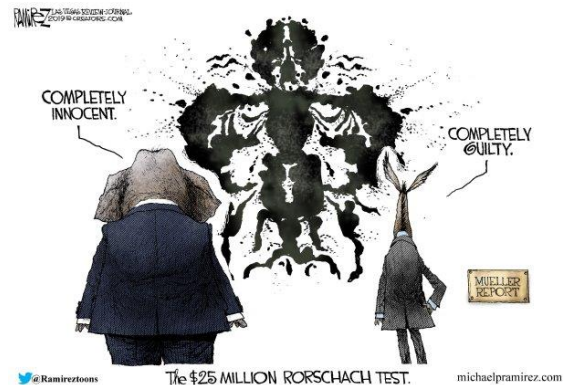


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IMPEACHMENT HEARINGS: A FASCINATING RORSCHACH TEST

By Steve Bakke  November 26, 2019



Candidate Trump's campaign style matched his reputation. Facing opposition, his combination of narcissism and hyperbole often led to outrageous comments, name-calling, mocking, and bullying. And I think we can agree his outrageous style was an early motivation for Democrats to want to remove him. It's easy to see how anyone he took "shots" at could grow to dislike him, or worse. That's how most people react, and they react with angry enthusiasm.

Ultimately, House Democrats held closed impeachment hearings, only releasing information that supported their accusations. That clever tactic amounted to doing political opposition research using taxpayer dollars, and it reinforced their strategy of dragging Trump through the mud as long as possible.

Then came the public portion of the inquiry which now seems to be over. Throughout those hearings, Intelligence Committee Chairman Schiff had his foot on the throat of any aggressive attempts by Republicans or the President to launch much of a defense. I will discuss more specifically some of the details of the public hearing at a later date. Here I'll comment generally about where I think we are.

It's clear many of us are overwhelmed with information, but without obvious explanations or answers. Nothing is clear-cut because much of what was presented is hearsay, speculation, interpretation, and presumption. Because of the nature of the evidence, the only conclusions that can be drawn thus far are best described as "matters of opinion."

Here's my simplified summary of the situation. Trump asked Ukraine's President to investigate potential corruption surrounding the 2016 campaign – e.g. Joe Biden's threat to withhold promised funds unless Ukraine fired the prosecutor investigating a Ukrainian oil company. Democrats allege that Trump threatened to withhold much needed military aid pending cooperation in the requested investigation – i.e. quid-pro-quo. However, Ukraine's President was bound by treaty to deliver on Trump's request to investigate potential corruption, without regard to any quid-pro-quo.

Complicating the issue for democrats is that there was no Ukrainian investigation, and the aid was ultimately paid anyway. It's also inconvenient that Biden's son was a highly paid board member of the oil company Biden rescued from the prosecutor. Complicating the issue for republicans, Biden is now a prominent election opponent for Trump, making it easier for democrats to claim there were impeachable campaign violations.

Democrats first tried to develop an “obstruction” charge, partly because Trump attempted to prevent certain individuals from testifying at the House inquiry by asserting executive privilege. Contrary to the democrats’ claim, it’s not an impeachable obstruction for a President to claim executive privilege to block testimony of certain individuals. Democrats should know this. If Congress disagrees with reasons for executive privilege claims, the remedy is to go to court, not impeach. Because that’s not working, democrats have broadened their focus to include accusations of bribery and other transgressions.



Nothing is clear-cut, otherwise Schiff wouldn’t have had to create a parody of Trump’s Ukraine call if its transcript clearly supported his allegations. And now we have testimony that is almost exclusively second-hand, hearsay, interpretation, and presumption.

We can’t be deceived by those who would have us believe that impeachment has a lower bar to clear than does a serious criminal prosecution. This isn’t a criminal prosecution, but it is an equally serious, very different type of prosecution. While impeachment is a political process, not a criminal one, the Constitution does refer to “crimes and misdemeanors.” Criminal statutes remain relevant, though not governing, and the absence of any statute violation would probably affect the final decision. Also, while the impeachment process doesn’t necessarily follow judicial standards, the Constitution doesn’t declare that standards of evidence and due process should be ignored. Democrats have violated both, but how that affects the outcome remains to be seen.

There’s also another huge unknown. Political allies of the democrats are subject to investigations by Inspector General Michael Horowitz, Attorney General Bill Barr, and U.S. attorney John Durham. It’s too early to determine how those investigations will affect the House impeachment or the Senate trial, but it’s sure to promote a lot of hopes, fears, and speculation.

Every statement, testimony and opinion in the Trump impeachment inquiry calls for interpretation in order to reach a conclusion. Put all of these subtle facts and nuances in a jar, shake them up, and cast them on the table. Look at all of the facts and ask yourself: “Are there things done that you feel that were wrong? Are those things so egregious that the President should be removed from office?” And we’d be foolish not to heed Alexander Hamilton’s advice in Federalist 65. He warned against insisting on perfection in our impeachable leaders. His words: “Where is the standard of perfection ever to be found?”

Perhaps republicans will make a compelling case in the President’s favor, but at worst, it appears there will be no clear-cut case to remove him. Democrats would have to rely on nuanced opinions and hearsay evidence to remove the President, and that won’t win the day. And, as much as democrats wish it were so, “annoying, outrageous style and behavior,” policy disagreements, and subjective competency evaluations, have no standing as impeachable offenses.

So far, it’s just a matter of political opinion – a fascinating Rorschach test. Next, let’s take some time to further untangle the questioning and testimony we’ve been able to witness so far.