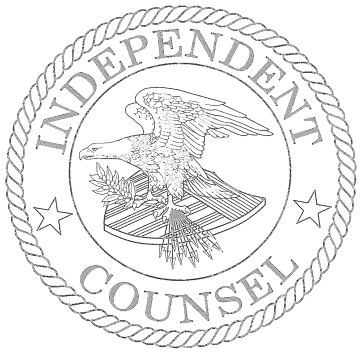

United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels
Division No. 94–1

Final Report of the Independent Counsel

In Re: Madison Guaranty Savings & Loan Association

Regarding Monica Lewinsky and Others

Robert W. Ray
Independent Counsel

Filed May 18, 2001
Modified September 20, 2001
Released March 6, 2002
Washington, D.C.

United States Court of Appeals

District of Columbia Circuit

Special Division

Division for the Purpose of
Appointing Independent Counsels
Ethics in Government Act of 1978, As Amended

Division No. 94-1

IN RE: MADISON GUARANTY SAVINGS & LOAN
(REGARDING MONICA LEWINSKY AND OTHERS)

Before: SENTELLE, *Presiding*, FAY and CUDAHY, *Senior Circuit Judges*

ORDER

Upon consideration of the motion of Independent Counsel Robert W. Ray requesting authorization to release and publish his Final Report in this matter, it is hereby

ORDERED that the motion be granted. It is therefore

ORDERED, ADJUDGED, AND DECREED that the Final Report of Independent Counsel Robert W. Ray *Regarding Monica Lewinsky and Others*, inclusive of an appendix containing all comments or factual information which have been submitted by any individual pursuant to 28 U.S.C. § 594(h)(2) and which are not heretofore governed by any other order of this Court, shall be released to the public.

Per Curiam
For the Court:
Mark J. Langer, Clerk

by Marilyn R. Sargent
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

In re: Madison Guaranty Savings & Loan Association — Division No. 94-1

Before: Sentelle, Presiding, Butzner and Fay, Senior Circuit Judges

ORDER

Upon consideration of an oral application for the expansion of jurisdiction of an Independent Counsel provided to this Court on behalf of the Attorney General on January 16, 1998, it is hereby

ORDERED that the investigative and prosecutorial jurisdiction over the following matters be referred to Independent Counsel Kenneth W. Starr and to the Office of the Independent Counsel as an expansion of prosecutorial jurisdiction in lieu of the appointment of another Independent Counsel pursuant to 593(c)(1):

> (1) The Independent Counsel shall continue to enjoy the full jurisdiction initially conferred upon him as a result of the August 5, 1994, order of the Special Division of the Court and all subsequent orders concerning jurisdiction. Pursuant to 28 U.S.C. § 593(c)(1), the Independent Counsel's jurisdiction shall be expanded to include the following:
>
> (2) The Independent Counsel shall have jurisdiction and authority to investigate to the maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law other than a Class B or C misdemeanor or infraction in dealing with witnesses, potential witnesses,

attorneys, or others concerning the civil case Jones v. Clinton.

(3) The Independent Counsel shall have jurisdiction and authority to investigate related violations of federal criminal law, other than a Class B or C misdemeanor or infraction, including any person or entity who has engaged in unlawful conspiracy or who has aided or abetted any federal offense, as necessary to resolve the matter described above.

(4) The Independent Counsel shall have jurisdiction and authority to investigate crimes, such as any violation of 28 U.S.C. § 1826, any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, arising out of his investigation of the matter described above.

(5) The Independent Counsel shall have all the powers and authority provided by the Independent Counsel Reauthorization Act of 1994.

It is further ORDERED that this document and its contents be and remain UNDER SEAL absent further Order of this Court.

This the 16th day of January, 1998.

Per Curiam
For the Court:

Marilyn Sargent
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
INDEPENDENT COUNSEL DIVISION

Special Division

In re Monica Lewinsky)
)
) No.
)

NOTIFICATION OF RECUSAL DETERMINATION

Section 591(e)(2) of the Independent Counsel Reauthorization Act of 1994 (the Act) requires that the Attorney General determine whether she must recuse herself because information received involves "a person with whom the Attorney General has a current or recent personal or financial relationship," and that the determination be filed with this Court. Accordingly, I hereby notify the Special Division of the Court that I have no current or recent personal or financial relationship with Monica Lewinsky such as would require my recusal from discharging my responsibilities under the Act.

Respectfully submitted,

Janet Reno
Attorney General of the United States

DATED: January 16, 1998

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
INDEPENDENT COUNSEL DIVISION

In re Monica Lewinsky	)	No.

NOTIFICATION TO THE COURT OF THE INITIATION OF A PRELIMINARY INVESTIGATION AND APPLICATION TO THE COURT FOR THE EXPANSION OF THE JURISDICTION OF AN INDEPENDENT COUNSEL

In accordance with the Independent Counsel Reauthorization Act of 1994, I hereby notify in writing the Special Division of the Court that I have commenced a preliminary investigation, 28 U.S.C. § 592(a)(1), into whether violations of federal criminal law were committed by Monica Lewinsky or any other individual, as described below. As a result of my inquiry into this matter, I request expansion of the jurisdiction of Independent Counsel Kenneth Starr to further investigate and determine whether prosecution is warranted. 28 U.S.C. § 593(c)(1). The Court has already been informed of this matter and my request orally.

The Department of Justice has received information from Independent Counsel Kenneth Starr that Monica Lewinsky, a former White House employee and witness in the civil case Jones v. Clinton, may have submitted a false affidavit and suborned perjury from another witness in the case. In a taped

conversation with a cooperating witness, Ms. Lewinsky states that she intends to lie when deposed. In the same conversation, she urges the cooperating witness to lie in her own upcoming deposition.

I have determined that it would be a conflict of interest for the Department of Justice to investigate Ms. Lewinsky for perjury and suborning perjury as a witness in this civil suit involving the President, in light of the allegations involved in the lawsuit. 28 U.S.C. § 591(c)(1).

I have also determined that the taped conversation establishes that further investigation of this matter is warranted. 28 U.S.C. § 592(c)(1).

It would be appropriate for Independent Counsel Starr to handle this matter because he is currently investigating similar allegations involving possible efforts to influence witnesses in his own investigation. Some potential subjects and witnesses in this matter overlap with those in his ongoing investigation. Independent Counsel Starr has requested that this matter be referred to him.

Attached is a recommended draft Order expanding Independent Counsel Starr's jurisdiction to include this matter.

Respectfully submitted,

Janet Reno
Attorney General of the United States

Date January 16, 1998

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Special Division

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty Savings & Loan Association

Division No. 94-1

Before: SENTELLE, *Presiding Judge*, BUTZNER and FAY, *Senior Circuit Judges.*

ORDER

Upon consideration of the "Application to Authorize Disclosure of Jurisdictional Expansion Order," filed by Independent Counsel Kenneth W. Starr on January 28, 1998, the Court finds that disclosure of the Court's order of January 16, 1998, expanding the jurisdiction of the Independent Counsel would be in the best interests of justice. Accordingly, it is

ORDERED that the application be granted. The Court's order expanding the prosecutorial jurisdiction of the Independent Counsel in this matter, filed under seal on January 16, 1998, is hereby unsealed. It is

FURTHER ORDERED that the "Notification to the Court of the Initiation of a Preliminary Investigation and Application to the Court for the Expansion of the Jurisdiction of an Independent Counsel" and the "Notification of Recusal Determination," filed under seal by the Attorney General on January 16, 1998, are also hereby unsealed.

Per Curiam
For the Court:
Mark J. Langer, Clerk

by

Marilyn R. Sargent
Chief Deputy Clerk

Final Report of the Independent Counsel

In Re: Madison Guaranty Savings & Loan Association

Regarding Monica Lewinsky and Others

Table of Contents:

Fifteen months ago I promised the American people that I would complete this investigation promptly and responsibly. Today I fulfill that promise.

President Clinton has acknowledged responsibility for his actions. He has admitted that he knowingly gave evasive and misleading answers to questions in the *Jones* deposition and that his conduct was prejudicial to the administration of justice; he has acknowledged that some of his answers were false; he has agreed to a five year suspension of his Arkansas bar license; and he has agreed not to seek attorneys' fees in connection with this matter.

The nation's interests have been served. And therefore, I decline prosecution.

In doing so, I have tried to heed Justice Robert Jackson's wisdom: "The citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility."

I trust that the decision made today meets the expectations of the American people, who deserve a resolution that acknowledges the President's conduct, respects America's institutions, and demonstrates sensitivity to our constitutional system of government.

This matter is now concluded. May history and the American people judge that it has been concluded justly.

Televised Statement of
Independent Counsel Robert W. Ray

Friday, January 19, 2001

Acknowledgements

[i]*

This is the sixth and final report to the public of the Office of the Independent Counsel, *In re: Madison Guaranty Savings & Loan Association.* It is the product and the culmination of the work of many people from August 1994 to today. I am indebted to those individuals, their service to the nation, and their commitment to justice.

After Congress re-enacted the independent counsel provisions of the Ethics in Government Act, the Special Division of the United States Court of Appeals for the District of Columbia Circuit, on August 5, 1994, appointed Kenneth W. Starr as Independent Counsel to continue the already wide-ranging investigation begun by Robert B. Fiske Jr. concerning the Madison Guaranty/Whitewater matters. Over the next four years, Attorney General Janet Reno sought the expansion of this Office's investigative jurisdiction on several occasions, so that the Office also conducted investigations into the "FBI Files" matter, the "Travel Office" matter and, finally, consideration of President William J. Clinton's testimony and other potentially obstructive conduct involving his relationship with Monica S. Lewinsky.

When, on October 18, 1999, Independent Counsel Starr resigned, the Special Division appointed me to conclude the Office's work. I have now done so. Although the Office will remain open for some period of time to archive material, conduct financial audits, and dispose of attorney fee applications, the substantive work of this Office is now over.

During its tenure, this Office has employed several hundred individuals in various capacities. Many attorneys have been employed by the Office or been detailed to the Office from the Department of Justice and United States Attorneys' Offices throughout the country. Over the past seven years, several hundred FBI, IRS, and Customs agents, and other investigators have assisted our investigation. Dozens of support staff, including our Administrative Officer and his staff, [ii] paralegals, secretaries, receptionists, and computer support personnel have worked tirelessly on the thousands of sometimes mundane, yet vital tasks that any government agency requires to function effectively.

Each and every person who has worked in any capacity in this Office deserves recognition for their courageous service. The sacrifices they have made are as varied as the individuals who have made them. Some endured months of travel. Others sacrificed substantial career prospects or left private law practice to serve the American people. Still others were separated from their families seemingly forever. Their families thus joined them in their service. And for many, the work of this Office will of course have a lasting impact on their lives, both personal and professional.

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* **Publication Note:** Pagination as contained in the version filed with the Court on May 18, 2001, which was the version made available to named persons for purposes of their review and comments published herewith, are noted in brackets to allow the reader to identify the page number and material being referenced by the named person in his/her comment.

A definitive conclusion to this investigation could not have been achieved without the contributions of these many talented individuals. My colleagues have worked long and hard under often trying circumstances that included unsubstantiated public allegations of misconduct and unnecessary delays in obtaining evidence to which the investigation was entitled under the law. Their contributions may never be fully recognized in the annals of history. I would be sorely remiss, however, if I did not simply commend the integrity and professionalism that the attorneys, agents, and staff brought to their work each day. Their tenacity as zealous advocates for justice and the courage displayed in their unbiased decision making have, for me, truly made all the difference.

It would be presumptuous of me to thank those who served with my predecessor, former Independent Counsel Starr, rather than with me. But his admiration for them is a matter of record, and I am honored to be able to repeat his sentiments here:

[iii]

> [M]y staff has included skilled and experienced prosecutors from around the country. They have brought an enormous amount of experience and expertise to the office. My colleagues during this past year have included a former United States Attorney...; the Chief of the Public Corruption Unit of the United States Attorney's Office in Los Angeles; the Chief of the Public Corruption Unit of the United States Attorney's Office in Miami; the Chief of the Bank Fraud Unit of the United States Attorney's Office in San Antonio; prosecutors with lengthy experience in the Public Integrity Section of the Department of Justice; seasoned [f]ederal prosecutors from 10 different [s]tates and the District of Columbia; and veteran state prosecutors from Maryland and Oregon.
>
> * * *
>
> During the Lewinsky investigation, the office also relied on many talented investigators with extensive service in the FBI and in law enforcement agencies, and the FBI laboratory yet again provided superb assistance to us, as it has throughout the Madison/Whitewater investigation, with the strong support of [FBI Director Louis J.] Freeh.
>
> In addition, let me express my appreciation, and it is great, for the grand jurors [of United States District Court for the District of Columbia Grand Jury 97–2] who devoted much time and energy to examining the witnesses and considering the evidence. Those 23 citizens of the District of Columbia have performed an invaluable service, and I publicly thank them.... [T]hese grand jurors were active, they were knowledgeable, [and] they were fair....[1]

In addition, I wish to extend that same appreciation to the twenty-three citizens who served on United States District Court for the District of Columbia Grand Jury 2000–03, empaneled on July 11, 2000. They served with distinction and approached their mission of assessing the law and the evidence in this case with fidelity to justice, mindful of the nation's interests.

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[1] *Impeachment Inquiry Pursuant to H. Res. 581: William Jefferson Clinton, President of the United States: Appearance of the Independent Counsel Before the House Comm. on the Judiciary,* 105th Cong., 2d Sess. 38–39 (Nov. 19, 1998) (statement of Independent Counsel Kenneth W. Starr).

I take great pride in the work of the Office of the Independent Counsel, *In re: Madison Guaranty Savings & Loan Association.* The individuals who have served in this Office are a remarkable group of human beings. They deserve to have history know and record their efforts, and how they served their country in this investigation. And so, a listing of their names follows these acknowledgements. They all have my deepest thanks and my congratulations on a job now concluded and well done. [iv]

Robert W. Ray
Independent Counsel
May 18, 2001

[v]

Persons Associated with the Office of the Independent Counsel *In Re: Madison Guaranty Savings & Loan Association* 1994–2002*

Name	Last Title Held	Dates of Service
Roger M. Adelman	Senior Counsel	04/26/96–09/09/96
Daniel R. Adrien	Summer Intern	06/01/98–08/21/98
Sabrina L. Alexander	Administrative Assistant	07/08/96–06/06/99
Geneva L. Allen	Receptionist	10/13/97–01/05/99
Margaret E. Alvarez	Legal Secretary	07/06/98–06/02/00
Bernard James Apperson	Deputy Independent Counsel	07/01/98–11/03/00
Caitlin O. Aptowicz	Paralegal Specialist	03/11/99–07/15/98
J. Keith Ausbrook	Deputy Independent Counsel	02/16/99–05/20/01
Alex M. Azar II	Associate Independent Counsel	10/26/94–09/30/96
Lawrence Bagley	Criminal Investigator	11/12/97–01/18/02
Charles G. Bakaly III	Counselor to the Ind. Counsel	04/13/98–06/01/99
David G. Barger	Associate Independent Counsel	01/26/98–10/01/99
Mark J. Barrett	Associate Independent Counsel	04/14/97–05/31/99
Jerry Bastin	Criminal Investigator	01/06/97–05/06/01
John D. Bates	Deputy Independent Counsel	01/03/95–03/01/97
Stephen G. Bates	Associate Independent Counsel	06/26/95–06/06/99
Jackie M. Bennett, Jr.	Deputy Independent Counsel	01/30/95–04/11/99
Elliot S. Berke	Senior Counsel in Charge of Congressional Affairs	06/07/99–Current
Dr. Alan Berman	Consultant	05/08/96–09/30/96
Ronice D. Bevan	Staff Assistant	12/19/94–04/28/95
Cherry Joy Beysselance	Legal Consultant	11/05/98–02/28/99
Thomas H. Bienert, Jr.	Associate Independent Counsel	02/05/98–06/10/98
Stephen J. Binhak	Associate Independent Counsel	10/20/97–05/31/99
Robert J. Bittman	Deputy Independent Counsel	10/11/94–01/29/99
William Black	Ethics Consultant	11/20/97–09/30/98
Dr. Brian Blackbourne	Consultant	11/29/95–02/12/96
James K. Blankinship	Associate Independent Counsel	03/08/99–05/05/99
Randy Boldyga	Contract Computer Support	02/13/95–03/22/96
Thomas P. Bossert	Paralegal Specialist/Evid. Tech.	04/26/99–11/06/01
John Bowler	Associate Independent Counsel	01/19/00–04/30/01
Harvest Boyd	Contract Computer Support	10/97–12/99
John Brandon	Criminal Investigator	01/01/99–06/04/99
Ruth C. Brankstone	Paralegal Specialist	10/24/94–12/20/96

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* Special Agents, Investigators, Deputies, Agents, and employees were also detailed to the Office of the Independent Counsel from the Federal Bureau of Investigation, the Internal Revenue Service, the United States Customs Service, and the United States Marshals Service. It is generally the practice not to reference the names of law enforcement agents and investigators from other federal agencies in published reports. So the names of the hundreds of active agents and employees detailed by these agencies to this Office over the years remain unlisted, though no less honored, here.

Name	Last Title Held	Dates of Service
Thomas C. Breighner	Research Analyst *	
Kimberly Nelson Brown	Associate Independent Counsel	07/03/96–09/08/97
Tracee A. Brown	Administrative Assisant	07/31/95–01/31/97
John R. Bryck	Paralegal Specialist	10/17/94–08/12/95
Elaine Burns	Contract Computer Support	09/29/94–08/97
John Burns	Contract Computer Support	08/27/94–Current
Tina A. Byers	Assistant Independent Counsel	04/26/99–07/29/99
Jeb Coleman Cade	Legal Assistant	12/29/97–08/01/99
William Cade	Criminal Investigator	10/01/97–04/30/99
J. Paul Caufield	Law Clerk	05/22/00–06/03/01
Sarah Cebular	Secretary	07/05/00–03/26/01
Levi W. Chaconas	Clerk	05/03/99–12/31/99
Ayawna A. Chase	Receptionist	01/24/00–07/16/00
Brian S. Chilton	Senior Counsel	01/03/00–Current
Joseph W. Cleary	Paralegal Specialist *	
Steven M. Colloton	Associate Independent Counsel	12/14/94–11/16/96
Ashford Connor	Contract Computer Support	01/27/98–Current
Rebecca J. Cooley	Legal Secretary	08/14/00–05/29/01
Coy A. Copeland	Criminal Investigator *	
Julie A. Corcoran	Associate Independent Counsel	02/25/98–08/13/00
Kathryn A. Cottrell	Administrative Assistant	08/05/96–12/19/96
Gwendolyn C. Craig	Paralegal Specialist	06/20/00–12/04/00
Pamela J. Craig	Confidential Assistant	10/03/94–Current
James N. Crane	Associate Independent Counsel	03/20/98–04/30/99
Robert Crouch	Facilities and Records Specialist	07/19/99–03/30/01
Samuel Dash	Ethics Consultant *	
Thomas W. Dawson	Associate Independent Counsel	01/27/97–10/02/98
Cheri M. Dea	Administrative Specialist	08/14/95–03/30/97
Joseph M. Ditkoff	Associate Independent Counsel	02/24/98–11/12/99
Shireen E. Dodini	Legal Secretary	09/01/98–05/23/99
Eric Dreiband	Associate Independent Counsel	08/18/97–01/02/00
Eric A. Dubelier	Associate Independent Counsel	05/06/96–12/13/96
William S. Duffey, Jr.	Deputy Independent Counsel	10/17/94–06/02/95
Colleen R. Duffy	Summer Legal Clerk	06/06/95–07/27/95
Rajeev P. Duggal	Paralegal	12/27/94–09/27/95
David L. Dunleavy	Paralegal Specialist	02/18/98–01/04/99
Cynthia D. Earman	Archivist	01/05/98–04/24/98
Michael Emmick	Deputy Independent Counsel	09/14/97–01/31/00
Elise R. Ericson	Paralegal Specialist	06/05/00–01/05/01
W. Hickman Ewing, Jr.	Deputy Independent Counsel	09/14/94–03/26/01
Jeffrey D. Fazio	Summer Intern/Law Clerk	05/21/01–08/16/01
Alison Ferguson	Clerk	10/17/97–07/27/98
Rita A. Ferguson	Staff Assistant	01/09/95–07/07/96

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* Mr. Breighner served 06/21/99–01/02/00, and 08/28/00–Current. Mr. Cleary served 07/20/98–07/02/99 and 05/22/00–06/13/00. Mr. Copeland served 04/24/95–06/16/95, 08/01/95–05/31/96, and 10/21/96–01/18/02. Mr. Dash served 10/01/94–04/30/96 and 04/02/97–11/20/98.

Name	Last Title Held	Dates of Service
D. Thomas Ferraro	Associate Independent Counsel	06/07/00–04/30/01
Lynda M. Flippin	Press Officer/Spec. Asst. to IC	02/23/98–Current
Jason R. Foringer	Summer Intern/Law Clerk	05/24/99–08/01/99
Valerie Francies	Contract Computer Support	03/09/98–Current
Anne V. Freden	Summer Intern	06/08/98–08/21/98
Richard D. Friedman	Legal Consultant	09/17/98–04/10/00
Jaimee Frohlich	Law Clerk	05/22/00–04/02/01
Jeri Frye	Contract Computer Support	03/97–08/97
Brian T. Gallagher	Clerk	05/15/00–08/09/00
Meghan Gallagher	Clerk *	
Terrence J. Galligan	Associate Independent Counsel	04/27/98–12/06/98
Karl N. Gellert	Associate Independent Counsel	07/19/99–Current
Deborah E. Gershman	Staff Assistant	10/17/94–07/31/98
D. Leah Giannini	Records and Archives Officer	01/10/96–08/27/00
Leland Giannini	Criminal Investigator	04/24/95–02/28/98
Lisa Gonsior	Summer Intern/Paralegal	06/30/97–08/17/97
Currie Gunn	Staff Assistant	09/13/99–11/19/99
Ameen I. Haddad	Law Clerk	06/10/96–08/14/96
Eric Hagans	Paralegal Specialist	07/17/00–03/02/01
Mary Harkenrider	Special Counsel	02/16/00–01/01/01
Erin Harrington	Legal Assistant	05/24/99–01/05/01
Jo Ann Harris	Special Counsel	02/16/00–01/01/01
Judy Harris	Administrative Officer	12/11/94–02/16/97
Phillip D. Hatfield	Associate Independent Counsel	06/07/00–Current
Lakesha Hayes	Secretary	01/18/00–07/16/00
Rodger A. Heaton	Associate Independent Counsel	09/02/97–07/17/98
Cathleen C. Herasimchuk	Associate Independent Counsel	09/19/94–09/29/94
Phil Horton	Contract Computer Support	09/26/94–10/14/94
Victor Houston	Criminal Investigator	10/25/94–05/31/95
Joshua B. Howard	Associate Independent Counsel	08/14/00–08/12/01
Karin J. Immergut	Associate Independent Counsel	06/01/98–10/09/98
Misty D. Jackson	Secretary	10/24/94–12/15/95
LeRoy Jahn	Associate Independent Counsel	05/06/95–08/09/97
W. Ray Jahn	Associate Independent Counsel	05/06/95–08/09/97
Eric H. Jaso	Associate Independent Counsel	03/13/95–06/10/97
Lindsey M. Jensen	Confidential Assistant	06/28/99–12/28/01
Patricia C. Johnson	Legal Assistant	04/26/99–07/02/99
Darrell M. Joseph	Associate Independent Counsel	11/05/97–06/01/99
Brett M. Kavanaugh	Associate Independent Counsel *	
George T. Kelley	Consultant	10/25/94–05/31/95
William Kelley	Legal Consultant	06/05/98–08/25/98
Matthew Kessinger	Legal Assistant	01/23/01–08/13/01
Richard C. Killough	Assistant Independent Counsel	12/21/98–02/19/99
Hyunjong Kim	Receptionist	03/31/97–05/21/97

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* Ms. Gallagher served 04/14/98–09/02/99, 12/21/99–01/05/00, and 05/15/00–08/18/00. Mr. Kavanaugh served 09/06/94–11/20/97 and 04/27/98–12/01/98.

Name	Last Title Held	Dates of Service
Matthew B. Kirsener	Law Clerk	05/20/96–09/06/96
Gordon Kromberg	Associate Independent Counsel	05/15/00–09/12/00
Lisa K. Krupinski	Management Analyst	03/31/97–Current
Stephen A. Kubiatowski	Associate Independent Counsel	04/17/95–05/11/97
Latour Lafferty	Associate Independent Counsel	04/03/00–04/30/01
Michael Landess	Research Consultant	03/27/98–07/24/99
Steve Learned	Associate Independent Counsel	09/19/94–09/16/95
Dr. Henry Lee	Consultant	04/04/96–07/30/96
Gregory L. Lefever	Administrative Officer	12/12/94–09/09/01
Greg Leiby	Contract Computer Support	08/10/98–Current
Andrew D. Leipold	Legal Consultant	03/13/98–02/28/99
Bradley E. Lerman	Associate Independent Counsel	10/03/94–02/02/96
Craig Lerner	Associate Independent Counsel *	
Gus Lesnevich	Consultant	03/19/97–04/19/97
Cathy Lindsey	Contract Computer Support	10/18/94–01/31/98
Dawn L. Lipp	Legal Secretary	03/18/97–07/17/98
Nydia Lopez	Secretary	03/01/00–06/30/00
William S. MacCartee	Paralegal Specialist	10/05/94–12/01/95
Gregory E. Maggs	Legal Consultant	06/29/98–03/31/99
Ronald J. Mann	Legal Consultant	06/04/98–04/01/99
John R. Martin	Law Clerk	05/24/99–08/13/99
Kevin J. Martin	Associate Independent Counsel	05/05/97–11/30/97
Lindsey B. Matson	Supervisory Paralegal Specialist	02/12/96–02/19/99
Timothy J. Mayopoulos	Associate Independent Counsel	10/05/94–04/25/96
John E. McCarrick	Law Clerk	10/12/94–08/16/96
Kevin M. Mitchell	Clerk	05/22/00–07/28/00
Monica Molloy	Paralegal Specialist	09/22/94–07/02/96
Walter Montano	Paralegal Specialist	06/07/99–05/07/00
James M. Morris	Consultant	08/23/98–09/09/98
Julie L. Myers	Associate Independent Counsel	01/05/98–11/07/99
Judy M. Nance	Supervisory Paralegal Specialist	12/04/94–05/09/99
Monique M. Neaves	Legal Secretary	06/02/97–10/29/99
George Newhouse	Legal Consultant	01/05/00–11/16/00
J. Forrest Norman	Paralegal Specialist	01/26/98–07/18/99
Patrick M. O'Brien	Associate Independent Counsel	05/28/98–08/25/99
Sandra A. Oldham	Administrative Officer	07/08/96–Current
A. Louise Oliver	Law Clerk	08/06/98–10/09/98
Edward J. Page	Deputy Independent Counsel	05/01/98–01/02/00
Stephen C. Parker	Associate Independent Counsel	03/25/96–07/18/97
Margaret E. Parks	Summer Intern	05/26/98–08/21/98
Robert H. Patterson, Jr.	Legal Consultant	02/23/99–05/31/99
Andrew Paukstitus	Clerk	04/16/01–04/20/01
K. Lawson Pedigo	Associate Independent Counsel	03/29/99–11/30/99

[ix]

* Mr. Lerner served 08/19/96–09/16/97 and 03/16/98–01/04/99.

Name	Last Title Held	Dates of Service
Jonathan I. Pomerance	Paralegal Specialist *	
Linda Potter	Staff Assistant	10/24/94–06/02/95
Christy M. Pratt	Paralegal Specialist	05/08/00–02/02/01
Carolyn Pritts	Records and Archives Officer	02/15/99–Current
Nicholas Pullen	Summer Intern	05/26/98–04/09/99
Lucia Rambusch	Paralegal Specialist	10/17/94–03/15/95
Elizabeth Ray	Public Information Assistant	07/27/98–10/18/99
Robert W. Ray	Independent Counsel	04/26/99–Current
Mei Li Reedy	Contract Computer Support	11/97–06/98
Thomas Repczinski	Law Clerk	12/27/95–01/10/97
Monte C. Richardson	Associate Independent Counsel	03/16/00–06/30/01
Roberta Richardson	Staff Assistant	07/07/97–10/01/97
Jim Rickards	Contract Computer Support	08/09/94–05/25/01
Miguel Rodriguez	Associate Independent Counsel	10/05/94–03/07/95
Philip J. Rooney	Financial Officer	04/17/95–Current
Nicholas Q. Rosenkranz	Summer Intern	06/08/98–08/21/98
Rod J. Rosenstein	Associate Independent Counsel	02/15/95–10/11/97
Paul S. Rosenzweig	Senior Litigation Counsel	11/17/97–04/28/00
Ronald D. Rotunda	Legal Consultant	08/25/97–05/06/99
Patricia S. Rowland	Staff Assistant	01/05/98–11/06/00
Debra Rubin	Legal Secretary	07/13/98–07/28/98
Neille M. Russell	Confidential Assistant	07/10/95–07/15/00
William Rutledge	Consultant	07/17/95–07/31/95
Jennifer Safavian	Associate Independent Counsel	02/14/00–06/03/01
John Sandman	Contract Computer Support	08/14/00–08/23/01
Jhaniel C. Santiago	Clerk	01/12/00–02/25/01
Amy D. Scivally	Receptionist	12/09/97–08/27/00
Thomas Serafin	Intern/Clerk	09/21/98–12/04/98
Kevin M. Sigafoes	Paralegal Specialist	02/02/98–01/30/00
Richard P. Simmons	Paralegal Specialist	05/10/95–10/11/95
Edward H. Smith II	Summer Intern	06/21/99–08/20/99
Deborah Stalford	Paralegal Specialist	12/04/95–12/26/95
[x] Kenneth W. Starr	Independent Counsel	08/09/94–10/18/99
Amy St. Eve	Associate Independent Counsel	10/11/94–08/02/96
Timothy S. Susanin	Associate Independent Counsel	06/01/98–04/30/00
Anita P. Swartz	Legal Secretary	02/12/98–07/30/99
Mark Sylvester	Paralegal Specialist	05/24/99–Current
Julie Talley	Secretary	08/02/99–01/13/00
Hector Tapia	Contract Computer Support	06/12/96–05/97
Dillion Teachout	Clerk	08/24/98–09/11/98
Catherine A. Thie	Management Assistant	01/13/97–01/30/98
Julie Thomas	Deputy Independent Counsel	01/18/00–Current
Aprel Thompson	Receptionist	07/17/00–04/08/01
Nora Thorne	Contract Computer Support	09/25/95–08/97
William H. Thullen	Financial Consultant	11/06/97–12/31/97

* Mr. Pomerance served 08/17/98–05/28/99 and 01/31/00–8/10/01.

