, but she will be addressing the press in a little over an hour and 15 minutes from now.

Again, you're going to see, in the meantime, these quick texts and tweets and X's, whatever you call it right now, going back and forth with mainly those who had accused Donald Trump of this, that he's liable and he has a big bill to pay. Try $354 million. Now what does he do?

After this.

(COMMERCIAL BREAK)

CAVUTO: On any other day, this would still be a big story. It certainly was yesterday on news that special counsel David Weiss had charged a former FBI informant with lying about President Joe Biden and his son Hunter Biden's involvement in business dealings with the Ukrainian energy company known as Burisma Holdings.

That was undercutting a major, major feature of Republicans impeachment inquiry into the president. Alexander Smirnov is the guy's name, 43 years old, facing charges in connection with lying to the FBI, creating false records.

He was arrested yesterday at the Harry Reid International Airport in Las Vegas after his arrival in the U.S. from overseas. He's going to make his - - he's already made his initial court appearance, but again, this undoes or potentially undoes the entire Hunter Biden case, or at least its most powerful and impactful witness.

Let's get the latest from David Spunt at the Justice Department, where this stands now -- David.

DAVID SPUNT, FOX NEWS CORRESPONDENT: Well, hi, Neil.

Alexander Smirnov, this former FBI informant, made the allegation that both Joe Biden and Hunter Biden accepted $5 million each in bribes from associates connected to a Ukrainian energy company called Burisma, where Hunter Biden once sat on the board.

He memorialized these allegations on what's called an FBI 1023 form. Republicans for several months last summer, up until just weeks ago, were continuing to talk about this 1023 form and these allegations. Smirnov has been charged with lying about these allegations. He's facing these charges.

President Biden today at the White House said that he is lying, meaning -- talking about Smirnov. Another bit of news from President Biden, not only does Hunter Biden have a special counsel. We have been talking about Robert Hur, the special counsel that investigated President Biden's handling of classified documents.

There's this Robert Hur interview with President Biden that happened back in October, and critics have been calling for the release of the transcript. They want to see the transcript. House Republicans wrote to Attorney General Merrick Garland asking him to make the transcript available.

Well, we just got first on FOX the letter from the Justice Department over to Capitol Hill, basically telling House Republicans that DOJ is committed to working with them, but needs to go through the normal process of looking to see if there's some classified information, perhaps, or any other bits of concerns.

Also, Neil -- and not to bog down people with too much information, will the White House perhaps get involved in claim executive privilege, meaning they will not allow this transcript to be released or possibly allow it to be released maybe just redacted?

So this essentially puts now the burden somewhat more on the White House to release the transcript, not the attorney general, not the Department of Justice. And the White House says that they are considering releasing that transcript.

So, a busy, busy day for President Biden dealing with two special counsels, one investigating his son, saying that Joe Biden and Hunter Biden, those allegations about Ukraine and accepting $5 million are false, and also this news that the Justice Department is working to make this transcript available if the White House approves, and the White House has to approve - - Neil.

CAVUTO: Got it, my friend.

David Spunt on all of that.

So this calls for a legal-palooza, and we have got the Marvel team of lawyers joining us. Katie Cherkasky is with us, Tom Dupree back with us, John Yoo back with us.

Katie, first on the Alexander Smirnov stuff, 43 years old, essentially charged with lying. I don't know where this goes from here, but that was the whole enchilada for the case going after Hunter Biden. He was the secret weapon, and these ties to Burisma were provable through him. Now, there might be others out there, but it's got to be a big blow.

What -- at least to Republicans. What do you see?

KATIE CHERKASKY, FORMER FEDERAL PROSECUTOR: Yes, absolutely.

That information was essentially the crux of the case tying the Bidens to Burisma. And so if that was in fact false -- and, again, he's just been indicted at this point. He hasn't been convicted of lying, and perhaps he is maintaining that he wasn't lying.

But if he was lying, then that does take away a significant portion of that puzzle there. And so a connection would have to be drawn in some other way.

CAVUTO: All right, now, then there's a separate issue, Katie, with Robert Hur, of course, who clarified in documents on the president -- that is, Joe Biden's handling of these classified documents, that he looked at in the context of an old man who would probably not be fingered by a jury anyway. He would be a sympathetic figure.

Now, it's that, the old man references and all of that, the White House finds a bit biting and smarting. So I don't know how eager they be to get that released, right?

CHERKASKY: Well, they have disputed the characterization that Biden was essentially not unfit to stand trial legally, but that it would be difficult to get an acquittal because of his mental faculties.

And so in order to substantiate the dispute, I think they should release those transcripts. Obviously, they are hesitant to do so for obvious reasons, I'm sure.

CAVUTO: Right.

CHERKASKY: But, certainly, that would be the only way to debunk the claims that Hur was mischaracterizing anything or was inappropriately summarizing what happened during those interviews.

CAVUTO: So, Tom Dupree, what if Hur's comments were quite sympathetic and quite understanding and compassionate to the president that, look, he just lost his fastball? He wasn't up to it. We didn't think anything would be proven chasing this that far. And it's not nearly as damning as it would appear, embarrassing to the president, maybe, but he's off any criminal indictments.

DUPREE: Yes.

And, look, I think this transcript is going to come out. I can't imagine that it's going to be kept under wraps. There are too many people pushing hard to get it. The Biden team says they want it to get out. I'm not sure I entirely believe that. I think that it will further undermine the -- Biden's claim that Hur made inappropriate characterizations or characterizations that are inaccurate.

I think the transcript will reveal that he has some memory issues. I think the transcript will reveal that he couldn't remember basic dates and times and things like that. But I think they have put themselves in a box. I mean, they have attacked the special counsel for kind of going outside the guardrails on this and including all of these so-called irrelevant digressions.

But I think they're going to leave the special counsel with no choice but to put this opinion or put the transcript out in public view and let people decide for themselves what the truth is.

CAVUTO: So, real quickly, John Yoo, what is the difference between Robert Hur saying stuff that might be offensive or sound offensive to a president, and the comments that Judge Arthur Engoron made about Donald Trump and his behavior in and outside the courtroom?

Now, one seems maybe sympathetic, depending on who's watching this, and the other a little zealous, but aren't they both at their core emotional reactions that two different entities had to two different cases?

YOO: I actually take both of the statements at face value.

I think Judge Engoron, for example, has to explain to the public and to the appeals court why he discounted everything that Trump said, where he just didn't find Trump believable, and that, when confronted with the facts, as Engoron said, Trump just didn't have answers.

Same with Hur. I think Hur has to make that judgment, because, without that decision that Biden is well-meaning, elderly with a bad memory, then you ask, why didn't Hur bring the charges? Because, in his report, he lays out exactly the facts that should have allowed -- should have pressed for a prosecution.

CAVUTO: Yes. Well said.

Guys, I want to thank you all on such a pressing day with so many legal cases. Other than that, not much really going on today, but the implications of all of this, as there are going to be multiple press conferences planned, and FOX will cover them all.

Here's "The Five."

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