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BY MATTHEW STEVENSON
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Who Won the Impeachment?



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If you're Donald Trump, watching the last act of your impeached presidency, you don't need a Weatherman to tell you which way the wind is blowing, which is in the direction of a District of Columbia courtroom, where you will either be convicted as an accessory to second-degree murder ("*an extreme indifference to human life...*") or a runaway jury will award plaintiffs (the Capitol police injured or killed in the riot) \$1.8 billion in damages (which by the way Deutsche Bank will not cover with another overdraft).

Technically, Trump "walked" in the impeachment trial, but that's because the Senate is the only courtroom this side of Putin's Russia where jurors hearing a case can conspire with defense attorneys (who, while we're on the subject, confused the trial with something that sounded like a rerun of *Judge Judy*).

The final vote on the charge of “incitement of insurrection” was 57-43 for conviction, which fell ten votes short of the two-thirds majority needed to find for the House of Representatives, which brought the charge against Trump.

According to “Leader” Mitch McConnell (who after the trial appeared as if one of the Chicago Seven and might well have said on the floor of the Senate, *“Martin’s dead. Malcolm’s dead. Medgar’s dead. Bobby’s dead. Jesus is dead. They tried it peacefully. We’re going to try something else...”*), the reason the Senate had to exonerate the former president is that Congress cannot remove from office someone who has already left. (McConnell said: *“I believe the Senate was right not to grab power the Constitution does not give us.”*)

In his postgame remarks, however, McConnell all but invited prosecutors in the District and elsewhere to throw the book at Trump (*“We have a criminal justice system in this country. We have civil litigation. And former Presidents are not immune from being held accountable by either one...”*) and perhaps also to throw away the key.

Upon his acquittal, Mar-a-Don issued a bizarre statement, channeling Lincoln’s second inaugural, saying:

It is a sad commentary on our times that one political party in America is given a free pass to denigrate the rule of law, defame law enforcement, cheer mobs, excuse rioters, and transform justice into a tool of political vengeance, and persecute, blacklist, cancel and suppress all people and viewpoints with whom or which they disagree. I always have, and always will, be a champion for the unwavering rule of law, the heroes of law enforcement, and the right of Americans to peacefully and honorably debate the issues of the day without malice and without hate.

The way this is written, it sounds as if Trump also wants his party to be free to “denigrate the rule of law, defame law enforcement, cheer mobs, excuse rioters, and transform justice into a tool of political vengeance...” (I thought it already had that right?)

So who won the impeachment?

Trump’s Many Legal Lives

Cats only have nine lives, but Trump—at least judicially—has hundreds.

What other citizen of the republic can grope countless women, defraud banks and investors, lie under oath, bleed companies under arcane bankruptcy laws, cavort with various Russian and Ukrainian bagmen, run Ponzi schemes, have his way with porn stars, obstruct justice, conspire to overturn elections, attack the Capitol and Congress with an armed mob, kill police officers, and still enjoy “the blessings of liberty” in a gilded Palm Beach hotel suite surrounded by trays of half-eaten cheeseburgers and Diet Coke?

In theory, Trump comes out of the impeachment trial under a halo of invincibility that will see him back on top of the Republican party, in time to “primary” (kids, it’s not a verb) all those renegade senators who voted to convict him in the Senate.

Nor should anything, other than his own madness, prevent King Donald from running again for president in 2024, by which time Leader McConnell will have come to his senses and opposed every program proposed by President Biden (to deal with the pandemic, climate change, the economy, immigration, and inequality—all those “Democrat” red herrings).

A resurgimiento must be the plan among those in the padded Mar-a-Lago bunker (Don Jr., Roger Stone, Kellyanne?) who until last Saturday would have been studying extradition laws in Argentina. So what could go wrong?

For one thing the Liz Cheney, Mike Pence, Mitch McConnell, and Nikki Haley wings of the Republican party appear to be done with Trump.

They might want his 74 million voters and his fund-raising prowess for the 2022 election and beyond, but they don’t want the boorish Trump himself, especially if his only platform—now that Twitter is gone—is a defendant’s table in a series of lawsuits and criminal trials.

Pelosi’s Hidden Agenda

Yes, Trump “walked” on the impeachment charges, but Pelosi’s and Schumer’s goals in the Senate trial were never to secure 67 guilty votes from the likes of co-conspirators Ted Cruz and Lindsey Graham.

At trial the Democrats were content to brand Trump and his ilk as a party of Proud Boys who if allowed back in power will yet again march on the Capitol, only this time with more guns.

The only way for the Republicans in the Senate to have double-crossed the Democratic strategy would have been to have voted unanimously to convict Trump.

If they had, they would now be starting over as a conservative party in opposition to Biden’s AAA platform (“*acid, amnesty, and abortion*”—it’s a 70s expression).