Name	Last Title Held	Dates of Service
Jennifer M. Tjia	Paralegal Specialist *	
Mark H. Touhey III	Deputy Independent Counsel	09/06/94–09/02/95
Michael L. Travers	Associate Independent Counsel	03/24/98–07/06/98
Bruce Udolf	Associate Independent Counsel	06/20/97–05/22/98
Erin S. Vagley	Administrative Clerk *	
Donald Vinson	Legal Consultant	02/01/99–02/17/99
Linda B. Walls	Paralegal Specialist	03/15/99–Current
Paul Walsh	Criminal Investigator	01/12/98–09/30/98
Marcia L. Walter	Associate Independent Counsel	11/09/98–03/23/99
Andrew White	Legal Consultant	09/13/00–01/23/01
James White	Criminal Investigator	05/04/00–05/17/01
Kim R. Widup	Chief of Investigations	06/05/00–Current
Ivan J. Wilkins	Paralegal Specialist *	
Eddie B. Williams	Clerk	09/18/00–Current
Bryan M. Winkelman	Legal Secretary	07/20/98–07/18/99
Mary Anne Wirth	Associate Independent Counsel	05/29/97–11/22/98
Catherine Wisenberg	Intern/Clerk	12/20/00–01/26/01
Solomon L. Wisenberg	Deputy Independent Counsel	02/02/97–03/28/99
Gabrielle R. Wolohojian	Associate Independent Counsel	08/09/94–05/31/95

* Ms. Tjia served 08/31/98–04/28/99 and 06/22/99–08/13/99. Ms. Vagley served 05/13/96–08/02/96 and 05/26/97–08/01/97. Mr. Wilkins served 01/06/95–03/31/95 and 06/26/95–08/10/95.

[1] Under 28 U.S.C. § 594(h)(1)(B),[1] Independent Counsel Robert W. Ray[2] files this Final Report concerning *In re: Madison Guaranty Savings & Loan Association,* Div. No. 94–1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998) (regarding Monica Lewinsky and others). This Report is the last report of the Office of the Independent Counsel, *In re: Madison Guaranty Savings & Loan Association,*[3] and describes the investigation into "whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law other than a Class B or C misdemeanor or infraction in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case *Jones v. Clinton.*" [4] Consistent with Congress's intention in the statutory final report requirement, this report also sets forth the Independent Counsel's reasons for declining prosecution of President William J. Clinton.

[2]

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[1] On June 30, 1999, the Independent Counsel Reauthorization Act of 1994, 28 U.S.C. §§ 591–599 (1994), expired and was not extended by Congress. The Independent Counsel is authorized, under 28 U.S.C. § 599 (providing for continuation of pending matters), to issue this Final Report.

[2] Robert W. Ray was appointed Independent Counsel under 28 U.S.C. § 593(e), on October 18, 1999, following the resignation of Independent Counsel Kenneth W. Starr.

[3] The Independent Counsel previously filed five reports intended for public release with the Special Division: Final Report of the Independent Counsel *In re: Madison Guaranty Sav. & Loan Ass'n* (filed Mar. 2, 2001) (reporting on James B. McDougal's, President William J. Clinton's, and Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., and Whitewater Development Corporation); Final Report of the Independent Counsel (*In re: Madison Guaranty Sav. & Loan Ass'n*) *In re: William David Watkins* and *In re: Hillary Rodham Clinton* (published Oct. 18, 2000) (reporting on matters commonly referred to as the "Travel Office" investigation); Final Report of the Independent Counsel *(In re: Madison Guaranty Sav. & Loan Ass'n) In re: Anthony Marceca* (published July 28, 2000) (reporting on a matter commonly referred to as the "FBI Files" investigation); Final Report of the Independent Counsel (*In re: Madison Guaranty Sav. & Loan Ass'n) In re: Bernard Nussbaum* (published July 28, 2000) (reporting on a matter related to the FBI Files investigation); and Report on the Death of [former Deputy White House Counsel] Vincent W. Foster, Jr. (published Oct. 10, 1997).

[4] Order, *In re: Madison Guaranty Sav. & Loan Ass'n,* Div. No. 94–1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998) (regarding Monica Lewinsky and others). This Report also includes appendices (a) containing materials relating to the Independent Counsel's resolution of the investigation (Appendix A–1), and the Arkansas Supreme Court's resolution of the disbarment proceedings against President Clinton (Appendix A–2); (b) detailing investigation of allegations made by Kathleen Willey (Appendix B); (c) detailing actions by others that hindered the Lewinsky investigation (Appendix C); (d) discussing the final status of the Clinton Administration's failure to produce certain electronically maintained documents (Appendix D); (e) financial information on expenditures throughout the history of this Office (Appendix E); and (f) a chronology of the Lewinsky investigation (Appendix F).

I. Introduction

The principal question to be answered under the Lewinsky jurisdictional mandate was whether charges should be sought against President William Jefferson Clinton for violations of federal criminal law in connection with the civil lawsuit of *Jones v. Clinton*. Resolving that question involved consideration of (1) whether the evidence was sufficient to seek charges and (2) if the evidence was sufficient, whether discretion should be exercised to decline prosecution in light of other factors under the Principles of Federal Prosecution. Those factors included whether there was a substantial federal interest in prosecution and whether there were adequate non-criminal alternatives to prosecution.

The Independent Counsel concluded that the evidence was sufficient to prosecute President Clinton. The Independent Counsel further concluded that while there was a substantial federal interest in prosecuting the President of the United States for his testimony and conduct in connection with the *Jones* case, alternative non-criminal sanctions were imposed that adequately satisfied the interests of federal law enforcement.

Three years after the initial allegations arose, after unwarranted litigation delays, denials, and unsubstantiated allegations of misconduct against this Office, this investigation concluded on January 19, 2001, when President Clinton admitted to misconduct and entered into an Agreed Order of Discipline, acknowledging to an Arkansas court that he had knowingly given evasive and misleading answers about his relationship with Monica Lewinsky during sworn deposition testimony in the *Jones v. Clinton* case, in violation of a federal court's orders. President Clinton also admitted that his knowingly evasive and misleading answers were prejudicial to the administration of justice and expressly acknowledged that some of his responses to deposition questions about Lewinsky were false. [3]

In the Independent Counsel's judgment, there was sufficient evidence to prosecute President Clinton for violating federal criminal laws within this Office's jurisdiction. Nonetheless, in light of: (1) President Clinton's admission of providing false testimony that was knowingly misleading, evasive, and prejudicial to the administration of justice before the United States District Court for the Eastern District of Arkansas; (2) his acknowledgement that his conduct violated the Rules of Professional Conduct of the Arkansas Supreme Court; (3) the five-year suspension of his license to practice law and $25,000 fine imposed on him by the Circuit Court of Pulaski County, Arkansas; (4) the civil contempt penalty of more than $90,000 imposed on President Clinton by the federal court for violating its orders; (5) the payment of more than $850,000 in settlement to Paula Jones; (6) the express finding by the federal court that President Clinton had engaged in contemptuous conduct; and (7) the substantial public condemnation of President Clinton arising from his impeachment, the Independent Counsel concluded,

consistent with the Principles of Federal Prosecution,[5] that further proceedings against President Clinton for his conduct should not be initiated.

[4] The prosecutor's "interest . . . in a criminal prosecution is not that [he] shall win a case, but that justice shall be done."[6] President Clinton's public acknowledgment of wrongdoing served the interests of justice, and the public interest, by finally and conclusively resolving a matter of national concern—one that diverted the country's attention for more than two years. President Clinton's sanctions in other venues reaffirmed the principle that high ranking government officials are not above the law. For these reasons, the Independent Counsel concluded that it would be "in the best interests of law enforcement and the country" for criminal prosecution of President Clinton to be declined.[7]

Under the independent counsel statute, a final report must "set[ ] forth fully and completely a description of the work of the independent counsel."[8] In this case, the investigation of President Clinton's conduct relevant to this report involved the nation's highest elected official. The results of that investigation were first detailed in this Office's September 9, 1998 referral of information to Congress. That referral was released by Congress to the public. The information set forth in the referral led to the impeachment of a President for only the second time in the history of the United States. The independent counsel statute nonetheless mandates that the final report also include an explanation of why criminal charges were not sought against President Clinton.

[5]

A. The Independent Counsel's Investigation.

On January 12, 1998, the Office of the Independent Counsel received information that Monica S. Lewinsky was attempting to influence the testimony of a witness in a civil lawsuit[9] brought against President Clinton and was planning to provide false information under oath in that lawsuit. This Office also was informed that Lewinsky had spoken to President Clinton and his friend, Vernon E. Jordan, about being subpoenaed as a witness in the *Jones* suit, and that Jordan and others were helping her find a job.[10] This Office presented that evidence to

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[5] United States Attorneys' Manual, Title 9 §§ 9–27.000 – 9–27.760. Under the independent counsel statute, independent counsels are required to follow written or other established policies of the Department of Justice to the extent that compliance with such policies does not impair their statutory independence. 28 U.S.C. § 594(f)(1).

[6] *Berger v. United States*, 295 U.S. 78, 88 (1935).

[7] Press Release, Office of the Independent Counsel, Agreement Reached With President Clinton at 2 (Jan. 19, 2001). 28 U.S.C. § 594(g) provides that "the independent counsel shall have full authority to dismiss matters. . . before prosecution, if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws." *See infra* pp. 48–58 (application of the Department of Justice's Principles of Federal Prosecution in declining prosecution of President Clinton).

[8] 28 U.S.C. § 594(h)(1)(B) (1994).

[9] *Paula Corbin Jones v. William Jefferson Clinton, et al.*, LR–C–94–290 (E.D. Ark.) (1994) [hereinafter *"Jones v. Clinton"*].

[10] The allegations about Vernon Jordan's assistance with employment opportunities were similar to allegations under review in the Independent Counsel's Madison Guaranty Savings & Loan Association investigation. This Office already was investigating whether Jordan had attempted to influence the cooperation of Webster C. Hubbell, the former Associate Attorney General and friend of President Clinton who had pleaded guilty to fraud, by helping Hubbell get lucrative consulting contracts requiring nominal work. *See* Referral to the United States House of Representatives Pursuant to

Continued—

Attorney General Janet Reno for her determination as to whether further investigation was warranted and whether this Office should conduct the investigation.

On January 16, 1998, following her determination that further investigation was warranted, the Attorney General, pursuant to 28 U.S.C. § 593(c)(1), applied to the Division for the Purpose of Appointing Independent Counsels of the United States Court of Appeals for the District of Columbia Circuit (the "Special Division") for appointment of an independent counsel, concluding that "it would be a conflict of interest for the Department of Justice to investigate Ms. Lewinsky for perjury and suborning perjury as a witness in this civil suit involving the President, in light of the allegations involved in the lawsuit." [11] Attorney General Reno advised the Special Division that "Monica Lewinsky, a former White House employee and witness in the civil case *Jones v. Clinton*, may have submitted a false affidavit and suborned perjury from another witness in the case. In a taped conversation with a cooperating witness, Ms. Lewinsky states that she intends to lie when deposed. In the same conversation, she urges the cooperating witness to lie in her own upcoming deposition." [12] The Attorney General recommended expansion of Independent Counsel Kenneth W. Starr's [6] [7]

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28 U.S.C. § 595(c) Submitted by the Office of the Independent Counsel at 7–8 (Sept. 9, 1998) [hereinafter "Impeachment Referral"]; *see also* Final Report of the Independent Counsel *In re: Madison Guaranty Sav. & Loan Ass'n,* Vol. III, Part C, Sec. III B (filed Mar. 2, 2001) (summarizing evidence developed during the investigation of these allegations).

[11] Notification To The Court Of The Initiation Of A Preliminary Investigation And Application To The Court For The Expansion Of The Jurisdiction Of An Independent Counsel at 2, *In re: Monica Lewinsky,* Div. No. 94–1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998).

[12] *Id.* at 1–2. The "cooperating witness" was Linda R. Tripp, who began cooperating with this Office in the Lewinsky investigation on January 12, 1998. *See* Tripp 1/12/98 Int. at 1; *see also* Impeachment Referral, *supra* note 10, at 7–8, 113–14 (reflecting Tripp's allegations regarding Lewinsky and the taped January 13, 1998 luncheon conversation between Tripp and Lewinsky referred to by the Attorney General in her Notification).

On January 16, Tripp's attorney also produced to this Office 27 tapes of telephone conversations between Tripp and Lewinsky concerning Lewinsky's relationship with President Clinton, the subject of the allegedly false affidavit. *See generally* Impeachment Referral, *supra* note 10, at 26 & n.125 (discussing Tripp's tapes).

On January 19, Paula Jones's attorneys issued a subpoena to depose Tripp on January 30, also requesting her to produce by January 22 "[a]ny audio tape upon which the voice of Defendant Clinton is recorded." Subpoena in a Civil Case (Linda Tripp), *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Jan. 19, 1998). In order to prevent interference with this Office's criminal investigation by Jones's attorneys seeking to obtain overlapping evidence and witnesses in their civil action, this Office sought and obtained an order staying that discovery on January 29, and Tripp's January 30 deposition therefore never occurred. Order, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Jan. 29, 1998); *see also infra* p. 33 and note 106 (noting the Jones's attorneys efforts to obtain Betty Currie's testimony after she had testified before the grand jury in this Office's criminal investigation).

Tripp was later prosecuted by the State of Maryland for allegedly violating state law prohibiting the taping of telephone conversations without the consent of both parties. *See Maryland v. Tripp,* Case No. 13–K–99–038397, 2000 WL 675492, at *1 (Md. Cir. Ct. May 5, 2000); Md. Code Ann., Courts and Judicial Proceedings §§ 10–401 & 10–402 (2000). After conducting a hearing under *Kastigar v. United States,* 406 U.S. 441 (1972), to determine the effect of Tripp's immunity agreement with this Office, the Maryland Circuit Court for Howard County barred the State from introducing the tapes into evidence, *see* Orders, *Maryland v. Tripp,* Case No. 13–K–99–038397 (Md. Cir. Ct. May 5 & 22, 2000), whereupon the State declined to proceed with its prosecution. *See* Ruling, Indictment Nolle Prosequi at Request of the State, *Maryland v. Tripp,* Case No. 13–K–99–038397 (Md. Cir. Ct. May 31, 2000), *at* http://www.courts.state.md.us/howard/mediaupdate/index.html.

existing jurisdiction to include the allegations related to Lewinsky.[13] On January 16, 1998, the Special Division granted the Attorney General's application:

> The Independent Counsel shall have jurisdiction and authority to investigate to the maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law other than a Class B or C misdemeanor or infraction in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case *Jones v. Clinton*.[14]

The civil case *Jones v. Clinton* had begun in May 1994, when Paula Corbin Jones sued William Jefferson Clinton in the United States District Court for the Eastern District of Arkansas, alleging that, while he was Governor and she was a state employee, he made a sexual advance to her in violation of federal and state law. Jones and President Clinton disputed the extent to which President Clinton would be required to disclose information during discovery about other sexual relationships he may have had. In late 1997, Judge Susan Webber Wright ruled Jones was "entitled to information regarding any individuals with whom President Clinton had sexual relations or proposed to or sought to have sexual relations and who were, during the relevant time frame, state or federal employees." [15]

[8]

On January 17, 1998, President Clinton was questioned under oath in a deposition about his relationships with other women in the workplace, including his relationship with Monica Lewinsky, who had been a White House intern from July to November 1995, a White House employee from November 1995 to April 1996, and then a Pentagon employee from April 1996 through December 1997.[16] President Clinton, after being placed under oath personally by Judge Wright, denied having a "sexual affair," a "sexual relationship" or "sexual relations" with Lewinsky. He also testified that he had no specific memory of being "alone" with Lewinsky.

Over the next several months, this Office conducted a comprehensive investigation, culminating in the Independent Counsel's referral to the United States House of Representatives on September 9, 1998, pursuant to 28 U.S.C. § 595(c), of substantial and credible information that might constitute grounds for President Clinton's impeachment.[17] The House of Representatives "authorized and

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[13] Notification To The Court Of The Initiation Of A Preliminary Investigation And Application To The Court For The Expansion Of The Jurisdiction Of An Independent Counsel at 2, *In re: Monica Lewinsky*, Div. No. 94–1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998).

[14] Order, *In re: Madison Guaranty Sav. & Loan Ass'n*, Div. No. 94–1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998) (granting jurisdiction regarding Monica Lewinsky and others). The Department of Justice informed this Office that investigation of President Clinton's conduct and testimony was included within the jurisdictional mandate of "others."

[15] Order, *Jones v. Clinton*, LR–C–94–290 (E.D. Ark. Dec. 11, 1997).

[16] EPASS Records for Monica Lewinsky dated Jan. 1, 1995 to Dec. 31, 1995 (first entry into the White House was July 10, 1995) (Doc. No. 827–DC–00000003); Resume of Monica Lewinsky (Doc. No. 830–DC–00000003); White House History of Employment for Monica Lewinsky (Doc. No. V006–DC–00000109); Notification of Personnel Action (Appointment to the White House Office of Legislative Affairs) (Doc. No. MSL–DC–00000645); Notification of Personnel Action (appointment to the Department of Defense) (Doc. No. 833–DC–00002730); Notification of Personnel Action (resignation) (Doc. No. 833–DC–00002716).

[17] Impeachment Referral, *supra* note 10.

directed [the Committee on the Judiciary] to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional authority to impeach William Jefferson Clinton, President of the United States of America."[18] The House Judiciary Committee reported four Articles of Impeachment,[19] and on December 19, 1998, the House of Representatives adopted two Articles of Impeachment alleging perjury before a federal grand jury and obstruction of justice before a federal grand jury and the United States District Court, sending the matter to the United States Senate for trial of impeachment.[20] On February 12, 1999, the Senate decided not to remove President Clinton from office, voting as follows: 55 Senators voted not guilty and 45 Senators voted guilty on Article I of the Articles of Impeachment (perjury); 50 Senators voted guilty and 50 Senators voted not guilty on Article II (obstruction of justice).[21] [9]

The Independent Counsel continued the investigation to determine whether criminal charges should be sought against President Clinton after his term of office.[22] A new grand jury was empaneled in July 2000 and, from then until January 2001, met a total of 28 days and heard from eight agent witnesses. These witnesses summarized testimony presented to the previous grand jury that heard evidence prior to President Clinton's impeachment. The new grand jury also received 223 exhibits, including transcripts of witness testimony before the previous grand jury.[23] [10]

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[18] H.R. Res. 581, 144 Cong. Rec. H10115 (daily ed. Oct. 8, 1998); Report of the Committee on the Judiciary House of Representatives Together With Additional, Minority, and Dissenting Views To Accompany H.R. Res. 611, Report 105–830, 105th Cong., 2nd Sess. (Dec. 16, 1998).

[19] Report of the Committee on the Judiciary House of Representatives Together With Additional, Minority, and Dissenting Views To Accompany H.R. Res. 611, Report 105–830, 105th Cong., 2nd Sess. 128–36 (Dec. 16, 1998).

[20] 144 Cong. Rec. H12040–42 (daily ed. Dec. 19, 1998).

[21] 145 Cong. Rec. S1458–S1459 (daily ed. Feb. 12, 1999). Following the Senate vote on removal of President Clinton from office, 38 Senators co-sponsored a resolution by Senator Dianne Feinstein "censur[ing]" President Clinton. *Id.* at S1652. The resolution recited (1) that President Clinton's conduct with Monica Lewinsky had been "shameful, reckless, and indefensible"; (2) that he had "g[iven] false or misleading testimony and... imped[ed] discovery of evidence in judicial proceedings"; (3) that he "remain[ed] subject to criminal actions in a court of law like any other citizen"; (4) that his "conduct in this matter has brought shame and dishonor to himself and to the Office of the President"; and (5) that he "violated the trust of the American people." S. Res. 44, 106th Cong. (1999) (unenacted). Of the 38 Senators who co-sponsored the resolution, 32 had voted against removal from office on both articles in the impeachment trial. When Senator Feinstein attempted to have the resolution brought to a vote, however, it failed to achieve the required number of votes to overcome a procedural objection. 145 Cong. Rec. S1462 (daily ed. Feb. 12, 1999).

[22] At this Office's request, the Department of Justice, Office of Legal Counsel, provided its formal opinion that: (1) "a sitting President is constitutionally immune from indictment and criminal prosecution." *See* Mem. for the Attorney General from Randolph D. Moss, Assistant Attorney General at 38 (Oct. 16, 2000); and (2) "a former President may be prosecuted for crimes of which he was acquitted by the Senate." *See* Mem. for the Attorney General from Randolph D. Moss, Assistant Attorney General at 1 (Aug. 18, 2000).

[23] A new grand jury was empaneled because the term of the original grand jury expired on March 18, 1999 and was not extended because it would have terminated by normal operation of law well before President Clinton's term in office ended on January 20, 2001. *See* Fed. R. Crim. P. 6(g) (limiting term of regular grand jury to a maximum of 24 months).

B. Arkansas Bar Proceeding.

On April 12, 1999, while this Office's criminal investigation was ongoing, Judge Susan Webber Wright of the United States District Court for the Eastern District of Arkansas held President Clinton in civil contempt of court pursuant to Fed. R. Civ. P. 37(b)(2) for his willful failure to obey the Court's discovery orders in the civil lawsuit.[24] Judge Wright ruled:

[11]

> [t]he record demonstrates by clear and convincing evidence that the President responded to plaintiff's questions by giving false, misleading and evasive answers that were designed to obstruct the judicial process.[25]

Judge Wright also found that President Clinton had "deliberately violated this Court's discovery orders and thereby undermined the integrity of the judicial system" [26] and referred President Clinton's conduct to the Arkansas Supreme Court's Committee on Professional Conduct to consider whether President Clinton, as a member of the Arkansas Bar, should be disciplined.[27]

On January 27, 2000, the Arkansas Supreme Court ordered its bar ethics committee to commence formal disciplinary proceedings against President Clinton.[28] The Committee served a formal complaint on President Clinton on February 15, 2000, ordering him to respond by April 21, 2000.[29] On May 22, 2000, following President Clinton's submission of his answers to the formal complaint, the Committee decided "to initiate disbarment proceedings against" President Clinton based on "the findings by a majority of the Committee" of "serious misconduct." [30] The disbarment recommendation was filed in the Pulaski County Circuit Court in Little Rock, Arkansas, where the Committee initiated formal disbarment proceedings.[31]

[12]

On November 9, 2000, the Committee served Requests for Admissions on President Clinton, asking him to admit or deny, among other things, whether during his *Jones* deposition he "falsely testified that [he] had no specific recollection of ever being alone with Ms. Monica Lewinsky," whether "[his] January 17, 1998 deposition testimony, in which [he] testified that [he] had never had sexual relations with Ms. Monica Lewinsky as 'sexual relations' was defined for the purposes of the deposition, was false," and whether "[t]he facts, as stated by Judge Susan Webber Wright in the April 12, 199[9] Order, are true." [32] After receiving

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[24] *Jones v. Clinton,* 36 F. Supp. 2d 1118 (E.D. Ark. 1999). Judge Wright was cognizant of the Independent Counsel's jurisdiction under criminal law and expressly limited the scope of her civil contempt finding so as not to interfere with this Office's ongoing investigation. *See infra* p. 40 and note 135.

[25] *Jones v. Clinton,* 36 F. Supp. 2d at 1127.

[26] *Id.* at 1134.

[27] *Id.* at 1135.

[28] *Hogue v. Neal,* 340 Ark. 250, 253, 12 S.W.3d 186, 188 (Jan. 27, 2000).

[29] Formal Complaint, *Neal v. Clinton* (under seal with the Arkansas Supreme Court, Committee on Professional Conduct, Feb. 15, 2000).

[30] Letter to Leslie Steen, Clerk, Arkansas Supreme Court from James A. Neal, Executive Director, Supreme Court of Arkansas, Committee on Professional Conduct (May 22, 2000).

[31] Complaint for Disbarment, *Neal v. Clinton,* Civ. No. 2000–5677 (Cir. Ct. of Pulaski Co., Ark. June 30, 2000).

[32] Plaintiff's First Set of Requests for Admissions, *Neal v. Clinton,* No. Civ. 2000–5677 (Cir. Ct. of Pulaski Co., Ark. Nov. 9, 2000).

several extensions of time to respond, the Committee and President Clinton agreed he would answer the Request for Admissions by January 22, 2001, after the expiration of his term in office.[33]

Following a December 27, 2000 meeting requested by the Independent Counsel with President Clinton regarding resolution of the matter consistent with general principles of federal prosecution, counsel for President Clinton contacted the Arkansas Committee on Professional Conduct seeking to "settle the lawsuit arising out of the President's deposition testimony in the Paula Jones case." [34]

On January 19, 2001, the Committee and President Clinton agreed he would accept "a five year suspension, pay[ ]. . . a $25,000 fine (as legal fees for the Committee's outside counsel), and formally acknowledg[e] a violation of one of the Arkansas Rules of Professional Conduct." [35] President Clinton admitted: [13]

> A. That he knowingly gave evasive and misleading answers in violation of Judge Wright's discovery orders, concerning his relationship with Monica Lewinsky, in an attempt to conceal from plaintiff Jones's lawyers the true facts about his improper relationship, which had ended almost a year earlier.
>
> B. That by knowingly giving evasive and misleading answers, in violation of Judge Wright's discovery order, he engaged in conduct that is prejudicial to the administration of justice in that his discovery responses interfered with the conduct of the *Jones* case by causing the court and counsel for the parties to expend unnecessary time, effort, and resources, setting a poor example for other litigants, and causing the court to issue a thirty-two page Order civilly sanctioning Mr. Clinton.[36]

Based on these admissions, the Arkansas Court ruled President Clinton had committed professional misconduct and "engag[ed] in conduct that was prejudicial to the due administration of justice." [37] Also on January 19, 2001, President Clinton's last full day in office, he issued a public statement announcing his acceptance of the Agreed Order of Discipline and admitting that "certain of [his] responses to questions about Lewinsky were false." [38] Additionally, President Clinton advised the Independent Counsel that he agreed not to seek "legal fees to which he might otherwise become entitled under the Independent Counsel Act as a result of the Lewinsky investigation." [39] [14]

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[33] Order, *Neal v. Clinton,* No. Civ. 2000–5677 (Cir. Ct. of Pulaski Co., Ark. Jan. 11, 2001).

[34] Letter from David E. Kendall, private counsel to President Clinton, to Robert W. Ray, Independent Counsel 1 (Jan. 19, 2001).

[35] *Id.* at 1. Former President Clinton paid the $25,000 fine by personal check dated March 16, 2001. *See* Appendix A–2. President Clinton acknowledged violation of Rule 8.4(d) of the Arkansas Rules of Professional Conduct, which defines professional misconduct, in part, as "conduct that is prejudicial to the administration of justice." Agreed Order of Discipline at 3, *Neal v. Clinton,* No. Civ. 2000–5677 (Cir. Ct. of Pulaski Co., Ark. Jan. 19, 2001).

[36] Agreed Order of Discipline at 3–4, *Neal v. Clinton,* No. Civ. 2000–5677 (Cir. Ct. of Pulaski Co., Ark. Jan. 19, 2001).

[37] *Id.* at 4.

[38] Statement on Resolution of Legal Issues, Weekly Comp. Pres. Doc. 194 (Jan. 19, 2001) (*see also* Appendix A–1).

[39] Letter from David E. Kendall, private counsel to President Clinton, to Robert W. Ray, Independent Counsel 2 (Jan. 19, 2001).

C. Resolution of Criminal Allegations Against President Clinton Relating To His Testimony About Monica Lewinsky.

The Independent Counsel considered the evidence regarding President Clinton's conduct—his testimony and other conduct in connection with the *Jones* deposition and the grand jury—in light of the Principles of Federal Prosecution [40] that guide all federal prosecutors and concluded that the evidence was sufficient to prosecute President Clinton for federal crimes within this Office's jurisdiction. Exercising his prosecutorial discretion, however, the Independent Counsel on January 19, 2001 declined prosecution of President Clinton because President Clinton's conduct had been adequately addressed through substantial administrative sanctions, including appropriate admissions of misconduct, and because the interests of justice did not otherwise warrant a criminal prosecution.[41]

[15] The Independent Counsel concluded that impeachment, the contempt citation issued by Judge Wright, the Agreed Order of Discipline, and President Clinton's public statement acknowledging the falsity of his testimony adequately upheld federal law enforcement interests in promoting truthfulness and honesty before judicial tribunals by a high government official in a position of trust. He also determined that President Clinton's payment of fees, fines, and the negotiated civil settlement effectively addressed the monetary harms visited on the plaintiff in the civil suit and the damages suffered by the federal and state courts. In short, as stated by the Independent Counsel on January 19, 2001:

> President Clinton has acknowledged responsibility for his actions. He has admitted that he knowingly gave evasive and misleading answers to questions in the *Jones* deposition and that his conduct was prejudicial to the administration of justice; he has acknowledged that some of his answers were false; he has agreed to a five year suspension of his Arkansas bar license; and he has agreed not to seek attorneys' fees in connection with this matter.
>
> The nation's interests have been served. And therefore, I decline prosecution.[42]

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[40] United States Attorneys' Manual, Title 9 §§ 9–27.000 – 9–27.750.

[41] *See* Letter from Robert W. Ray, Independent Counsel, to David E. Kendall, private counsel to President Clinton 1 (Jan. 19, 2001) ("Upon entry of [the] Order by the Pulaski County Circuit Court and following the President's issuance of his public statement, I have decided to exercise my discretion, consistent with the Principles of Federal Prosecution, to decline prosecution, with prejudice, of all matters within the January 16, 1998 jurisdictional mandate").

