



# Hunter Biden and Donald Trump Should Both Have Jury Trials

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It's been a spectacular year for fans of true-crime dramas. Hollywood may be on strike, but this summer we've been treated to multiple indictments of a cartoonish former president by a Department of Justice (DOJ) that's also trying to sweep a burgeoning corruption scandal under the rug by filing misdemeanor tax charges against the current president's influence-peddling son and pretending that's all there is to an increasingly lurid story involving drugs, guns, money, and more foreign intrigue than a Jason Bourne movie.

Besides their entertainment value, the prosecutions of Hunter Biden and former President Donald Trump provide a timely reminder of the Founders' wisdom in prescribing an open and adversarial process for adjudicating criminal charges—and our folly in replacing it with a transactional and largely opaque system of plea-driven mass adjudication. Exhibit A is the scandal-cauterizing sweetheart plea deal the DOJ tried but failed to give Biden in federal court in Delaware last month.

It's increasingly clear that something is rotten in the state of Delaware, where various members of the Biden family have raked in tens of millions of dollars over the years from a rogues' gallery of unsavory Russians, Chinese, Ukrainians, Romanians, and Kazakhs—to name a few. Precisely what services they provided in exchange for all that cash remains unclear, but there's no mistaking the odor.

Leading the charge is President Joe Biden's son Hunter, a man of considerable appetites who appears to have spent much of his adult life trading on the family name. Unfortunately, in the course both of funding and indulging those appetites, he appears to have committed numerous crimes, ranging from rinky-dink tax delinquencies to felony drug and gun possession, and possibly more serious offenses such as tax evasion, filing false tax returns, money laundering, and violating the Foreign Agents Registration Act (FARA).

But instead of thoroughly investigating Hunter Biden's activities and charging him with every provable crime, as they typically do, federal prosecutors appear to have deliberately curtailed the investigation to avoid developing evidence of criminal misconduct and then worked with Biden's legal team to simultaneously present and resolve the most inconsequential possible case against him, short of nothing.

However, that effort fell apart when the judge to whom the plea deal was presented started asking basic questions such as what the scope of Biden's immunity would be and whether it might violate the separation of powers to involve her in future charging decisions against him. Among various competing narratives, the most plausible one is that prosecutors couldn't acknowledge in open court what they had almost certainly done off the record, which was to give Biden global immunity on all federal charges, including potential FARA violations that the DOJ had advised Congress—perhaps not entirely candidly—were still under investigation.

Think how much more we could learn about Biden-family influence peddling and the machinations of foreign agents if the charges against Hunter were litigated in open court, as the Constitution provides. Among other things, the relevant tax filings would have to be offered into evidence and there would be testimony about them, potentially including how Biden earned the income upon which he neglected to pay taxes, who paid him, and whether any other family members participated in the performance or the fruits of that labor. Those questions might lead to others, such as why the government appears to have cherry picked Biden's least culpable tax shenanigans while turning a blind eye to more serious misconduct, as alleged by multiple IRS whistleblowers. The disinfecting power of sunlight shines much brighter in open court than it does upon the creases and folds of an artfully drafted plea agreement (or an inartfully drafted one, as the case might be).

Switching venues and defendants, the prosecutions of Trump tell a similar story about the virtues of jury trials and the vices of plea bargaining, but from the other side of the equation.

In a system where 98.3 percent of federal criminal convictions come from guilty pleas, Trump is something of a unicorn: the exceptional defendant who almost certainly cannot be induced to plead guilty, both because he's just that brash and also because prosecutors most likely prefer not to be seen employing the kind of nakedly coercive plea tactics against a pugnacious former president that they routinely bring to bear on defendants of lower stature and fewer resources.

But think what a disaster it would be if Trump were somehow induced to plead guilty to charges of seeking to nullify the 2020 election. It seems doubtful that many Americans would accept the legitimacy of a guilty plea elicited through some combination of gratuitous pretrial detention, charge stacking, mandatory minimums, seizing financial assets to impair the defense, and even threatening to indict family members just to exert plea leverage—all of which have been approved by the courts and are routinely deployed against less visible defendants.

As a nation, we all have a shared stake in seeing the government's allegations against Trump tested in open court. We need to know what he did, what he tried to do, what he said to others, and what they said to him. We must assess whether the witnesses for and against him are credible based on their demeanor, their feelings toward Trump, and whether they're testifying against him in order to save their own skins. Then there are the myriad legal arguments the defense will advance, including that the statutes in the indictment don't actually cover the alleged conduct, that Trump lacked the requisite mental state, and that he was exercising his constitutional rights of free expression and to petition the government for redress of grievances.

But if he pleads guilty, none of those factual determinations will ever get made and none of those legal arguments will ever be adjudicated. Instead, the entire country, including Trump supporters and Trump revilers alike, will just have to take his and the government's word for it that he committed crimes—whether he did or not.

Guess what? Every one of those concerns arises in hundreds of thousands of plea bargains that other defendants enter into every year in America. Did they actually do what the prosecution claims they did? Was it really a crime? And could the government have proven those charges beyond a reasonable doubt to the satisfaction of a unanimous jury? Maybe. Maybe not. We can only guess.

One thing we know for sure is that plea bargaining has become so coercive that innocent people are regularly induced to plead guilty to crimes they did not commit. We have no idea who and we have no idea how many innocent people languish in prison after falsely condemning themselves while the true perpetrators run free—because we prefer the efficiency of plea-fueled McJustice over the meticulous, transparent, and yes, inefficient procedures spelled out with ineluctable clarity in the Constitution. Shame on those who perpetuate this system.

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