

'Lost, Not Stolen' Report Fails To Convince

Authors ignore the tens of millions of unsolicited mail-in ballots sent to voters.



by Conrad Black

The imperishable Never Trumpers are by some measure the most contemptible definable group in contemporary American presidential politics. As the contest for the 2016 Republican presidential nomination unfolded, they were uniformly of the Mitch McConnell school of “dropping (Trump) like a hot rock,” if he were nominated and focusing Republican funding entirely upon congressional candidates.

Even though Donald Trump won the most convincing sweep of primaries any Republican candidate except an incumbent president has had, they sat on their hands in 2016 as Mr.

Trump led their party to victory and repositioned it on top of the traditional Democratic boroughs of the Hispanic, African-American, and working-class votes.

They enthusiastically joined in the cheering on the monstrous farrago of falsehoods that composed the Trump-Russia collusion theory, and generally made common cause with the Democrats throughout Mr. Trump's term and in the 2020 election. Their initial reaction to the 2020 election result was scarcely contained glee and the complacent supposition, again expressed by Mr. McConnell, that the dreadful Trump meteor would now pass into oblivion and the happy losers' playpen of Bush, McCain, Romney loser-Republicans would be reactivated.

Their response to the unconcealable facts that they dare not speak – that President Trump retains his popularity and that the regime carried into office by all the media bias and political skulduggery of the Trump-hate coalition is a spectacular and overwhelming failure – is to repeat endlessly to themselves that Mr. Trump is losing his following and that it is time for Messrs. Trump and Biden to go into retirement together. The voters can decide that, not the pundits.

The most irritating tactic of the Never Trumpers has been to claim that Mr. Trump has no legitimate complaint about the 2020 election result and that, accordingly, the January 6 disturbances had no basis whatever except sour grapes, and that Mr. Trump is merely a crybaby sore loser, unlike the gracious Republican presidential losers that preceded him.

This anti-Trump narrative, which is more of Republican than Democratic origins, holds that there is no possible question about the validity of the 2020 election result and accordingly January 6 was merely a cranky and irresponsible invitation to hooliganism and that the inescapable conclusion of these events is that the former president is unfit for high office.

The latest installment in this last-ditch campaign of the Bush

Republicans and their allies is a self-nominated group of Trump arch-critics that has produced what it represents as a report of a thorough examination of Trump claims against the legitimacy of the 2020 election.

The former solicitor general, Ted Olson, who won George W. Bush's lawsuit over the 2000 election in the U.S. Supreme Court, and a former senator, John Danforth of Missouri, are the most distinguished members of this group, but it is clear from its composition and from its report that the purpose of this activity is to further the floundering anti-Trump challenge for control of the Republican Party.

Entitled "Lost, Not Stolen," the report inadvertently highlights a weakness in the Trump argument for which the former president is himself responsible. As has been detailed in Molly Hemingway's authoritative analysis of the election, "Rigged," and elsewhere, Mr. Trump moved too late to challenge the election result where it was vulnerable.

That is the pre-election changes to voting and vote counting rules, ostensibly to facilitate voting during the pandemic, that contrary to the constitutional allocation of elections to the state legislatures, were effected by state courts or governors, especially in the swing states of Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.

Mr. Trump also allowed Rudolph Giuliani and others to conduct a histrionic *beau geste* campaign around the country over minor electoral infractions, demanding unrealistically drastic remedies. This was a serious tactical error that enabled his enemies, including the authors of this spurious report, to misrepresent Trump's grievances over the election result.

The authors of this report ignore the tens of millions of unsolicited mail-in ballots sent to voters. There was no verification and no possibility of being certain in whose hands these ballots were prior to being deposited in ballot

boxes or improvised drop boxes, raising concerns of ballot harvesting. Mr. Trump's main electoral challenge was in the Texas attorney general's suit against the swing states that allegedly did not comply with the Constitution's requirement of fair elections, and which was supported by 18 other states.

As it was litigation between states, it originated at the Supreme Court, which for fuzzy and questionable process reasons, declined to hear the case. Courts at various levels throughout the country declined to judge on their merits and instead rejected, also for process reasons, all of the other 18 lawsuits that attacked the constitutionality of the changes to the voting and vote-counting rules in the several states.

It is disappointing that a committee including a former solicitor general of the United States and several somewhat prominent jurists purported to dismiss Mr. Trump's claims as unfounded without mentioning any of the constitutional questions that were raised and which the entire judiciary, in an act of abdication, declined to judge.

Mr. Trump has himself to blame for, while identifying in good time the danger of ballot harvesting, failing to mount a legal offensive against it as the rules were changed under cover of the pandemic in state after state. He also has himself to blame for allowing the Giuliani operation to be represented by his enemies, including the writers of this latest report, as the core of his objections.

His claim to have won a majority of the popular vote is also far-fetched. Mr. Trump made it clear when he addressed his followers on January 6, 2021, that these constitutional issues are his chief objection, compounded by the systematic refusal of the judiciary to discharge its duty as a coequal branch of government with the executive and the Congress.

Public opinion has steadily reflected widespread concern about the validity of the 2020 result, where 50,000 votes flipped in

Pennsylvania and any two of Arizona, Georgia, and Wisconsin, would have given the election to Mr. Trump in the Electoral College. That would have been the seventh time a president would have been elected with fewer votes than his chief opponent, (1824, 1876, 1888, 1960, 2000, 2016; John F. Kennedy only had more votes than Richard Nixon in 1960 if the votes cast in Alabama for the Dixiecrat candidate, Senator Byrd, are allocated to Kennedy).

Mr. Trump's enemies will not get away with this smear job, any more than they will make the case that he and his supporters had no cause for complaint on January 6. The last thing Mr. Trump wanted on that day was an attempted insurrection. The fact that Mr. Trump has not always handled this well does not vacate his legitimate argument.

It is a disgrace that anti-Trump Republicans would go to the lengths this committee has gone to in the forlorn cause of taking the Republican Party back for the Bush-McCain-Romney faction, from the Trump Republican majority, which includes all of the plausible alternatives to Mr. Trump as the Republican presidential nominee in 2024.

First published in the [*New York Sun*](#).