[42] Televised Statement of Independent Counsel Robert W. Ray (Jan. 19, 2001).

II. Scope of the Report

An independent counsel is required by law to file "a final report... setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought."[43] This statutory language differed from the pre-1994 law, which contained a "declination clause" requiring:

> a description of the work of the independent counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel.[44]

[16]

The Independent Counsel Reauthorization Act of 1994 did not include a declination clause. Because of the intense public interest in this investigation and the historical significance of the conclusion of an investigation that led to the impeachment of a President, the statute obligates the Independent Counsel to report fully and completely on President Clinton's conduct insofar as necessary for the public to assess the Independent Counsel's decision not to pursue criminal prosecution of President Clinton.

The declination clause's omission did not reflect a congressional determination that an independent counsel is never permitted to articulate his reasons for declining prosecution. The declination clause's deletion resulted from a compromise adopted in the House and Senate Conference Committee. The Senate's view, that an independent counsel is never permitted to comment on a subject's potential criminal wrongdoing unless the person was indicted, was rejected by the Conference Committee on the final bill. The Conference Committee decided that an independent counsel should explain a declination decision where it is in the public's interest that he do so in order for the public to understand the conduct of the person investigated, and the independent counsel's basis for declining prosecution of the person for that conduct.[45] The Independent Counsel has given careful [17]

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[43] 28 U.S.C. § 594(h)(1)(B) (2000) (lapsed June 30, 1999 by operation of 28 U.S.C.A § 599 (West 2000)).

[44] 28 U.S.C. § 594(h)(1)(B) (1988) (lapsed Dec. 15, 1992 by operation of 28 U.S.C.A § 599 (West 1993)).

[45] The version of the reenacted legislation reported by the House Judiciary Committee for consideration by the House of Representatives (H.R. 811, 103d Cong.) retained the declination clause in section 594(h)(1)(B) unmodified. *See* H.R. Rep. No. 103–224 at 22, 29 (1993). The Senate, by contrast, made two substantive changes to the final report language, deleting "fully and completely" and the declination clause. The sponsor of that legislation, Senator Robert Dole, explained his intent: "If retained, this language would have been an open invitation to independent counsels to editorialize on cases that they, for whatever reason, chose not to bring, smearing hard-earned reputations in the process." 139 Cong. Rec. S15972 (daily ed. Nov. 18, 1993); *see also* 139 Cong. Rec. S15886 (daily ed. Nov. 17, 1993) ("[T]he amendment we are accepting relative to the final report is, indeed, to try to avoid having independent counsels state conclusory opinions that the subject of an investigation engaged in criminal wrongdoing in the absence of bringing an indictment against that person") (statement of Sen. Carl Levin).

Continued—

consideration to the legislative history on the omission of the "declination clause." The analysis and findings contained in this Report are consistent with Congress's intention as reflected by the statute's language and legislative history.

This Office's investigation has been and will continue to be of substantial public interest, and the decision of the Independent Counsel to decline prosecution is of historical significance. The Independent Counsel has determined the analysis of the basis for his decision given here is required to assure the public that the investigation of President Clinton was professional, thorough, and fair, and that the decision to decline prosecution was based on a review of the case's merits, the evidence, and the professional guidelines used by prosecutors to evaluate the appropriateness of a prosecution.

Even though this Report must be and is "full and complete," there is no need for this Report to be repetitive. The facts have already been recorded by this Office in its Impeachment Referral (and exhibits) to Congress that is in excess of
[18] 8,000 pages, in a House report upon impeaching the President that is in excess of 400 pages, and in Senate documentation in excess of 15,000 pages.[46] That is the official record, and does not begin to encompass the vast public record on the subject. It is the Independent Counsel's intention in this Final Report to add further detail only as necessary to explain the basis for his resolution of the investigation, and no more.

The Conference Committee resolved these two views, expressly acknowledging that the "public interest" nevertheless justified an explanation of an independent counsel's decision not to indict based upon "a wide range of concerns which need to be carefully balanced," including: (1) an understanding of the basis for the independent counsel's decision not to indict; (2) an appreciation of the extent to which the individual was central or peripheral to the independent counsel's jurisdictional mandate; (3) that the information may exonerate the innocent; and (4) protecting individual rights to due process, privacy and fairness. *See* H.R. Conf. Rep. No. 103–511, at 19–21 (1994). In particular, the Conference Committee "consider[ed] to be crucial a discussion of the conduct of the person for whom the independent counsel was appointed to office." *Id.* at 19–20.

[46] *See* Impeachment Referral, *supra* note 10; House Comm. on the Judiciary, Impeachment of William Jefferson Clinton, President of the United States, H.R. Rep. No. 105–830 (1998); S. Doc. No. 106–3 (1999).

III. Findings

This Section summarizes the factual findings of this Office's investigation and details the Independent Counsel's analysis in declining prosecution of President Clinton.

A. Summary of Findings.

On January 17, 1998, President Clinton, after being placed under oath by the Honorable Susan Webber Wright, United States District Judge for the Eastern District of Arkansas, testified in a deposition presided over by Judge Wright regarding his relationship with Monica Lewinsky. At the conclusion of President Clinton's testimony, Judge Wright specifically reminded President Clinton of her confidentiality order, barring discussion of the deposition.

On August 17, 1998, President Clinton testified before a duly empaneled federal grand jury conducting a criminal investigation that was undertaken by this Office at the specific request of Attorney General Janet Reno. President Clinton testified before the grand jury about his conduct in connection with Monica Lewinsky and the *Jones* case.

To evaluate the truthfulness of President Clinton's testimony before Judge Wright, the Independent Counsel examined evidence regarding the relationship between President Clinton and Monica Lewinsky. With respect to that relationship, the Independent Counsel reports:

- President Clinton and Monica Lewinsky engaged in an intimate sexual relationship from November 1995 to March 1997. [19]
- During the course of that relationship, President Clinton and Lewinsky frequently were alone.
- Substantial evidence, including the testimony of Lewinsky, established that the sexual contact between Lewinsky and President Clinton involved instances where he touched her in an intimate way.
- President Clinton acknowledged that (1) in an attempt to conceal the true facts about his relationship with Lewinsky, he knowingly gave evasive and misleading answers concerning that relationship in violation of United States District Judge Susan Webber Wright's discovery orders, (2) his knowing violation of Judge Wright's discovery orders was prejudicial to the administration of justice, and (3) certain of his answers concerning his relationship with Lewinsky were false.

To evaluate President Clinton's compliance with Judge Wright's discovery order, the Independent Counsel also examined the conduct of President Clinton in discussing his *Jones* deposition with others. With respect to that conduct, the Independent Counsel reports:

- At the conclusion of President Clinton's deposition, Judge Wright specifically admonished President Clinton that a confidentiality order was in effect and that he was prohibited from discussing his deposition with anyone.
- Following his deposition, President Clinton contacted his secretary, Betty Currie, and asked her to come to the office the next day, which was a Sunday, where, in sum and substance, he made the following statements to her:
  - You were always there when Monica was there.
  - We were never really alone.
  - Monica came on to me, and I never touched her, right?
  - You could see and hear everything.

To evaluate the truthfulness of President Clinton's testimony before a federal grand jury, the Independent Counsel examined President Clinton's responses to questions posed to him before the grand jury. With respect to those responses, the Independent Counsel reports:

- President Clinton acknowledged he had been alone with Monica Lewinsky.
- President Clinton denied having had sexual relations with Lewinsky, as he understood the term, and also denied that he had had intimate contact with her breasts or genitalia.

[20]

- President Clinton said his conversation with Currie following his *Jones* deposition was for the purpose of determining whether his own recollection of his contact with Lewinsky was accurate.

B. Factual Background.

1. Evidence From Monica Lewinsky Relating to the Truthfulness of President Clinton's Testimony.

Monica Lewinsky testified that on November 15, 1995, while she was employed as a White House intern and the *Jones* case was pending, President Clinton began a physical relationship with her.[47] That relationship included

[47] Lewinsky 8/6/98 GJ at 10. Lewinsky testified before the grand jury after entering into a cooperation agreement with this Office, dated July 28, 1998, for which she received immunity from prosecution for her own conduct in connection with the *Jones v. Clinton* litigation. Agreement between OIC and Monica Lewinsky, July 28, 1998, GJ 97–2 Exh. No. ML–2. President Clinton claimed his improper relationship with Lewinsky did not begin until 1996. Statement of William Jefferson Clinton, GJ 97–2 Exh. No. WJC–1. The evidence corroborates Lewinsky: Presidential movement logs for November 15 and 17, 1995, show President Clinton in the locations, and at the times, described by Lewinsky. Lewinsky 8/6/98 GJ at 10–12; Presidential Movement Logs for Nov. 15, 1995 (Doc. No. 1222–DC–00000156); Presidential Movement Logs for Nov. 15, 1995 (Doc. No. 1362–DC–00000549); WAVES Records for Monica Lewinsky on Nov. 15, 1995 (Doc. No. V006–DC–00000005); Presidential Movement

Continued—

mutual sexual contact.[48] Throughout their intimate physical relationship and afterward, President Clinton and Lewinsky exchanged numerous personal gifts [49] and had sexually explicit telephone conversations.[50] [21]

President Clinton's sexual encounters with Lewinsky were typically preplanned and orchestrated to conceal the true nature of the relationship.[51] The two arranged to meet on weekends because "most people weren't in on the weekends so . . . it would be safer to do that then." [52] On other occasions, Lewinsky testified, [22]

Logs for Nov. 17, 1995 (Doc. No. 1222–DC–00000162); EPASS Record for Monica Lewinsky on Nov. 17, 1995 (Doc. No. 827–DC–00000008); WAVES Record for Monica Lewinsky on Nov. 17, 1995 (Doc No. V006–DC–00000005). Presidential telephone records for November 15 and 17, 1995 reflect calls between President Clinton and congressmen while he and Lewinsky were alone, as Lewinsky described. Lewinsky 8/6/98 GJ at 20; Lewinsky 8/26/98 Depo. at 5–13; Presidential Phone Records from Nov. 15, 1995 (Doc. No. 1472–DC–00000003 through 00000008); Presidential Phone Records from Nov. 17, 1995 (Doc. No. 1472–DC–00000011 through 00000015). White House photographs taken on November 17, 1995, show President Clinton eating pizza and standing in his Chief of Staff's office area, as described by Lewinsky in her testimony. Lewinsky 8/6/98 GJ at 14–16; Lewinsky 8/26/98 Depo. at 10–14; Photographs of President Clinton standing in his Chief of Staff's office area along with Monica Lewinsky and others (Doc. No. V006–DC–00003740 through 00003744). Betty Currie remembered that Lewinsky delivered pizza to President Clinton on November 17, 1995, as Lewinsky said in her testimony. Lewinsky 8/6/98 GJ at 14–16; Currie 1/27/98 GJ at 25; Currie 5/14/98 GJ at 36–38.

[48] Lewinsky 8/6/98 GJ at 12–13, 16, 18–20, 31; Lewinsky 8/20/98 GJ at 67–68; Lewinsky 8/26/98 Depo. at 6–7, 11–12, 14–16, 24–30, 36–37, 48–50; Lewinsky 12/8/00 Int. at 4. The investigation necessarily considered whether the President was truthful in testifying about his relationship with Monica Lewinsky. In assessing whether the President was truthful about that relationship, or might have intended to take steps to keep the truth about that relationship from coming to light, a precise description of the nature, times, locations, and supporting evidence of their physical relations was included in the Impeachment Referral, *supra* note 10, at 28–30 (first encounter November 15, 1995); *id.* at 30–32 (second encounter November 17, 1995); *id.* at 32–33 (third encounter December 31, 1995); *id.* at 34–35 (fourth encounter January 7, 1996); *id.* at 35–36 (fifth encounter January 21, 1996); *id.* at 36–37 (sixth encounter February 4, 1996); *id.* at 39–40 (seventh encounter March 31, 1996); *id.* at 44–47 (eighth encounter April 7, 1996); *id.* at 57–59 (ninth encounter February 28, 1997); *id.* at 60 (tenth and final encounter March 29, 1997); *id.* at 71 (Lewinsky's unsuccessful attempt to have an eleventh encounter on August 19, 1997). Those descriptions need not be repeated here.

[49] President Clinton and Lewinsky exchanged in excess of 48 gifts. Inventory Sheets—Gifts from President Clinton to Lewinsky produced by Currie in a box (Doc. No. 824–DC–00000001–2, 00000010 & 00000011); Additional gifts from President Clinton to Lewinsky produced by Currie (Doc. No. 902–DC–00000004 through 00000005); FBI Receipt for Property Received (Jul. 29, 1998) from Monica Lewinsky, Law Offices of Plato Cacheris (gifts from President Clinton to Lewinsky); Inventory of Consensual Search of Monica Lewinsky's apartment conducted on Jan. 22, 1998 (items seized from Lewinsky's apartment containing various gifts and memorabilia including gifts from President Clinton); White House Productions to subpoenas V006 and D1415 (gifts from Lewinsky to President Clinton) (David Kendall also responded to subpoena D1415); Productions from David E. Kendall, private counsel to President Clinton, response to subpoenas V002 and D1507 (gifts from Lewinsky to President Clinton).

[50] Lewinsky 8/6/98 GJ at 23–24, 139, 142–43; Clinton 8/17/98 GJ at 9.

[51] Lewinsky 8/20/98 GJ at 16, 18, 19, 22; Lewinsky 8/26/98 Depo. at 14, 17–18, 27–28; Lewinsky 2/1/99 Senate Depo. at 38–39; Currie 5/6/98 GJ at 155; Byrne 7/17/98 GJ at 4; *see also* Currie 5/6/98 GJ at 83–86 (meetings between Clinton and Lewinsky frequently occurred on "Saturdays or after hours").

[52] Lewinsky 8/6/98 GJ at 47; *see also* Lewinsky 8/6/98 at 18–19, 58, 149; Lewinsky 8/20/98 GJ at 7, 22; Lewinsky 8/26/98 Depo. at 14; Lewinsky 2/1/99 Senate Depo. at 61; Currie 7/22/98 GJ at 65–66. United States Secret Service personnel noticed a pattern. According to Brent Chinery, Uniformed Division, "when Monica would come in when I was working, it was always like on a Saturday morning or a Sunday morning around 9:00 or 10:00 in the morning. Nobody else would be around in the West Wing except for the President and Betty. Once Monica came in, even though the President was over in the residence, we knew he would be coming over to the oval [office] once Monica came in." Chinery 7/23/98 GJ at 50.

"we would usually plan that I would either bring papers, or... accidentally [bump] into each other in the hall... there was always some sort of cover." [53]

To conceal the sexual aspect of their relationship from others, President Clinton and Lewinsky agreed that, if asked, each would deny the relationship and would falsely claim Lewinsky was present in the Oval Office area to bring him official papers or to visit President Clinton's personal secretary, Betty Currie.[54] Lewinsky testified her friendship with Betty Currie was "a function of making [her] relationship with the President easier." [55]

President Clinton's and Lewinsky's ninth sexual encounter on February 28, 1997, however, resulted in evidence establishing the sexual nature of their relationship—a stain on a blue dress worn by Lewinsky that day.[56] Tests revealed that
[23] the stain was President Clinton's semen.[57]

2. President Clinton's Civil Discovery Responses.

President Clinton initially responded to the *Jones v. Clinton* complaint through a motion to dismiss the action claiming he was immune from civil suit while President.[58] On May 27, 1997, the United States Supreme Court ruled unanimously that the President of the United States was not immune while in office from being sued for private or personal activity, and the case was remanded to Judge Wright for further proceedings, including pretrial discovery.[59] Judge Wright imposed a Confidentiality Order prohibiting all parties and their counsel, agents, and spokespersons from disclosing to any person, directly or indirectly, the content and substance of any deposition, the questions asked, and the identity of witnesses to be deposed.[60]

[24] As part of the pretrial discovery process, Jones attempted to show that President Clinton had engaged in a pattern of similar sexually oriented conduct with

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[53] Lewinsky 8/6/98 GJ at 53–54; *see also* Lewinsky 8/6/98 GJ at 18; Lewinsky 8/26/98 Depo. at 27–28, 34, 35; Byrne 7/17/98 GJ at 5.

[54] Lewinsky 8/6/98 GJ at 53–55, 123; Lewinsky 2/1/99 Senate Depo. at 53, 54–55, 58–61, 76, 91; Clinton 8/17/98 GJ at 118; Clinton 1/17/98 Depo. at 69.

[55] Lewinsky 8/6/98 GJ at 48.

[56] Impeachment Referral, *supra* note 10, at 57–59 (detailing the encounter).

[57] *See* Lewinsky 8/6/98 GJ at 32, 39–40; *see also* infra p. 35 and note 115 (describing FBI Laboratory tests confirming that semen on the dress was President Clinton's).

[58] President Clinton's Motion to Dismiss on Grounds of Presidential Immunity, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Aug. 10, 1994).

[59] *Clinton v. Jones,* 520 U.S. 681 (1997).

[60] Confidentiality Order On Consent of All Parties at 2–3, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Oct. 30, 1997):

> IT IS HEREBY ORDERED, AND COUNSEL FOR ALL PARTIES CONSENT to the entry of the following confidentiality order to apply to the parties, counsel for the parties, and agents (including spokespersons) for the parties, prohibiting disclosure directly or indirectly of:
>
> 1. The time, place, or date on which any deposition is to be taken or the identity of any witness to be deposed; and
>
> 2. The content of any deposition, including but not limited to the questions asked, the answers given, whether any objections were made, the substance of any objections, the length of the deposition, whether the deposition went well or poorly, and whether new information was disclosed or old information confirmed; . . .

subordinate government employees.[61] Jones's attorneys served President Clinton with written interrogatories,[62] one of which stated:

> Please state the name, address, and telephone number of each and every [federal employee] with whom you had sexual relations [63] when you [were] . . . President of the United States.[64]

President Clinton objected that this invaded his privacy, was irrelevant, was "beyond any reasonable scope of discovery," and was meant "solely to harass, embarrass and humiliate" him.[65] On December 11, 1997, Judge Wright overruled President Clinton's objection.[66] Judge Wright ordered President Clinton to answer [25]
questions regarding any state or federal employees with whom he had had sexual relations between May 8, 1986 and December 11, 1997.[67] On December 23, 1997, pursuant to Judge Wright's Discovery Order,[68] President Clinton, under penalty of perjury, answered "None."[69]

On December 15, 1997, Jones's lawyers served President Clinton with a second set of document requests, asking him to "produce documents that related to communications between the President and Monica Lewi[n]sky."[70] On January 15, 1998, President Clinton's attorneys served his responses to Jones's document request, objecting to the scope of the request, but responding that notwithstanding that objection, President Clinton had no "documents concerning Monica

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[61] Second Set of Interrogatories from Plaintiff to Defendant Clinton, *Jones v. Clinton*, LR–C–94–290 (E.D. Ark. Oct. 1, 1997).

[62] Written interrogatories are a common discovery device in federal civil cases by which a party serves written questions on the opposing party. The rules require that they be answered under oath and therefore under penalty of perjury. *See* Fed. R. Civ. P. 33.

[63] "Sexual relations" was not expressly defined in the interrogatory, and as Judge Wright later noted, remained undefined in the litigation until President Clinton's January 17, 1998 deposition. Clinton 1/17/98 Depo. at 26 (statement of Judge Wright). President Clinton was asked in the grand jury whether his "definition of sexual relationship is intercourse only," to which he answered, "No, not necessarily intercourse only. But it would include intercourse. I believe, I believe that the common understanding of the term, if you say two people are having a sexual relationship, most people believe that includes intercourse." Clinton 8/17/98 GJ at 23.

[64] Second Set of Interrogatories from Plaintiff to Defendant Clinton (Interrog. No. 10) at 7, *Jones v. Clinton*, LR–C–94–290 (E.D. Ark. Oct. 1, 1997). The interrogatory in the text reflects Judge Wright's order, dated December 11, 1997, limiting the scope of the question to cover only women who were state or federal employees at the relevant times. Order, *Jones v. Clinton*, LR–C–94–290 (E.D. Ark. Dec. 11, 1997).

[65] President Clinton's Responses to Plaintiff's Second Set of Interrogatories at 5, *Jones v. Clinton*, LR–C–94–290 (E.D. Ark. Nov. 3, 1997) (Answer No. 10).

[66] Order, *Jones v. Clinton*, LR–C–94–290 (E.D. Ark. Dec. 11, 1997).

[67] *See id.* at 4.

[68] *Id.*

[69] President Clinton's Supplemental Responses to Plaintiff's Second Set of Interrogatories at 2, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Dec. 23, 1997) (response to Interrog. No. 10).

[70] Plaintiff's Second Request for Production of Documents and Things at 6, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Dec. 15, 1997). "Documents" was defined by Jones's lawyers as that term is used in Fed. R. Civ. P. 34, which defines documents as including "writings, drawing, graphs, charts, photographs, phonorecords, and other data compilations." Plaintiff's Second Request for Production of Documents and Things at 2, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Dec. 15, 1997). The Jones attorneys also defined document to include "any tangible thing on which appears, or in which is stored or contained, any words, numbers, symbols, or images." *Id.*

Lewinsky" or "reflecting any communications, meetings or visits involving [President] Clinton and Ms. Lewinsky, especially within the White House." [71]

[26] In contrast, Lewinsky later testified

> [t]here were . . . some occasions when I sent him cards or notes that I wrote things that he deemed too personal to put on paper just in case something ever happened, if it got lost getting there or someone else opened it. So there were several times when he remarked to me, you know, you shouldn't put that on paper.[72]

President Clinton agreed he had told her "she should be careful what she wrote, because a lot of it was clearly inappropriate and would be embarrassing if somebody else read it." [73] Lewinsky said President Clinton admonished her about written references to their relationship during their final conversation on January 5, 1998, because of "[a]n embarrassing mushy note" she had recently sent him.[74]

3. Monica Lewinsky as a Witness in *Jones v. Clinton.*

On December 5, 1997, attorneys for Jones gave President Clinton's attorneys a proposed witness list identifying Lewinsky as a potential witness.[75] Lewinsky testified that President Clinton called her in the middle of the night at around 2:00 or 2:30 a.m. on December 17, 1997,[76] and they spoke for about a half an [27] hour.[77] During that conversation, he told her she was on the witness list.[78] Lewinsky later described the telephone conversation to the grand jury:

> I was—I'm sure, as you can imagine, I was upset and shocked [about being included on the witness list]. He told me that it didn't necessarily mean that I would be subpoenaed, but that that was a possibility, and if I were to be subpoenaed, that I should contact Betty and let Betty know that I had received the subpoena.
>
> I believe that I probably asked him, you know, what should I do in the course of that and he suggested, he said, "Well, maybe you can sign an affidavit." [79]
>
> At some point in the conversation, and I don't know if it was before or after the subject of the affidavit came up, he sort of said, "[y]ou know,

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[71] President Clinton's Responses to Plaintiff's Second Set of Requests at 11–12, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Jan. 15, 1998). In contrast, on January 27, 1998, in response to a grand jury subpoena issued on January 20, 1998 seeking "all documents and things referring or relating to Monica Lewinsky," President Clinton produced to this Office, among other things: two antique books (Doc. Nos. V002–DC–00000003, V002–DC–00000471), and a coffee mug inscribed "Santa Monica" (Doc. No. V002–DC–00000473). Grand Jury Subpoena No. V002 (E.D. Va. Jan. 20, 1998).

[72] Lewinsky 8/6/98 GJ at 56.

[73] Clinton 8/17/98 GJ at 49.

[74] Lewinsky 8/6/98 GJ at 189–92.

[75] Plaintiff's Witness List, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Dec. 5, 1997).

[76] Lewinsky 8/6/98 GJ at 121–22.

[77] *Id.* at 121–26.

[78] *Id.* at 122–23.

[79] *Id.* at 123. Lewinsky said President Clinton suggested she might want to sign an affidavit. *Id.* The President testified he told Lewinsky that if she were called as a witness, she would "have to get a lawyer." Clinton 8/17/98 GJ at 119. Lewinsky said she was "99.9 percent certain" that President Clinton did not tell her she should get a lawyer. Lewinsky 8/26/98 Depo. at 57.

you can always say you were coming to see Betty or that you were bringing me letters." Which I understood was really a reminder of things that we had discussed before.[80]

On December 19, 1997, Lewinsky was served with a subpoena to appear for a deposition in *Jones v. Clinton.*[81] On January 7, 1998, Lewinsky executed an affidavit declaring, "I have never had a sexual relationship with the President...."[82] Lewinsky admitted to the grand jury that this statement in her affidavit was false.[83] [28]

4. President Clinton's Deposition Testimony in *Jones v. Clinton.*

On Saturday, January 17, 1998, President Clinton gave testimony under oath, as administered by Judge Wright, at a deposition in *Jones v. Clinton.*[84] During his deposition, President Clinton testified as follows:

Q: At any time were you and Monica Lewinsky together alone in the Oval Office?

A: I don't recall....

Q: So I understand, your testimony is that it was possible, then, that you were alone with her, but you have no specific recollection of that ever happening?

A: Yeah, that's correct....[85]

* * *

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[80] Lewinsky 8/6/98 GJ at 123–24; *see also* Lewinsky 2/1/99 Senate Depo. at 49–50; *but see* Lewinsky 2/1/99 Senate Depo. at 52–53 (responding "I don't believe so, no" when asked whether President Clinton's statement about what Lewinsky might say related to her affidavit). Lewinsky said she understood President Clinton's advice to mean she might be able to execute an affidavit that "could range from anywhere between maybe just somehow mentioning...innocuous things or going as far as maybe having to deny any kind of relationship." Lewinsky 8/6/98 GJ at 124. President Clinton later explained to the grand jury he "felt strongly...that she could execute an affidavit that would be factually truthful, that might get her out of having to testify." Clinton 8/17/98 GJ at 119.

[81] Subpoena in a Civil Case (Monica Lewinsky), *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Dec. 17, 1997) (Doc. No. 1736–DC–00002677) (GJ 00–3 Exh. No. 222). Lewinsky 8/6/98 GJ at 127–28; Lewinsky 8/20/98 GJ at 65–66; Lewinsky 2/1/99 Senate Depo. at 62–63.

[82] Aff. of Jane Doe #6 [Monica Lewinsky] (Jan. 7, 1998) (Doc. Nos. 849–DC–00000634 through 00000635); *but see* Lewinsky 12/8/00 Int. at 3 (admitting affidavit was false and misleading).

[83] Lewinsky 8/6/98 GJ at 204–05. On December 8, 2000, Lewinsky again confirmed that her denial of a "sexual relationship" in the affidavit was "false." Lewinsky 12/8/00 Int. at 3.

[84] The deposition was videotaped at the Washington, D.C. law offices of Robert S. Bennett, President Clinton's attorney in the *Jones* case. Clinton 1/17/98 Depo. at 1. Judge Wright administered the following oath to President Clinton, as recorded on that videotape (GJ 00–3 Exh. No. 14–c):

> JUDGE WRIGHT: Mr. President, please raise your right hand. Do you solemnly swear (or affirm) that the matter before the Court—excuse me—that the testimony that you are about to give, in the matter before the Court, will be the truth, the whole truth, and nothing but the truth, so help you God?
>
> THE PRESIDENT: I do.

[85] Clinton 1/17/98 Depo. at 52–53.

[29] Q: At any time were you and Monica Lewinsky alone in the hallway between the Oval Office and this kitchen area?

A: I don't believe so, unless we were walking back to the back dining room with the pizza. I just, I don't remember. I don't believe we were alone in the hallway, no.[86]

* * *

Q: [H]ave you ever had sexual relations with Monica Lewinsky, as that term is defined in Deposition Exhibit 1,[87] as modified by the Court?

[30] A: I have never had sexual relations with Monica Lewinsky. I've never had an affair with her.[88]

When asked about Lewinsky during the deposition, President Clinton referred to Betty Currie as having responsive information. For example, he said, "Betty suggested [Vernon Jordan] meet with [Lewinsky],"[89] or responded to questions by suggesting that Jones's lawyers "should ask Betty."[90]

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[86] *Id.* at 58–59.

[87] Definition of Sexual Relations, Deposition of William Jefferson Clinton, *Jones v. Clinton*, (Jan. 17, 1998) (Doc. No. 849–DC–00000586). The proffered definition was in three parts. *Id.* President Clinton's attorney objected that it was confusing and overbroad. Clinton 1/17/98 Depo. at 20. Judge Wright agreed "definition number two is too encompassing, it's too broad, and so is definition number three. Definition number one encompasses intent,... but numbers two and three... are just too broad." Clinton 1/17/98 Depo. at 22. As a result of Judge Wright's ruling (reflected below in ~~strike-out~~), the definition of "sexual relations" used was as follows:

> Definition of Sexual Relations
>
> For the purposes of this deposition, a person engages in "sexual relations" when the person knowingly engages in or causes –
>
> (1) contact with the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to arouse or gratify the sexual desire of any person;
>
> ~~(2) contact between any part of the person's body or an object and the genitals or anus of another person; or~~
>
> ~~(3) contact between the genitals or anus of the person and any part of another person's body.~~
>
> "Contact" means intentional touching, either directly or through clothing.

President Clinton later agreed the definition "was the one the Judge decided on and I was bound by it." Clinton 8/17/98 GJ at 18.

[88] Clinton 1/17/98 Depo. at 78; *but see* Lewinsky 12/8/00 Int. at 4 (stating the opposite).

[89] Clinton 1/17/98 Depo. at 72.

[90] *Id.* at 62, 71. Other examples occurred as follows:

> Q. Do you recall ever walking with Monica Lewinsky down the hallway from the Oval Office to your private kitchen there in the White House?
>
> A. ... at some point during the government shutdown, ... [Lewinsky] was back there with a pizza that she brought to me and to others. I do not believe she was there alone, however. I don't think she was. And my recollection is that on a couple of occasions after that she was there but my secretary, Betty Currie, was there with her. She and Betty are friends. That's my, that's my recollection.

Id. at 56–58.