Instead the Democrats won twice—they had their show trial on prime-time television and left the erratic Trump at the head of a weakened political party that has the air of a QAnon chat room. Ka-ching.

He’s Biden’s Problem Now

Joe spent the trial above the fray, watching the Super Bowl, heading to Camp David, too busy with pandemic stimulus legislation to watch even Trump’s ambulance-chasing legal defense team get laughed out of the Senate.

In case you are wondering, here’s a verbatim description of Trump lawyer Michael van der Veen’s areas of legal practice: “Animal Bites, Assault, Motor Vehicle Accidents, Personal Injury – Plaintiff, Slip and Fall, Wrongful Death, Dram Shop Laws, Construction Accident, Brain Injury, Sexual Abuse – Plaintiff, Trucking Accidents, Premises Liability – Plaintiff, Litigation, Restraining Order, Small Claims, Arrest & Arraignment, Assault & Battery, Criminal Fraud, Criminal Law, Drug & Alcohol Violations, Expungement, Failure to Pay Child Support, False Accusations, Felony, Juvenile Delinquency, Misdemeanor, Motor Vehicle Offenses, Murder, Parole, Probation, Prosecution, Sex Offenses, Tax Evasion, Theft,

Traffic Violations, Criminal Domestic Violence...” No wonder Trump hired him; he needs it all.

Biden’s trickier issue, coming out of the McConnell acquittal denunciation of Trump, is that his Justice Department is now on the clock to indict Trump for the Capitol invasion, which is how Mitch gets rid of his Trump problem—by letting Biden do the dirty work.

If Biden walks away from Trump’s obvious criminality, well, then, don’t blame McConnell and the Republicans for not doing more to save the Republic. Hey, they did their duty in the Senate by upholding constitutional procedures in an honorable way.

As Mitch said afterwards: “We refused to continue a cycle of recklessness by straining our own constitutional boundaries in response. The Senate’s decision does not condone anything that happened on or before that terrible day. It simply shows that Senators did what the former President failed to do: We put our constitutional duty first.”

Henceforward, Trump is Biden’s problem.

If Biden pardons Trump or lets him escape prosecution for the Capitol murders, hotheaded Democrats will turn on the weak-kneed president, accusing him of imagining a reach-across-the-aisle America at a time when Republican goons are swinging baseball bats and hockey sticks.

But then, if Biden lets his prosecutors seek justice for Trump’s endless crimes, Biden will become the president who turned the United States into a banana republic, with the ex-president dispatched to a Bolivian-like jail.

Whither the Republican Party

For my sins I watched every minute of the impeachment trial, which lasted some twenty hours (as did the Super Bowl pre-game shows).

For much of the five-day series (I did get a little tired watching that endless loop of Capitol super-cop Eugene Goodman saving all those innocent senators from the mob), I thought about the future of the Republican party, and if it has one.

In American history political parties have come and gone. We no longer have Democrat-Republicans (it was one party in 1792), Federalists, Whigs, Know-Nothings, Greenbacks, Free Soilers, or the Anti-Masonic Party (against Freemasonry from 1828-38)—to name but a handful of political parties that have flashed in the pan of American politics.

The modern Republican Party came into being in the 1850s, as the Whig Party collapsed from the weight of its unwieldy pro-slavery and anti-slavery membership (the tent was too big).

The first Republican candidate for president was the western explorer, John C. Frémont (his slogan was “*Free Speech, Free Press, Free Soil, Free Men...Frémont and victory*”).

Although Abraham Lincoln established the party’s anti-slavery street cred in the 1860s, since then the Republicans have endorsed (depending on their mood) the gold standard (Ulysses Grant), the tariff (William McKinley), trust-busting (Teddy Roosevelt), isolation (Warren

Harding), fiscal conservatism (Herbert Hoover), liberal internationalism (Thomas Dewey), imperialism (Richard Nixon and W), and corporate welfare (Ronald Reagan). But nothing lasts forever.

Is This the End Game?

Who's to say that the current Republican party will not splinter among the wings loyal to Trump, McConnell, and the Lincoln Project (those Trump-hating Republicans who made all those attack ads).

A lot is made of the 74 million Americans who voted in 2020 for the Republican candidate, Trump, which ought to insure the future of a unified party.

What happens to a party that is marching behind the standard of a man, Trump, who might spend the next four years ensconced in a variety of criminal and civil cases, all of which show him as an enabler of Oath Keepers and QAnon, if not Charles Ponzi?

Keep in mind, too, that only a gerrymandered House, voter suppression, and non-proportional representation in the Senate have kept the Republicans in the recent political game.

Republicans have lost five of the last six popular votes for the presidency, although Republican presidents have still appointed 16 of the last 20 justices to the Supreme Court, and often have controlled the Senate.

