

OPINION

OP-ED



SETH WENIG Pool Photo

FORMER President Trump appears in court in New York in April.

Trump's trials should be televised

Transparency lends legitimacy to the proceedings. We should all see justice done.

By Laurence H. Tribe and Dennis Aftergut

ON THURSDAY, a group of Democratic congressional representatives led by California's Adam Schiff wrote the Judicial Conference of the United States urging that televising the federal trials of Donald Trump is vital "if the public is to fully accept the outcome."

It's impossible to exaggerate the importance of such public acceptance of the jury's verdict — whatever it is — in the case charging Trump with involvement in conspiracies to overturn the 2020 election.

The rule of law depends upon public trust in its processes. Nothing promotes trust of facts better than what we see with our own eyes.

Chief Justice John G. Roberts Jr. should use his power as the leader of the judicial conference to ensure the trial's accessibility to all Americans.

There are good reasons to do so even if contrary to his ordinary instincts. In these extraordinary times, these are no ordinary cases.

First, some background. In 1980, one of us (Tribe) successfully argued *Richmond Newspapers vs. Virginia*, the U.S. Supreme Court case that ruled that the press and the public have a right to attend and observe federal criminal trials

even when both parties and the judge prefer a blackout.

Still, the court has yet to take the logical next step — giving that right practical meaning for the nation as a whole. Trial courtrooms typically accommodate fewer than 100 spectators. But a federal court rule prohibits broadcasting of criminal trials.

The trial of Trump over alleged lies about the 2020 election and the Jan. 6, 2021, insurrection is so unique and so historic that treating it as a special exception does not threaten the rule, or even the Supreme Court's own ban on televising its proceedings.

By statute, the Judicial Conference can recommend to the Supreme Court changes to the rules of the court that promote "fairness in the administration" of justice.

Allowing televising of this trial, with strict court-supervised guardrails, would indisputably have that effect by permitting citizens of every political stripe to form their own judgment of the proceedings adjudicating Trump's innocence or guilt. Americans will be able to see a former president being treated like any citizen who is accused of a crime.

In the context of the 2024 election in which Trump appears headed to win

the Republican Party's nomination, nothing is more vital. Sunlight here can best enlighten the electorate.

In the ordinary course, while opinions differ about televised court proceedings, the desire to protect their solemnity and to avoid incentives for performative behavior before a broad public audience seems understandable.

At the same time, the trial of Trump relating to his alleged attempt to end the lawful transfer of presidential power will be America's most consequential moment of legal accountability since 1807, when Aaron Burr was tried for treason for plotting to wage a violent insurrection against our government.

Giving Americans the opportunity to witness these judicial proceedings directly will help ensure what is needed under the rule of law — faith in the process of getting to the truth.

Because of the Justice Department's ethical restraints on contemporaneous public statements about trials, in this one, only one side — and one with enormous communication reach — will be amplifying its version of each day's courtroom events.

We have already seen Trump's social media posts attacking the federal judge assigned to the case, Tanya S. Chutkan, as "unfair" and special counsel Jack Smith as "deranged." Trump has also sprinkled in untruths designed to enrage his supporters about being "arrested," a claim that U.S. Marshals contradicted.

The dangers of misinformation about the fairness of the judicial process are magnified by the reality that so many of today's television viewers are siloed into outlets that filter news to confirm their audiences' biases. In addition, fewer Americans than ever read print media that aim for objectivity.

The opportunity to see this trial with one's own eyes is the obvious remedy.

Moreover, with the Supreme Court's public trust at a low ebb, Roberts supporting the broadcasting of this case could enormously help to reverse that tide. Americans would see him going out of his way to ensure judicial transparency where it matters most.

The courthouse in the *Richmond Newspapers* case happened to be the one in which Patrick Henry had delivered an impassioned plea for liberty.

Today, all civically minded Americans, joined by the press and electronic media, should be making the same plea to let the light in on the most consequential trial in American history.

LAURENCE H. TRIBE is the Carl M. Loeb university professor of constitutional law emeritus at Harvard University. DENNIS AFTERGUT is a former federal prosecutor, currently of counsel to Lawyers Defending American Democracy.