Q. And how do you know [Currie and Lewinsky] are friends? *Continued—*

During the first break in the deposition, President Clinton, his attorney Robert S. Bennett, White House Counsel Charles F.C. Ruff, and Deputy White House Counsel Bruce R. Lindsey discussed whether to place Lewinsky's affidavit on the record, ultimately agreeing that Bennett would do so and then "ask President Clinton a few questions about it."[91] Bennett recalled that at this break, he and President Clinton "read[ ] or review[ed] Paragraphs 6 and 8 of the Lewinsky affidavit" in which she denied a sexual relationship with President Clinton.[92] President Clinton expressly "consented to" placing Lewinsky's affidavit "on the record at the deposition," and "indicated he would affirm Paragraphs 6 and 8."[93] Immediately after the break, Bennett asserted before Judge Wright that the affidavit established that "there is absolutely no sex of any kind in any manner, shape or form" between President Clinton and Lewinsky.[94] Following a later break in the deposition, Bennett read aloud for the record the portion of Lewinsky's affidavit denying a "sexual relationship" and asked President Clinton whether the statement was "true and accurate," to which President Clinton responded under oath: "That is absolutely true."[95] [31] [32]

A. Well, I know they're friends because, because Betty befriended her when she was working there,.... I think Betty just sort of adopted her, you know. She's much younger than Betty, obviously. I think Betty just took an interest in her and kind of adopted her and has kept in touch with her over the time since she left the White House....

Q. Now, to your knowledge, has Monica Lewinsky ever sent any letters from the Pentagon to Betty Currie in the White House?

A. I don't know. You'd have to ask Betty about that.

Id. at 61–62.

[91] Aff. of Robert S. Bennett ¶ 6 (June 9, 2000); Supplementary Aff. of Robert S. Bennett at ¶ 2 (Aug. 11, 2000). These affidavits and others executed by Mr. Bennett were authorized by President Clinton and submitted to this Office by David E. Kendall, private counsel to President Clinton, in connection with this investigation. See Letter from David E. Kendall, to Robert W. Ray, Independent Counsel (July 17, 2000) (transmitting June 9, 2000 affidavit); *see also* Supplementary Aff. of Robert S. Bennett at ¶ 1 (Aug. 11, 2000); Second Supplementary Aff. of Robert S. Bennett at ¶ 2 (Sept. 11, 2000); Third Supplementary Aff. of Robert S. Bennett at ¶ 2 (Oct. 20, 2000); Fourth Supplementary Aff. of Robert S. Bennett at ¶ 2 (Nov. 22, 2000).

[92] Third Supplementary Aff. of Robert S. Bennett at ¶ 3b (Oct. 20, 2000).

[93] Second Supplementary Aff. of Robert S. Bennett at ¶¶ 3c & d (Sept. 11, 2000).

[94] Clinton 1/17/98 Depo. at 54. President Clinton later claimed before the grand jury that he "was not paying a great deal of attention to this exchange." Clinton 8/17/98 GJ at 58. In contrast, Judge Wright's law clerk, Barry W. Ward, who attended the deposition, executed a sworn statement that he had "observed President Clinton looking directly at Mr. Bennett" during Mr. Bennett's statement. Ward 1/25/99 Aff. at 1; *see also* 145 Cong. Rec. S1351 (daily ed. Feb. 8, 1999) (reading portions of Ward's affidavit, including the quoted portion, on the Senate floor).

[95] Clinton 1/17/98 Depo. at 204; *but see* Lewinsky 12/8/00 Int. at 2 (conceding the statement in her affidavit was false). Bennett advised Judge Wright as follows on September 30, 1998:

> As you are aware, Ms. Monica Lewinsky submitted an affidavit dated January 7, 1998... in support of her motion to quash the subpoena for her testimony. This affidavit was made part of the record of President Clinton's deposition on January 17, 1998.
>
> It has recently been made public in the Starr Report that Ms. Lewinsky testified before a federal grand jury in August 1998 that portions of her affidavit were misleading and not true. Therefore, pursuant to our professional responsibility, we wanted to advise you that the Court should not rely on Ms. Lewinsky's affidavit or remarks of counsel characterizing that affidavit.

Letter from Robert S. Bennett, private counsel to President Clinton, to the Hon. Susan Webber Wright (Sept. 30, 1998).

At the conclusion of the deposition, Judge Wright specifically instructed President Clinton that the parties were prohibited from "saying anything whatsoever" to anyone about the substance and details of the deposition pursuant to the Court's October 30, 1997 Confidentiality Order: [96]

> JUDGE WRIGHT: All right. Before he leaves, I want to remind him, as the witness in this matter, and everyone else in the room, that this case is subject to a Protective Order regarding all discovery, that it's my intent that this deposition not be used for any purposes other than the purposes envisioned by the Rules of Civil Procedure and the Rules of Evidence, and that is for use in this Court case and for no other purpose, and therefore, all parties present, including Secret Service agents, videographers, court reporters and the witness are not to say anything whatsoever about the questions they were asked, the substance of the deposition, the length of it, objections, recess, any details, whether the President did well or did not do well, whether he is credible or not
> [33] credible, whether he admitted or denied any specific allegations, and this is extremely important to this Court that the, this process not be used for any purpose other than the purposes envisioned in the Rules of Evidence and the Rules of Civil Procedure, and that's all I'm going to say. I gave a similar admonition about a year-and-a-half ago when I was up here in the White House, and it worked that time, and I hope that it works this time as well. If it does not, of course, anyone who violates that can be subject to sanctions of the Court.[97]

5. President Clinton's Conduct After His Deposition.

Early Saturday evening, following the conclusion of his deposition, President Clinton returned to the White House and called Betty Currie to ask her to come to the White House the next day to meet with him.[98] When President Clinton met with Currie on Sunday, January 18, 1998, he discussed his deposition with her.[99] Currie testified that President Clinton appeared "concerned," and told her he had been asked questions about Lewinsky at the deposition.[100] Currie thought his comments were intended to be "more like statements than questions" [101] that "he wished [her] to agree with," [102] and, in sum and substance, were as follows:[103]

- You were always there when Monica was there.
- [34] We were never really alone.

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[96] Clinton 1/17/98 Depo. at 212–13.

[97] *Id.*

[98] Currie 1/27/98 GJ at 65–67; Clinton 8/17/98 GJ at 147–48; Presidential Call Log, Jan. 17, 1998 (Doc. No. V006–DC–00002066).

[99] Clinton 1/17/98 Depo. at 148; Currie 1/27/98 GJ at 70–71.

[100] Currie 1/27/98 GJ at 70–75.

[101] *Id.* at 71 ("Q: Okay. And then you told us that the President began to ask you a series of questions that were more like statements than questions. A: Right").

[102] *Id.* at 74 ("Q: Would it be fair to say, then—based on the way he stated it and the demeanor that he was using at the time that he stated it to you—that he wished you to agree with that statement? A: I can't speak for him, but—Q: How did you take it?.... A: (Nodding.) Q: And you're nodding your head 'Yes'; is that correct? A: That's correct").

[103] Currie 1/24/98 Int. at 6.

- Monica came on to me, and I never touched her, right?
- You could see and hear everything.[104]

Currie also told Office of the Independent Counsel investigators she felt President Clinton made these remarks to gauge her reaction.[105] Currie said President Clinton met with her again a few days later to reiterate these statements.[106] [35]

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[104] Currie 1/27/98 GJ at 71–74; Currie 7/22/98 GJ at 6–7, 10–11, 79; *see also* Clinton 8/17/98 GJ at 55–57. According to Currie, the way President Clinton phrased the inquiries made them sound like both questions and statements at the same time. Currie 1/24/98 Int. at 6.

At different points in her grand jury testimony, there are minor variations in the wording used or agreed to by Betty Currie in recounting President Clinton's statements. *Compare* Currie 1/27/98 GJ at 71 ("You were always there when Monica was there" (Currie statement)) *with id.* at 74 (Q: "'You were always there when she was there, right?' Is that the way you remember the President stating it to you?" A: "That's how I remember him stating it to me"). Less than ten days after the events, she claimed her memory of the details was "getting worse by the minute." *Id.* at 71.

Currie explained that discrepancies in her testimony were due to memory problems. For example, in her May 6, 1998 testimony, Currie acknowledged she sometimes would come to the White House on weekends or when few others were present solely to have Lewinsky admitted and bring her to see President Clinton. Currie 5/6/98 GJ at 83–86. Just over two months later, she testified that "[she] d[id]n't remember any occasions" when she came just to admit Lewinsky, though she could not rule it out. Currie 7/22/98 GJ at 24.

To resolve discrepancies in Currie's testimony and to assess her credibility as a witness, the Independent Counsel invited Currie to be interviewed by this Office in December 2000. *See* Letter from John S. Bowler, Assoc. Independent Counsel, to Lawrence H. Wechsler, attorney for Betty Currie (Dec. 8, 2000). Currie's attorney declined on her behalf stating, "The fact is that your request to re-interview Mrs. Currie, with regard to precisely the same matters covered by your office's previous interviews, represents an unwelcome, and we believe completely unnecessary, imposition upon my client... As you know, your office had the opportunity to interview Mrs. Currie on numerous occasions, and had the further opportunity to question Mrs. Currie in the grand jury on no less than five separate occasions. As you have copies of the notes and reports of the interviews and of the transcripts of the grand jury testimony, there can be no question but that you have a full record of my client's recollections as to the matters that you have elected to investigate." Letter from Lawrence H. Wechsler, attorney for Betty Currie, to John S. Bowler, Assoc. Independent Counsel 1 (Dec. 11, 2000).

[105] Currie 1/24/98 Int. at 7.

[106] Currie 1/27/98 GJ at 80–82. Deputy White House Counsel Cheryl D. Mills also attempted to contact Betty Currie to discuss this Office's investigation at a time when Mills knew that Currie had retained counsel and after it had been publicly disclosed that Currie had been subpoenaed to testify before the grand jury. *See* Mills 8/11/98 GJ at 81–82 (discussing pager message from Mills to Currie at 9:18 p.m. on Saturday, January 24, 1998: "Checking on you. Thinking about you. Page me if you need me. C. D. Mills XOXOXO"); *id.* at 83 (acknowledging that she had known at the time that Currie was already represented with respect to the investigation because she had helped her retain counsel); Amy Goldstein, *Summons Thrusts President's Gatekeeper Into View*, Wash. Post, Jan. 23, 1998, at A20 (reporting that, the day before Mills's page, Currie had been subpoenaed by this Office); *id.* at 82–83 (acknowledging that although she could not recall whether her page "was before or after I had already had discussions with [Currie] regarding a lawyer and I knew that you all [the Office of the Independent Counsel] were seeking to speak with her[,] ... if it is that time frame, that's like [sic] what I would have been paging her about"). Mills characterized Currie as "a friend of mine" and testified that she paged Currie "frequently." *Id.* at 77–80.

On January 22, 1998, five days after the President's deposition, Jones's lawyers issued a subpoena for Betty Currie's deposition. Currie was served with the subpoena on January 27. Subpoena in a Civil Case (Betty Currie), *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Jan. 22, 1998) (Doc. No. ES–DC–00000006) (GJ 00–3 Exh. No. 216). Jones's lawyers also supplemented their witness list to include Currie on January 23. Plaintiff's Supplement To Witness List, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Jan. 23, 1998) (Doc. No. ES–DC–00000001) (GJ 00–3 Exh. No. 217).

In order to prevent civil discovery from interfering with the criminal investigation by, among other things, having witnesses like Currie simultaneously subpoenaed by Jones's attorneys and the grand jury, the Independent Counsel filed a motion with Judge Wright to stay discovery until the criminal investigation was resolved. Motion of the United States for Limited Intervention and a Stay of Discovery, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Jan. 28, 1998). On January 29, 1998, Judge Wright

Continued—

After Currie met with President Clinton on Sunday afternoon, she paged Lewinsky four times, at 5:12 p.m., 6:22 p.m., 7:06 p.m., and 8:28 p.m.[107] Currie [36] testified President Clinton "may have asked me to call [Lewinsky] to see what she knew or where she was or what was happening."[108] At 11:02 p.m., President Clinton called Currie to ask whether she had spoken to Lewinsky, which Currie had not.[109]

The next morning, Monday, January 19, Currie continued trying to contact Lewinsky, paging her at 7:02 a.m., 8:08 a.m., 8:33 a.m., 8:37 a.m., and 8:41 a.m.[110] Currie said she was calling to tell Lewinsky that she (Lewinsky) had been mentioned during President Clinton's deposition.[111] At 8:50 a.m., President Clinton called Currie at her home.[112] Currie told President Clinton that she had been unable to reach Lewinksy.[113]

Wright granted the Independent Counsel's request, and ordered that "the plaintiff and defendants may not continue with discovery of those matters that concern Monica Lewinsky" because of the need to "protect the integrity of the criminal investigation" and the "fact that the government's proceedings could be impaired and prejudiced were the Court to permit inquiry into the Lewinsky matter by parties in this civil case." Order at 3, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Jan. 29, 1998).

[107] The messages said, in order of reference, "PLEASE CALL KAY AT HOME," "PLEASE CALL KAY AT HOME," "PLEASE CALL KAY AT HOME," and "CALL KAY," with Currie referring to herself as "Kay." *See* Lewinsky's pager records (Jan. 18, 1998) (Doc. No. 831–DC–000000008); Currie 5/7/98 GJ at 96–97; Currie 7/22/98 GJ at 156, 158.

[108] Currie 5/7/98 GJ at 99–100.

[109] Currie 7/22/98 GJ at 161–62; Presidential Call Log (Jan. 18, 1998) (Doc. No. 1248–DC–00000314).

[110] The pages said, in order of reference, "PLEASE CALL KAY AT HOME AT 8:00 THIS MORNING," "PLEASE CALL KAY," "PLEASE CALL KAY AT HOME," "PLEASE CALL KAY AT HOME. IT'S A SOCIAL CALL. THANK YOU," and "KAY IS AT HOME. PLEASE CALL." Lewinsky's pager records (Jan. 19, 1998) (Doc. No. 831–DC–000000009); Currie 5/7/98 GJ at 104–05; Currie 7/22/98 GJ at 160–62.

[111] Currie 7/22/98 GJ at 157–59, 164–66.

[112] Presidential Call Log (Jan. 19, 1998) (Doc. No. 1248–DC–00000318).

[113] Currie 7/22/98 GJ at 162–63. At 8:51 a.m., Currie paged Lewinsky again. Lewinsky's pager records (Jan. 19, 1998) (Doc. No. 831–DC–000000009). The page read, "MSG. FROM KAY. PLEASE CALL. HAVE GOOD NEWS." *Id.*

At 8:56 a.m., President Clinton also called Vernon Jordan's residence, and spoke for nine minutes. Presidential Call Log (Jan. 19, 1998) (Doc. No. 1248–DC–00000318). At 10:29 a.m., a page was sent from Jordan's office to Lewinsky. Akin, Gump, Strauss, Hauer & Feld call log (Jan. 19, 1998) (Doc. No. V004–DC–00000165); Lewinsky's pager records (Jan. 19, 1998) (Doc. No. 831–DC–000000009) ("PLEASE CALL MR. JORDAN"). At 10:36 a.m., a call lasting just under four minutes was placed from Jordan's office to the White House. Akin, Gump, Strauss, Hauer & Feld call log (Jan. 19, 1998) (Doc. No. V004–DC–00000165). At 10:53 a.m., a thirty-six second call was placed from Jordan's office to Frank Carter's office, who was Lewinsky's attorney. Akin, Gump, Strauss, Hauer & Feld call log (Jan. 19, 1998) (Doc. No. V004–DC–00000165).

At 10:58 a.m., President Clinton called Jordan's office. Presidential Call Log (Jan. 19, 1998) (Doc. No. 1248–DC–00000319). At 11:16 a.m., Jordan again paged Lewinsky. Lewinsky's pager records (Jan. 19, 1998) (Doc. No. 831–DC–000000009) ("PLEASE CALL MR. JORDAN"). At 12:31 p.m., Jordan used his cell phone to have a three minute conversation with the White House. Bell Atlantic Mobile toll records (Jan. 19, 1998) (Doc. No. 1033–DC–00000035). At 1:45 p.m., President Clinton phoned Currie at her home, which lasted two minutes. Presidential Call Log (Jan. 19, 1998) (Doc. No. 1248–DC–00000319). At 2:29 p.m., Jordan placed a two minute call from his cell phone to the White House. Bell Atlantic Mobile toll records (Jan. 19, 1998) (Doc. No. 1033–DC–00000035). At 2:46 p.m., Carter paged Lewinsky. Lewinsky's pager records (Jan. 19, 1998) (Doc. No. 831–DC–000000009) ("PLEASE CALL FRANK CARTER").

Jordan's attempts to reach Lewinsky were also unsuccessful, Jordan 6/9/98 GJ at 17, 21–23, and Carter told him that afternoon that Lewinsky had obtained new attorneys. Carter 6/18/98 GJ at 146.

6. President Clinton's Grand Jury Testimony. [37]

The Independent Counsel's criminal investigation began on January 16, 1998.[114] Seven months later, on August 17, 1998,[115] President Clinton testified from the Map Room of the White House via live video transmitted to federal [38] Grand Jury 97–2 empaneled in the District of Columbia.[116] At his grand jury appearance, President Clinton was asked, "Mr. President, were you physically intimate with Monica Lewinsky?" [117] He then asked for and received permission to read the following prepared statement:

> When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse; they did not constitute "sexual relations" as I understood that term to be defined at my January 17, 1998, deposition; but they did involve inappropriate intimate contact. These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Lewinsky that included inappropriate sexual banter. I regret that what began as a friendship came to include this conduct. I take full responsibility for my actions. While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the Office I hold, this is all I will say about the specifics of these particular matters. I will try to answer to the best of my ability other questions, including questions about my relationship with Lewinsky, questions about my understanding of the term "sexual relations" as I understood that term to be defined at my January 17, 1998, deposition, and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses.[118]

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[114] Fallon 1/27/98 GJ at 4.

[115] President Clinton's agreement to appear before the grand jury voluntarily on August 17 was reached not long after Lewinsky began cooperating with this Office on July 28, 1998, GJ 97–2 Exh. No. ML–2, and produced a blue dress she believed was stained with President Clinton's semen. Declaration of Robert J. Bittman, Deputy Independent Counsel (Aug. 3, 1998) (Doc. No. MLR–DC–00000001); Photograph of Blue Dress (Doc. No. DB Photos 0007); Lewinsky 8/20/98 GJ at 50–51; Lewinsky 8/6/98 GJ at 37–41. On July 30, 1998, the blue dress was sent to the FBI laboratory. Federal Bureau of Investigation Laboratory Report at 1–2 (Aug. 3, 1998). This Office notified President Clinton's attorney that it had a substantial predicate to request President Clinton's blood sample. Letter from Robert J. Bittman, Deputy Independent Counsel, to David E. Kendall, private counsel to President Clinton (July 31, 1998). On August 3, 1998, the FBI laboratory confirmed the stain was human semen. Federal Bureau of Investigation Laboratory Report at 1–2 (Aug. 3, 1998). On August 3, 1998, President Clinton provided a blood sample. FBI FD–302 8/3/98 at 1. A scientific comparison of President Clinton's blood with the semen on Lewinsky's blue dress showed the DNA matched. Federal Bureau of Investigation Laboratory Report at 1 (Aug. 17, 1998). Letter from Donald M. Kerr, Asst. Director, Laboratory Division, FBI to Kenneth W. Starr, Independent Counsel (Sept. 8, 1998).

[116] Clinton 8/17/98 GJ at 2–5.

[117] *Id.* at 8.

[118] *Id.* at 8–9; GJ 97–2 Exh. No. WJC–1 (after President Clinton read the statement, it was marked as an exhibit).

[39]

a. Regarding President Clinton's Intent During the *Jones v. Clinton* Deposition.

President Clinton testified before the grand jury about his state of mind during his January 17, 1998 *Jones v. Clinton* deposition when responding to questions about Monica Lewinsky: [119]

[40]

> I was doing my best to be truthful. I was not trying to be particularly helpful to them [Paula Jones's attorneys], and I didn't think I had an obligation to be particularly helpful to them to further a—when I knew that there was no evidence here of sexual harassment, and I knew what they wanted to do was to leak this, even though it was unlawful to do so.[120]
>
> * * *
>
> And when I was asked about this [gifts exchanged with Lewinsky] in my deposition, even though I was not trying to be helpful particularly to these people that I thought were not well-motivated, or being honest or even lawful in their conduct vis-à-vis me, that is the Jones legal team, I did ask them specifically to enumerate the gifts. I asked them to help me because I couldn't remember the specifics.[121]
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> * * *

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[119] Also reflective of President Clinton's state of mind during the deposition were the statements he gave in the days immediately following his deposition. "False or inconsistent statements that a defendant makes in explanation or defense" may be considered by a jury as evidence "tending to prove the defendant's consciousness of guilt." Criminal Jury Instructions for the District of Columbia, Instr. 2.29, at 103–04 (4th ed. 1993).

On Wednesday morning, January 21, 1998, President Clinton told Jim Lehrer on *The NewsHour With Jim Lehrer* that "There is no improper relationship," and when asked to explain said, "Well, I think you know what it means. It means that there is not a sexual relationship, an improper sexual relationship, or any other kind of improper relationship. " Interview by Jim Lehrer with President Clinton, PBS, *The NewsHour* (Jan. 21, 1998).

Also that afternoon, the Capitol Hill newspaper *Roll Call* interviewed President Clinton and asked, "You said in a statement today that you had no improper relationship with this intern. What exactly was the nature of your relationship with her?" Excerpts of Telephone Interview of the President by Roll Call, U.S. Newswire, Jan. 21, 1998. He answered saying, "Well, let me say, the relationship was not improper...." *Id.* The *Roll Call* reporter then asked, "Was it in any way sexual?", and President Clinton answered, "The relationship was not sexual. And I know what you mean, and the answer is no." *Id.*

Later that afternoon, President Clinton was interviewed on the National Public Radio program *All Things Considered.* He was asked, "Is there any truth to the allegation of an affair between you and the young woman?" He responded, "No. That's not true either. And I have told people that I would cooperate in the investigation, and I expect to cooperate with it. I don't know any more about it than I've told you, and any more about it, really, than you do. But I will cooperate. The charges are not true. And I haven't asked anybody to lie." *All Things Considered*: Interview of President Clinton (NPR radio broadcast, Jan. 21, 1998).

Then on January 26, 1998, President Clinton added the following at the conclusion of a news conference:

> But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again: I did not have sexual relations with that woman, Miss Lewinsky. I never told anybody to lie, not a single time. Never. These allegations are false.

Remarks on the After School/Child Care Initiative by President Clinton (Jan. 26, 1998), *in* Public Papers of the Presidents of the United States: William J. Clinton 1998 Book I (Jan. 1 to June 30, 1998) at 110–11 (1999).

[120] Clinton 8/17/98 GJ at 28.

[121] *Id.* at 45.

> In the face of that, I knew that in the face of their [the Jones lawyers] illegal activity [leaks of information revealed in discovery] I still had to behave lawfully. But I wanted to be legal without being particularly helpful. I thought that was, that was what I was trying to do.[122]
>
> * * *
>
> Now, so I will admit to this, sir. My goal in this deposition was to be truthful, but not particularly helpful. I did not wish to do the work of the Jones lawyers. I deplored what they were doing. I deplored the innocent people they were tormenting and traumatizing. I deplored their illegal leaking. I deplored the fact that they knew, once they knew our evidence, that this was a bogus lawsuit, and that because of the funding they had from my political enemies, they were putting [sic] ahead. I deplored it. But I was determined to walk through the mine field of this deposition without violating the law, and I believe I did.[123]

In his January 19, 2001 statement, however, President Clinton acknowledged, "I tried to walk a line between acting lawfully and testifying falsely, but I now recognize that I did not fully accomplish this goal and that certain of my responses to questions about Ms. Lewinsky were false."[124] President Clinton admitted in the Agreed Order of Discipline that he "knowingly gave evasive and misleading answers, in violation of Judge Wright's discovery orders, concerning his relationship with Ms. Lewinsky," and "[t]hat by knowingly giving evasive and misleading answers, in violation of Judge Wright's discovery orders, he engaged in conduct that [was] prejudicial to the administration of justice[.]"[125] Judge Wright's April 12, 1999 ruling also recognized that: [41]

> [t]he record demonstrates by clear and convincing evidence that the President responded to plaintiff's questions by giving false, misleading and evasive answers that were designed to obstruct the judicial process.[126]

b. Regarding Sexual Relations.

President Clinton further testified before the grand jury regarding sexual relations with Monica Lewinsky as follows:

> Q. [I]f Monica Lewinsky says that while you were in the Oval Office area you touched her breasts, would she be lying?
>
> A. That is not my recollection.[127]
>
> * * *

[42]

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[122] *Id.* at 78.

[123] *Id.* at 80. After he made this statement, President Clinton was asked, "You didn't think you had a free shot to say, 'I don't know', or 'I don't recall', but when you really did know and you did recall, and it was just up to them, even if you weren't telling the truth, to do a follow-up and to catch you?" President Clinton answered, "No, sir, I'm not saying that." *Id.* at 81.

[124] Statement on Resolution of Legal Issues, Weekly Comp. Pres. Doc. 194 (Jan. 19, 2001) (*see also* Appendix A–1).

[125] Agreed Order of Discipline at 3–4, *Neal v. Clinton*, No. Civ. 2000–5677 (Cir. Ct. of Pulaski Co., Ark. Jan. 19, 2001) (signed by William J. Clinton as "ACCEPTED AND ACKNOWLEDGED").

[126] *Jones v. Clinton*, 36 F. Supp. 2d 1118, 1127 (E.D. Ark. 1999).

[127] Clinton 8/17/98 GJ at 109; *but see* Lewinsky 8/26/98 Depo. at 7, 11, 16, 18, 20, 24, 29–31, 36–37, 39–40, 44, 46, 49–50; Lewinsky 8/20/98 GJ at 31–32 (contradicting President Clinton on this point).

Q. So, you didn't do any of those three things . . . touching her breast, kissing her breast, or touching her genitalia?

A. That's correct.[128]

c. Regarding President Clinton's Statements to Betty Currie.

President Clinton further testified regarding his statements to Betty Currie:

Q. So, if Ms. Currie testified that you approached her on the 18th [of January 1998], or you spoke with her and you said, you were always there when she was there, she wasn't, was she?

A. . . . I wanted to know what Betty's memory was about what she heard, what she could hear. And what I did not know was—I did not know that. And I was trying to figure out, and I was trying to figure out in a hurry because I knew something was up.

Q. So, you wanted—

A. After that deposition.

Q. —to check her memory for what she remembered, and that is—

A. That's correct. . . . [W]hat I was trying to determine was whether my recollection was right and that she was always in the office complex when Monica was there, and whether she thought she could hear any conversations we had, or did she hear any. . . . I was trying to understand what the facts were.[129]

[43] **d. Regarding President Clinton's Statements to Monica Lewinsky.**

President Clinton further testified regarding his statements to Monica Lewinsky:

* * *

Q. Did you say anything like [you can always say that you were coming to see Betty or bringing me letters] once you knew or thought she might be a witness in the Jones case? Did you repeat that statement, or something like it to Monica Lewinsky?

A. . . . I can tell you this: In the context of whether she could be a witness, I have a recollection that she asked me, well, what do I do if I get called as a witness, and I said, you have to get a lawyer. And that's all I said.[130]

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[128] Clinton 8/17/98 GJ at 95; *but see* Lewinsky 8/26/98 Depo. at 7, 11, 16, 18, 20, 24, 29–31, 36–37, 39–40, 44, 46, 49–50; Lewinsky 8/20/98 GJ at 31–32 (contradicting President Clinton on this point).

[129] Clinton 8/17/98 GJ at 53–55.

[130] *Id.* at 118–19. Lewinsky testified that if President Clinton told her to get a lawyer she "would have started to think about how [she] was going to get a lawyer and who [she] should get, and [she] didn't do that." Lewinsky 8/26/98 Depo. at 57. When asked if President Clinton told her that she should get a lawyer when they were discussing her name appearing on the witness list, she replied, "I don't believe so. No," and that she was "99.9 percent certain" of that. Lewinsky 8/26/98 Depo. at 57.

e. Regarding the Nature of President Clinton's Relationship with Monica Lewinsky.

President Clinton further testified regarding the nature of his relationship with Monica Lewinsky:

> Q. ... [W]hether or not Mr. Bennett knew of your relationship with Lewinsky, the statement that there was "no sex of any kind in any manner, shape or form, with President Clinton," was an utterly false statement. Is that correct?
>
> A. It depends on what the meaning of the word "is" is.... I mean that at the time of the deposition, it had been—that was well beyond any point of improper contact between me and Ms. Lewinsky. So that anyone generally speaking in the present tense, saying there is not an improper relationship, would be telling the truth if that person said there was not, in the present tense; the present tense encompassing many months.[131]
>
> * * *
>
> Q. If they testified that you denied sexual relations or relationship with Monica Lewinsky, or if they told us that you denied that, do you have any reason to doubt them, in the days after the story broke; do you have any reason to doubt them? [44]
>
> A. No. The—let me say this. It's no secret to anybody that I hoped that this relationship would never become public. It's a matter of fact that it had been many, many months since there had been anything improper about it, in terms of improper contact.[132]
>
> * * *
>
> Q. ... Mr. President, were you physically intimate with Monica Lewinsky?
>
> A. ... When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters ... did involve inappropriate intimate contact.[133]

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[131] Clinton 8/17/98 GJ at 58, 60–61.
[132] *Id.* at 105.
[133] *Id.* at 8–9.

7. United States District Judge Susan Webber Wright Sanctioned President Clinton for His Conduct Relating to His *Jones v. Clinton* Deposition.

Judge Wright found that President Clinton's "deposition testimony regarding whether he had ever been alone with Lewinsky was intentionally false, and his statements regarding whether he had ever engaged in sexual relations with Lewinsky likewise were intentionally false, notwithstanding tortured definitions and interpretations of the term 'sexual relations.'" [134] Judge Wright found President Clinton in civil contempt for this conduct.[135]

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[134] *Jones v. Clinton*, 36 F. Supp. 2d 1118, 1130 (E.D. Ark. 1999).

