

CONGRESSMAN BRAD SHERMAN

24TH DISTRICT, CALIFORNIA



SERVING THE SAN FERNANDO AND CONEJO VALLEYS,
LAS VIRGENES AND MALIBU

COMMITTEE ON BANKING
AND FINANCIAL SERVICES

COMMITTEE ON
INTERNATIONAL RELATIONS

December 23, 1998

Mr. Edward Mezvinsky
815 N. Woodbine Ave.
Narbeth, PA 19072

Dear Mr. Mezvinsky:

Congressman Sherman thought you find the enclosed letter he sent to members the United States Senate of interest. A similar letter was sent to his colleagues in the House as well.

Best,

A handwritten signature in blue ink, appearing to read "Peter Loge", with a stylized flourish extending to the right.

Peter Loge
Chief of Staff

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December 21, 1998

In 1974 The House Judiciary Committee Determined That Lying Under Oath In A Private Matter Does Not Warrant Impeachment of President -- a Review of Nixon Tax Perjury Article

Dear Senator:

As you consider the Articles of Impeachment sent to you by the House, I hope your legal analysis is more careful and that your approach is more judicial. This letter is designed to assist you in reviewing the only established precedent on the most important issue before you: Is the impeachment of a President warranted by wrongs committed in his private life which do not threaten our Constitutional system of government?

Summary

In 1974 the Judiciary Committee established a precedent that a crime committed in private life (*i.e.*, Richard Nixon's tax fraud) does not warrant the impeachment of the President. In 1998 the House Judiciary Committee ignored this precedent because it was erroneously told that the 1974 vote against the Tax Article of Impeachment was based on a lack of sufficient factual evidence against Richard Nixon.

However, a careful review of the 1974 record, and of statements made in 1975, show that in 1974 the House Committee was swayed principally by the legal principles defining an impeachable offense, *not* by any lack of factual evidence against Richard Nixon.

The acts which the House Judiciary Committee found did not warrant the impeachment of President Nixon are virtually identical to the perjury Article passed by the House (Article I) and are not dissimilar to the charges in Article III.

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Detailed Analysis

President Nixon knowingly filed a 1969 tax return which fraudulently claimed that he had donated *pre-presidential papers* before the date Congress eliminated the charitable tax deduction for such donations. President Nixon, knowing his return was false as to this \$576,000 deduction, signed his name under the words:

“Under penalty of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete.”

In July 1974 Edward Mezvinsky (D-IA), a Member of the House Judiciary Committee, introduced an Article of Impeachment alleging that President Nixon had signed “Under penalty of perjury” a tax return which Nixon knew was false. While Mezvinsky argued that filing the tax return was an abuse of public power because Nixon knew his *red-flag* \$576,000 deduction would not trigger an audit *because he was President*. However, most Committee members believed that Nixon’s false tax return was a “personal,” non-governmental crime, and thus did not warrant the impeachment of the President.

The Judiciary Committee voted 26 to 12 against impeaching Nixon for his false tax return.

Technically, Nixon committed “tax fraud” not “perjury” and was subject to prosecution under the Internal Revenue Code. Yet Nixon’s crime (covered by his pardon) was almost identical to the perjury of which Clinton is accused (and is referred to here as “tax perjury”) because:

1. Nixon signed a document under the words “Under penalty of perjury, I declare...”
2. He presented false information to a federal agency.
3. Nixon lied when he had a legal obligation, *enforceable by federal felony statutes*, to tell the truth.
4. Nixon’s false statements related to a private matter -- his personal liability for federal taxes. (Clinton testified regarding his personal liability to Paula Jones.)
5. Nixon ignored the “rule of law” and his legal obligation to tell the truth.

Some have argued that the Judiciary Committee did not pass a Tax Perjury Article of Impeachment against Nixon only because the facts were unclear. A review of the Committee Report shows that some Members thought the factual evidence against Nixon was weak, while other Members thought that a criminal act in the conduct of personal affairs did not warrant the impeachment of the President. (See attached excerpts.)

Most of the Members of the Judiciary Committee did not speak on the record on the Tax Perjury Article. So how are we to know the reason for their vote and the precedent the 26 to 12 vote established?

The person most aware of the reasoning of the Committee Members regarding the Tax Article is its author Edward Mezvinsky (D-IA), who lobbied his colleagues on both sides of the aisle to get his Article adopted. I called Mr. Mezvinsky on December 16 and talked with him at length about his efforts in 1974 to convince his colleagues to vote for his Article. He told me that the clear majority of those who voted against his Article did so because they concluded that a crime committed in private life, which did not relate to an abuse of Presidential power and was not as heinous as murder or rape, did not warrant the impeachment of a President.

