Nadler's 180-Second Fantasy

IS HOUSE DEMOCRATS' "MENDACIOUS IMPEACHMENT FOLLY" DOOMED TO FAIL?

by Joseph DeMaio, ©2019

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(Dec. 10, 2019) — Jerrold Nadler, the Chairman of the House Judiciary Committee now pursuing impeachment against President Trump, is now on record as claiming that the case against the president is so strong that "if presented to a jury, would be a guilty verdict in about three minutes flat." Really? Setting aside the adolescent hyperbole of that prediction – and coming from a night-school graduate of the Fordham University Law School yet – it is an interesting, if curious, claim. Let us dissect it.

First, as Chairman Nadler – being a Fordham law graduate – should know, impeachment under Art. 2, § 4 of the Constitution is a political, not judicial, mechanism for the removal of a public official – here, President Trump – upon proof of treason, bribery or other high crimes and misdemeanors. While the proceeding may (or may not) result in a "conviction," by using the term "guilty" in his claim, Nadler erroneously equates the proceedings before the Senate with a judicial criminal trial.

The proceedings are *not* a criminal trial, as even Art. 1, § 3, Cl. 7 confirms. That provision states that judgments upon conviction "shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States…," but adds that the person removed "shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law." Thus, there is no criminal "trial" – if at all – until *after* one is impeached and removed upon a "conviction" of the defalcations identified in Art. 2, § 4.

Second, under his theory, Nadler argues that if this were a criminal proceeding – ahem…, it is not – the "stockpile" of evidence that the Democrats have assembled is so massive and compelling that if it were submitted to a jury, it would result in "a guilty verdict in about three minutes flat." Again, even acknowledging that his faux analogy between an impeachment and a criminal trial is hyperbolic, Nadler confuses the two by claiming that after retiring to deliberate, a "jury" would render a verdict of "guilty" in approximately 180 seconds.

Nadler overlooks the fact that, the proceeding in the Senate being – under his theory – the functional equivalent of a criminal trial, any "jury" called upon to deliberate would need to "convict" on a unanimous vote, *i.e.*, 100% of the empaneled deliberating jurors. Nadler thus also disregards the reality that only two-thirds (*i.e.*, 66.67%) of the Senators *present* (*see* Art. 1, § 3, Cl. 6) would be needed to "convict" on an impeachment. Faulty analogy, Jerrold. Apart from the 180-second deliberation period joke, although it might be mathematically easier to get a two-thirds vote to remove a president on an impeachment than it would be to get a unanimous 100% vote to secure a conviction on, for example, a bribery charge, it is a lead-pipe certainty that the Democrats' impeachment charade will fail in the Senate. Take that to the bank.

Even Pelosi (secretly) understands that an impeachment referral will be DOA in the Senate. The fact that the House Democrats nonetheless doggedly plow forward with their carnival in the absence of *any* bipartisan support simply underscores their malevolence and hatred for Trump…, and, by extension, the nearly 63 million Americans who voted for him. Thank heavens for the Electoral College, because without it, we would have Hillary ("Vile Video") Clinton in the Oval Office. Memo to Pelosi: spare us your "with a heavy heart" and "love for the Constitution" gibberish, because a blind Martian could see that comment is a lie.

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From the perspectives of Pelosi, Schiff and Nadler (now *there's* Three Amigos for ya…), anything and everything that can be done to wound and hobble President Trump before November 2020 – including a groundless impeachment charade bereft of competent factual proof of any impeachable offense – is fair game. What despicable political troglodytes that trio represents.

Third, however, and most importantly, Nadler completely ignores one of the core principles of criminal trial practice. Art. 1, § 3, Cl. 6 provides that, while the Senators who are "present" at the proceedings may function as the "jurors" considering the facts and competent, empirical evidence offered to support the impeachment (or not) and removal (or not) of the president, "… the Chief Justice shall preside." As in any trial, whether civil or criminal, while the parties and witnesses may offer their respective *facts* and evidence supporting their positions, it is the judge – the person who "presides" over the event – who rules on *legal* issues flowing from such facts and evidence.

As such, even if the impeachment circus originating in the Pelosi-controlled House takes its "act on the road" by careening down the hall to the Senate, it will be Supreme Court Chief Justice John Roberts who will "preside" over the matter. Sooo… what does the term "preside" mean? Black's Law Dictionary defines the term thusly: "**1.** To be in charge of a formal event, organization, or company; specif., to occupy the place of authority, esp. as a judge during a hearing or trial <preside over the proceedings>. **2.** To exercise management or control <preside over the estate>."

Thus, at the conclusion of the Democrats' presentation of their "evidence" purportedly "proving" – under Nadler's theory, beyond any reasonable doubt – that President Trump should be "convicted" on the articles of impeachment and removed from office, even a first-year Fordham law student would see the approaching locomotive: a motion for a directed verdict. A directed verdict in favor of a defendant, before it is even submitted to a jury, is proper where there is an absence of the proof necessary to make out a case against the defendant. Yes, Virginia, just like here.

Given the flimsy, hearsay-upon-hearsay and slipshod – that is a term from constitutional law professor Jonathan Turley, not your faithful servant – nature of the impeachment proceedings thus far, one can hardly expect any improvement in the actual formal articles of impeachment. That being the case, the president's defenders in the Senate would be wise to move for a directed verdict of acquittal.

The time is fast approaching when the Republicans and all sane Americans (thus excluding many Democrats) will need to begin taking the gloves off and start fighting fire with fire. As even Snopes.com confirms, Usurper-in-Chief Obama counseled that "when they bring a knife to a fight, we bring a gun." The best antidote for that species of incendiary metaphorical advice is to vote every single Democrat in both the House and Senate during their next campaign in 2020… out… of… office. *No exceptions.*

The Democrats have, through their mendacious impeachment folly, proven incontrovertibly that they have forfeited any claim of right or ability to govern a free people in a constitutional republic such as ours. They are aiming a dagger at the Constitution, the heart of the nation. Not good. The figurative – hello, Three Amigos…, *figurative* – weapon of choice that Americans can use to eliminate the threat posed by these thugs will become available on November 3, 2020. Vote *very* carefully on that date…, oh, and ask your election officials about 18 U.S.C. § 611(a).