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Obstacles to Removing Trump: Those Pesky Rules of Evidence, Due Process, and Reasonable Doubt

by Steve Bakke  December 10, 2019



Conflicting alternative realities – that’s the only way to describe the Trump impeachment saga. This article is my layman’s interpretation of some things that confuse us all.

The first round of secret, then public hearings, in the House Intelligence Committee resulted in mostly hearsay evidence, interpretation and supposition by witnesses. Gordon Sondland’s first testimony described a President who withheld military aid, subject to Ukraine’s announcement of a corruption investigation. Eventually, Sondland testified that he talked to Trump who, when asked directly, stated “I want nothing.....no quid-pro-quo.” By his own admission, Sondland’s earlier testimony regarding Trump requiring “quid-pro-quo” for military aid was mere presumption. Other witnesses, many of whom could trace their information and opinions back to Sondland, appear to be mostly hearsay witnesses expressing interpretations and suppositions.

Next came two days of hearings in the House Judiciary Committee. The first four witnesses were constitutional law professors. Keeping their foot on the republicans’ throat, democrats called three witnesses, allowing the republicans only one. These scholars didn’t agree whether there were impeachable offenses, nor whether charges were proven.

Trump’s executive privilege assertion for witnesses and documents led to democrat claims of obstruction. George Washington University Professor Johnathan Turley, no Trump supporter, clearly won the day by pointing out that the remedy is in the courts if they can’t agree on validity of executive privilege assertions. Trump already has gone to court,

prompting Turley to state emphatically, “If you impeach a president, if you make a high crime and misdemeanor out of going to the courts, it is an abuse of power. It’s your abuse of power.”

Turley referred to the evidence as “presumptions...paucity of evidence...wafer thin...” and “a case for impeachment...cannot be made on this record.” He added, “If President Trump honestly believed that there was a corrupt arrangement with Hunter Biden that was not fully investigated by the Obama administration, the request for an investigation is not corrupt.”

We’ve also had a day of testimony during which Judiciary Committee members interrogated Intelligence Committee staff counsels. Nothing changed, and it deteriorated into arguing about previous testimony and process.

As I write this, Democrats have decided on limiting impeachment charges to “abuse of power” and “obstruction of Congress,” and it’s on the way to the Senate for trial. Those charges are a bit less dramatic than I expected. With all the earlier focus on quid-pro-quo/bribery and obstruction of justice, those charges have been dropped. Reasons for not pursuing them must have included those pesky rules of evidence, due process, and reasonable doubt. Fair rules finally will govern the process.

The process in the Republican-run Senate will be considerably different than in the House. While impeachment is a unique process, the Senate will employ more traditional rules of evidence, due process and reasonable doubt. The Chief Justice will preside, and I expect more fairness for calling witnesses and interrogation. The President will finally be effectively represented by counsel.

Some of my personal takeaways: Trump arguably had the authority to ask Ukraine to investigate prior election meddling as well as Hunter Biden’s potential conflict; the opinion, “I wouldn’t put it past Trump” doesn’t constitute evidence; most of the evidence is disputed i.e. a matter of opinion; much of the “evidence” (e.g. hearsay, speculation) will probably be inadmissible; and, Trump’s faces impeachment for arguably lawful acts.

In summary, Democrats claim the evidence is uncontested, and the President should be removed from office. In contrast, the republicans say that it’s very clear, the President has done nothing wrong. I believe the evidence for impeachment is ambiguous at best, almost to the point of being exculpatory. The democrats are being defeated by rules of evidence, due process, and reasonable doubt – all good developments

Finally, the DOJ Inspector General’s report on the FBI’s procedures in the Trump investigation doesn’t help the democrats’ cause, and time will tell how much damage U.S. Attorney Durham’s findings about the Steel Dossier and FISA warrants will do to the democrats and the “deep state.”

As I’ve been saying for several weeks, this flimsy impeachment case has deteriorated into nothing more than a “matter of opinion,” and that won’t win the day for the democrats.