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Impeachment Sidebar: Bribery

Jerry Goldfeder's 'Impeachment Sidebar' addresses various salient issues relating to the impeachment inquiry. This is the second in the series.

A president or other civil officer may be impeached if he or she is guilty of "Treason, Bribery, or other high Crimes and Misdemeanors." The provision is simply stated, but somewhat elusive.



By [Jerry H. Goldfeder](#)

It appears that the House of Representatives' Permanent Select Committee on Intelligence has wrapped up its fact-finding in the impeachment process, and will be sending its report to the House Judiciary Committee. Judiciary, and presumably the full House, will then be tasked with the question of whether the actions of President Trump (and perhaps others) constitute impeachable offenses. The outcome does appear inevitable, but let's step back a moment—after all, impeaching and removing a duly elected President of the United States is a very serious and somber act.

As practically everyone by now knows, the U.S. Constitution lays out the standard. A president or other civil officer may be impeached if he or she is guilty of "[Treason, Bribery, or other high Crimes and Misdemeanors.](#)" The provision is simply stated, but somewhat elusive.

Let's put aside the offense of treason. The Constitution defines it as "only in levying War against [the United States], or in adhering to their Enemies, giving them Aid and Comfort." Although an allegation of the President's conduct as treasonous has been asserted [by some](#), no one in the House has suggested that he has committed this grievous offense. On the other hand, leaders in the House have [floated the allegation](#)

that the President has committed the impeachable offense of bribery, and it appears that Ambassador Gordon Sondland [recently made their case](#), even if unintentionally.

One would ordinarily think that bribery is a relatively straightforward crime, spelled out in the [United States Code](#). But, first of all, there is a robust debate as to the statute's application. (See, e.g., [Albert W. Alschuler, *Criminal Corruption: Why Broad Definitions of Bribery Make Things Worse*, 84 *Fordham L. Rev.* 463 \(2015\)](#).) And more importantly, as [Intelligence Committee Chair Adam Schiff recently said on NPR](#), "the founders understood bribery ... not as we understand it in law today. It was much broader. It connoted the breach of the public trust in a way where you're offering official acts for some personal or political reason, not in the nation's interest." Thus, we cannot look just to the bribery statute.

Representative Schiff's expansive view of the constitutional crime of bribery is supported by Laurence Tribe and Joshua Matz. In their recent book, [To End a Presidency](#), they remind us that bribery is not defined in the Constitution, and the Founders' reference to it was not tied to any general federal bribery statute. Their analysis is not new. During the impeachment trial of federal Judge Robert W. Archibald in 1912, the [House Judiciary Committee issued a lengthy report](#) in which a central theme was that impeachment went beyond statutory crimes: [in the words of the 19th century constitutional scholar Thomas M. Cooley](#), "It is often found that offenses of a very serious nature by high officers are not offenses against the criminal code but consist in abuses or betrayals of trust or inexcusable neglects of duty."

Thus, as the House Judiciary Committee begins to analyze whether it was an impeachable offense of bribery for the President to withhold military aid or a White House meeting unless Ukraine undertook an investigation of former Vice President Biden and his son (or at least announced an intention to do so), we should not expect a tie-in to specific statutory language. Rather, the issue will be debated within the more overarching framework of whether the alleged quid pro quo violated a public trust or was against the national interest.

Given this complexity, former federal prosecutor Renato Mariotti [recently urged](#) the House to consider bypassing the offense of bribery and rely on the more traditional—and "simpler"—allegation in impeachment hearings, abuse of power.

Next up: *High Crimes and Misdemeanors*

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