LETTERS



EMMA MCINTYRE Getty Images for TAS Rights Management

TAYLOR SWIFT performs onstage during the Eras tour at SoFi Stadium on Thursday.

Taylor Swift isn't here to do politicians' job

Re "Swift can make a statement and still perform," Aug. 3

BY MY COUNT, at least 14 of the politicians who signed the letter to Taylor Swift asking that she postpone concerts are elected California Legislature members.

The people who actually have the power to make laws to ensure that lower-wage employees in California make a decent living are the very Assembly members who signed this letter and their Democratic colleagues. But these elected officials don't pass legislation that sets a higher minimum wage and needed benefits package because they are cowards who are afraid to upset the business owners and corporations in the state who keep wages and benefits so low for workers while they and their shareholders reap the financial benefits.

Will politicians actively and publicly work with local organizations, media outlets (including newspapers) and everyday people to build momentum that will make change? This is not Taylor Swift's job — it's the job of our legislators, and so far you've all been MIA.

CAROL J. SMITH
Cerritos

Taylor Swift is a caring woman with a political conscience. But postponing her concerts at SoFi is not the right answer here because it is not fair to her fans who have focused their lives around these concerts.

How about a compromise, Taylor? Do the concerts and donate a huge amount of the proceeds from the shows to the Unite Here Local 11 strike and defense fund so that the workers who are not able to afford tickets to your concerts can at least have something to eat.

Did I mention a "huge amount?" You can afford it and this kind of generosity may end up making you even more popular with your fans than you already are, if that is even possible.

LARRY WEINER
Culver City

::

Thanks to Anita Chabria for a thoughtful summary. Unite Here knew for a while that Taylor Swift was coming to L.A. and that it would be a huge money-making event for hotels. A carefully planned public relations campaign would have enabled hotel workers to put their best foot forward to impress Swift and her legion of fans. Workers could have passed out fliers and utilized social media, newspapers, television and radio spots to make their concerns for better working conditions and pay known to a generally sympathetic crowd.

The pressure (bad press) from these nearly 500,000 Swifties generating free media presence during concert week could have compelled the hotel owners to reach a settlement with the union.

Rather than take some responsibility for approximately 30,000 union workers, politicians would like the voting public to believe it is up to a pop singer to disappoint heartbroken fans because they and their staff had no idea how to avert the strike.

ANTHONY ELIA
Mission Viejo

::

I read with interest and a little amusement about how officials, including the lieutenant governor, want Taylor Swift to cancel her concerts in solidarity with hotel workers. I guess it's easy for the lieutenant governor to say since she's already seen Swift's show. I wonder if it ever occurred to her to boycott the con-

cert herself as a show of solidarity with the workers?

CAL TERAOKA
Huntington Beach

What comes next for Trump?

Re "Trump indicted in election case," Aug. 2 and "Trump's legal problems are also a news problem," Aug. 3

If what happened Tuesday occurred in another country, the United States would be more than concerned about the status of its democracy.

All of the legal and political analysis aside, ultimately, this dark American historical moment will end up with "we the people." And by that I mean a jury of 12 and voters in the next election cycle. If citizens truly understand the laws and Constitution of this country, I'm hopeful they will do the right thing.

If not, then America will get what it deserves.

THOMAS CAMACHO
Los Angeles

::

I offer a solution. Have President Biden offer a pardon to former President Trump for the federal crimes for which he is indicted — when Trump admits his guilt and promises to never again seek public office.

JIM BAROSS
San Diego

::

The ever-present articles with the obligatory photo covering the latest episodes of the Trump show have become some of his best advertising.

Trump is doing a great job of branding himself as the next president. Every article has a large photo of Trump, always dressed in red, white and blue. He poses himself speaking, fist raised, striding toward the audience, whatever, in front of an American flag.

The flag has become a Trump image gimmick. Please, if you must cover this indicted candidate, do it without the photos.

JODI MILES
Santa Barbara

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This orca might finally go free. Why did it take so long?

