

# HOUSTON CHRONICLE



## Cherwitz: A Trump Cover-up? Look to the Romans

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Photo: Thanasios Gioumpasis,  
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The Colosseum also known as the The Flavian Amphitheatre is illuminatated at night in Rome, Italy. (Photo by Athanasios Gioumpasis/Getty Images).

Many of the ways we argue about topics in politics and law have their roots in antiquity - and specifically in classical theories of rhetoric. While we think our discourse today is unique to the times and circumstances in which we live, the

reality is that patterns of thinking and talking are inherent in the human condition and therefore may be time-invariant.

Case in point: I am a college professor who teaches Argumentation & Advocacy, a class comprised of dozens of students who eventually become lawyers. In this course students study the Roman concept of "stasis" - a theory delineating all of the issues attorneys in Roman times drew upon to determine whether someone is guilty.

Students learn that, while the Romans couldn't have predicted the specific content about which we argue in the 21st century, their notion of stasis is applicable, informative and anticipated accurately how we argue today.

Consider the three major points of stasis detailed by the Romans. First are "questions of fact." This question asks: Did the accused commit the act or do the deed? This is a factual, not a legal question. Second are "questions of definition or interpretation." Here, attorneys ask: Does the act or deed constitute and meet the definition of the crime? This is a legal question. Finally are "questions of quality or justification." Put differently: Is there partial or absolute justification explaining why the accused may have committed the deed?

The Romans made clear that several sub-issues help answer the first point of stasis, questions of fact. For example: Is their circumstantial evidence (the place, time and duration of the act) or motives that implicate the accused? In addition, is there past proof (what the accused did or said prior to the act), contemporaneous proof (what was done or said simultaneous to the act) or subsequent proof (evidence such as blood, finger prints obtained after the act occurred) suggesting the accused did the deed?

But there is one sub-issue particularly enlightening in 2017. It was called "argument from consequence." Roman lawyers often asked: Does the accused

person's behavior show signs or consequences of guilt? In the case of recent allegations made about President Donald Trump, argument from consequence is telling and a paradigmatic example of the applicability of the Roman theory of stasis.

In the past few months Trump has admitted that he fired FBI director James Comey because of the Russian investigation. In his tweets there are numerous examples of inconsistency where Trump contradicted what members of his own administration said.

Revelations in recent weeks perhaps are the most curious. Trump asked his advisers about the rules pertaining to presidential pardons and doubled down on his efforts to undermine the investigation by the special prosecutor.

Although some find all of this innocuous, many people wonder whether Trump's actions and words expose a person who did things that are wrong and perhaps illegal - someone who shows the "consequences" of guilt.

Many legal observers and members of the media reasonably ask: If Trump isn't guilty of wrongdoing and subsequently covering it up, why would he say and do the things he does? After all, as the Romans knew, perhaps only a guilty person would behave that way?

While the argument from consequence does not in and of itself prove that Trump is guilty, it is extremely relevant and informative. Hence, it underscores why we should remind ourselves and our students that the ways people think and argue are deeply rooted in the human condition and are explained by philosophers thousands of years ago.

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