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Trump Was Convicted by a Jury, Not by His Political Enemies

The guilty verdict for a former president shows why jury trials are crucial for preserving the U.S. legal system against corruption.

By *Akhil Reed Amar*

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A courtroom sketch from Donald Trump's trial, May 30. PHOTO: JANE ROSENBERG/REUTERS

Imagine this: In a Manhattan courthouse, an epic criminal trial unfolds against a hugely polarizing public figure who has denounced the establishment at every turn. The strict letter of the criminal law favors the prosecution, so the trial judge's instructions to the jury lean hard against the embattled defendant. Twelve jurors deliberate behind closed doors and then announce their unanimous verdict in open court: not guilty.

This isn't just a fictional account of how this week's trial of ex-president Donald Trump for falsifying business records might have ended. It is what actually happened in the 1735 trial of newspaper publisher John Peter Zenger. In that historic case, Zenger was charged with libel for publishing articles critical of New York's royal governor, but it took a jury just minutes to decide to acquit him.

The trial became a landmark in American law by establishing that every criminal jury has the power to acquit, even if the presiding judge wants a conviction. Even if a jury engages in "nullification" by ignoring a trial judge's pro-conviction instructions, no judge, at trial or on appeal, can undo the acquittal. Retrial would be double jeopardy, a constitutional no-no.

The reason why Zenger walked out of his trial a free man and Trump walked out a felon is that Zenger's jury voted to acquit and Trump's jury voted to convict. This simple fact refutes most of the complaints that the former president made to reporters immediately after the verdict on Thursday.

Trump said, without evidence, that President Biden was responsible for his conviction, saying "this was done by the Biden administration in order to wound or hurt an opponent." Trump also implied, again without evidence, that evil big-money men are out to get him, describing Manhattan District Attorney Alvin Bragg as a "Soros-backed D.A." And he claimed that trial judge Juan Merchan was unfair, calling him "a conflicted judge who should have never been allowed to try this case."

But it was 12 ordinary citizens, not Biden, Soros or Merchan, who unanimously pronounced Trump guilty on 34 felony counts. In fact, the Trump trial shows why juries have long been considered an important anti-corruption device. A sitting judge—one person, known to future litigants long in advance—is in theory easy enough to bribe. But does Trump mean to imply that all 12 of the jurors, none of whom was known in advance, were paid off by Biden or Soros? How? A judge might be tempted to kiss the hand of the state government that

feeds him or, in the case of a federal judge, the president who nominated her in the past and might promote her in the future. Not so a jury.

Trump also complained that his trial should have been moved out of Manhattan because he is politically unpopular there, saying, “We were at 5% or 6% in this district, in this area.” But even if the defendant prefers a different venue, the Sixth Amendment states that federal trials should be held not just in the state but also the “district” where the crime occurred. The Declaration of Independence denounced pro-defendant venue transfers as a “mock-trial” system. Similar principles sensibly govern state criminal trials like Trump’s, and Manhattan is undeniably where Donald Trump, Stormy Daniels, David Pecker and other key players in the charged crimes came together.

Trump’s lawyers do have serious arguments that can be raised on appeal, including First Amendment arguments about campaign-finance rules and federalism arguments about state-law overreach. Some of these issues could reach the U.S. Supreme Court, which includes three justices Trump himself nominated. But most of what Trump said after his conviction was pure spin, unlikely to persuade any sober appellate tribunal.

Come November, a much larger jury of sorts—the American electorate—will have its own chance to deliberate and to render judgment on Trump. Voters can’t formally reverse his convictions, but they could “nullify” them politically by returning Trump to the White House, regardless of his adjudicated felonies.

But before voters have their say, we should give some thought—and many thanks—to the 12 citizens who served on the jury. They didn’t know each other beforehand, and none exactly volunteered for the job. When summoned, they put their lives on hold, listened to the witnesses, examined the evidence, deliberated together and delivered a verdict. Somewhere the Founders are smiling, even if Donald Trump is scowling.

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