IMPEACH THE CREEPY TWEETER

Nate Silver is the man I credit with *Moneyball* baseball. His use of statistics revolutionized a sport already crazy about statistics - even if it took some of the sport out of the game - reducing all performers to "role players." The A's were the team in the movie and on the field, and now the Giants seem to be buying into *Moneyball* system. Okay, not a good recommendation but just the same I am visiting Silver's numbers game site, *fivethirtyeight.com*, where Silver has moved his numbers game confidently into politics.

One of Silver's senior editors, Perry Bacon, adeptly takes on the issue of impeaching Trump. He frames the issue as **four "Woulds."** Would impeachment hurt congressional Democrats in the near term? Would impeachment boost Trump's job approval ratings in the near term? Would impeachment hurt Democrats electorally in November 2020? Would impeachment help Trump's reelection prospects?

Bacon's response to **the first Would - would there be near-term harm** - is that the numbers don't squeeze well for the Democrats. **Republicans oppose impeachment by a margin of 91% to 5% in response to the release of the Mueller Report. Independents oppose impeachment but by a narrower margin than Republicans: 51% to 40%, according to the same poll. Democrats can hardly beat those odds with roughly 70% supporting impeachment and a significant 23% opposed.**

Of course, Corporate Democrats, led by Nancy Betrayus, have been in the vanguard of the 23%, using the numbers she helped create as an excuse for opposing impeachment. In fact, she leads the pack in arguing that **the second Would - Would impeachment boost Trump's job approval ratings?** - deserves a resounding "Yes."

Well, right now, with this after-midnight moment rapidly passing away, **Trump has a 53% disapproval rating, with a mere 41% approval**. To illustrate the chancy business of approval, someone in the Nate Silver organization created a gorgeous chart to record the minimum to maximum approval swings of all the imperial presidents since Truman.

Trump's "median" spot in the swing beats nobody. Only GeeDub dipped lower in median average than Trump, landing somewhere in the frozen teens of approval. A few percents above GeeDub, we find Trump and Nixon sharing a spot in the low ground of the twenties.

What Trump lacks is a period where he was wildly popular, as were GeeDub, the elder Bush, Truman and Kennedy. They all had moments when their approval ratings were over 80%. GeeDub in fact broke into the nineties! While Trump hasn't been able to break out of the 50th percentile. In that way, Trump isn't that far behind Reagan and Nixon, who couldn't break out of the 60th percentile! Teflon Reagan, however, didn't fall below 35% - strangely enough sharing the very same not-so-low spot inhabited by Obama and Johnson at their worst times.

Nonetheless, when Nixon was on the ropes, he only managed a plus 50% in his favor from fellow Republicans - while Trump among Republicans soars to 80%, no matter what he does. In fact, his standing with Republicans topped out at 91% in a recent Gallup poll. On the face of it, this is a hard nut to crack. Says Bacon, "Impeachment doesn't look like a great idea for Democrats politically - it divides the party, unifies Republicans and pushes independents toward the GOP."

In the short run. **But as the public is educated about the details of Trump's impeachable conduct, Democrats and Independents could be expected to add more pull toward impeachment.** As for Republicans, at 91%, room for improvement here is negligible - a couple points, but who knows if it will be plus or minus.

The third Would is Pelosi's home turf - congressional gains or losses due to impeachment. Number-cruncher Bacon believes that, "We shouldn't overstate the impeachment backlash from two decades ago. Even though the impeachment effort against Clinton was unpopular, Republicans kept control of the House and won back the presidency in 2000. And even though Clinton's approval rating remained high, the Democratic presidential candidate in 2000, Al Gore, distanced himself from Clinton. Gore reportedly felt that the controversy around the president and his impeachment made voters wary of Clinton even if they said they approved of him."

In the final analysis, Bacon's that is, Republicans are already pretty extremely antagonistic to the DNC. Let alone the agenda being forged by A.O.C. Not to mention Bernie's Progressive Democrats and the left-leaning base.

This leads to **the fourth Would: Would impeachment help get Trump re-elected?** Bacon argued earlier that the numbers show that impeachment would not even result in a short-term boost for Trump. Bacon then asks, "But what if he can spend a year saying the Democrats tried to remove him from office? Well, here's the thing: Impeachment or not, Trump is likely to act as though the Democrats tried to get rid of him. He has already cast the Mueller investigation as akin to a 'coup.' The idea that Democrats are obsessed with taking Trump down will likely be in the president's campaign commercials and echoed by Republicans in Congress and on Fox News no matter what Democrats do in the next 17 months."

