



## Bernie Sanders and the Greatest Show Trials on Earth!

Walter Olson

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At Wednesday's Democratic debate in Las Vegas, Vanessa Hauc of Telemundo asked former Vice President Joe Biden about his expressed desire to "hold oil and gas executives accountable for their role in harming our planet. You have even suggested that you might put them in jail."

Biden dodged in his answer, but Vox has now put out a roundup a roundup of the Democratic candidates' published views on prosecuting fossil fuel executives. It's worth a look.

To begin with the more normal responses, candidates Mike Bloomberg, Joe Biden, and Pete Buttigieg all basically promise stepped-up enforcement of existing laws, with Bloomberg additionally saying he will "strengthen rules" allowing the Department of Justice to bring criminal cases, and Biden saying he will "seek additional legislation as needed to hold corporate executives personally accountable—including jail time where merited." Elizabeth Warren repeats her proposal—which I've criticized in some detail—for new legislation attaching criminal liability to negligence that leads to "severe harm."

What about the idea that advocacy on the wrong side of climate debates should carry legal consequences? In a brief—but disturbing—reference, Sen. Amy Klobuchar favors holding "companies accountable for their . . . campaigns to mislead the public." Justice Stephen Breyer, in *Nike v. Kasky*, rightly called out schemes to impose liability on businesses for promoting faulty public policy views as inconsistent with the First Amendment.

But at least Klobuchar doesn't seem to be promoting the idea of *criminal* liability—a difference as big as that between "Sue her!" and "Lock her up!"

Some Senate Democrats, however (as well as some other officials), do seem to be interested in applying criminal law to "wrongful advocacy" by businesses—or even by nonprofits and university scholars.

Sometimes they reach for stretchy theories of conspiracy or "racketeering" to achieve this purpose, or, as in New York, see it as securities fraud (a theory that crashed and burned big time in New York's Exxon prosecution last December). For years now, proposals have circulated to make the denial of climate change consensus a criminal matter, perhaps as a "crime against humanity." Tom Steyer might be on this page, calling for "real—potentially criminal—consequences for actions [executives] may have taken to *knowingly spread false information and slow climate action*." The emphasis here is added because the qualifiers—"knowingly," "false,"

“slow,” and “action”—are so nebulous that it’s impossible to know what Steyer really means. It’s possible that he has no idea, either.

But in a class by himself is Bernie Sanders.

Sanders has repeatedly sounded variations on the theme: “Fossil fuel executives should be criminally prosecuted for the destruction they have knowingly caused.”

He does not say what criminal law he thinks they have broken, despite the plain current legality under current law of operating refineries, at-pump gas sales and so forth. But note that Sanders’ language is not forward-looking—it’s retrospective. He’s not just talking about passing some new law and then arresting executives who proceed to violate it. He is talking about prosecuting past lawful behavior.

It’s a reminder that for all his talk of Denmark-this and Sweden-that, Bernie Sanders has never cut his ties to a branch of the socialist tradition in which the conviction gets settled first and the law is discovered afterward.

America needs a politics with fewer authoritarian impulses, not more.

*Walter Olson is a senior fellow at the Cato Institute’s Robert A. Levy Center for Constitutional Studies and is known for his writing on the American legal system.*