Will it be Trump, Liz Cheney, Mike Pence, or Mitch McConnell who will lead the party in the 2022 mid-term elections, in which control of the Senate will be on the ballot?

If the post-impeached Trump is shunned by the party establishment in Washington, will he go through with his threat to create a Patriot Party and divide the Republicans into the fragments of his explosive ego?

If I had to bet on a scenario, it would be that Trump is angrier at Republicans than he is at the Democrats; nothing would give him greater pleasure than to destroy his own party.

Keep in mind that the mob in camo gear and coonskin caps that stormed the Capitol was chanting "Hang Mike Pence."

Impeachments 'R' Us

In case you only watched the highlights of the proceedings, the first day was devoted to the jurisdictional question (deadly from a ratings standpoint) of whether the Senate had the right to hear an impeachment case of a president no longer in office (it voted that it did).

The next two days, Wednesday and Thursday, were taken up by Democrats showing video highlights of the attacks (all those little evil red dots getting close to saintly orange blobs).

On Friday (after Trump had pulled another of his lawyers), the defense presented its case, which was that Nancy Pelosi was as responsible as Trump for the Capitol riots.

Saturday was given to closing arguments by both sides and the vote (never really in question).

The Democratic main trial man was Maryland Representative Jamie Raskin, a former constitutional law professor, who opened the case for the House prosecutors and who popped

out of his seat to answer questions about the wording or meaning of clauses in the Constitution. (Trump's lawyers were on firmer ground handling questions about dog bites.)

Raskin grew on me. On the first day he was weepy and professorial, treating us all like first year law students. After that he gained crisp confidence, especially when he figured out that his opposing counsel was Jacoby & Meyers (*"Impeachments 'R' Us..."*).

By the end of the trial, he was under the thin skin of the Screaming Dutchman (Trump lawyer Michael van der Veen) who seemed to be arguing a case about the due process of his client's breathalyzer test. (*"We don't do it like that in Philadelphia...."*)

Parade's End

The rest of the House manager team, pressing the case against Trump, had the ethnic diversity of a platoon in a World War II movie—only a wise-cracking Italian from Brooklyn was missing. But they did an excellent job presenting the case against Donald Trump, not that it required Cicero.

I liked them all, especially the delegate from the Virgin Islands, Stacey Plaskett, who remained focused whenever called to speak and who didn't mind, as they say in baseball, throwing at the intemperate van der Veen's head.

If anything, the strength of the House managers revealed a fatal flaw in the Democratic Party, which is that it's a Confucian gerontocracy when there are lots of capable leaders who are younger and sharper.

Biden, Pelosi, Schumer, Sanders, Warren, and the Clintons are all in their seventies (Pelosi is 80) while Jamie Raskin, the oldest of the managers, is 58, and it made a difference to hear and see Democratic politicians speak with energy and passion. Plus I like his hero, Tom Paine.

Mar-a-Lago's Beached Whale

In most trials the incoherence of Trump's defense team (one of his lawyers sought to represent pedophile Jeffrey Epstein; another declined, as a district attorney, to prosecute Bill Cosby) would have doomed his case.

Except that here Trump could have sent out dancing bears and Senate Republicans would have acquitted him. But you do have to wonder how Trump will fare, as a defendant, when he goes up against a team more aggressive than a bought jury?

Even before this trial, many top law firms were distancing themselves from Trump. (I presume he wasn't paying them.) After this dismal performance (even though nominally he won), Trump's legal management incompetence will embolden all sorts of prosecutors, plaintiff lawyers, class action groups, and bounty hunters to have a run at the beached whale stranded in Mar-a-Lago.

Here's a short list of cases that Trump might well be asked to defend in the coming years: the election tampering phone call in Georgia; the Manhattan District Attorney's investigations into the Trump Organization; the inquiries of the New York State Attorney General into

various fraudulent financial matters; the charges against Individual-1 (Trump) in the Southern District of New York case that sent Michael Cohen to jail; back taxes sought by the IRS; sedition and insurrection charges in Washington, D.C.; civil cases brought by the victims of the D.C. riots; bank lawsuits for unpaid Trump debts; fraud claims of Trump investors; those twenty-six cases in his matters of sexual harassment; and, finally, the possibility that Melania (despite a prenup) will claim \$3.5 billion in some divorce court—half of the \$7 billion Trump has always boasted he is worth.

If Trump's team consists of bottom-feeding lawyers from Philadelphia (with personal injury ads on buses) and a few Epstein wannabe apologists, it could—as Yogi liked to say—get late early out there.

Deaf Ears for Kevin McCarthy

The videos of the Proud Boys and Oath Keepers attacking Congress were horrifying, and there was a Zapruder film quality to the grainy sequences that show Mike Pence, hustling down stairs, declining the invitation to his own hanging. Otherwise the trial lacked drama, at least about its outcome, as the senatorial jury was in the bag.