[135] *Id.* at 1131–32; *see also* Fed. R. Civ. P. 37(b) (2) (a court may hold a party in contempt for failure to obey its orders). Judge Wright observed that although she also had the authority to review President Clinton's conduct "pursuant to the criminal contempt provisions set forth in Fed. R. Crim. P. 42," she would not do so to avoid additional hearings, and, in view of this Office's ongoing investigation of President Clinton, "to prevent any potential double jeopardy issues from arising." *Jones v. Clinton*, 36 F. Supp. 2d at 1133.

IV. Analysis of Potential Violations of Federal Criminal Law

[45]

The Independent Counsel is required to follow the "written or other established policies" of the Department of Justice to the extent such guidance would not be inconsistent with his statutory independence.[136] These policies include guidance, articulated in the Principles of Federal Prosecution ("Principles"),[137] designed to assist a federal prosecutor in determining whether or not federal criminal charges should be presented to a grand jury for consideration. The Principles were written "with a view to providing guidance rather than to mandating results. The intent is to assure regularity without regimentation, to prevent unwarranted disparity without sacrificing necessary flexibility." [138]

In deciding whether to present charges relating to President Clinton's conduct to a grand jury, the Principles instruct the Independent Counsel to determine first whether in his judgment there was sufficient evidence that President Clinton had committed any federal offenses within the scope of the jurisdictional mandate.[139] As described below, the Independent Counsel concluded that sufficient evidence existed to prosecute and that such evidence would "probably be sufficient to obtain and sustain a conviction . . . by an unbiased trier of fact." [140]

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[136] 28 U.S.C. § 594(f)(1).

[137] United States Attorneys' Manual, Title 9 §§ 9–27.001 – 9–27.750.

[138] *Id.* at § 9–27.001.

[139] *Id.* at § 9–27.200 (A) & (B); *see also Branzburg v. Hayes*, 408 U.S. 665, 686 (1972).

[140] United States Attorneys' Manual, Title 9 § 9–27.220. The Principles of Federal Prosecution set forth a two-step process for determining whether charges should be sought. First, a prosecutor must determine whether the evidence is sufficient. *Id.* Second, a prosecutor must determine whether the matter still warrants prosecution. *Id.* Moreover, because President Clinton was central to the Independent Counsel's investigation under the jurisdictional mandate, the final report of that investigation must sufficiently detail President Clinton's conduct and the legal evaluation of that conduct. *See* H.R. Conf. Rep. No. 103–511, at 19–20 (1994) (the Conference Committee "consider[ed] to be crucial a discussion of the conduct of the person for whom the independent counsel was appointed to office").

Here, the Independent Counsel's opinion that sufficient evidence existed to seek charges against President Clinton is stated in this limited analytical context, and does not establish that a crime was in fact committed, which can only be done under our system of justice by a trier of fact after a constitutionally required trial, or by guilty plea. The Independent Counsel's conclusions regarding the sufficiency of evidence are stated here only insofar as is necessary under the Principles to explain his decision making. Then, assuming the sufficiency of evidence, the Independent Counsel is expected under the independent counsel statute to explain why charges nonetheless have not been sought. Whether the Independent Counsel would have actually sought an indictment—and whether the grand jury would actually have returned one against President Clinton—is and will remain unaddressed. Nothing stated in this Report is intended to imply any suggestion to the contrary.

Continued—

[46] That conclusion does not, however, end a federal prosecutor's inquiry. Under the Principles, even when a prosecutor believes a provable case has been developed, he or she must also consider whether other reasons exist for commencing or declining federal prosecution in the matter. The Principles provide that a government attorney should commence federal prosecution if he or she believes the conduct constitutes a federal offense and the admissible evidence will be sufficient to obtain and sustain a conviction, unless, in the prosecutor's judgment, prosecution should be declined because: 1) no substantial federal interest exists, or 2) there are adequate non-criminal alternatives to prosecution.[141] A prosecutor should "weigh all relevant considerations" in determining whether there is a substantial federal interest in prosecution, including: (1) federal law enforcement priorities; (2) the nature and seriousness of the offense; (3) the deterrent effect of prosecution; (4) the person's culpability in connection with the offense; (5) the person's history with respect to criminal activity; (6) the person's willingness to cooperate in the investigation or prosecution of others; and (7) the probable sentence or other consequences if the person is convicted.[142]

[47]

In determining whether adequate non-criminal alternatives to prosecution exist, a prosecutor should "consider all relevant factors, including: (1) [t]he sanctions available under the alternative means of disposition; (2) [t]he likelihood that an effective sanction will be imposed; and (3) [t]he effect of non-criminal disposition on [f]ederal law enforcement interests."[143] Referral to licensing authorities (such as the bar, in the case of a lawyer) is specifically identified as a potentially adequate non-criminal alternative to prosecution.[144] As set forth more fully below, the Independent Counsel concluded that while there were substantial federal interests to be served by prosecution, non-criminal alternatives to prosecution were sufficient to justify declination of a prosecution of President Clinton.

A. Sufficient Evidence Existed to Prosecute President Clinton.

The Independent Counsel's judgment that sufficient evidence existed to prosecute President Clinton was confirmed by President Clinton's admissions[145] and by evidence showing that he engaged in conduct prejudicial to the administration of justice. In his Agreed Order of Discipline, President Clinton admitted he "knowingly gave evasive and misleading answers, in violation of Judge Wright's discovery orders, concerning his relationship with Ms. Lewinsky," and "[t]hat by knowingly giving evasive and misleading answers, in violation of

[48]

A prosecutor has a responsibility to ensure that the reputation of a person who is not charged with a criminal offense is not tarnished by comments made by the prosecutor. In the unusual case where the matter already has received substantial publicity, however, the Department of Justice's Media Relations policy recognizes that "comments about . . . an ongoing investigation may need to be made." United States Attorneys' Manual, Title 1 § 1–7.530 (B).

[141] United States Attorneys' Manual, Title 9 § 9–27.220 (A).

[142] *Id.* at § 9–27.230 (A).

[143] *Id.* at § 9–27.250 (A) ("Non–Criminal Alternatives to Prosecution").

[144] *Id.* at § 9–27.250 (B).

[145] Letter from David E. Kendall, private counsel to President Clinton, to Robert W. Ray, Independent Counsel 2–3 (Jan. 19, 2001) ("[g]iven the steps the President is prepared to take, we know he might be legally prejudiced . . . if he signed the Order [of Discipline] prior to having an assurance there would be no prosecution").

Judge Wright's discovery orders, he engaged in conduct that is prejudicial to the administration of justice[.]" [146] In his January 19, 2001 statement, President Clinton admitted "certain of my responses to questions about Ms. Lewinsky were false." [147]

More specifically, the Independent Counsel concluded that President Clinton engaged in conduct that impeded the due administration of justice by:

- testifying falsely under oath in *Jones v. Clinton* that (1) Monica Lewinsky's sworn affidavit denying a sexual relationship with him was "absolutely true"; [148] (2) he could not recall ever being alone with Monica Lewinsky; [149] and (3) he had not had a sexual affair or engaged in sexual relations with Monica Lewinsky; [150] and
- making statements to Betty Currie at a White House meeting, following his deposition in *Jones v. Clinton.*[151]

At the grand jury, President Clinton asserted his conduct "did not constitute sexual relations [as he] understood that term to be defined at [his] deposition" [152] because he had not touched or kissed Monica Lewinsky's breasts or genitalia.[153] [49]
Lewinsky's testimony directly contradicted these declarations.[154] Reviewing President Clinton's testimony in the *Jones* case, Judge Wright found: "[T]he President's deposition testimony regarding whether he had ever been alone with Lewinsky was *intentionally false,* and his statements regarding whether he had ever engaged in sexual relations with Lewinsky likewise were *intentionally false,* notwithstanding tortured definitions and interpretations of the term 'sexual relations.'" [155]

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[146] Agreed Order of Discipline at 3–4, *Neal v. Clinton*, No. Civ. 2000–5677 (Cir. Ct. of Pulaski Co., Ark. Jan. 19, 2001) (signed by William J. Clinton as "ACCEPTED AND ACKNOWLEDGED").

[147] Statement on Resolution of Legal Issues, Weekly Comp. Pres. Doc. 194 (Jan. 19, 2001) (*see also* Appendix A–1).

[148] Clinton 1/17/98 Depo. at 204; *but see* Lewinsky 12/8/00 Int. at 2 (conceding the statement in her affidavit was false).

[149] Clinton 1/17/98 Depo. at 52–53, 58–59.

[150] *Id.* at 78; *see also* GJ 00–3 Exh. No. 221 at 7.

[151] *See* Currie 1/27/98 GJ at 71–76.

[152] Clinton 8/17/98 GJ at 9; *see* Definition of Sexual Relations, *supra* p. 30 and note 87.

[153] Clinton 8/17/98 GJ at 94 ("Q: So, touching, in your view then and now—the person being deposed touching or kissing the breast of another person would fall within the definition? A: That's correct, sir").

[154] Lewinsky 8/26/98 Depo. at 7–8, 12–13, 16–17, 19, 25, 30–31, 37, 40–41, 47–48, 50–51; Lewinsky 7/30/98 Int. at 7–8, 16; Lewinsky 8/6/98 GJ at 31, 38–39; Lewinsky 8/20/98 GJ at 68–69.

[155] *Jones v. Clinton*, 36 F. Supp. 2d 1118, 1130 (E.D. Ark. 1999).

B. The Principles of Federal Prosecution Authorize Declination of Criminal Matters Even When Evidence Sufficient to Obtain and Sustain a Conviction Exists.

This case involved the exercise of the full law enforcement authority of the Attorney General vested in the Independent Counsel by statute to address allegations of criminal conduct by high ranking government officials.[156] The subject of
[50] those allegations in this case was the President of the United States, the highest ranking public official under the Constitution, whose constitutional obligations include "tak[ing] Care that the Laws be faithfully executed." [157]

After reviewing the facts and applicable law, the Independent Counsel determined that while there were substantial federal interests to be served by prosecution, there were "adequate, non-criminal alternative[s] to prosecution." [158] The Independent Counsel therefore determined that prosecution of President Clinton for matters involving his testimony in the *Jones v. Clinton* civil lawsuit and the federal grand jury was not warranted.

1. There Were Substantial Federal Interests to be Served in the Prosecution of President Clinton.

The United States Attorneys' Manual lists various factors to be considered in determining whether an otherwise sustainable prosecution should be declined because the contemplated prosecution would serve no substantial federal interest.[159] The Independent Counsel concluded that the nature and seriousness of the offenses investigated and the deterrent effect of prosecution were substantial federal interests which would have been served by prosecution of President Clinton.

[51] In reaching this conclusion, the Independent Counsel considered the admonition of the Principles that limited federal resources not be spent in prosecuting "inconsequential cases or cases in which the violation is only technical." [160] In

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[156] 28 U.S.C. § 594(a) (establishing independent counsel with "full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice [and] the Attorney General" except for authority to authorize wiretaps, which is retained by the Attorney General). The Independent Counsel Reauthorization Act of 1994 was enacted by Congress and signed into law by President Clinton. *See* Independent Counsel Reauthorization Act of 1994, Pub. L. No. 103–270, 108 Stat. 735 (June 30, 1994). On signing the legislation into law, President Clinton said:

> I am pleased to sign into law S. 24, the reauthorization of the Independent Counsel Act. This law, originally passed in 1978, is a foundation stone for the trust between the Government and our citizens. It ensures that no matter what party controls the Congress or the executive branch, an independent, nonpartisan process will be in place to guarantee the integrity of public officials and ensure that no one is above the law.

Statement on Signing the Independent Counsel Reauthorization Act of 1994 (June 30, 1994), *in* Public Papers of the Presidents of the United States: William J. Clinton 1994 Book I (Jan. 1 to July 31, 1994) at 1168 (1995).

[157] U.S. Const. art. II, § 3, cl. 4.

[158] United States Attorneys' Manual, Title 9 § 9–27.250.

[159] *Id.* at § 9–27.230. This is not a complete list. Not all of the factors are relevant to every case, nor will all of the factors be of equal weight in every case. *Id.*

[160] *Id.* at § 9–27.230 (B)(2).

this case, the Independent Counsel concluded that the case was not inconsequential and that the violation was not simply technical.

The Independent Counsel also considered the countervailing requirement that he weigh the actual or potential impact of the offense on the community.[161] In the Independent Counsel's view, President Clinton's offenses had a significant adverse impact on the community, substantially affecting the public's view of the integrity of our legal system.

The Independent Counsel also was mindful of the deterrent effect a prosecution of President Clinton would have on future similar conduct of others. Deterrence, "whether it be criminal activity generally or a specific type of criminal conduct, is one of the primary goals of the criminal law." [162] The Independent Counsel recognized President Clinton's conduct might be viewed as the result of embarrassment over an extramarital sexual affair. He was, nevertheless, of the view that President Clinton's conduct, "if commonly committed," [163] would severely undermine our system of justice. As President George Washington said upon his own farewell from office, "oaths . . . are the instruments of investigation in courts of justice." [164] The Independent Counsel concurred with Judge Wright's view that President Clinton's conduct, "coming as it did from a member of the bar and the chief law enforcement officer of this Nation, was without justification and undermined the integrity of the judicial system." [165] Thus, the Independent Counsel concluded that a substantial federal interest would be served by the presentation of criminal charges relating to President Clinton's conduct. [52]

2. President Clinton Received Significant Administrative Sanctions for His Actions in the Civil Deposition and Before the Federal Grand Jury.

The Independent Counsel also considered whether there were adequate non-criminal alternatives to prosecution.[166] The commentary to the Principles of Federal Prosecution notes:

> When a person has committed a federal offense, it is important that the law respond promptly, fairly, and effectively. *This does not mean, however, that a criminal prosecution must be initiated.* In recognition of the fact that resort to the criminal process is not necessarily the only appropriate response to serious forms of antisocial activity, Congress and state legislatures have provided civil and administrative remedies for many types of conduct that may also be subject to criminal sanction. . . . Although on some occasions they should be pursued in addition to the criminal law procedures, on other occasions they can be expected to provide an *effective substitute for criminal prosecution.* In weighing the adequacy of such an alternative in a particular case, the

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[161] *Id.*

[162] *Id.* at § 9–27.230 (B)(3).

[163] *Id.*

[164] George Washington, Farewell Address Before Assembled Members of Congress (Sept. 17, 1796), *reprinted in* Mason L. Weems, The Life of Washington 152 (Marcus Cunliffe ed., 1999) (1962).

[165] *Jones v. Clinton,* 36 F. Supp. 2d 1118, 1131 (E.D. Ark. 1999).

[166] United States Attorneys' Manual, Title 9 § 9–27.250.

> prosecutor should consider the *nature* and *severity* of the sanctions that could be imposed, the *likelihood* that an *adequate* sanction would *in fact be imposed*, and the *effect* of such a non-criminal disposition on *federal law enforcement interests*.[167]

The Department of Justice Principles of Federal Prosecution expressly contemplate that alternative sanctions may vindicate federal law enforcement interests and provide an appropriate substitute for the initiation of criminal charges. This determination, however, is one of judgment and is not susceptible to mathematical precision.[168]

[53]

As a consequence of his conduct in the *Jones v. Clinton* civil suit and before the federal grand jury, President Clinton incurred significant administrative sanctions. The Independent Counsel considered seven non-criminal alternative sanctions that were imposed in making his decision to decline prosecution: (1) President Clinton's admission of providing false testimony that was knowingly misleading, evasive, and prejudicial to the administration of justice before the United States District Court for the Eastern District of Arkansas; (2) his acknowledgement that his conduct violated the Rules of Professional Conduct of the Arkansas Supreme Court; (3) the five-year suspension of his license to practice law and $25,000 fine imposed on him by the Circuit Court of Pulaski County, Arkansas; (4) the civil contempt penalty of more than $90,000 imposed on President Clinton by the federal court for violating its orders; (5) the payment of more than $850,000 in settlement to Paula Jones; (6) the express finding by the federal court that President Clinton had engaged in contemptuous conduct; and (7) the substantial public condemnation of President Clinton arising from his impeachment.[169] President Clinton's conduct was indeed serious, but President Clinton already suffered serious and, in the Independent Counsel's view, sufficient sanctions.

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On September 9, 1998, the Office of the Independent Counsel submitted a Referral to the United States House of Representatives pursuant to 28 U.S.C. § 595(c) presenting "substantial and credible information" [170] that might warrant impeachment of President Clinton. As a result of this referral, the House of Representatives voted to impeach President Clinton on December 19, 1998.[171] His trial before the United States Senate began on January 7, 1999 and ended February 12, 1999.[172] This public record and the sanction of President Clinton resulting from his impeachment form a portion of the alternative sanctions already imposed on President Clinton prior to the Independent Counsel's prosecutorial decision.[173]

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[167] *Id.* at § 9–27.250 (B) (emphasis added).

[168] Carl H. Loewenson Jr., *The Decision to Indict,* Am. Bar. Ass'n Litigation, Fall 1997, at 14–18 ("[E]very case is different, and the prosecutor's decision whether to indict rests on . . . good judgment. . . . [N]o checklist will substitute for sound intuition informed by thorough factual and legal investigation").

[169] 144 Cong. Rec. H12040–43 (daily ed. Dec. 19, 1998); *Jones v. Clinton,* 36 F. Supp. 2d 1118 (E.D. Ark. 1999); Stipulation of Settlement and Release, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Nov. 13, 1998).

[170] Impeachment Referral, *supra* note 10, at 1.

[171] 144 Cong. Rec. H12040–43 (daily ed. Dec. 19, 1998).

[172] 145 Cong. Rec. S41–05 (daily ed. Jan. 7, 1999); 145 Cong. Rec. S1458–60 (daily ed. Feb. 12, 1999).

[173] Thirty-eight United States Senators also co-sponsored a resolution censuring President Clinton for his conduct. 145 Cong. Rec. S1652 (daily ed. Feb. 12, 1999); S. Res. 44, 106th Cong. (1999) (unenacted); *see supra* p. 17 and note 21.

On November 13, 1998, the parties to the *Jones* case agreed to a settlement of the lawsuit.[174] Under that agreement, Ms. Jones was paid $850,000.00.[175] This settlement was $325,000 more than the relief sought by the plaintiff in her Amended Complaint.[176] The Independent Counsel considered this substantial payment in excess of the relief requested as a second component of the alternative sanction imposed upon President Clinton. [55]

On April 12, 1999, Judge Susan Webber Wright filed a Memorandum Opinion and Order finding President Clinton in civil contempt of court, pursuant to Fed. R. Civ. P. 37(b)(2), for his willful failure to obey certain discovery Orders of the Court.[177] Judge Wright explained: "[T]he record demonstrates by clear and convincing evidence that the President responded to plaintiff's questions by giving false, misleading and evasive answers that were designed to obstruct the judicial process."[178] In finding that President Clinton gave "intentionally false" testimony, Judge Wright rejected President Clinton's justification for his conduct—his belief that the *Jones* case was an illegitimate, "politically inspired lawsuit."[179] Judge Wright instead found:

> The President never challenged the legitimacy of plaintiff's lawsuit by filing a motion pursuant to Rule 11 [relating to frivolous or improper pleadings]... and it simply is not acceptable to employ deceptions and falsehoods in an attempt to obstruct the judicial process, understandable as his aggravation with plaintiff's lawsuit may have been.[180]

Relying on these factual findings, Judge Wright found President Clinton in contempt and fined him:

> not only to redress the President's misconduct, but to deter others who might themselves consider emulating the President of the United States by engaging in misconduct that undermines the integrity of the judicial system.[181] [56]

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[174] Stipulation of Settlement and Release, *Jones v. Clinton*, LR–C–94–290 (E.D. Ark. Nov. 13, 1998).

[175] *Id.*

[176] Plaintiff's First Amended Complaint, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Dec. 8, 1997) (Doc. No. 1736–DC–00012568–92). Jones's amended complaint asked for a total of $525,000 in compensatory and punitive damages. *Id.* At the time of the settlement, the plaintiff's suit had been dismissed by the district court and the matter was on appeal before the United States Court of Appeals for the Eighth Circuit. Notice of Appeal of Plaintiff Paula Jones, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Apr. 29, 1998); Stipulation of Settlement and Release, *Jones v. Clinton,* LR–C–94–290 (E.D. Ark. Nov. 13, 1998).

[177] *Jones v. Clinton*, 36 F. Supp. 2d 1118 (E.D. Ark. 1999).

[178] *Id.* at 1127.

[179] Address to the Nation on Testimony Before the Independent Counsel's Grand Jury (Aug. 17, 1998), *in* Public Papers of the Presidents of the United States: William J. Clinton 1998 Book II (July 1 to Dec. 31, 1998) at 1457 (2000).

[180] *Jones v. Clinton,* 36 F. Supp. 2d at 1131.

[181] *Id.* at 1134. Judge Wright ordered President Clinton to pay any reasonable expenses, including attorneys' fees, occasioned by his misconduct as well as the costs of the Court's travel to Washington, D.C. to preside over the deposition. Id. Ultimately, President Clinton paid in excess of $90,000. Judge Wright also referred the matter to the Arkansas Supreme Court's Committee on Professional Conduct for review. *Id.* The Arkansas Supreme Court's Committee on Professional Conduct had already received a complaint from the Southeastern Legal Foundation of Atlanta on September 15, 1998. Frank J. Murray, *Clinton's Law License At Stake As Arkansas Court Probes Ethics Committee Ordered To Begin Disciplinary Proceedings,* Wash. Times, Jan. 28, 2000, at A1.

The Independent Counsel considered Judge Wright's findings, because they required President Clinton to compensate Ms. Jones for the consequences of his wrongdoing, and because they constituted a significant public sanction. In the view of the Independent Counsel, Judge Wright's judicial opinion itself was a significant alternative sanction imposed upon President Clinton.

On January 27, 2000, the Supreme Court of Arkansas ordered the Arkansas Committee on Professional Conduct to commence formal disciplinary proceedings against President Clinton. A year later on January 19, 2001, President Clinton agreed to settle the disbarment proceedings, accept "a five year suspension, pay [ ]... a $25,000 fine (as legal fees for the Committee's outside counsel), and formally acknowledg[e] a violation of one of the Arkansas Rules of Professional Conduct."[182] The Committee also required President Clinton to admit "[t]hat he knowingly gave evasive and misleading answers" concerning his relationship with Monica Lewinsky.[183] Specifically, the Agreed Order of Discipline found that President Clinton had engaged in misconduct in violation of Rule 8.4(d) of the Arkansas Rules of Professional Conduct, which defines professional misconduct, in part, as "conduct that is prejudicial to the administration of justice."[184]

[57]

President Clinton resolved the bar proceeding by accepting a five-year suspension of his license to practice law in Arkansas and a $25,000 fine. That resolution followed a December 27, 2000 meeting in the Map Room at the White House between President Clinton and the Independent Counsel. Also in attendance at that meeting were a Deputy Independent Counsel, this Office's Chief of Investigations, President Clinton's private counsel, and the White House Counsel. At that meeting, the Independent Counsel told President Clinton what actions would be required for the Independent Counsel to exercise his discretion to decline prosecution. The Independent Counsel informed President Clinton that he would resolve the matter without further proceedings if the President agreed to (1) a substantial suspension of his bar license; (2) appropriate admissions regarding his conduct in the *Jones* case; and (3) a settlement of any claim to attorneys' fees incurred in connection with the Lewinsky matter.

On January 19, 2001, the Independent Counsel announced that he would decline prosecution after the Pulaski County Circuit Court entered the Agreed Upon Order of Discipline (containing certain admissions and imposing a $25,000 fine). President Clinton issued a separate statement admitting that some of his answers in his *Jones* case deposition were false, and he agreed not to seek any fees incurred in connection with the Lewinsky matter. The Independent Counsel was satisfied for the reasons stated herein that the sanctions imposed and President Clinton's admissions were sufficient,[185] consistent with the Principles of Federal Prosecution, to decline prosecution.

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[182]Letter from David E. Kendall, private counsel to President Clinton, to Robert W. Ray, Independent Counsel 1 (Jan. 19, 2001).

[183]Agreed Order of Discipline at 3, *Neal v. Clinton*, No. Civ. 2000–5677 (Cir. Ct. of Pulaski Co., Ark. Jan. 19, 2001).

[184]*Id.* at 4.

[185]President Clinton's admissions were restricted to his deposition testimony, and did not address his grand jury testimony. The Independent Counsel concluded, however, that President Clinton's admissions and the sanctions imposed were sufficient to decline prosecution in the entire matter.

These sanctions were severe, immediately imposed, and made a definitive as well as an important official statement while President Clinton was still in office that "the integrity of the legal system demands a policy of zero tolerance for lying under oath."[186] The Independent Counsel considered this concrete resolution a significant component of his assessment of the adequacy of the alternative sanctions imposed upon President Clinton.

Finally, President Clinton issued a written public statement, one of the last documents now included in the official papers of his presidency, in which he admitted for the first time that "certain of [his] responses to questions about Ms. Lewinsky were false."[187] President Clinton's admission laid to rest longstanding questions as to his veracity. In the Independent Counsel's view, a resolution that definitively resolved many of the factual issues over President Clinton's conduct substantially served the public interest.

Thus, the Independent Counsel ultimately determined the nature and severity of these alternative sanctions were adequate substitutes for criminal prosecution. The Agreed Order of Discipline, the written statement of President Clinton, and the contempt citation issued by Judge Wright adequately addressed the substantial federal law enforcement interests of promoting truthfulness and honesty before judicial tribunals. President Clinton's payment of fees, fines, and a significant civil settlement, effectively addressed the monetary harms visited on the plaintiff in the civil suit and the damages suffered by the federal and state courts.

Based upon a consideration of all of these factors, the Independent Counsel determined he would exercise his discretion to decline criminal prosecution of President Clinton, with prejudice. This investigation, begun more than three years ago, is now closed.

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[186] W. William Hodes, *Clinton's Plea As Lesson*, Nat'l. L. J., Feb. 12, 2001, at 2. Professor Hodes, an expert on legal ethics and co-author of the leading law school text on legal ethics, further opined on the severity of this sanction:

> It was the moral equivalent of disbarment, given that in most states, even disbarred lawyers are not permanently ousted from practice, but are permitted to apply for reinstatement, usually after five years.... Second, this heavy sanction was imposed for misconduct arising not out of Mr. Clinton's practice of law, but from his private capacity as a litigant. This aspect of the case, which Mr. Clinton's lawyers had urged in mitigation of the punishment, was instead taken as confirmation of the seriousness of the offense: It sets too bad an example if one who is supposed to be an officer of the court and a servant of the law instead prejudices the administration of justice.... Lying about sex or other seemingly minor details of a case does matter, it turns out, if the lies are told under oath. *Id.*

[187] Statement on Resolution of Legal Issues, Weekly Comp. Pres. Doc. 194 (Jan. 19, 2001) (*see also* Appendix A–1).

V. Conclusion

This Final Report brings to a conclusion events that have now become part of history. For only the second time in our nation's history a President of the United States was impeached (and, for the second time, acquitted). For the first time a President was held in contempt of court, and for the second time a prosecutor was obliged to face the daunting task of determining how to resolve allegations of criminal conduct by a President. All will no doubt agree that the decisions recounted in this Report form an indelible part of the American historical record.

But there agreement is likely to end. In the search for the definitive meaning of this investigation, there remains the understandable quest for some larger message and clearer understanding. [60]

The operation of this Office stands comfortably within the operating principles of prosecutors and the work they do across the country to enforce the rule of law. The historical legacy of this independent counsel should be no different from that of any other prosecuting official. If this investigation leaves any meaning at all behind, it is the same one that should be derived from the work of any prosecutor's office—a conviction in the legitimacy of law enforcement and the judicial system, a commitment to liberty, an understanding of the proper role a prosecutor plays within our country, and a firm belief that justice is done when the law and the best interests of the public are satisfied.

Unfortunately, we have seen how cynics and political opponents too readily can impugn the integrity of those charged with investigating high-level government officials. This trend is symptomatic of a broader and more fundamentally destructive cynicism that threatens to grip the public—what *USA Today* has called a "poisonous national political atmosphere."[188] The resolution of this Office's investigation should, in part, be seen as a rejection of that cynical view and a reaffirmation of the legitimacy of the courts, the political process, and the rule of law. It is far too easy to say that the outcome of a case turns on the politics of a prosecutor or a judge. The resolution of a criminal case should never be a partisan matter.

So too, we must realize that justice and truth are not found only in a prosecutor's office. They are found, far more readily, in the minds, attitudes, and sentiments of the American people. As Judge Learned Hand said many years ago: "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it."[189] Nor, one might add, can any Office of the Independent Counsel. In fulfilling our jurisdictional mandate, we bore in mind Judge Hand's admonition to all Americans: "The spirit of liberty is the spirit which is not too sure that it is right."[190] Criminal investigations are not the proper venue [61]

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[188] Editorial, USA Today, Nov. 27, 2000, at 25A.

[189] Learned Hand, *The Contribution Of An Independent Judiciary To Civilization, in* The Spirit of Liberty 155, 155–65 (I. Dilliard ed., 1953).

[190] *Id.*

to search for moral certainty—they are instead an effort to obtain just results within the narrow confines of the law.

If any one lesson is to be learned from this Office's experience, it is that a prosecutor can serve only one function—to seek justice under the criminal law. He or she cannot be, and should not be tasked as, an independent arbiter of ultimate truth. The institution and the nature of a prosecutor's office make him ill-suited to that task. When such a responsibility is conferred upon any official, it creates unreasonable and unrealistic expectations. And in asking the prosecutor to act beyond the normal ambit of his or her powers, we challenge the public trust and confidence in the prompt, effective, and fair administration of justice.

Simply stated, the ultimate role of a federal prosecutor is to serve the national interest by remaining, always, a public servant. As Attorney General Robert Jackson once said, a prosecutor at his best is one who "tempers zeal with kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility."[191] He must maintain the integrity of his office and his actions while doing justice as he deems fit. In concluding this investigation, we have acted as we thought just and as we thought the nation's interests demanded.

In the search for meaning from this episode in American history, two observations of former Watergate Special Prosecutor Leon Jaworski have special resonance: "From Watergate we learned what generations before us have known: our Constitution works."[192] And, as Jaworski also said, we have reaffirmed the principle and the spirit of the law that "no one—absolutely no one—is above the law."[193]

A generation later, let it also be said so here.

