



Legal Errors in the New York Prosecution of President Trump Jury Unanimity

Judge Merchan issued legally and constitutionally defective jury instructions, which deprived President Trump of his Sixth Amendment rights. Because the jury was not completely unanimous about the underlying crime Trump committed, Trump was deprived of his Sixth Amendment rights.

N.Y. Election Law § 17-152

- N.Y. Election Law § 17-152 states, “any two or more persons who conspire to promote or prevent the election of any person to a public office by unlawful means ... shall be guilty of a misdemeanor.” This crime has two elements.
- To be guilty, a jury must find the accused: (1) conspired to affect an election; and (2) committed another act by “unlawful means” in furtherance of the conspiracy.
- A jury must agree unanimously on the acts constituting elements of a crime.¹

Judge Merchan issued legally incorrect jury instructions

- Judge Merchan instructed the jurors that they “need not be unanimous as to what those unlawful means were.”²
- Judge Merchan provided the jury with three options of “unlawful means”: a violation of Federal election law, violation of tax law, or falsification of records.
- Under these instructions, the jury was not required to agree on the underlying crime Trump committed. It could have been split 4-4-4 among the three vague, distinct options provided by the judge.
- The jury was ultimately only unanimous with respect to half of the elements.
- The underlying crime and the jurors’ agreement on it remain entirely unknown.

The jury instructions violated President Trump’s Sixth Amendment rights

- The Sixth Amendment provides that all those accused of a crime have the right to “be *informed* of the nature and cause of the accusation.”³
- The Sixth Amendment requires that a jury reach a *unanimous* decision before an accused can be convicted of a serious crime.⁴
- Trump’s rights were violated when he received no notice of the underlying crime the jury found him guilty of committing.

¹ See *U.S. v. Gotti*, 451 F.3d 133, 137 (2d Cir. 2006) (“The jury must be unanimous not only that at least two [predicate] acts were proved, but must be unanimous as to each of two predicate acts.”); *U.S. v. Carr*, 424 F.3d 213, 224 (2d Cir. 2005) (“The jury must find that the prosecution proved each one of those two ... specifically alleged predicate acts beyond a reasonable doubt.”).

² Jury Instrs. at 30–31, *People v. Donald J. Trump* (No. 71543-23) (available at <https://bit.ly/4c6SyvJ>).

³ U.S. CONST. amend. VI. (emphasis added).

⁴ *Ramos v. Louisiana*, 590 U.S. 83 (2020) (holding that the Sixth Amendment right to a jury trial [including unanimity requirement] is incorporated under the Fourteenth Amendment).