

# Eric Swalwell and the politics of contempt

BY JONATHAN TURLEY, OPINION CONTRIBUTOR - 12/16/23 10:30 AM ET

SHARE

TWEET



This week, millions of people were glued to their televisions as [Hunter Biden](#) defied a House subpoena in a [press conference](#) with the Capitol building in the background. It was an act of legal self-immolation as the president's son engaged in flagrant contempt of Congress, a federal crime.

Stranger still was that behind Hunter was standing his lawyer, [Abbe Lowell](#), who watched as his client effectively begged to be criminally charged.

---

But it was a familiar figure behind Lowell that was the most incongruous: Rep. Eric Swalwell (D-Calif.).

At first, one had to wonder whether Swalwell had simply wandered by the presser on the way to his office. But the Biden team set up the conference on the Senate side — out of the reach of the House sergeant at arms, who might not have reacted well to an act of open contempt of Congress on his side of the Capitol.

We later learned that Swalwell was not there simply as a pedestrian, but as a participant. It was Swalwell who helped orchestrate the defiance of his own House and facilitated an alleged federal crime.

As first reported by the Washington Examiner, Swalwell used his official position to reserve the space for the press conference and lent his assistance to Hunter in refusing to appear before the House committees investigating his father, President Biden. It was a curious role for a former House impeachment manager to play in assisting in the obstruction of an impeachment inquiry of three House committees.

Of course, Swalwell has argued for the rounding up of anyone who aided and abetted the unlawful conduct during the Capitol riot on Jan. 6, 2021.

Indeed, in 2021 Swalwell sponsored a resolution exploring whether dozens of Republican colleagues could be expelled under the 14th Amendment for aiding and abetting an insurrection by “making unsubstantiated claims of systematic election and voter fraud.”

---

Now, Swalwell was standing in front of the same building aiding and abetting both a potential crime and the obstruction of congressional proceedings.

Hunter was not just committing contempt of Congress; he was parading his contempt with Swalwell as the drum major.

What followed him was contempt on steroids. All Hunter had to do was walk into the building behind him to appear in the deposition and plead the 5th Amendment to refuse to testify, as others have done. The only option he did not have was to refuse to appear.

---

Swalwell insisted that it was the fault of the House for insisting on a closed-door deposition, which he portrayed as outrageous. It was another hypocritical moment since the Democrats insisted on the same process for witnesses, including those who appeared before the Jan. 6th committee.

It was also how Swalwell and his colleagues handled the investigation of the Ukrainian telephone call by Trump. Indeed, Swalwell participated in closed depositions and then gave interviews after they were held in private.

There are various reasons for closed deposition preceding public hearings.

---

First, these depositions allow professional staff to conduct questioning in a methodical and professional manner. In a public hearing, questioning is conducted by members who are often ill-equipped for substantive inquiries.

Second, Hunter must be asked about an array of financial documents and communications involving names and privacy protected information. In a public

hearing, the use of such documents would trigger redactions and interruptions in their use.

Third, these depositions allow for in-depth questioning on transactions and communications. In a public hearing, members are confined to a five-minute rule that guarantees questioning cannot achieve much, if any, depth.

---

---

Both Hunter and Swalwell likely knew that, and that is precisely why they wanted a public hearing. Notably, after saying that he wanted to answer all questions in public, Hunter then refused to answer any questions in public put forward by the press.

The fourth and most important reason for the deposition is that the House wants it this way. Witnesses, even a president's son, do not get to choose how or when they appear. Two Trump associates – Steven Bannon and Peter Navarro – refused to appear in the House and were quickly held in contempt by a majority of the House, including Swalwell.

Indeed, President Biden himself has maintained that defying subpoenas cannot be tolerated. When subpoenas were issued to Republicans during the House's Jan. 6 investigation, Biden declared: "I hope that the committee goes after them and holds them accountable criminally."

---

---

The Justice Department clearly agreed. Under Attorney General Merrick Garland, Bannon went from a failure to appear to an actual indictment in just two months.

It also does not matter that the House formally approved the impeachment inquiry only after Hunter's press conference. As I testified in the first Biden impeachment inquiry hearing, there is no requirement of a formal vote. Indeed, the Democrats did not initially hold a formal vote in their own impeachment of Trump. Hunter's subpoena was issued by two committees with inherent subpoena authority under three different House rules, including the authority given to the House Oversight Committee.

It was a valid subpoena.

---

---

The question is not whether Hunter Biden can be held in contempt; of course he can. The question is what to do with Eric Swalwell.

Swalwell has long courted controversy. Republicans tossed him off the House Intelligence Committee due to his purported affair with an alleged Chinese spy named Fang Fang.

This is different. Swalwell was not charged in the Chinese affair, including by the House Ethics Committee. This was a criminal act directed against the House itself.

Recently, the House censured Rep. Jamaal Bowman (D-N.Y.) for pulling a fire alarm before a major vote. Here Swalwell played a key role in obstructing a major House investigation. Where Bowman's offense was treated as a misdemeanor, Hunter's offense is a felony.

Swalwell did not simply facilitate a crime, he went out of his way to associate himself with it.

Swalwell surely knew that he was helping Hunter in defying a subpoena and obstructing the investigation into Joe Biden. He not only helped set up the press conference but made sure that he was in the camera frame behind Hunter for every network audience. He presumably utilized congressional staff to assist in this effort.

In taking these actions, Swalwell encouraged and facilitated the contempt of Congress. While his conduct may not warrant a criminal charge, it certainly warrants action from the House.

The issue is whether the House has a right to demand answers in this investigation. One member was particularly passionate in 2018 in calling for contempt sanctions against Steve Bannon: "If they don't force him to answer legitimate questions, they will be ceding Congress' authority, and we'll be setting a very, very dangerous precedent that people can just tell Congress what they will and will not answer, and will show no resolve to use our subpoena power to get to the bottom of what's going on."

That was Eric Swalwell.

*Jonathan Turley is the J.B. and Maurice C. Shapiro Professor of Public Interest Law at the George Washington University Law School. He also previously served as lead counsel representing the House of Representatives.*