Respectfully submitted,

ROBERT W. RAY
Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490 North
Washington, D.C. 20004

Washington, D.C.
May 18, 2001

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[191] Attorney General of the United States Robert H. Jackson, Address at Second Annual Conference of United States Attorneys, at the Department of Justice, Washington, D.C. (Apr. 1, 1940).

[192] Leon Jaworski, The Right and the Power 279 (1976).

[193] *Id.*

Appendix A–1

[63]

Materials Relating to the Independent Counsel's January 19, 2001 Resolution of the Investigation of President William Jefferson Clinton

[64]

Office of the Independent Counsel

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January 19, 2001

Independent Counsel Robert W. Ray today issued the following statement:

President Clinton announced today his agreement to accept a five-year suspension of his license to practice law in the State of Arkansas. In that agreement, President Clinton acknowledged that he knowingly gave evasive and misleading answers in violation of Chief Judge Susan Webber Wright's discovery orders concerning his relationship with Monica Lewinsky and that that conduct was prejudicial to the administration of justice. In President Clinton's public statement, he acknowledged that he knowingly violated Judge Wright's discovery orders and that certain of his answers concerning his relationship with Monica Lewinsky were false. He also agreed not to seek legal fees in connection with this matter.

The country has reached the end of the tortuous path it has traveled for the last three years. By agreement with President Clinton, and upon entry of the Agreed upon Order of Discipline in Pulaski County Circuit Court, I have decided to exercise my discretion, consistent with the principles of federal prosecution, to decline prosecution of all matters within the January 16, 1998 jurisdictional mandate of the Special Division of the United States Court of Appeals for the District of Columbia Circuit. That mandate authorized this Office to investigate whether "Monica Lewinsky or others suborned perjury, intimidated witnesses, obstructed justice . . . or otherwise violated federal law . . . in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case Jones v. Clinton." That matter will be closed.

[65]

Fifteen months ago, I took an oath of office to conclude this investigation in a prompt, responsible, and cost-effective manner. In my judgment, I have fulfilled that promise.

I also pledged to heed the words of Justice Sutherland who wrote 60 years ago that the prosecutor's foremost obligation is not to win a case, but to ensure that "justice shall be done." This resolution, by agreement with President Clinton, means that justice has, in fact, been done. It is in the best interests of law enforcement and the country.

I also believe that this resolution is faithful to this country's principles of liberty and law. During World War II, Judge Learned Hand wondered "whether we do not rest our hopes too much upon constitutions, upon laws, and upon courts." He went on to say, "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it." He believed that "[t]he spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias."

It is my hope that the result announced today will help restore faith and trust in federal law enforcement efforts in investigations of high ranking government officials. When he was Attorney General, Justice Robert H. Jackson observed that "the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility."

Under the Independent Counsel statute, this Office is obligated to prepare and submit to the Special Division a report that "set[s] forth fully and completely the work of the independent counsel." Once filed with the Special Division, the final report remains under seal until such time, if at all, the Special Division authorizes its public release. Historically, public release

occurs only after those persons named in a report are notified, pursuant to the statute, and have a full opportunity to read the relevant portions of the report that pertain to them and to prepare and file comments. This process typically takes several months after a report is filed.

Finally, I especially want to recognize and express my gratitude to agents of the Federal Bureau of Investigation and other law enforcement agencies for their contributions to the work of this Office. Those contributions have been critical to the appropriate conclusion of this and other investigations. Members of the grand jury sitting here in Washington also deserve our thanks.

Upon Entry of the Order of Agreed Discipline, President Clinton will be discharged from all criminal liability for matters within the remaining jurisdiction of this Office. These matters are now concluded.

[67]

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DAVID E. KENDALL

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

January 19, 2001

BY HAND

Robert W. Ray, Esq.
Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, N.W.
Suite 490 North
Washington, D.C. 20004

Dear Mr. Ray:

We have had many discussions in recent days, both in person and by telephone. As you know, we are taking steps to bring this matter to a timely and appropriate conclusion, which the President believes is in the best interest of the country and his family. We know that you, too, seek to do what you believe is best for the country, and we appreciate the way in which you are discharging your responsibilities under the Independent Counsel Act.

In order to conclude this matter, we have met with the Arkansas Committee on Professional Conduct to settle the lawsuit arising out of the President's deposition testimony in the Paula Jones case. I am attaching to this letter a copy of the Agreed Order of Discipline which we have been able to negotiate with the Committee. The offer stated in this Order remains open to us until Friday, January 19, 2001.

The President is prepared to sign this Order to settle the Committee's suit. As you can see, this would mean accepting a five-year suspension, paying a $25,000 fine (as legal fees for the Committee's outside counsel), and formally acknowledging a violation of one of the Arkansas Rules of Professional Conduct. The President is

willing to sign this Order, notwithstanding that a five-year suspension is far harsher than appropriate under the Arkansas precedents for this type of conduct (not having occurred during the practice of law and not involving a criminal conviction). Typically, the Committee has issued a reprimand in these circumstances. As you can see from the recent cases decided by the Arkansas Supreme Court, which we provided to your office, five-year suspensions have been imposed on lawyers who had pleaded guilty to several criminal charges and served several months in the federal penitentiary. While we therefore disagree with the terms the Committee is seeking, the President has decided he would be willing to accept this harsh settlement to do whatever he can to achieve closure before he leaves office.

In that same vein, the President has decided he will not seek any legal fees to which he might otherwise become entitled under the Independent Counsel Act as a result of the Lewinsky investigation. Thus, we will not file an application with the Special Division for reimbursement of those fees.

As we have discussed, the President described to the grand jury on August 17, 1998, what he had attempted to do in his deposition. He stated that when he was deposed, "I was doing my best to be truthful" (p. 28, Aug. 17, 1998, grand jury transcript), "I wanted to be legal without being particularly helpful" (id. at 78), "[m]y goal in this deposition was to be truthful but . . . I did not wish to do the work of the Jones lawyers" (id. at 80), and "I was determined to walk through the mine field of this deposition without violating the law, and I believe I did" (ibid.)(emphasis added in all quotations).

Reasonable people may conclude he crossed over that line he was trying to walk, and walking that line was plainly a dangerous and risky exercise. But when it comes to stating now what the President's intent was then in the deposition, all he can in conscience do is say what he told the earlier grand jury: he tried to avoid testifying falsely. When it comes to what his subjective motivation was, what the President actually believed, however successful he ultimately might have been in walking that line, all he can do is to state what that was.

We respect and agree with the goal you have articulated of bringing this matter to closure in the best interests of the country. We have attempted to do all we can to achieve that end. I believe that our mutual communications have been professional, candid, and, as appropriate, confidential. I think both sides have discharged our respective duties and responsibilities in a fair and honorable way.

Given the steps the President is prepared to take, we know he might be legally prejudiced, as you have acknowledged in our discussions, if he signed the

[69]

Order prior to having an assurance there would be no prosecution. I am confident that, were you in our shoes, you would show the same prudence. For that reason, we would need to hear from you prior to proceeding to sign the Order, which the President is prepared to do immediately.

In the public statement you made on the day you took office fifteen months ago, you quoted Justice Sutherland's words in Berger v. United States, written over sixty-five years ago, that "the Government's interest in a matter entrusted to a prosecutor is to act fairly and impartially: 'not that it should win a case, but that justice shall be done.'" I believe that the President has paid an extraordinarily high price for his conduct and that it is now time to bring this matter to a conclusion without further action against him. I hope you will agree that, in the unique circumstances of this highly publicized matter, this would, finally, constitute justice.

Sincerely,

David E. Kendall

[70]

Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
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January 19, 2001

Mr. David E. Kendall
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Dear Mr. Kendall:

This letter responds to your presentation to me of an Agreed Order of Discipline ("Order") with respect to a complaint by the Arkansas Supreme Court Committee on Professional Conduct, signed by President Clinton, and a written copy of a prepared public statement that President Clinton intends to issue regarding his agreement to and acceptance of the terms of the Order.

Upon entry of that Order by the Pulaski County Circuit Court and following the President's issuance of his public statement, I have decided to exercise my discretion, consistent with the principles of federal prosecution, to decline prosecution, with prejudice, of all matters within the January 16, 1998 jurisdictional mandate of the United States Court of Appeals for the District of Columbia Circuit, Division 94-1 for the Purpose of Appointing Independent Counsels (the "Special Division"). Subject to the foregoing terms, the investigation is now concluded, and Grand Jury 2000-3 (impaneled July 11, 2000) will thereafter be discharged.

Sincerely,

Robert W. Ray
Independent Counsel

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 19, 2001

STATEMENT BY THE PRESIDENT

Today, I signed a consent order in the law suit brought by the Arkansas Committee on Professional Conduct, which brings to an end that proceeding. I have accepted a five-year suspension of my law license, agreed to pay a $25,000 fine to cover counsel fees, and acknowledged a violation of one of the Arkansas Model Rules of Professional Conduct because of testimony in my Paula Jones case deposition. The disbarment suit will now be dismissed.

I have taken every step I can to end this matter. I have already settled the Paula Jones case, even after it was dismissed as being completely without legal and factual merit. I have also paid court and counsel fees in restitution and been held in civil contempt for my deposition testimony regarding Ms. Lewinsky, which Judge Wright agreed had no bearing on Ms. Jones' case, even though I disagreed with the findings in the judge's order. I will not seek any legal fees incurred as a result of the Lewinsky investigation to which I might otherwise become entitled under the Independent Counsel Act.

I have had occasion frequently to reflect on the Jones case. In this Consent Order, I acknowledge having knowingly violated Judge Wright's discovery orders in my deposition in that case. I tried to walk a line between acting lawfully and testifying falsely, but I now recognize that I did not fully accomplish this goal and that certain of my responses to questions about Ms. Lewinsky were false.

I have apologized for my conduct, and I have done my best to atone for it with my family, my Administration, and the American people. I have paid a high price for it, which I accept because it caused so much pain to so many people. I hope my actions today will help bring closure and finality to these matters.

30-30-30

[72]

OFFICE OF THE INDEPENDENT COUNSEL
ROBERT W. RAY

Fifteen months ago I promised the American people that I would complete this investigation promptly and responsibly.

Today I fulfill that promise.

President Clinton has acknowledged responsibility for his actions. He has admitted that he knowingly gave evasive and misleading answers to questions in the Jones deposition and that his conduct was prejudicial to the administration of justice; he has acknowledged that some of his answers were false; he has agreed to a five year suspension of his Arkansas bar license; and he has agreed not to seek attorney's fees in connection with this matter.

The nation's interests have been served. And therefore, I decline prosecution.

In doing so, I have tried to heed Justice Robert Jackson's wisdom: "The citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility."

I trust that the decision made today meets the expectations of the American people, who deserve a resolution that acknowledges the president's conduct, respects America's institutions, and demonstrates sensitivity to our constitutional system of government.

This matter is now concluded. May history and the American people judge that it has been concluded justly.

-- Televised Statement by Independent Counsel Robert W. Ray
Upon Resolution of the Lewinsky Investigation

Friday, January 19, 2001

Appendix A–2

Materials Relating to the Arkansas Supreme Court's Resolution of the Disbarment Proceedings Against President William Jefferson Clinton

[74]

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

00 JUN 30 PM 5:05

3

CIRCUIT-COUNTY CLERK

JAMES A. NEAL, AS EXECUTIVE DIRECTOR OF THE ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT — PLAINTIFF

VS. NO. CIV 2000 - 5677

WILLIAM JEFFERSON CLINTON — DEFENDANT

COMPLAINT FOR DISBARMENT

Comes the Plaintiff, James A. Neal, as Executive Director of the Arkansas Supreme Court Committee on Professional Conduct, by and through undersigned counsel, and for his Complaint for Disbarment against the Defendant, William Jefferson Clinton, states and alleges that

1. The Plaintiff, at the direction of the Arkansas Supreme Court Committee on Professional Conduct (the "Committee") and under the authority granted the Executive Director by the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, revised on January 15, 1998 (the "Procedures"), initiates this disbarment action against Mr. Clinton.

2. Pursuant to Section 5K of the Procedures, this Court has subject matter jurisdiction over this action, and the Circuit Court of Pulaski County, Arkansas is the proper venue for the adjudication of this matter.

3. The Arkansas Supreme Court granted Mr. Clinton the privilege to practice law on September 7, 1973. Mr. Clinton's Arkansas Bar Identification Number is 73019.

1

[75]

He is the 42nd President of the United States of America. At all times material to this case, Mr. Clinton resided in Washington, D.C., but remained subject to the Model Rules of Professional Conduct for the State of Arkansas. Mr. Clinton, pursuant to his request of June 30, 1993, placed his Arkansas license on inactive status for continuing legal education purposes.

4. On April 12, 1999, Judge Susan Webber Wright, United States District Court for the Eastern District of Arkansas, issued a 32 page Memorandum Opinion and Order (the "Order") in *Jones v. Clinton, et al.*, Case No. LR-C-94-290, a copy of which is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

5. In the Order, Judge Wright held Mr. Clinton in contempt of her December 11, 1997 Discovery Orders (the "Discovery Orders"). The Order served as the basis of a judicial referral to the Committee, and serves as the basis for this Complaint for Disbarment.

6. In the Order, Judge Wright found, *inter alia*, the following:

(a) That Mr. Clinton gave false, misleading and evasive answers that were designed to obstruct the judicial process to Ms. Jones' attorneys during Mr. Clinton's January 17, 1998 deposition.

(b) That Mr. Clinton gave intentionally false deposition testimony regarding whether he had ever been alone or ever engaged in sexual relations with Ms. Lewinsky;

(c) That Mr. Clinton, in a televised *Address to the Nation* on August 17, 1998, acknowledged that he "misled people" with regard to the questions posed to him by Ms. Jones' attorneys.

2

[76]

(d) That Mr. Clinton's contumacious conduct in the *Jones v. Clinton* case, coming as it did from a member of the bar and chief law enforcement officer of this Nation, was without justification and undermined the integrity of the judicial system.

7 As a result of these findings, Judge Wright sanctioned Mr. Clinton ordering him to pay Ms. Jones' attorneys any reasonable expenses, including attorneys' fees, caused by his willful failure to obey the Court's Discovery Orders, and to pay the sum of $1,202.00 in expenses incurred by the Court in traveling to Washington, D.C. to preside over Mr. Clinton's deposition.

8 In the Order, Judge Wright offered Mr. Clinton the opportunity to demonstrate why he was not in civil contempt and why sanctions should not be imposed or, alternatively, why the Court was otherwise in error in the manner it was proceeding.

9 Additionally, Judge Wright stayed enforcement of the Order for thirty (30) days to give Mr. Clinton an opportunity to request a hearing or to file an appeal.

10 In the Order, Judge Wright stated that the Court would entertain any legitimate and reasonable requests from Mr. Clinton for extensions of time in which to address the matter.

11 Mr. Clinton neither requested a hearing, nor did he appeal the Order.

12 On or about September 28, 1998, Mr. Clinton paid $89,484.05 in attorneys' fees to satisfy the Order, along with the $1,202.00 in costs incurred by the Court.

3

[77]

13 The conduct of Mr. Clinton, found and adjudged by Judge Wright in the Order, was motivated by a desire to protect himself from the embarrassment of his own conduct.

14 The conduct of Mr. Clinton found and adjudged by Judge Wright in the Order, collectively and singularly, violated the Arkansas Model Rules of Professional Conduct 8.4(c), (d).

15 Mr. Clinton's conduct found and adjudged by Judge Wright in the Order, constitutes "Serious Misconduct" as defined by Section 7B(3) of the Procedures, which defines "serious misconduct" as conduct involving "dishonesty, deceit, fraud and misrepresentation by the lawyer."

16 Mr. Clinton's conduct found and adjudged by Judge Wright in the Order, damages the legal profession and demonstrates a lack of overall fitness to hold a license to practice law.

WHEREFORE, FOR THE REASONS STATED HEREIN, the Plaintiff prays for a judgment of this Court specifically finding that William Jefferson Clinton, Arkansas Bar ID#73019 has conducted himself in a manner that violates the Model Rules of Professional Conduct as adopted by the Arkansas Supreme Court, that Mr. Clinton's conduct warrants disbarment by the Arkansas Supreme Court, which would result in an Order from the Arkansas Supreme Court removing the name of William Jefferson Clinton from the registry of licensed attorneys maintained by the Clerk of the Arkansas Supreme Court, and for Plaintiff's attorneys' fees and costs and all other relief to which it may be entitled.

[78]

Respectfully submitted,

JAMES A. NEAL, Executive Director of the Arkansas Supreme Court Committee on Professional Conduct, PLAINTIFF

BY: _____

Mary-Bernarde Miller, Esq. - #84107
GILL ELROD RAGON OWEN
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BY: _____

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[79]

SUPREME COURT OF ARKANSAS
Committee on Professional Conduct

JAMES A. NEAL, EXECUTIVE DIRECTOR
RANDEE DIMEO, SENIOR STAFF ATTORNEY
MICHAEL E. HARMON, STAFF ATTORNEY
LYNN WILLIAMS, STAFF ATTORNEY (RETIRED)
JUSTICE BUILDING, ROOM 2200
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(501) 376-0313
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May 22, 2000

Honorable Leslie Steen
Clerk, Arkansas Supreme Court
Justice Building, 625 Marshall Street
Little Rock, AR 72201

RE: Attorney William Jefferson Clinton, Arkansas Bar ID #73019
CPC Docket Nos. 2000-013 and 2000-018

Dear Mr. Steen:

Pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, Section 4B(3) and 4C, you are hereby notified of the decision of the Arkansas Supreme Court Committee on Professional Conduct to initiate disbarment proceedings against attorney William Jefferson Clinton. This action is being taken against the respondent attorney as a result of the formal complaints referenced above and the findings by a majority of the Committee that certain of the attorney's conduct as demonstrated in the complaints constituted serious misconduct in violation of Model Rules 8.4(c) and 8.4(d) of the Arkansas Model Rules of Professional Conduct. Actions for disbarment are conducted in accordance with Section 5K, Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

Sincerely,

James A. Neal

James A. Neal
Executive Director

JAN/mm

FILED
MAY 22 2000
LESLIE W. STEEN
CLERK

[80]

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

FILED
2000 AUG 29 PM 4:05
CAROLYN STALEY
CIRCUIT COUNTY CLERK

JAMES A. NEAL, AS EXECUTIVE DIRECTOR OF THE ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT — PLAINTIFF

VS. NO. CIV 2000-5677

WILLIAM JEFFERSON CLINTON — DEFENDANT

ANSWER

Comes the Defendant, William Jefferson Clinton, by and through undersigned counsel, and for his Answer to the allegations set forth in Plaintiff's Complaint for Disbarment, states as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied except to admit that Judge Wright issued the Order attached as Exhibit A to the Complaint and to aver that the Order speaks for itself and is the best evidence of its content.

6. Denied except to admit that Judge Wright issued the Order attached as Exhibit A to the Complaint and to aver that the Order speaks for itself and is the best evidence of its content.

[81]

7. Denied except to admit that, for the reasons stated in the Order attached as Exhibit A to the Complaint, which Order speaks for itself and is the best evidence of its content, Judge Wright sanctioned Defendant as alleged in Paragraph 7.

8. Denied except to admit that Judge Wright issued the Order attached as Exhibit A to the Complaint and to aver that the Order speaks for itself and is the best evidence of its content.

9. Admitted.

10. Denied except to admit that Judge Wright issued the Order attached as Exhibit A to the Complaint and to aver that the Order speaks for itself and is the best evidence of its content.

11. Defendant admits that he did not request a hearing or appeal the Order and avers that his counsel sent a letter dated May 7, 1999, informing the Court that "For reasons unnecessary to detail here, the President's time is almost wholly preoccupied with the duties of his office, both now and for the foreseeable future . . . The President and his counsel have in other fora addressed the factual issues analyzed in the [Order], and on those occasions have disputed allegations that he knowingly and intentionally gave false testimony under oath. This position remains unchanged."

12. Admitted.

13. Denied except to admit that Defendant took actions motivated in part by a desire to protect himself and others from embarrassment and to aver

[82]

(a) that this conduct arose in the context of a law suit that was dismissed with prejudice prior to trial because it was wholly "lacking in merit" (Order at 21);

(b) that Judge Wright ruled that testimony concerning Ms. Lewinsky "was not essential to the core issues in this case and, in fact, that some of this evidence might even be inadmissible . . . ", Jones v. Clinton, 993 F. Supp. 1217, 1219 (E.D. Ark. 1998);

(c) that plaintiff Paula Jones' lawyers had already obtained information from Ms. Linda Tripp prior to the deposition and so were not deprived of significant information by the defendant's deposition answers;

(d) that the matters at issue here, as Judge Wright repeatedly found in her Order, (see, e.g., Order at 11 (three times), 13 (two times), 30 n.22) involved defendant's "unofficial conduct", his "private actions" (id. at 11), and "his role as a litigant in a civil case . . . [which] did not relate to his duties as President" (ibid.); and

(e) that the case in which the conduct occurred was one "in which the plaintiff [Ms. Paula Jones] was made whole, having agreed to a settlement in excess of that prayed for in her complaint" (Order, at 13).

14. Denied.

15. Denied.

16. Denied.

17. Denied that plaintiff is entitled to the relief sought.

18. Any allegation not specifically admitted herein is denied.

First Defense: On the basis of the relevant facts, the governing law, and the applicable decisions of the Arkansas courts and the Arkansas Supreme Court Committee on Professional Conduct, a sanction of disbarment would be excessively harsh, impermissibly punitive, and unprecedented in the circumstances of this case.

[83]

Second Defense: In Arkansas bar disciplinary cases which do not involve the practice of law or a felony conviction, the sanction of disbarment has historically been regarded as disproportionately severe and has not been imposed.

Wilson, Engstrom, Corum & Coulter
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By: _____
Stephen Engstrom
Arkansas Bar # 74047

David E. Kendall
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Attorneys for Defendant
William Jefferson Clinton

[84]

FILED

2001 JAN 19 PM 1:58

CAROLYN STALEY
CIRCUIT COUNTY CLERK

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION

JAMES A. NEAL, AS EXECUTIVE DIRECTOR OF THE ARKANSAS SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT — PLAINTIFF

VS. NO. CIV 2000-5677

WILLIAM JEFFERSON CLINTON — DEFENDANT

AGREED ORDER OF DISCIPLINE

Come now the parties hereto and agree to the following Order of this Court in settlement of the pending action:

The formal charges of misconduct upon which this Order is based arose out of information referred to the Committee on Professional Conduct ("the Committee") by the Honorable Susan Webber Wright, Chief United States District Judge for the Eastern District of Arkansas. The information pertained to William Jefferson Clinton's deposition testimony in a civil case brought by Ms. Paula Jones in which he was a defendant, Jones v. Clinton, No. LR-C-94-290 (E.D. Ark.).

Mr. Clinton was admitted to the Arkansas bar on September 7, 1973. On June 30, 1990, he requested that his Arkansas license be placed on inactive status for continuing legal education purposes, and this request was granted. The conduct at issue here does not arise out of Mr. Clinton's practice of law. At all times material to this case, Mr. Clinton resided in Washington, D.C., but he remained subject to the Model Rules of Professional Conduct for the State of Arkansas.

On April 1, 1998, Judge Wright granted summary judgment to Mr. Clinton, but she subsequently found him in Civil contempt in a 32-page Memorandum Opinion and Order (the

[illegible] 1

[85]

"Order") issued on April 12, 1999, ruling that he had "deliberately violated this Court's discovery orders and thereby undermined the integrity of the judicial system." Order, at 31. Judge Wright found that Mr. Clinton had "responded to plaintiff's questions by giving false, misleading and evasive answers that were designed to obstruct the judicial process .... [concerning] whether he and Ms. [Monica] Lewinsky had ever been alone together and whether he had ever engaged in sexual relations with Ms. Lewinsky." Order, at 16 (footnote omitted). Judge Wright offered Mr. Clinton a hearing, which he declined by a letter from his counsel, dated May 7, 1999. Mr. Clinton was subsequently ordered to pay, and did pay, over $90,000, pursuant to the Court's contempt findings. Judge Wright also referred the matter to the Committee "for review and any action it deems appropriate." Order, at 32.

Mr. Clinton' s actions which are the subject of this Agreed Order have subjected him to a great deal of public criticism. Twice elected President of the United States, he became only the second President ever impeached and tried by the Senate, where he was acquitted. After Ms. Jones took an appeal of the dismissal of her case, Mr. Clinton settled with her for $850,000, a sum greater than her initial ad damnum in her complaint. As already indicated, Mr. Clinton was held in civil contempt and fined over $90,000.

Prior to Judge Wright's referral, Mr. Clinton had no prior disciplinary record with the Committee, including any private warnings. He had been a member in good standing of the Arkansas Bar for over twenty-five years. He has cooperated fully with the Committee in its investigation of this matter and has furnished information to the Committee in a timely fashion.

Mr. Clinton's conduct, as described in the Order, caused the court and counsel for the parties to expend unnecessary time, effort, and resources. It set a poor example for other litigants, and this

damaging effect was magnified by the fact that at the time of his deposition testimony, Mr. Clinton was serving as President of the United States.

Judge Wright ruled that the testimony concerning Ms. Lewinsky "was not essential to the core issues in this case and, in fact, that some of this evidence might even be inadmissible ...." Jones v. Clinton, 993 F. Supp. 1217, 1219 (E.D. Ark. 1998). Judge Wright dismissed the case on the merits by granting Mr. Clinton summary judgment, declaring that the case was "lacking in merit – a decision that would not have changed even had the President been truthful with respect to his relationship with Ms. Lewinsky." Order, at 24-25 (footnote omitted). As Judge Wright also observed, as a result of Mr. Clinton's paying $850,000 in settlement, "plaintiff was made whole, having agreed to a settlement in excess of that prayed for in the complaint." Order, at 13. Mr. Clinton also paid to plaintiff $89,484 as the "reasonable expenses, including attorney's fees, caused by his willful failure to obey the Court's discovery orders." Order, at 31; Jones v. Clinton, 57 F. Supp.2d 719, 729 (E.D. Ark. 1999).

On May 22, 2000, after receiving complaints from Judge Wright and the Southeastern Legal Foundation, the Committee voted to initiate disbarment proceedings against Mr. Clinton. On June 30, 2000, counsel for the Committee filed a complaint seeking disbarment in Pulaski County Circuit Court, Neal v. Clinton, Civ. No.2000-5677. Mr. Clinton filed an answer on August 29, 2000, and the case is in the early stages of discovery .

In this Agreed Order Mr. Clinton admits and acknowledges, and the Court, therefore, finds that:

A. That he knowingly gave evasive and misleading answers, in violation of Judge Wright's discovery orders, concerning his relationship with Ms. Lewinsky, in an attempt to conceal from plaintiff Jones' lawyers the true facts about his improper relationship with Ms. Lewinsky, which had

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ended almost a year earlier.

B. That by knowingly giving evasive and misleading answers, in violation of Judge Wright's discovery orders, he engaged in conduct that is prejudicial to the administration of justice in that his discovery responses interfered with the conduct of the Jones case by causing the court and counsel for the parties to expend unnecessary time, effort, and resources, setting a poor example for other litigants, and causing the court to issue a thirty-two page Order civilly sanctioning Mr. Clinton.

Upon consideration of the proposed Agreed Order, the entire record before the Court, the advice of counsel, and the Arkansas Model Rules of Professional Conduct (the "Model Rules"), the Court finds:

1. That Mr. Clinton's conduct, heretofore set forth, in the Jones case violated Model Rule 8.4(d), when he gave knowingly evasive and misleading discovery responses concerning his relationship with Ms. Lewinsky, in violation of Judge Wright's discovery orders. Model Rule 8.4(d) states that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice."

WHEREFORE, it is the decision and order of this Court that William Jefferson Clinton, Arkansas Bar ID #73019, be, and hereby is, SUSPENDED for FIVE YEARS for his conduct in this matter, and the payment of fine in the amount of $ 25,000. The suspension shall become effective as of the date of January 19, 2001.

IT IS SO ORDERED.

William Reed
CIRCUIT COURT JUDGE

January 19, 2001
DATE

[redacted]

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ACCEPTED AND ACKNOWLEDGED:

William Jefferson Clinton
Arkansas Bar ID #73019
Date: Jan. 19, 2001

APPROVED BY:

DAVID E. KENDALL
Attorney for Defendant

STEPHEN ENGSTROM
Attorney for Defendant

MARIE-BERNARDE MILLER
Attorney for Plaintiff

LYNN WILLIAMS
Attorney for Plaintiff

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Received

MAR 2 0 2001

Arkansas Supreme Court
Committee on Professional Conduct

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March 20, 2001

Re: William Jefferson Clinton
Arkansas Bar No. 73019

BY MESSENGER

Lynn Williams, Esq.
Justice Building, Room 2200
625 Marshall Street
Little Rock, Arkansas 72201

Dear Lynn:

I enclose check number 2306 for $25,000 dated March 16, 2001, drawn by Bill Clinton on Citibank, N.A. of New York payable to the Arkansas Supreme Court Committee on Professional Conduct in satisfaction of the fine for which provision was made in the Agreed Order of Discipline.

Cordially,

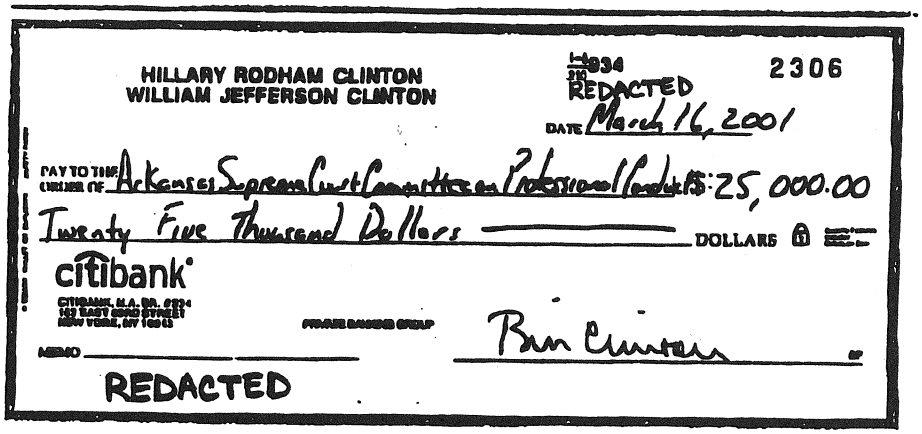
Stephen Engstrom

SE/mk
Enclosure

cc: David Kendall, Esq.
Marie-B. Miller, Esq.