To summarize the case of the House of Representatives, Trump orchestrated everything from “the big lie” (the theory of the stolen election) to the January 6 noon rally at the Ellipse, after which the great patriotic rabble set off to “take back” their country at the Capitol, where a joint session of Congress was scheduled to count the electoral votes at 2 p.m. and certify the winner of the 2020 presidential election.

Once the attacks on the Capitol began, around 1 p.m., Trump did nothing to secure the besieged branch of government, except to send out a few tweets and at around 4 p.m. to tell the attackers and killers “we love you.”

As described by Representative Raskin and his co-managers, Trump not only incited the insurrection against Congress, but then, in violation of his oath of office, failed to preserve, protect and defend the government then under assault; and the reason he didn't send help to the besieged Capitol is because the president, back watching television in the White House, was taking delight in the mob violence.

As testament to his state of mind, when the House Minority Leader Kevin McCarthy frantically called Trump asking for help, the president replied: “Well, Kevin, I guess these people are more upset about the election than you are.” Only a president who plotted such an attack would be so indifferent to a congressional plea for more police support.

Free Speech Über Alles

On the Trump side of the trial, his lawyers never denied either that the attacks were deadly or that Trump had addressed the mob beforehand with bombastic language. But they said that Trump, as president, was protected by the free speech clause of the First Amendment to say what he did to the crowd, which then, on its own, decided to head over to the Capitol and attack the joint session of Congress.

Trump's lawyers said there was no connection between his free speech and the deadly acts that followed. He could not be held responsible for the actions of the mob. (Not-to-so-fun fact: the legal case cited by Trump's lawyers arguing his right to unfettered free speech was *Brandenburg v. Ohio*, in which members of the Klu Klux Klan shouted vile statements at a rally, which a court later said was their constitutional right, as the denunciations of Blacks and Jews had not incited immediate violence.)

Second, the Trump lawyers argued (despite the Tuesday vote) that the Senate had no standing to try an impeachment charge against a president who had already left office or then to deny him the possibility of standing for public office in the future.

Trial and Error

Missing, however, from this trial (as with the first Trump impeachment trial) was the testimony of witnesses. Nor did the House managers have the ability, as in most trials, to subpoena documents or witnesses. (Both Democrats and Republicans agreed on having a quick trial.)

All they could do to present their case was to supplement their pleadings with on-air videos from the riot and excerpts from Trump's speeches and Twitter account.

What it meant was that no evidence was produced at trial that established any connection, other than tweets and the speech on the Ellipse, between the Trump White House and those who attacked the Capitol.

Nor was any connection established between any of the attackers and reconnaissance tours taken the day before of the Capitol, in the company of members of Congress or their staffs.

If, for example, there are texts or emails between the Proud Boys or Oath Keepers and anyone in Trump's entourage—say Don Jr.—they were not presented as evidence at the trial.

Nor did the House managers go into much detail about who in the Trump White House helped to plan the rally or what was conveyed—other than the big lie—to those who assembled in Washington for their day of rage.

Why go to the trouble of a trial and not call any witnesses?

Why, if the democracy is on the line, rush through the ending on a Saturday afternoon, so that senators can enjoy the long weekend and then the following week off?

The Grand Wizard of Washington

In the end impeachment is an act of politics, not law, and the political calculation of forty-five Republican senators was to acquit Trump on the insurrection charge.

Did they do so hoping that in 2022 or 2024 Trump, as the shadow president, will lead the party back from the wilderness?

Did they do so fearing that Mafia Don would punish them for voting with the Democrats?

Was money promised to any senators to determine their votes? (I ask as the acquittal of Andrew Johnson, during his 1868 impeachment trial, was determined by a \$10,000 bribe delivered by Secretary of State William Seward.)

The impeachment winners? In the end congressional Democrats and President Biden got their show trial (which was well done and struck me as “necessary and proper”), and Republicans got to vote for Trump’s acquittal and, afterwards, to say, yeah, well, he was guilty. (Mitch likes to have his cake and eat yours, too.) And Trump remains, for now, at the head of the Republican party. As they often say in Congress, “There’s something here for everyone.”

The trial loser? Clearly it was American democracy. How can the chief magistrate send a deadly mob into the Congress while it is counting electoral votes, murder and wound dozens of Capitol police, try to kill the Speaker of the House and lynch the vice-president, and then cite, in his defense, the First Amendment principle of free speech?

To paraphrase lead manager Raskin, the Trump legal position defies “common sense”, but at least those Ohio Klansmen in the *Brandenburg* case should be proud of their boy.

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Matthew Stevenson is the author of many books, including [Reading the Rails](#) and [Appalachia Spring](#). His most recent book, published this summer, is [The Revolution as a Dinner Party](#), about China throughout its turbulent twentieth century