By Maddalena Bearzi

AFTER FIVE decades of performing at a Miami tourist attraction, the captive orca Lolita is finally on track to return to her native waters in the Pacific Northwest. Her path to freedom inspires hope — but also shows how far humans have to go in truly respecting animal life.

Born circa 1966, Lolita was a female member of the L pod, one of three southern resident orca groups living in the Pacific waters of the Salish Sea. In 1970, during a contentious capture in Penn Cove in which several orcas died, she was forever taken from her family.

Since then, Lolita — a.k.a. Tokitae in a Coast Salish language, sometimes shortened to Toki, or Sk'aliCh'elh-tenaut, the name given to her by the Lummi nation — has spent more than 50 years penned in at the Miami Seaquarium entertainment park. Last year the Seaquarium, under relatively new ownership by the Dolphin Company and amid mounting public pressure, announced that Lolita has been retired from performing. Then a few months ago, the Dolphin Company signed a historic, legally binding agreement with Miami-Dade County and the nonprofit Friends of Toki (doing business as Friends of Lolita) to return this orca to a sea sanctuary in her home waters of the Salish Sea. Under the current plan, which is contingent on the receipt of government

permits and regulatory approvals, it will take up to two years for Lolita to be relocated.

Lolita, for me, is more than just a cause or a "killer" whale. In 2016, when this orca had just passed half a century in age, I visited the Miami Seaquarium with a marine mammal vet and an ex-dolphin trainer. As a behavioral ecologist who has studied cetaceans in the wild for 30 years, I was asked to observe and record Lolita's behaviors. The goal of our visit was to provide expert testimony on her physical and mental status in a legal action brought to compel her gradual reintroduction into her native sea.

Soul-crushing is the only way I can describe my time in Lolita's company. Since her cage-mate Hugo died in 1980 from a brain aneurysm, likely the result of tirelessly hitting his rostrum against the walls of their undersized pool, Lolita has had no contact with other members of her species. She was lonely, except for a couple of Pacific white-sided dolphins she shared her small tank with, unshielded from the scorching sun, deprived of environmental enrichment and forced to perform daily in a pool so minuscule she could barely swim.

There was little left in Lolita reminiscent of the wild orcas I have observed swimming free in the Pacific Ocean. With her collapsed dorsal fin she swam in seamless circles, dragged her flukes on the bottom of the pool or spent extended



NURI VALLBONA Miami Herald

LOLITA is on track to be released from the Miami Seaquarium to her native waters on the West Coast.

amounts of time underwater, motionless and facing the wall. She repeated the same behaviors, with no obvious function, over and over.

I was allowed to approach Lolita just once at the Seaquarium, and our eyes met for a heartbreaking instant. I was overpowered by the sense of hopelessness that this animal was able to convey. A couple of years later, when the appeals court in Lolita's case ruled to keep her captive despite our — and many other people's — efforts to free her, the thing that I remembered above all else was her suppliant, dispirited eyes.

I still wonder how the jam-packed audiences clapping and praising Lolita's shows could not perceive what I saw during my time at the Seaquarium: a creature severely scared, inside and out. I wonder if it's our human ego, sense of superiority to other beings or even desire for convenience that makes us ignore the effects of captivity.

Maybe it's just a lack of knowledge of what these animals are all about.

Lolita may never be able to thrive in the wild with her own species anymore. But as long as her health allows for her safe transfer, she must be released. In a sanctuary and under human care, she

would at least have a last taste of freedom.

Intelligence and emotion in Lolita and other animals are difficult not only to define but to understand and gauge. Just think about how tricky it is for any of us to fully apprehend our own human thoughts and feelings on an everyday basis.

But it's enough to spend time with wild dolphins, for example, to see they are capable of vivid experiences and emotional lives. Orcas are known to have their own culture. Lolita's brain, like yours and mine, is equipped to feel anger, pain, joy, frustration and more. She is a smart, social being. And across the animal kingdom, not a day goes by without new discovery of other non-human creatures doing remarkable things.

Now is the time to recognize that we are not the only species able to feel and think. It's the only road to developing the empathy necessary to regard other creatures as fellow sentient beings — and start appreciating them for who they really are.

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