

Unequal Justice: Call Trump to Testify at His Impeachment Trial

None of the potential witnesses identified by Democrats could offer evidence as relevant as the President on his motives in dealing with Zelensky and ordering a hold on American aid.

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As the Senate impeachment trial of Donald John Trump unfolds, one fundamental issue is whether witnesses will be called to give live testimony. The parties, not surprisingly, are sharply and bitterly divided on that.

There can be little question that justice demands that witnesses be called, and that a Senate trial without them would be a sham—if the goal of a trial is to arrive at the truth, witnesses are essential.

And at the top of any witness list should be the President himself.

Trump should be subpoenaed to raise his right hand in the august arena of the U.S. Senate to give his account of the facts averred in the [two articles of impeachment](#) that have been lodged against him, accusing him of abuse of power and obstruction of Congress.

Senate Republicans led by Kentucky Republican Mitch McConnell, the most Machiavellian Majority Leader in recent memory, would doubtless be apoplectic at the suggestion that the President himself should appear and testify. In fact, the Republicans, with some exceptions, are skeptical about allowing *any* live witnesses to be called. They seek a swift acquittal and know full well that witness testimony is messy, time-consuming, and could be devastating to the President's defense. And they have naked power on their side, rooted in their fifty-three-seat majority.

What the Republicans want is not a fair trial but a cover-up. And a cover-up is the last thing the nation needs at this critical juncture in its history.

The articles of impeachment set forth a narrative of extreme malfeasance, stemming from Trump's efforts to pressure Ukrainian President Volodymyr Zelensky to launch investigations into Joe Biden and the discredited rightwing conspiracy theory that Ukraine, rather than Russia, meddled with the 2016 American election. The articles also cite Trump for ordering past and present administration officials not to cooperate with the House's impeachment inquiry.

Democrats insist, correctly, that live testimony from key witnesses is imperative to ensure a full and fair adjudication of the President's conduct. And in this, they have long-standing precedent on their side.

As Noah Bookbinder, executive director of Citizens for Responsibility and Ethics in Washington, noted in a recent [op-ed](#) in *The Washington Post* : “Only [19 other individuals](#) besides Trump have been impeached by the House of Representatives. The Senate completed a trial in fifteen of those cases, and in every single one of them, it heard testimony from witnesses.” Most of these impeachment trials involved federal judges.

Although House Leader Nancy Pelosi, Democrat of California, in November [welcomed Trump to testify](#) in the impeachment inquiry (an invitation Trump declined), Senate Democrats thus far have omitted the President’s name from their potential impeachment witness list.

In a [December 15 letter](#) to McConnell, Minority Leader Chuck Schumer, Democrat of New York, named four witnesses with direct knowledge of the alleged abuse of power and obstruction: Acting White House Chief of Staff Mick Mulvaney; Senior Advisor to the Chief of Staff Robert Blair; former National Security Advisor John Bolton; and Associate Director of National Security Programs at the Office of Management and Budget Michael Duffy. All had been blocked by Trump from appearing before the House.

During the first day of the impeachment trial, the House managers in charge of prosecuting the case requested subpoenas for the four witnesses. Their motions were tabled by the GOP majority by way of 53-47 votes.

While they are important, none of these witnesses could offer evidence as relevant as the President on his motives in dealing with Zelensky and ordering a hold on American aid. Only he can definitively explain what he meant by the “favor” he asked of Zelensky regarding Biden and the 2016 election in his [July 25 phone conversation](#) with the Ukrainian leader. Trump has repeatedly described the conversation as a “[perfect call](#).”

To be sure, testifying before Congress is rare for Presidents, but it is [not unprecedented](#). Abraham Lincoln voluntarily appeared before the House Judiciary Committee in 1862 to answer questions about the premature publication of part of his 1861 State of the Union address. Woodrow Wilson testified before the Senate Committee on Foreign Relations in 1919 on the treaty of peace with Germany and the creation of the League of Nations.

More relevant, Gerald Ford explained his decision to pardon Nixon in testimony before a House Judiciary subcommittee in 1974. And in 1998, Bill Clinton [testified](#) under oath about his affair with Monica Lewinsky before a grand jury run by independent counsel Ken Starr via a television hookup installed at the White House.

Both former acting Solicitor General Neal Kaytal and prominent conservative attorney George Conway, the husband of Trump advisor Kellyanne Conway, have [publicly urged](#) Trump to testify at his impeachment trial.

“If you really believed this [your innocence in the Ukraine affair], you’d be trying to clear your name—clamoring for a real trial,” Kaytal [tweeted](#) on January 12. “[Y]ou would testify under oath that you did ‘nothing wrong.’ The fact that you don’t speaks volumes.”

Now I don’t believe there is any realistic chance that Trump would honor a Senate subpoena in the event that one is issued. Although testifying would surely play to his unbridled ego and narcissism and offer him an opportunity to execute a prime-time TV takedown of his “deep-state” adversaries, in the end I would expect Trump and his lawyers to claim executive privilege or immunity, or, more telling still, to invoke the Fifth Amendment,

allowing Trump to remain silent, even as he continues to fulminate on Twitter.

But that is no reason for the House managers not to go after Trump directly. Nor is it any reason for Senate Democrats not to support a request to subpoena the President.

The President is on trial for “high crimes and misdemeanors.” It doesn’t get much more serious than this. It’s time to hold Donald John Trump to account in the most aggressive manner permitted by law.

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