

High Crimes and Misdemeanors

We have all heard the phrase, "*high crimes and misdemeanors.*" And now, for the third time in our lifetimes, we are witnessing Congress using these charges to try to impeach a president. Many of us are watching the Hollywood theatrics of Congressmen as they arbitrarily forbid, hush and call down their fellow lawmakers in the chambers who want to talk or ask questions.

Years ago, the Founders of the Constitution pondered wording for the grounds of possible impeachment. It makes for a good read to see the other words and phrases that were dismissed when "*high crimes and misdemeanors*" was finally selected for inclusion.

The following was extracted from the Constitutional Rights Foundation website, crf-usa.org, where one can read about the players in history who put this into law.

Our Constitution provides impeachment as the method for removing the president, vice president, federal judges, and other federal officials. The process begins in the House of Representatives where the House Judiciary Committee holds hearings and, if necessary, prepares articles of impeachment or the charges against the official.

If a majority of the committee votes to approve the articles, the whole House debates and votes on them. If a majority of the House votes to impeach the official on any article, then the official must then stand trial in the Senate.

For the official to be removed from office, two-thirds of the Senate must vote to convict the official. Upon conviction, the official is automatically removed from office and, if the Senate so decides, may be forbidden from holding governmental office again.

The impeachment process is political in nature, not criminal. Congress has no power to impose criminal penalties on impeached officials. But criminal courts may try and punish officials if they have committed crimes.

The Constitution sets specific grounds for impeachment. They are "*treason, bribery, and other high crimes and misdemeanors.*" To be impeached and removed from office, the House and Senate must find that the

official committed one of these acts. The Constitution defines treason in Article 3, Section 3, Clause 1: Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Constitution does not define bribery. It is a crime that has long existed in English and American common law. It takes place when a person gives an official money or gifts to influence the official's behavior in office. For example, if defendant Smith pays federal Judge Jones \$10,000 to find Smith not guilty, the crime of bribery has occurred.

Prior to the Clinton investigation, the House had begun impeachment proceedings against only 17 officials: one U.S. senator, two presidents, one cabinet member, and 13 federal judges. Two of the 17 resigned from office before the House voted to impeach.

Of the 15 impeached, the Senate voted to convict only seven — all were federal judges. The Senate dropped the case against the senator, ruling that a senator could not be impeached. One judge resigned from office before the Senate voted on his case. The Senate voted to acquit the other six officials.

In all the articles of impeachment that the House has drawn, no official has been charged with treason. The closest to a charge of treason was one federal judge who was impeached and convicted for siding with the South and taking a position as a Confederate judge during the Civil War. Two officials have been charged with bribery. The remaining charges against all the other officials fall under the category of "*high crimes and misdemeanors.*"

What are "*high crimes and misdemeanors?*" On first hearing this phrase, many people probably think that it is just an 18th century way of saying "felonies and misdemeanors." Felonies are major crimes and misdemeanors are lesser crimes. If this interpretation were correct, "*high crimes and misdemeanors*" would simply mean any crime. But this interpretation is mistaken.

For the more than 200 years since the Constitution was adopted, Congress has seriously considered impeachment only 18 times. Thirteen of these cases involved federal judges. The "*high crimes and misdemeanors*" that the House charged against these judges included being habitually drunk, showing favoritism on the bench, using judicial power unlawfully, using the office for financial gain, unlawfully punishing people for contempt of court, submitting false expense accounts, getting special deals from parties appearing before the court, bullying people in open court, filing false income tax returns, making false statements while under oath, and disclosing confidential information.

Only three of the 18 impeachment cases have involved a president — Andrew Johnson in 1868, Richard Nixon in 1974, and Bill Clinton in 1998. It's important to take a brief look at these three cases to understand how Congress has interpreted "*high crimes and misdemeanors.*"