3/20/2001
check received from Stark Ligon [illegible]
CPC.
3-20-01

[90]



HILLARY RODHAM CLINTON
WILLIAM JEFFERSON CLINTON

1-1034
311 REDACTED

2306

DATE March 16, 2001

PAY TO THE ORDER OF Arkansas Supreme Court Committee on Professional Conduct $ 25,000.00

Twenty Five Thousand Dollars ——— DOLLARS

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NEW YORK, NY 10043

PROFILE BANKING GROUP

Bill Clinton

MEMO

REDACTED

Appendix B

Investigation of Allegations Made by Kathleen E. Willey

The scope of the Special Division's Order granting the Independent Counsel jurisdiction also extended to whether President Clinton gave false testimony about Kathleen E. Willey during his deposition in *Jones v. Clinton.*[1] Willey, a White House volunteer, met with President Clinton in November 1993 to ask for paid employment in the administration. She alleged that during their meeting he fondled her.[2] Because the alleged incident arose in an employment [i]

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[1] The Order provided:

> The Independent Counsel shall have jurisdiction and authority to investigate to the maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law other than a Class B or C misdemeanor or infraction in dealing with witnesses, potential witnesses, attorneys, *or others concerning the civil case Jones v. Clinton.*

In re: Madison Guaranty Sav. & Loan Ass'n, Div. No. 94–1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998) (regarding Monica Lewinsky and others) (emphasis added).

[2] This Office subsequently learned that the Willey allegations presented potential issues of witness intimidation and obstruction of justice. Lewinsky 8/6/98 GJ at 70–77. Lewinsky said that on July 4, 1997, when she told President Clinton a reporter was working on a story about Willey's allegations, President Clinton told her Willey had called Nancy Hernreich the week before to warn her about the story. Lewinsky 8/6/98 GJ at 72–73; Lewinsky 8/11/98 Int. at 5. On July 14, 1997, President Clinton called Lewinsky back to the White House and asked her whether Linda Tripp was the source of her knowledge about Willey, which Lewinsky confirmed. Lewinsky 8/6/98 GJ at 75–76. President Clinton told Lewinsky that Willey had called again, saying the reporter, Michael Isikoff, had somehow learned about Willey's first call, causing President Clinton to wonder whether Lewinsky had mentioned Willey's call to Tripp, which Lewinsky acknowledged. *Id.* at 76–77.

Lewinsky testified, "[H]e was concerned about Linda, and I reassured him. He asked me if I trusted her, and I said yes." *Id.* at 77. Lewinsky said President Clinton then asked her to try to persuade Tripp to call Deputy White House Counsel Bruce Lindsey. "[President Clinton] asked me if I would just try to see if [Linda] would call [Bruce Lindsey], and so I said I would try." *Id.* at 77–79. President Clinton left to participate in a 51-minute conference call with his private attorney in the *Jones v. Clinton* case, Robert Bennett, and Charles Ruff, then the White House Counsel, followed by a six minute phone conversation with Lindsey. Presidential Call Log of July 14, 1997 (Doc. No. 968–DC–00003550). Tripp called Lindsey, who told Tripp to contact Bennett, which Tripp did not do. Lindsey 3/12/98 GJ at 13–15; Tripp 7/16/98 GJ at 56–62, 75–80; Lewinsky 7/29/98 Int. at 11.

In a subsequent television interview, Willey was asked if she had been pressured to retract her claim by Nathan Landow, but Willey refused to answer. *See 60 Minutes:* Transcript of Interview with Kathleen Willey at 8–9 (CBS television broadcast, Mar. 15, 1998). However, Willey did explain that she felt "pressured" by Robert Bennett. *Id.* at 9–10; see also Carl M. Cannon, *Willey Says Clinton Lied In Affidavit,* Balt. Sun, Mar. 16, 1998 at A1; Roger Simon, *Ex-Aide: Clinton Fondled Me Accusation May Be Most Serious Yet Against President,* Chicago Trib., Mar. 16, 1998 at 1; Thomas Galvin & Corky Siemaszko, *He Deserved A Slap—Willey Sez Bill Behavior 'Reckless,'* N.Y. Daily News, Mar. 16, 1998 at 3.

Willey also alleged that in the period immediately preceding her January 1998 *Jones* deposition, her cat disappeared, her tires were punctured, and a male jogger whom she did not recognize approached her at her rural home, called her by her name, and asked about her tires, cat (which he named), children (whom he named), attorney, and her attorney's children (whom he also named), saying "I hope you're getting the message" or "You're just not getting the message, are you?" Willey 3/6/98 Int. at 18; Willey 3/10/98 GJ at 123–27. At her Jones deposition, however, Willey testified no one had tried to discourage her from testifying. Willey 1/11/98 Depo. at 86–87.

Willey told the grand jury that even though she was "terrified for my safety" because of these incidents, "I did give consideration to maybe not—maybe not being very truthful in [her *Jones v. Clinton*] deposition because I thought that my—that people close to me were in jeopardy." Willey 3/10/98 GJ at 170–71. Despite the threats, Willey told the grand jury, she "decided that I had to tell the truth" at her deposition. Willey 3/10/98 GJ at 127. As noted below, *see infra* p. 92 and notes 50–52, there were material differences between Willey's deposition testimony and what she told the grand jury about the incident between her and President Clinton.

This Office investigated whether Landow or others had engaged in any criminal acts such as obstruction of justice or witness intimidation with respect to Willey, and determined there was insufficient evidence to support the filing of criminal charges.

[ii] context, Judge Susan Webber Wright ruled the allegations could be explored during discovery in *Jones*.[3] In testimony before the grand jury, President Clinton acknowledged the relevance of the Willey allegation to his *Jones v. Clinton* deposition:

> I was very well prepared to talk about Paula Jones and to talk about Kathleen Willey, because she had made a related charge. She was the
[iii] only person that I think I was asked about who had anything to do with anything that would remotely approximate sexual harassment.[4]

A. Willey's Allegations.

Kathleen Willey and President Clinton gave consistent testimony that they first met in 1989, when then-Governor Clinton and she attended a political rally for Virginia Lieutenant Governor Douglas Wilder in Charlottesville, Virginia.[5] Willey began volunteering at the White House soon after President Clinton took office in January 1993.[6] When Willey learned her family was in serious financial trouble, she decided to ask President Clinton for a paying job.[7]

On November 29, 1993, Nancy Hernreich, Deputy Assistant to the President and Director of Oval Office Operations, escorted Willey into the Oval Office.[8] Willey was visibly upset and President Clinton asked her what was wrong.[9] She replied, "I've just got a real serious problem and I need some help from you."[10] Willey said he poured her a cup of coffee in the pantry of the Oval Office dining room, then took her to his private study.[11]

[iv] Consistent with Willey's testimony, President Clinton agreed he and Willey were the only ones present during their conversation, testifying, "I think it was partly in the Oval Office and partly in the dining room I have in the back[.]"[12] He also agreed, "[S]he got something to drink, I got something to drink."[13] President Clinton also agreed they walked down the hallway leading from the Oval Office to the private dining room.[14]

Willey recalled telling him "there was a financial crisis in my family and that it was very, very serious, and that my days of volunteering were going to have to come to an end, that I really needed a job."[15] Willey said her demeanor was "very emotional. . . . I was crying, because I was worried."[16] Willey said, "I had

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[3] *See* Order, *Jones v. Clinton*, LR–C–94–290 (E.D. Ark. Dec. 11, 1997).

[4] Clinton 8/17/98 GJ at 59.

[5] Willey 03/10/98 GJ at 9–10. President Clinton said he believed "that [he] met [Willey] once before" the 1992 Richmond debate," in "connection with her involvement with Governor Wilder." Clinton 8/17/98 GJ at 156–57.

[6] Willey 3/10/98 GJ at 32.

[7] *Id.* at 44–47; Willey 1/11/98 Depo. at 31.

[8] Willey 1/11/98 Depo. at 32–33. Hernreich had no recollection of this. Hernreich 3/31/98 GJ 98–99.

[9] Willey 3/10/98 GJ at 53.

[10] *Id.* at 53.

[11] *Id.* at 54–55.

[12] Clinton 1/17/98 Depo. at 31–32.

[13] *Id.* at 32.

[14] *Id.*

[15] Willey 3/10/98 GJ at 55.

[16] *Id.* at 55–56.

the feeling that [President Clinton] was not really paying attention to what I was saying, which I just found unusual. . . . He was just off someplace else."[17]

President Clinton recalled that his meeting with Willey occurred not long before the death of Willey's husband.[18] He said he agreed to Willey's request to see him to discuss her interest in "moving out of the social office where she was not happy."[19] He agreed Willey appeared "agitated," and that she told him she [v] was in "very difficult straits" because of "some family financial issues," and "needed to earn some money."[20]

President Clinton and Willey disagree on what happened at the end of their conversation.[21] Willey testified, "Right as we got to the door, he stopped and he gave me a hug, which wasn't unusual, and he said, 'I'm so sorry that this is happening to you.'"[22] Willey said President Clinton took the coffee cup from Willey and put it on a shelf, and that "he had [ ] his hands in my hair, and I was pulling away from him . . . because I thought it was getting a little tense—well, a little inappropriate."[23] She alleged that he then fondled her.[24] According to Willey, President Clinton also said, "You have no idea how much I wanted you to come and bring me the chicken soup and see me in Williamsburg that evening."[25] Willey said, "Aren't you afraid somebody's going to walk in here?"[26] He allegedly responded, "[N]o, I'm not."[27]

Willey testified the encounter terminated when someone knocked and called [vi] out.[28] President Clinton, in Willey's recollection, looked at his watch and noted that he was late for a 3:00 p.m. Cabinet meeting, but said "they c[ould] wait."[29] Willey said she broke away from President Clinton, opened the door, and entered

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[17] *Id.* at 58.

[18] Clinton 1/17/98 Depo. at 30.

[19] *Id.* at 30–31.

[20] *Id.* at 31, 33, 43.

[21] Willey voluntarily submitted to two polygraph tests. The FBI administered two polygraphs because the first was deemed "inconclusive" due to "a lack of consistent, specific, and significant physiological responses," whereas the results of the second suggested she was being truthful. See Willey 9/9/98 Polygraph; Willey 9/15/98 Polygraph. The results of these polygraph tests were referenced in court during the Julie Hiatt Steele trial. Tr. at 33–34, *United States v. Steele*, No. 99-9-A (E.D. Va. May 3, 1999), discussed further *infra* p. 91 and note 44.

[22] Willey 3/10/98 GJ at 59.

[23] *Id.*

[24] *Id.* at 60–62.

[25] *Id.* at 61. Willey said she had her first telephone conversation with Governor Clinton during his 1992 Presidential Campaign visit to Virginia on October 13, 1992, during which Willey noted Governor Clinton's voice was raspy and recommended he eat some chicken soup. *Id.* at 13–16. She said when the Governor replied, "Would you bring me some," she responded, "I'm not sure" and "kind of hemmed and hawed." *Id.* at 13–14. Willey said the Governor called later, but she told him she was "going to stay right [t]here." *Id.* at 15. President Clinton testified he could not recall having telephoned Willey that day, but said, "I may well have [called her] and I don't know why I did it." Clinton 8/17/98 GJ at 159–60. He acknowledged "some vague memory" of talking with her "at some point . . . about my sore throat, or what she thought would be good for it," though he thought they discussed it in "some actual person-to-person conversation with her." *Id.* at 160. Asked whether he had invited Willey to meet with him at his hotel, he responded: "I don't believe I did that, sir." *Id.*

[26] Willey 3/10/98 GJ at 65.

[27] *Id.*

[28] *Id.* at 64–66. Willey thought the person who called out was President Clinton's aide, Andrew Friendly. Friendly said he recalled Willey being in the Oval Office, but he was not sure when. Friendly 4/6/98 Int. at 2–3.

[29] Willey 3/10/98 GJ at 65.

the Oval Office.[30] He followed, sitting down behind his desk.[31] She left the Oval Office through the reception area, where she thought she saw Secretary of the Treasury Lloyd Bentsen and Office of Management and Budget Director Leon Panetta.[32] Willey, "unnerved by what had happened," returned home outside Richmond, Virginia, later learning her husband had committed suicide that day.[33]

[vii] Testifying under oath in his *Jones* deposition, President Clinton "emphatically" denied making any sexual advance toward Willey.[34] He again denied Willey's allegations when he testified before the grand jury on August 17, 1998.[35] He agreed they had physical contact, but not of a sexual nature.[36]

B. Evidence Concerning Willey's Allegations.

Willey and President Clinton are the only direct witnesses to their meeting, and their accounts differ substantially on the crucial facts of what occurred. This Office conducted a substantial investigation to determine whether there was evidence to verify or disprove Willey's allegations, which in turn would allow an assessment of whether President Clinton's testimonial denials were truthful.

1. Willey's Statements to Others.

Willey told several people about the alleged encounter with President Clinton almost immediately after it happened. Ruthie Eisen, a former White House volunteer, testified that Willey informed her of the incident the afternoon or evening of the day it occurred.[37] Willey's friend Dianne Martin also testified that

[viii] Willey called her on the day of the incident and told her about it.[38] Willey saw Linda Tripp not long after the alleged incident, and Tripp later testified that Willey reported what happened.[39]

Willey said she also told her friend Julie Hiatt Steele about the encounter soon after it occurred.[40] Steele first told journalist Michael Isikoff that "Willey had graphically described being fondled by the president," "that Willey had told her about the incident on the night it allegedly occurred, and that she had been distraught."[41] Steele later denied Willey told her about the encounter the day it

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[30] *Id.* at 66.

[31] *Id.* at 66–67.

[32] *Id.* at 67–68. Schedule of President Clinton for 11/29/93 (Doc. No. 1566–DC–00000057); Diarist Notes re: Meeting with Economic Advisors 11/29/93 (Doc. No. 1566–DC–00000068).

[33] Willey 3/10/98 GJ at 44, 72–75.

[34] Clinton 1/17/98 Depo. at 35.

[35] Clinton 8/17/98 GJ at 161–62.

[36] Clinton 1/17/98 Depo. at 35.

[37] Tr. at 382–84, *United States v. Steele*, No. 99–9–A (E.D. Va. May 4, 1999) (testimony of Ruthie Eisen).

[38] *Id.* at 691–93 (testimony of Dianne Martin).

[39] Tripp also testified that when Willey told her about the incident Willey "seemed almost shocked, but happy shocked." Tripp 6/30/98 GJ at 69–71. Another witness thought Willey seemed flattered by the alleged incident. *See* Cardozo 4/7/98 Int. at 3–4. Others thought she was offended. Swenson 8/4/98 Int. at 1–2; Gecker 3/31/98 Int. at 3. Tripp also testified that she believed that Willey had a longstanding romantic interest in President Clinton. Tripp 6/30/98 GJ at 39–40, 62.

[40] Willey 3/10/98 GJ at 73–74.

[41] Michael Isikoff, *A Twist In Jones v. Clinton: Her Lawyers Subpoena Another Woman*, Newsweek, Aug. 11, 1997.

occurred as Steele had originally told Isikoff.[42] Steele said she had initially lied to Isikoff because Willey had asked her to in late winter 1997.[43] This Office pursued criminal charges against Steele for allegedly making false statements to FBI agents and the grand jury. [44]

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[42] Steele maintained Willey did not tell her about any sexual advance by President Clinton until March 1997, when Willey asked Steele to lie for her and say Willey had recounted the incident to her the day it occurred and was visibly upset. Steele 6/11/98 GJ at 45–47, 50. Steele provided her initial statement to *Newsweek* in March 1997. After recanting in July 1997, Steele gave essentially the same account in an affidavit drafted by President Clinton's attorneys, an FBI interview, a civil suit against a reporter, and media interviews, all in 1998. Steele 2/13/98 Affidavit at ¶¶ 7–8; Steele 3/10/98 Int. at 2–3; Amended Complaint and Demand for Jury Trial at 2–3, *Steele v. Isikoff*, No. 1:98CV01471 (D.D.C. July 2, 1998); Larry King Live: Interview of Julie Hiatt Steele (CNN television broadcast, Aug. 7, 1998); *see also* Steele 6/11/98 GJ at 101–08, 113, 122–23 (recounting preparation of affidavit).

Contrary to Steele's denials, William Poveromo, who had dated Steele, testified that while having dinner at Steele's home in April 1997, she told him that President Clinton had fondled Willey when Willey worked at the White House, and that Willey had told her about it soon after the incident. Tr. at 160–63, *United States v. Steele,* No. 99–9–A (E.D. Va. May 3, 1999) (testimony of William Poveromo). Steele's friend Mary Earle Highsmith testified that Steele was present at a 1996 lunch where Willey spoke about President Clinton's "sexual advance." Highsmith 8/5/98 GJ at 8–12. Highsmith said Steele acted as though she had heard the story before. *Id.* Highsmith testified that some time in November 1997, Steele said she had first heard about the incident in January 1994. Highsmith 11/5/98 GJ at 3; Highsmith 8/5/98 Int. at 1. Amy Horan, Steele's close friend and former employee, testified that in September 1996 Steele told her that Willey and President Clinton "had an intimate encounter, that they had fondled each other, he had kissed her." Horan 11/3/98 GJ at 10, 14, 19, 77. Horan understood that the encounter had been consensual, and that it had occurred on the day of Willey's husband's suicide. *Id.* at 20–21, 28–29, 33, 49, 77–78.

[43] Steele 6/11/98 GJ at 45–47.

[44] On January 7, 1999, a federal Grand Jury in the United States District Court for the Eastern District of Virginia charged Steele with false statements and obstruction of justice by interfering with a grand jury investigation in violation of 18 U.S.C. §§ 1001 & 1503. Trial began May 3 and ended on May 7, 1999 with a mistrial because the jury was unable to reach a unanimous verdict on any count. Tr. at 1–2, *United States v. Steele,* No. 99–9–A (E.D. Va. May 3, 1999); *id.* at 878–79. According to a press report, nine jurors voted to convict Steele, and the jury foreman said that one of the jurors voting for acquittal had refused to keep an open mind. *See* Pete Yost, *Starr Urged To Retry Hiatt Steele,* Associated Press, May 22, 1999, at 1 (available at 1999 WL 17806509). One of the jurors who voted for acquittal apparently did not believe Willey's testimony. *See, e.g.,* Pete Yost, *Retry Julie Hiatt Steele, Jury Foreman Tells Starr Panel Members Vote 9–3 To Convict,* New Orleans Times-Picayune, May 23, 1999, at A8 (quoting one of the jurors who voted for acquittal as saying Willey had "'zero credibility'"). The Office decided not to pursue a retrial. The following month the Independent Counsel's motion to dismiss the indictment was granted. Order, *United States v. Steele,* 99–CR–9–ALL (E.D. Va. June 9, 1999).

Following dismissal of the indictment, Steele filed a motion under the "Hyde Amendment," which entitles a "prevailing party" in a criminal case to recovery of costs and attorneys' fees "where the court finds that the position of the United States was vexatious, frivolous, or in bad faith." Depts. of Commerce, Justice and State, and the Judiciary and Related Agencies Appropriations Act of 1998, Pub. L. No. 105–119, § 617, 111 Stat. 2440, 2519 (1997), *reprinted in* 18 U.S.C. A. § 3006A, Historical and Statutory Notes, "Attorneys' Fees and Litigation Expenses to Defense" (West. Supp. 1999). The district court denied Steele's request:

> [T]his Court presided over this trial, and, after hearing all of the evidence and observing all of the witnesses, the Court denied defendant Steele's Motion for Judgment of Acquittal..., effectively ruling that the evidence was sufficient for a reasonable trier of fact to find the defendant guilty. This Court found then and finds now that there was sufficient evidence to submit all of the counts to the jury for their verdict. Based on the entire record before the Court,... this Court finds that the prosecution of Defendant Steele was not vexatious, frivolous, or in bad faith.

Order at 1–2, *United States v. Steele,* No. 99–9–A (E.D. Va. Aug. 3, 1999). Steele then appealed that ruling to the United States Court of Appeals for the Fourth Circuit, which affirmed by summary order the lower court's ruling that the Independent Counsel's prosecution of Steele was not vexatious, frivolous, or in bad faith. *United States v. Steele,* No. 99–4589, 2000 WL 690494, at *3 (4th Cir. May 26, 2000) (per curiam).

[x]

2. Communications By Willey With President Clinton Following the Alleged Incident.

Willey testified she met again with President Clinton on December 10, 1993 and told him she considered his November 29 behavior "unfortunate and inappropriate," but wanted to put the event "behind her."[45] As a widow, she said, she "need[ed] a job more than ever."[46] Willey said President Clinton did not acknowledge her reference to the alleged prior encounter.[47]

One month after their November encounter, Willey sent a note reminding President Clinton she needed a job: "Thank you for the opportunity to work in this great house. After this bittersweet year, my first resolution for 1994 will be the pursuit of a meaningful job. I hope it will be here."[48] Subsequent letters also sought President Clinton's help or expressed gratitude.[49]

[xi]

3. Willey's Testimony to the Grand Jury About the Alleged Incident Differed Materially from Her Deposition Testimony Given in *Jones v. Clinton*.

Willey's *Jones* deposition testimony differed from her grand jury testimony on material aspects of the alleged incident. She said at her deposition that she could not recall whether President Clinton succeeded in kissing her[50] and that he did not fondle her.[51] She also claimed she had never talked to anyone other than Isikoff, Gecker, and Steele about the details of the incident.[52]

4. Willey's Statements to This Office.

The Independent Counsel agreed not to prosecute Willey for any offense arising out of the investigation, including false statements in her *Jones* deposition, so long as she cooperated fully and truthfully with the investigation.[53] Following that first immunity agreement, Willey gave false information to the FBI

[xii]

about her sexual relationship with a former boyfriend,[54] and acknowledged

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[45] Willey 3/10/98 at 77–79.

[46] *Id.* at 28; Willey 3/6/98 Int. at 11.

[47] Willey 3/10/98 GJ at 80; Willey 3/6/98 Int. at 11.

[48] Card to President Clinton from Kathleen Willey (Dec. 20, 1993) (Doc. No. 1089–DC–00000299–300).

[49] *See, e.g.*, Letter to President Clinton from Kathleen Willey (Oct. 18, 1994) (Doc. No. 1089–DC–00000221) ("I have invested almost three years with your campaign and administration and am not very willing to depart yet"); Letter to President Clinton from Kathleen Willey (Dec. 5, 1995) (Doc. No. 1089–DC–00000246–248) (thanking President for appointing her to Convention on Biological Diversity, but noting Bob Nash of the Presidential Personnel office is "still having a lot of difficulty finding a job for me" and requesting a position on the reelection campaign); Note to President Clinton from Kathleen Willey (Feb. 14, 1995) (Doc. No. 1089–DC–00000309) (requesting appointment to International Union for the Conservation of Nature).

[50] Willey 1/11/98 Depo. at 47.

[51] *Id.* at 84.

[52] *Id.* at 88–89, 97, 101.

[53] Willey 3/6/98 Cooperation Agreement at 1–2. The agreement stipulated the "request for immunity is made at the request of your attorney out of an abundance of caution and not because you believe you intentionally answered any question incorrectly, nor committed any offense." *Id.*

[54] Willey 6/22/98 Int. at 3–4.

having lied about it when the agents confronted her with contradictory evidence.[55] Following Willey's acknowledgement, the Independent Counsel agreed not to prosecute her for false statements in this regard.[56]

C. Analysis of Potential Statutory Violations Relating to President Clinton's Testimony About the November 1993 Incident With Willey.

Willey and President Clinton, the only two percipient witnesses to the alleged encounter, substantially and materially disagree on what occurred. The burden of proving what actually occurred in a case against President Clinton rests on the prosecutor, and Willey would be the government's principal witness. In the Independent Counsel's judgment, the evidence was insufficient to prove to a jury beyond a reasonable doubt that the President's deposition testimony about his conduct with Willey was false.[57]

Linda Tripp's testimony that Willey had a previous romantic interest in President Clinton (and appeared to view his alleged advances positively) departed from Willey's testimony. Tripp's cooperation with this Office in the Lewinsky investigation ultimately yielded evidence about President Clinton's conduct with Monica Lewinsky that was contrary to the President's testimony. Thus, evidence supplied by Linda Tripp regarding Willey that was consistent with President Clinton's testimony would likely be favorably received by a jury. [xiii]

Even assuming Willey's testimony was truthful about the incident with President Clinton, her testimony at trial would be subject to further challenge based on the differences between her deposition and grand jury statements, as well as her acknowledgement of false statements to the Office of the Independent Counsel. Concerns about the probative effect of Willey's testimony would likely be sufficient to negate a conclusion that "the person [charged] probably will be found guilty by an unbiased trier of fact."[58]

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[55] Willey 1/7/99 GJ at 130–32.

[56] Letter to Dan Gecker, Esq., attorney for Kathleen Willey, from David G. Barger, Assoc. Independent Counsel (Sept. 25, 1998).

[57] The Independent Counsel is not offering, and cannot offer, any opinion as to whose version of events is right, Willey's or President Clinton's, concerning what happened on November 29, 1993. Unlike Lewinsky's allegations about intimate contact with President Clinton that were separately corroborated by, among other things, Lewinsky's dress, see Final Report of the Independent Counsel at 35 & n.115, *In re: Madison Guaranty Sav. & Loan Ass'n*, (regarding Monica Lewinsky and others) (filed May 18, 2001), here there was no indisputable, physical evidence corroborating Willey's allegations. In the narrow context of assessing whether to seek criminal charges against President Clinton for his denials, the burden falls on the government to prove the President should not be believed. For the reasons stated in the text, the Independent Counsel concluded no more and no less than that charges could not be sustained against President Clinton concerning his testimony about Willey.

[58] United States Attorneys' Manual, Title 9 § 9–27–220(B); *see Foreman: Steele Jury Favored Conviction; He Suggests Retrial,* Minn.–St. Paul Star Tribune, May 23, 1999, at 15A (one of Steele's jurors who voted for acquittal "pointed to testimony in Steele's trial that after Willey was granted immunity from prosecution by Starr's office, she was caught lying to prosecutors about a relationship she had had").

In short, there was insufficient evidence to prove to a jury beyond a reasonable doubt that President Clinton's testimony regarding Kathleen Willey was false. Accordingly, the Independent Counsel declined prosecution and the investigation of potential criminal wrongdoing relating to Willey's allegations is now closed.

Appendix C

Unfounded Allegations of Criminal and Professional Misconduct and Spurious Claims of Privilege

I. Introduction

[i]

This Office faced numerous challenges to its professional integrity and the lawful exercise of its authority, ranging from unsubstantiated allegations of criminal and professional misconduct to unsupported claims that the Office and its duly empaneled grand jury were not legally entitled to evidence in the possession of witnesses, many of whom were White House employees. Responding to all of these claims in court and in public affected the Office's ability to fulfill its mandate in a timely and cost-effective manner. In the end, no attorney or other employee of this Office was ever found to have engaged in any form of criminal or professional misconduct, and the courts determined in every case that privileges asserted by President Clinton, the Office of the President, and others did not form a legal basis to withhold evidence from this Office and the grand jury. This appendix chronicles the claims made in connection with the Lewinsky investigation, as well as additional claims that, although related to other matters, arose during the last months of the Lewinsky investigation.

II. No Person in this Office Was Found to Have Violated Federal Rule of Criminal Procedure 6(e).

On February 6, 1998, two weeks after the public disclosure of this Office's investigation relating to Monica Lewinsky, President Clinton's private counsel, David Kendall, issued a public statement alleging "a deluge of illegal leaks from that office of false and misleading information."[1] Stating that he intended to seek judicial relief from the leaks under Federal Rule of Criminal Procedure 6(e), Kendall continued:

> The leaking of the past few weeks is intolerably unfair. It violates not only the criminal rules, rules of court, rules of ethics and Department of Justice guidelines, it also violates the fundamental rules of fairness in an investigation like this. [ii]
>
> We've seen leak after leak, which ultimately and in the fullness of time turns out to be false information. These leaks make a mockery of the traditional rules of grand jury secrecy. They often appear to be a cynical attempt to pressure and intimidate witnesses, to deceive the public and to smear people involved in the investigation.[2]

On October 30, 1998, slightly more than a month after this Office submitted its Referral to Congress pursuant to 28 U.S.C. § 595(c), Chief Judge Johnson of the United States District Court for the District of Columbia disclosed that she had named a special master to determine whether the Office of the Independent Counsel had illegally leaked secret grand jury information to the media in violation of Rule 6(e).[3]

Notwithstanding the intensity of the charges in February 1998, in March 2001, three years later, and two months after President Clinton left office, the former President, the Office of the President (prior to January 20, 2001), Bruce Lindsey, and Sidney Blumenthal agreed to a joint stipulation with this Office to [iii] the dismissal of all sealed proceedings involving alleged violations of Rule 6(e).[4]

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[1] David E. Kendall, Statement (Feb. 7, 1998), *available* at A.P. Political Serv. at 1998 WL 7383986.

[2] *Id.*

[3] Order, *In re: Grand Jury Proceedings*, Misc. Nos. 98–55, 98–177, and 98–228 (consolidated) (D.D.C. Oct. 30, 1998).

[4] Joint Stipulation of Dismissal of Rule 6(e) Proceedings, *In re: Grand Jury Proceedings,* Misc. Nos. 98–55, 98–177, and 98–228 (consolidated) and 99–214 (D.D.C. Mar. 22, 2001).

On March 23, 2001, Chief Judge Johnson filed an order accepting the joint stipulation and dismissing the remaining matters without any finding of a violation of Rule 6(e).[5]

The United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") also rejected Mr. Kendall's allegations that an article appearing in the January 31, 1999 *New York Times*, while the Senate impeachment trial was pending, included material disclosed by individuals in this Office in violation of Rule 6(e).[6] The D.C. Circuit concluded that the material disclosed in the article was not covered by the rule because it did not constitute matters "occurring before the grand jury."[7] This ruling came more than eight months after Mr. Kendall's charges and only after this Office appealed the district court's decision and obtained a summary reversal to prevent the district court from conducting a proceeding against this Office or any of its personnel on the basis of those charges.[8]

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[5] Order, *In re: Grand Jury Proceedings*, Misc. Nos. 98–55, 98–177, and 98–228 (consolidated) (D.D.C. Mar. 23, 2001); Order, *In re: Grand Jury Proceedings,* Misc. No. 99–214 (D.D.C. Mar. 23, 2001).