That leads me to propose **a fifth & final Would: Would not impeaching Trump result in the Democratic Party losing its soul?** When the "peace candidate" Obama so thoroughly disappointed his left-leaning base, refusing to as much as raise his voice against the previous war criminals, the result left him free to join their ranks without fear of reprisal. Endless war! Too big to fail! Hunt down the whistleblowers! Become the Deporter-in-Chief of two-and-a-half million! Venezuela declared a national security risk! It wasn't pretty. It flat-lined the enthusiasms of the party's left-leaning base - a spirit only recently restored by Bernie's unexpected candidacy.

Backing away from a moral obligation, refusing to use the means available to remove the noxious, dangerous, criminal Trump, can only repeat the Obama phenomena of the progressive and left-leaning base. It would catapult the Imperial Presidency securely above the Constitution. Commander-in-Chief Trump is settling down to a rule of Endless Emergencies. This exalted position is one that Trump already thinks he inhabits, that Trump covets, and one that the InfoWhores/RushLimberger forces do not find at all objectionable. One pro-Trump friend doesn't think that the Putin model, for instance, is distasteful, describing Putin favorably as a Christian Democrat…!?!

Of course, Pelosi's big picture crucially includes maintaining the Corporate Democrat Party that has made millionaires of them all. She is gambling that if Trump is undisturbed in office, her Democrat favorite, a conventional sell-out in the mold of Joe Biden, will repeat the dazzling victory...of Hillary Clinton? For the base, this is a lose-lose option. Another Corporate Democratic President offers nothing but a guaranteed disaster. At the cost of dampening the fire of political-engagement needed to stop global warming, losing precious time and forcing another generation into the streets to demand a real Green New Deal.

Moneyball is the game Pelosi and her accomplices will play, right over the cliff's edge. *But wait, the situation changes by the minute*. My cell phone has Hillary declaring that the Mueller report showed that OBSTRUCTION OCCURRED! Occurred! Obstruction! Let's go get 'em, team. Save Our Souls and Impeach the Creepy Tweeter.

This has been another shrill bleat from
ThePeoplesWhistle,
a Tweet that's not an echo.

The respective roles of Mueller and Congress come immediately to mind when reading former Independent Counsel Ken Starr's recently published book, **Contempt: A Memoir of the Clinton Investigation,** in which Starr defends his role in the impeachment of Bill Clinton. The memoir is not a convincing performance, but it has the virtue of confirming that Mueller has performed exceptionally well in ways that Starr did not. It also suggests that Mueller would have reason to refrain from following Starr's lead in becoming an analyst, much less appearing to have become an advocate, for impeachment. He might well conclude, as Starr did not, that he had one job to do and Congress must attend to this other, different and urgent constitutional duty.

Time and again, Starr describes how he got lost in the politics of the situation—and, eventually, the politics of impeachment. He and his team sent to the Hill an impeachment referral that included a graphic sexual narrative, whereupon Congress promptly released it in full to the public. Starr seems confounded that Congress did not protect against disclosure of this material.

In another fateful move, Starr did not resist the decision by the House Republican majority to rely on him as their key witness, foregoing any investigation of its own. The majority's special counsel for the impeachment proceeding informed him that he was to *"fly solo in the witness box."* Starr still does not understand how, in this appearance before Congress and now again in this memoir, he has come off as the chief advocate for the impeachment case, not merely the source of a referral.

He relates how his team examined the authorities on impeachment and concluded that what constituted an impeachable offense was **"ultimately a political judgment entrusted to the unfettered discretion of the House of Representatives."** In other words, he did not glean a concrete standard from all the research. He seems to have adopted Gerald Ford's much-quoted and *markedly simplistic assessment* that **"an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history."** Starr's referral to the House omitted explicit argument about the grounds for his conclusion that there was "substantial and credible evidence" of impeachable offenses. He relays his findings about Clinton's involvement in perjury and obstruction, but in the report to Congress, he does not address the basic question of whether, on the specific facts rather than in the abstract, these crimes justified ouster from office.

For example, Starr understood at the time that the lawyers representing Paula Jones in her sexual harassment action against the president intended to trap the president in a lie. It was not to Clinton's credit that he lied before the grand jury in the Jones case; but then again, it was not a feather in the Jones legal team's cap - *nor necessary for their client's case* - to lay a trap of this kind. Was this the kind of "perjury" that supported impeachment in a case of this nature? Far from addressing the issue, Starr instead proceeded to build on the Jones legal team's maneuver and brought Bill Clinton before a grand jury to put him to the choice of admitting the lie or lying again. Starr had the discretion to adopt a course different from the full-throated advocacy contained in the report and later in his House testimony, especially if he could not identify a clearly articulable and coherent standard. In sum, Starr tells the story of a prosecutor, charged with investigating a president, who fails to define his role with precision and avoid being swept up in the politics of impeachment.

Bob Bauer
lawfareblog.com