

# Impeachment is only a preliminary

How does impeachment work and what does the ACLU impeachment resolution mean?

Since the ACLU resolution was announced, some criticism has been voiced that ACLU is abandoning its traditional stance that "all persons are innocent until proven guilty." This is not the case and such comments indicate a misconception about the impeachment process.

The ACLU resolution states that "substantial public evidence" exists and therefore the ACLU requests the "House of Representatives...to initiate impeachment..." Neither the Constitution nor history define what should be the standard of evidence relied upon in impeachment.

In criminal proceedings, "probable cause" to believe a crime has been committed is usually the standard used to issue an indictment and "proof beyond a reasonable doubt" is necessary for a conviction. In civil and administrative proceedings, the standard used to make a decision is usually a "preponderance of evidence."

While the Founding Fathers took pains to keep the impeachment process distinct and separate from both criminal and civil proceedings, they provided absolutely no alternative standard of evidence to be used in impeachment however.

The ACLU's characterization, "substantial public evidence," is as valid as anybody's interpretation. In this area where there are no standards and only sketchy precedents to be relied upon, the degree of certainty of guilt required to impeach the President is largely an unanswerable question and completely dependant upon the evidence the House is willing to consider.

ACLU does not presume Nixon's guilt in the sense that they are saying he should be removed from office. Had that been the ACLU's intention, the resolution would have called for Nixon's conviction by the Senate. In other words, the ACLU would have determined that Nixon is guilty and must be removed. The Board did not go that far.

Instead, ACLU merely asks the House "...to initiate impeachment." This is to say only that the House should look into charging the President and that he should be tried by the Senate. ACLU asks the House to *provide* the

President with the due process which is described in the Constitution, the impeachment process.

What does impeachment mean then?

Impeachment is merely the charging of a public official. A simple majority of the voting members of the House of Representatives is required to pass what are called Articles of Impeachment. These Articles then constitute the charges on which the official is prosecuted and to which a defense must be presented. They are essentially a list of the evidence that tends to indicate that the official did something improper.

Thus far, House Speaker Carl Albert has assigned the several impeachment resolutions introduced by Representatives to the House Judiciary Committee. Albert has the discretion to establish a special select committee to rule on the resolutions if he wishes. Whichever committee ends up examining the resolutions it will be up to that committee to determine to what extent hearings will be held or investigations made. The next step would be to pass the Articles of Impeachment out to the House floor for consideration by the entire House. If passed by the House, the Articles then go to the Senate.

Trial in the Senate is presided over by the Chief Justice of the Supreme Court. The Senators in effect sit as a jury. The President can be represented by Counsel, may present evidence in his defense, may cross-examine witnesses and even testify in his own behalf. This is the due process of impeachment. There is no issue of executive privilege or separation of powers. The Constitution is clear that these considerations are set aside in an impeachment.

Following the trial, the Senate votes and may remove the President from office by a two-thirds majority of those members voting. If this occurs, the President is removed from office and barred from seeking any other public office. Of course, the President may render these proceedings moot at any time by resigning his office. If convicted, succession to the Presidency is carried out according to the procedure provided by the Twenty-fifth Amendment to the Constitution.