Mr. Mezvinsky is a Democrat. Is he remembering or interpreting the vote on his 1974 Article of Impeachment to establish a precedent favorable to our current Democratic President? Has his memory faded with time over the last 24 years?

Fortunately, in 1975 Mezvinsky wrote an article for the Georgetown Law Journal describing the thought process of his colleagues and providing a contemporaneous statement of the legal conclusions reached in 1974 by the Judiciary Committee.

Mr. Mezvinsky first explains the staff guidance the Committee received, and then the conclusion of the Members of the Committee, which followed that guidance.

“The staff nevertheless injected a requirement of substantiality into the impeachment formula: to constitute an impeachable offense, presidential conduct must be **‘seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.’** [Staff of the Impeachment Inquiry, House Comm. On the Judiciary, 93rd Cong., 2d Sess., Constitutional Grounds for Presidential Impeachment 26-27 (Comm. Print 1974).]”

“Most opponents of the Tax Article felt that willful tax evasion did not rise to the level of an impeachable offense requiring removal of the President.”

--Edward Mezvinsky
Georgetown Law Journal, 1975
Volume 63: 1071 at pages 1078-1079

The record on the Nixon impeachment process further supports the conclusion that impeachment of a President is warranted only for an offense against our very system, an offense subversive of the government itself.

A memorandum setting forth the views of certain Republican Members of the Judiciary Committee in 1974 (**including current Senate Majority Leader Trent Lott**) similarly emphasized the necessarily serious and public character of any alleged offense:

“It is not a fair summary...to say that the Framers were principally concerned with reaching a course of conduct, whether or not criminal, generally inconsistent with the proper and effective exercise of the office of the presidency. They were concerned with preserving the government from being overthrown by the treachery or corruption of one man....[I]t is our judgment, based upon this constitutional history, that the Framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct dangerous to the system of government established by the Constitution.” [*Nixon Report* at 364-365 (Minority Views of Messrs. Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, **Lott**, Moorhead, Maraziti and Latta) (final emphasis added).]

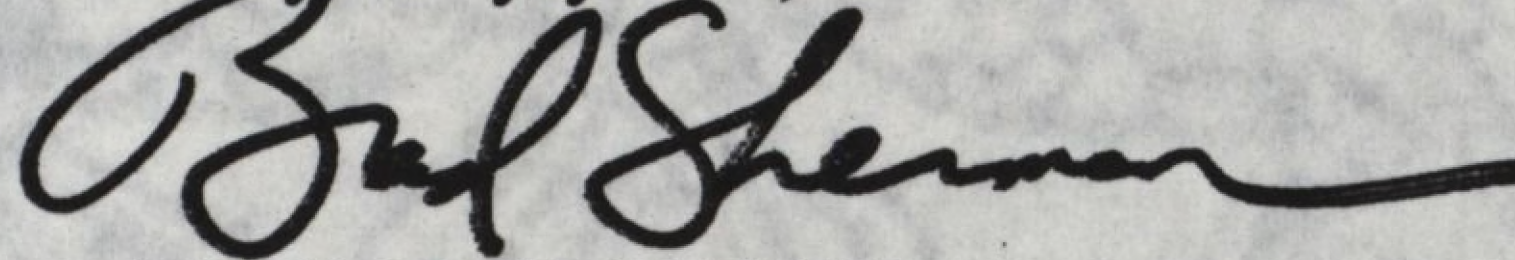
Conclusion

A 1975 law journal article tells the story. In 1974 a Judiciary Committee, dominated by Democrats, was confronted with a President who had lied on a tax return signed “under penalty of perjury.” That crime dishonored President Nixon, undermined respect for law, and called into doubt Mr. Nixon’s credibility on public matters. However the Committee applied the following formula: **seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.**

That same standard should be applied to President Clinton. Article I alleges that President Clinton lied "under penalty of perjury" and through that action undermined respect for law, and his own credibility and honor. Yet President Clinton's actions do not warrant the impeachment of a President under the standards formulated by the Judiciary Committee in 1974 and applied by most Committee Members in rejecting the Tax Perjury Article of Impeachment against Richard Nixon.

I believe that the facts alleged against President Clinton, even if true, do not warrant the impeachment of the President under the standards enunciated and followed by the Judiciary Committee in 1974. Accordingly, you should reject the Impeachment Articles as a matter of law (in a form similar to summary judgement), and avoid a long trial on the facts.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brad Sherman", with a long horizontal flourish extending to the right.

BRAD SHERMAN