[6] *In re: Sealed Case,* 192 F.3d 995 (D.C. Cir. 1999).

[7] *Id.* at 1004.

[8] *In re: Sealed Case,* 151 F.3d 1059 (D.C. Cir. 1998). The district court conducted a criminal contempt proceeding against one former member of this Office, Charles G. Bakaly, not for a violation of Fed. R. Crim. P. 6(e) in connection with the January 31, 1999 *New York Times* article, but for making false and misleading statements to the court following the story. *In re: Grand Jury Proceedings,* 117 F. Supp. 2d 6 (D.D.C. 2000). Following a nonjury trial before Chief Judge Johnson, Mr. Bakaly was acquitted of those charges on October 6, 2000. *Id.* at 33. The court also found "deeply disturbing" the "fraudulent attribution" that "could have had an impact on the Court's determination of . . . whether the OIC should be held to answer under the penalty of contempt of court, for possibly leaking information that may include matters occurring before the grand jury." *Id.* at 25 n.3.

III. Charges that this Office Intentionally Disclosed the Existence of a Grand Jury Investigating President Clinton Were False.

[iv]

Former Vice President Al Gore accepted the Democratic Party's nomination for President on the evening of August 17, 2000. During the afternoon prior to his speech, the Associated Press reported that a new grand jury had been empaneled to hear evidence regarding perjury and obstruction of justice by President Clinton.[9]

Although the article stated that the sources of the story were "outside [Independent Counsel] Ray's office,"[10] and despite affirmative denials that this Office was the source of the story,[11] the media widely reported the leak as a gross political act by this Office.[12] Many made unsubstantiated accusations that this Office intentionally leaked the story to influence the political process.[13] The next day, August 18, 2000, Judge Richard D. Cudahy of the D.C. Circuit's Division for the

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[9] Pete Yost, *Grand Jury to Hear New Clinton Case*, A.P., Aug. 18, 2000.

[10] *Id.*

[11] Press Release from the Office of the Independent Counsel (Aug. 17, 2001), *at* http://www.oicray.com.

[12] *See, e.g., CBS News: Evening News with Dan Rather* (CBS television broadcast, Aug. 17, 2000) ("Timing is everything. Al Gore must stand and deliver here tonight as the Democratic Party's presidential nominee. And now Gore must do so against the backdrop of a potentially-damaging carefully orchestrated story leak about President Clinton. This story is that Republican-backed special prosecutor Robert Ray—Ken Starr's successor—has a new grand jury looking into possible criminal charges against the president, growing out of Mr. Clinton's sex life"); Dan Rather, *Low-Road Politics—Clinton Grand Jury Leak Carefully Orchestrated* (Aug. 17, 2000), *available at* http://cbsnews.cbs.com/now/story/0,1397,225854–412,00.shtml ("You don't have to be a cynic to note that this has all the earmarks of a carefully orchestrated, politically motivated leak. The Republican-backed Robert Ray is sponsored by a three-judge panel that must periodically decide whether Ray's investigation should continue. This panel features two federal judges backed by the Jesse Helms wing of the Republican Party").

[13] *See, e.g.,* Jonathan Weisman, *Angry Democrats Call News Leak Of Clinton Probe A Political Tactic*, Balt. Sun, Aug. 19, 2000, at 20A (noting comments from Julian Epstein, Democratic counsel on the House Judiciary Committee: "The fact that [Ray] does not prevent a story like this from coming out on the day the nominee of a party is going to speak could not be more overtly political"); Michael Hedges, *New Panel Probes Lewinsky: Democrats Accuse Special Counsel Of Timing Leak To Hurt Gore*, Aug. 18, 2000, at A1 (White House spokesman Jake Siewert: "The timing of the leak reeks to high heaven. But given their (the independent counsel's office) track record on this, it is hardly surprising"); *id.* (Gore campaign spokesman Doug Hattaway: "The timing is highly suspect. People are sick and tired of the judicial system being manipulated for political purposes").

Purpose of Appointing Independent Counsels ("Special Division") admitted that he had been the source of the disclosure; he stated that he had inadvertently disclosed the existence of the new grand jury to a reporter.[14] Even after Judge Cudahy's admission, the White House Press Secretary still asserted: "We may never know the full story here."[15]

[14] Statement by Judge Richard D. Cudahy, Aug. 18, 2000 (GJ 00–3 Exh. No. 33). Judge Cudahy expressed his apologies to all concerned, stating that the nature of the controversy generated by his inadvertent disclosure prompted him to make the statement. *Id.*

[15] Susan Schmidt, *Judge Was Source of Clinton Jury Story; Leak 'Inadvertent,' Carter Nominee Says,* Wash. Post, Aug. 19, 2000, at A1.

IV. All Complaints to the Department of Justice of Professional Misconduct Were Rejected.

The Department of Justice also received numerous complaints about the conduct of Independent Counsel Kenneth W. Starr and his staff.[16] These complaints were referred to the Justice Department's Office of Professional Responsibility ("OPR"), which investigates complaints concerning the conduct of Department attorneys in the exercise of their official responsibilities. The Attorney General undertook a review of these allegations pursuant to her authority to remove an independent counsel for cause.[17] None of these complaints resulted in a finding of professional misconduct by any person in the Office of the Independent Counsel.[18] [vi]

On November 15, 1998, shortly before Independent Counsel Starr was scheduled to testify on the referral under 28 U.S.C. 595(c) before the House Judiciary Committee, Attorney General Janet Reno informed him that OPR had recommended further inquiry about complaints of professional misconduct. At the request of the Attorney General, OPR ultimately identified nine allegations that appeared to OPR to require further analysis.[19] In May 1999, the Office of the Independent Counsel provided OPR with a detailed submission addressing these allegations,[20] which OPR reviewed in conjunction with other materials.[21]

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[16] The Department of Justice's Office of Professional Responsibility received 283 complaints regarding the Office of the Independent Counsel, including 27 from Members of Congress. Letter from H. Marshall Jarrett, Counsel, Office of Professional Responsibility, to J. Keith Ausbrook, Deputy Independent Counsel (Feb. 28, 2001). The Justice Department's Criminal Division received 5,308 complaints. *Id.* The Executive Secretariat received 132 complaints, including 16 from Members of Congress. Id.

[17] 28 U.S.C. § 596(a)(1); Letter from H. Marshall Jarrett, Counsel, Office of Professional Responsibility, to Kenneth W. Starr, Independent Counsel (Jan. 19, 1999).

[18] Recently, when former Attorney General Reno was asked her "opinion of how [Independent Counsel] Starr conducted the investigation," she responded: "I have not reviewed it other than to determine whether there was a basis for removing him for cause, and determined that there was not." Hannity and Colmes (Fox News television broadcast, May 2, 2001).

[19] Letter from Gary G. Grindler, Principle Associate Deputy Attorney General, to the Honorable Kenneth W. Starr, Independent Counsel (Mar. 16, 1999) (attaching Memo from H. Marshall Jarrett, Counsel, Office of Professional Responsibility, identifying nine issues to be addressed in OPR inquiry).

[20] *See* Submission of the Office of the Independent Counsel (*In re: Madison Guaranty Sav. & Loan Assoc.*) Relating to the Inquiry of the Department of Justice Office of Professional Responsibility (May 28, 1999) [hereinafter "OIC Submission"].

[21] *See* Mem. for the Attorney General from H. Marshall Jarrett, Counsel, Office of Professional Responsibility, stating recommendations regarding disposition of allegations against Independent Counsel Kenneth W. Starr at 1 (Oct. 15, 1999) [hereinafter "Jarrett Mem."].

[vii] On October 15, 1999, the Attorney General, acting on OPR's recommendation, concluded that no further inquiry was necessary regarding eight of the nine allegations.[22] Four of these allegations were deemed unlikely to develop evidence warranting the removal of the Independent Counsel from office, and three allegations lacked a factual basis.[23] One allegation included a primary and two subsidiary charges. The primary charge was rejected on the ground that the issue had been properly resolved through litigation before a federal district court judge in the course of pretrial motions.[24] The two subsidiary charges were referred back to the Independent Counsel for his consideration and action.[25] In sum, OPR recommended further inquiry into only one of the nine allegations, which related to the Office of the Independent Counsel's first contact with Monica Lewinsky.[26]

A. Four Allegations Were Rejected on the Ground That, Even if Substantiated, They Would Not Have Warranted the Removal of Independent Counsel Starr.

With respect to four allegations, the Attorney General accepted OPR's conclusion that a full investigation would not develop evidence of misconduct warranting the removal of Independent Counsel Starr from office pursuant to the Attorney General's authority under Title 28, United States Code, Section 596(a). Those allegations were: (1) whether communications between Linda Tripp, or
[viii] persons acting on her behalf, and Independent Counsel Starr's law partner, Richard Porter, were consistent with the client representation restrictions governing Independent Counsels, their staffs, and attorneys associated with them, as codified at 28 U.S.C. § 594(j), and with other applicable provisions governing conflicts of interest;[27] (2) whether the Office of the Independent Counsel made material misrepresentations to the Attorney General, and to other Department attorneys, in connection with its request for jurisdiction over the Lewinsky matter;[28] (3) whether Independent Counsel Starr's prior contacts with people working on the *Jones v. Clinton* civil case gave rise to a conflict of interest in the request for and acceptance of jurisdiction to investigate the Lewinsky matter, including whether the Department of Justice was provided appropriate information about those prior contacts at the time of the request for jurisdiction;[29] and (4) whether the Office of the Independent Counsel made improper statements about Presidential advisor Sidney Blumenthal.[30]

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[22] *See* Letter from Janet Reno, Attorney General, to Kenneth W. Starr, Independent Counsel 1 (Oct. 15, 1999) [hereinafter "Reno Letter"].

[23] Reno Letter, *supra* note 22, at 1; Jarrett Mem., *supra* note 21, at 1–3.

[24] Reno Letter, *supra* note 22, at 1; Jarrett Mem., *supra* note 21, at 1–3.

[25] Reno Letter, *supra* note 22, at 1; Jarrett Mem., *supra* note 21, at 1–3.

[26] Reno Letter, *supra* note 22, at 1; Jarrett Mem., *supra* note 21, at 1–3.

[27] Jarrett Mem., *supra* note 21, at 1–2; OIC Submission, *supra* note 20, at 99–106.

[28] Jarrett Mem., *supra* note 21, at 1–2; OIC Submission, *supra* note 20, at 112–33.

[29] Jarrett Mem., *supra* note 21, at 1–2; OIC Submission, *supra* note 20, at 134–45.

[30] Jarrett Mem., *supra* note 21, at 1–2; OIC Submission, *supra* note 20, at 173–83.

B. Three Allegations Were Rejected as Having No Factual Basis.

With respect to three other allegations, the Attorney General accepted OPR's conclusion that none was supported by any factual basis.[31] Those allegations were whether (1) the Office of the Independent Counsel improperly influenced the conduct of Linda Tripp prior to January 12, 1998 in order to create a basis for obtaining jurisdiction over the Lewinsky matter;[32] (2) the Office of the Independent Counsel misled the D.C. Circuit on June 29, 1998 regarding the likelihood of impeachment proceedings;[33] and (3) the Office of the Independent Counsel conducted investigative activities without any jurisdictional basis, including whether it was proper to offer Linda Tripp immunity from prosecution and surreptitiously record conversations involving Linda Tripp before receiving jurisdiction over the Lewinsky matter.[34] [ix]

C. One Complaint, Which Included Two Subsidiary Complaints, Regarding the Steele Investigation Were Rejected.

With respect to one complaint—that the Office of the Independent Counsel lacked jurisdiction to investigate Julie Hiatt Steele—the Attorney General also accepted OPR's recommendation to reject the allegations.[35] OPR reviewed the record of pretrial motions in the Steele case and concluded that the trial judge had properly disposed of those allegations.[36]

Pursuant to OPR's recommendation, the Attorney General referred to the Independent Counsel two subsidiary allegations that the trial judge had not addressed. These allegations concerned the filing of an ex parte brief in another court and the alleged harassment of Steele's daughter in the grand jury.[37] The Independent Counsel reviewed the matters and, in December 1999, found the relevant attorneys to have acted appropriately in both instances.[38]

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[31] Jarrett Mem., *supra* note 21, at 1.

[32] *Id.*; OIC Submission, *supra* note 20, at 107–11.

[33] Jarrett Mem., *supra* note 21, at 1; OIC Submission, *supra* note 20, at 146–51.

[34] Jarrett Mem., *supra* note 21, at 1; OIC Submission, *supra* note 20, at 152–61.

[35] Reno Letter, *supra* note 22, at 1; Jarrett Mem., *supra* note 21, at 2.

[36] Jarrett Mem., *supra* note 21, at 2.

[37] Reno Letter, *supra* note 22, at 1.

[38] *See* Mem. from J. Keith Ausbrook, Senior Counsel, to Independent Counsel Robert W. Ray (Dec. 22, 1999) (reflecting Independent Counsel's acceptance of recommendation that filing of *ex parte* brief was appropriate conduct); *see also* Mem. from J. Keith Ausbrook, Senior Counsel, to Independent Counsel Robert W. Ray (Dec. 22, 1999) (reflecting Independent Counsel's acceptance of recommendation that conduct in the grand jury was appropriate).

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D. The Independent Counsel Accepted the Conclusion of a Special Counsel Concerning the January 16, 1998 Contact with Monica Lewinsky that No Attorney Committed Professional Misconduct.

OPR decided that additional investigation was needed in order to determine whether this Office complied with Department of Justice regulations then in effect relating to contacts with individuals outside the presence of an attorney in their dealings with Monica Lewinsky on January 16, 1998.[39] In November 1999, in response to a request by Independent Counsel Ray, Attorney General Reno referred that matter to the Independent Counsel for investigation with the agreement that the Attorney General would accept his findings.[40]

On February 16, 2000, Independent Counsel Ray appointed Jo Ann Harris, former Assistant Attorney General for the Justice Department's Criminal Division during the Clinton Administration, as Special Counsel to this Office to conduct an independent review of the allegation.[41] Special Counsel Harris and her co-

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counsel, former Counsel to the Assistant Attorney General, Mary Harkenrider, completed their review and submitted a report to Independent Counsel Ray on December 6, 2000 for his consideration and final determination.[42] The Report of the Special Counsel acknowledged the full cooperation and support of the Office of the Independent Counsel.[43]

The Report of the Special Counsel concluded that no attorney in the Office of the Independent Counsel engaged in professional misconduct in connection with the approach to Monica Lewinsky on January 16, 1998 because the Department's regulations did not unambiguously define Lewinsky as a represented person.[44] The

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[39] Specifically, this Office had been accused of violating then-applicable ethical provisions regulating contact by federal prosecutors with persons represented by lawyers. *See* 28 C.F.R. §§ 77.8, 77.9 (effective Aug. 4, 1994). The regulations have since been superseded by the McDade Amendment, effective October 21, 1998. *See* 28 U.S.C. § 530B (subjecting attorneys for the Government, including independent counsels, to state bar laws and rules).

[40] *See* Letter from Janet Reno, Attorney General, to Robert W. Ray, Independent Counsel 1 (Nov. 12, 1999).

[41] Report of the Special Counsel Concerning Allegations of Professional Misconduct by the Office of the Independent Counsel in Connection with the Encounter with Monica Lewinsky on January 16, 1998 at 1 (Dec. 6, 2000) [hereinafter "Report of the Special Counsel"]. The resolution of this matter is disclosed here because of the substantial interest in assuring the public that these allegations were fully investigated and appropriately resolved.

[42] Report of the Special Counsel, *supra* note 41, at 1–2.

[43] *Id.* at 1, 7.

[44] *Id.* at 2. Subsequent to the Independent Counsel's decision on the report, the United States Supreme Court held that the right to counsel under the Sixth Amendment to the U.S. Constitution does *not* attach to both charged crimes and "any other offense that is very closely related factually to the offense charged." *Texas v. Cobb*, 121 S. Ct. 1335, 1340 (2001) (internal quotation marks and citation omitted). In expressly rejecting the dissenting justices' views, the Court recognized that "vague iterations of the 'closely related to' or 'inextricably intertwined' test . . . would defy simple application." *Id.* at 1343; *cf. id.* at 1350 (Breyer, J., dissenting, joined by Justices Stevens, Souter, and Ginsburg) (invoking the "closely related to" and "inextricably intertwined" test). Thus, a person charged with burglary did not have a right to counsel—and therefore was not represented—with respect to a murder for which he had not been charged that occurred in the course of the burglary. *Id.* at 1344.

Continued—

Report of the Special Counsel concluded, however, that one lawyer exercised poor judgment in the planning and execution of the approach to Lewinsky.[45] [xii]

On January 16, 2001, Independent Counsel Ray accepted the Special Counsel's determination that no attorney of this Office engaged in professional misconduct. Upon full consideration of the Report of the Special Counsel, written comments, an oral presentation by the attorney in question, the recommendation of two senior attorneys in the Office who reviewed the report, and consultation with counsel for this Office, the Independent Counsel decided to overrule the Special Counsel's finding of poor judgment.

1. The Independent Counsel Accepted the Determination that No Attorney Had Committed Professional Misconduct.

The Independent Counsel accepted the Special Counsel's determination that no attorney had engaged in professional misconduct. The Special Counsel concluded that whether Monica Lewinsky was a "represented person" within the meaning of the regulations was ambiguous. The Special Counsel specifically found that the regulations, commentary on the regulations, and other materials relevant to the inquiry supported two different ways of analyzing whether a person is represented with respect to a matter.[46] After acknowledging these two modes of analysis, one of which was used in the contact with Monica Lewinsky, the Special Counsel found no professional misconduct occurred because "the regulation does not clearly answer the question of the scope" of the representation of Lewinsky.[47]

2. The Independent Counsel Rejected the Special Counsel's Finding of Poor Judgment. [xiii]

The Independent Counsel rejected the Special Counsel's finding that one attorney exercised poor judgment, on the ground that the Independent Counsel considered it fundamentally unfair to single out one attorney for decisions that were made in consultation with supervisors, other colleagues, and a representative of the Department of Justice, which resulted in a decision that the Special Counsel herself recognized was proper under one mode of analysis supported by relevant authority.[48] The Independent Counsel concluded that the attorney had

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While the issue here arose in the context of the Department's ethical rules rather than the Sixth Amendment, the "closely related to" or "inextricably intertwined" test raises similar difficulties in determining whether Lewinsky's representation for the purpose of filing an affidavit in the *Jones* case constituted representation with respect to the criminal investigation of her filing a false affidavit. *Cf. Shelton v. Hess,* 599 F. Supp. 905, 909 (S.D. Tex. 1984) (case cited and relied upon by OPR during its preliminary inquiry in which court disqualified lawyer from representation because subject of the existing representation was "strikingly similar" to and "inextricably intertwined" with the matter for which the contact was initiated). Summary of the Preliminary Inquiry of the Office of Professional Responsibility into Allegations Against Independent Counsel Kenneth W. Starr Concerning Contact with Monica Lewinsky at 36–39 (transmitted to Independent Counsel Ray, Nov. 23, 1999).

[45] Report of the Special Counsel, *supra* note 41, at 2–4.

[46] *Id.* at 71.

[47] *Id.* at 82.

[48] *See id.* at 3, 70–71.

adopted a mode of analysis used by the Justice Department in analyzing its own regulations, and despite lecturing for the Department numerous times on the subject, had never been informed by the Department of any other mode of analysis.[49] Accordingly, in the Independent Counsel's view, no finding of poor judgment could be fairly sustained that was entirely dependent upon which mode of analysis was correct.[50]

Moreover, the Special Counsel's investigation revealed that there were many others involved in the planning and execution of the encounter, including senior staff of the Office of the Independent Counsel and representatives of the Department of Justice, who did not make clear—with opportunities to do so—their specific concerns, if any, regarding the proposed contact.[51] Under these circumstances, the Independent Counsel concluded that the finding of poor judgment could not be fairly sustained.

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[49] *See id.* at 54, 97.

[50] *See id.* at 32–97. The Independent Counsel further concluded that the judgment exercised under these circumstances was not "in marked contrast" to the judgment of an attorney exercising good judgment—OPR's standard for finding poor judgment. The Independent Counsel determined that an attorney who used a mode of analysis that was recognized by the Department could not be found to have used judgment "in marked contrast" to the judgment of an attorney exercising good judgment.

[51] *See id.* at 18–23, 27–33.

V. Allegations Concerning the United States District Court for the Eastern District of Arkansas Were All Dismissed.

Over the course of the investigations conducted by this Office, various complaints were lodged before the United States District Court for the Eastern District of Arkansas seeking the appointment of special counsel to investigate alleged prosecutorial misconduct against this Office. The complainants were Francis T. Mandanici (a public defender from Connecticut with no known connection to the investigation), Julie Hiatt Steele (a defendant in a criminal trial conducted by this Office), Stephen A. Smith (former Chief of Staff to Governor Clinton who pled guilty to a misdemeanor and testified for the government at the trial of Susan McDougal, Jim McDougal, and Jim Guy Tucker), and the United States district judges (except for Judge George Howard Jr. who recused himself) of the Eastern District of Arkansas. No counsel was ever appointed, and the complaints were all dismissed as without merit by another judge designated by the Chief Judge of the United States Court of Appeals for the Eighth Circuit to consider these matters.

A. The Complaints of Mandanici, Smith, and Steele Were Rejected.

On September 11, 1996, March 11, 1997, June 19, 1997, and June 4, 1999, Francis T. Mandanici filed "grievances" with the United States District Court for the Eastern District of Arkansas seeking the appointment of counsel to investigate whether (1) Independent Counsel Kenneth W. Starr was subject to conflicts of interest in connection with his investigation involving the Resolution Trust Corporation ("RTC") because his law firm had been sued by the RTC, (2) his planned acceptance of the deanship at the School of Public Policy at Pepperdine University reflected a conflict of interest, (3) the Office had improperly leaked grand jury material about Susan McDougal and Hillary Clinton, (4) Independent Counsel Starr had solicited false testimony from Susan McDougal and Julie Hiatt Steele, (5) Independent Counsel Starr violated the independent counsel law in his testimony before the House Judiciary Committee regarding the Referral under 28 [xv]

U.S.C. 595(c), and (6) Independent Counsel Starr had a conflict of interest because of his representation of the tobacco industry.[52]

On October 2, 1997, the district court dismissed the complaints raised in Mandanici's first three letters, finding that it was "unaware that Mr. Starr has ever acted in an improper or unethical manner in the matters over which this Court has presided [and] [i]n the absence of specific evidence of misconduct..., this Court declines to provide Mr. Mandanici a forum for the pursuit of his 'vendetta.'"[53] The Eighth Circuit dismissed Mandanici's "appeal" finding that a complainant in a disciplinary matter has no standing to pursue an appeal.[54]

On September 17 and October 12, 1999, Stephen A. Smith and Julie Hiatt Steele, respectively, filed grievances expressly adopting the June 4, 1999 Mandanici grievance alleging that Independent Counsel Starr had solicited false testimony.[55] They both claimed that Independent Counsel Starr or his staff had
[xvi] solicited false testimony from them.[56] Ms. Steele also claimed that Independent Counsel Starr suffered from a conflict of interest because of his prior contact with the lawyers for Paula Jones.[57]

With respect to Mandanici's June 4, 1999 complaint, and the subsequent complaints by Steele and Smith adopting Mandanici's complaint, all of the judges of the Eastern District of Arkansas recused themselves on December 21, 1999 and asked that the Chief Judge of the Eighth Circuit appoint another judge to sit by designation to consider these claims.[58] The Chief Judge of the Eighth Circuit first appointed the Honorable Warren K. Urbom,[59] who was already sitting by designation on a petition for disclosure of grand jury material related to the Office of the Independent Counsel filed in the Western District of Arkansas by the judges (except for Judge Howard) of the Eastern District.[60]

On January 26, 2000, Judge Urbom recused himself from further consideration of the "grievances" (as well as the petition for disclosure of grand jury materials), stating in both cases: "After being apprised of the nature of the matters involved in these assignments and reflecting upon my relationships with the
[xvii] identifiable persons whose legitimate interests are at stake, I am confident that I must disqualify myself.... My impartiality might reasonably be questioned."[61]

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[52] *In re: Mandanici v. Starr*, 99 F. Supp. 2d. 1019, 1021–25 (E.D. Ark. 2000).

[53] I*n re: Starr*, 986 F. Supp. 1159, 1160 (E.D. Ark. 1997).

[54] *Starr v. Mandanici*, 152 F.3d. 741, 751 (8th Cir. 1998).

[55] I*n re: Smith v. Starr,* 99 F. Supp. 2d. 1037, 1038 (E.D. Ark. 2000); *see also In re: Steele v. Starr,* 99 F. Supp. 2d. 1042, 1046 (E.D. Ark. 2000).

[56] *Smith,* 99 F. Supp. 2d. at 1038–39; *Steele,* 99 F. Supp. 2d at 1046.

[57] *Steele*, 99 F. Supp. 2d. at 1046.

[58] *See Steele*, 99 F. Supp. 2d. at 1042; *Smith,* 99 F. Supp. 2d. at 1037.

[59] Designation of District Judge for Service in Another District within His Circuit, *In re: Mandanici v. Starr,* 4:99–MC–160 (E.D. Ark. Dec. 29, 1999) (under seal); Designation of District Judge for Service in Another District within His Circuit, *In re: Smith v. Starr,* 4:99–MC–161 (E.D. Ark. Dec. 29, 1999) (under seal); Designation of District Judge for Service in Another District within His Circuit, *In re: Steele v. Starr,* 4:99–MC–162 (E.D. Ark. Dec. 29, 1999) (under seal).

[60] Designation of Judge for Service in Another District within His Circuit, *In re: Petition for Disclosure Grand Jury Testimony,* No. GJ–99–24 (W.D. Ark. Dec. 9, 1999) (under seal).

[61] Order, *In re: Mandanici v. Starr,* 4:99–MC–160 (E.D. Ark. Jan. 26, 2000); Order, *In re: Smith v. Starr*, 4:99–MC–161 (E.D. Ark. Jan. 26, 2000); Order, *In re: Steele v. Starr,* 4:99–MC–162 (E.D. Ark. Jan. 26, 2000); *see also* Order of Disqualification, *In re: Petition for Disclosure of Grand Jury Testimony,* No. GJ–99–24 (W.D. Ark. Jan. 31, 2000) (under seal). All of the judges of the Eastern District of Arkansas, except for Judge Howard, had initiated a separate ethical inquiry and in connection with it, sought materials from a grand jury investigation related to this Office in the Western District of Arkansas

Continued—

The Chief Judge of the Eighth Circuit then appointed the Honorable John F. Nangle of the United States District Court for the Eastern District of Missouri to consider all of the matters that Judge Urbom had been considering.[62]

Judge Nangle dismissed the complaints of Mandanici, Smith, and Steele. Rejecting Mandanici's allegation that Independent Counsel Starr solicited false testimony from Susan McDougal or Julie Hiatt Steele, the court said: "[T]here is not one shred of support in the hundreds of pages of documents submitted by Mandanici to support the[ ] subjective opinions" that "McDougal and Steele thought that they could avoid further legal problems if they testified falsely."[63]

With respect to Mandanici's other substantive allegations, the district court described them variously as "ridiculous,"[64] "the stuff that dreams are made of,"[65] indicating "no suggestion of bias or conflict,"[66] and finally "nonsense."[67] In short, Mandanici's allegations, both independently and as adopted by Smith and Steele, were emphatically rejected by the court. Judge Nangle also rejected Smith's and Steele's individual claims, finding no evidence that Independent Counsel Starr or the Office of the Independent Counsel attempted to suborn perjury from Smith or Steele.[68] The court also found Steele's claim of a conflict of interest was "without merit."[69]

B. Judge Nangle Rejected the Claims of the Judges of the Eastern District of Arkansas.

Judge Nangle, sitting by designation also in the Western District of Arkansas, rejected the request of all of the judges of the Eastern District of Arkansas (except for Judge George Howard Jr. who had recused himself) to appoint counsel to investigate whether any person improperly sought to have Judge Henry Woods removed from the trial of the then sitting Governor of Arkansas Jim Guy Tucker.[70]

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conducted by Michael E. Shaheen Jr. *See* Petition, *In re: Petition for Disclosure of Grand Jury Testimony,* No. GJ–99–24 (W.D. Ark. Nov. 12, 1999) (under seal). All of the judges of the Western District of Arkansas had recused themselves from consideration of that petition, resulting in the appointment of Judge Urbom to consider that petition. Order, *In re: Petition for Disclosure of Grand Jury Testimony,* No. GJ–99–24 (W.D. Ark. Dec. 2, 1999) (recusal of all judges) (under seal); Designation of Judge for Service in Another District within His Circuit, *In re: Petition for Disclosure of Grand Jury Testimony,* No. GJ–99–24 (W.D. Ark. Dec. 9, 1999) (under seal).

[62] Designation of Judge for Service in Another District within His Circuit, *In re: Mandanici v. Starr,* 4:99–MC–160 (E.D. Ark. Feb. 3, 2000) (under seal); Designation of Judge for Service in Another District within His Circuit, *In re: Smith v. Starr,* 4:99–MC–161 (E.D. Ark. Feb. 3, 2000) (under seal); Designation of Judge for Service in Another District within His Circuit, *In re: Steele v. Starr,* 4:99–MC–162 (E.D. Ark. Feb. 3, 2000) (under seal); Designation of Judge for Service in Another District within His Circuit, *In re: Petition for Disclosure Grand Jury Testimony,* No. GJ–99–24 (W.D. Ark. Feb 3, 1999) (under seal).

[63] *Mandanici,* 99 F. Supp. 2d. at 1029.

[64] *Id.* at 1031.

[65] *Id.* at 1033.

[66] *Id.* at 1035.

[67] *Id.*

[68] *Steele,* 99 F. Supp. 2d. at 1046–47; *Smith,* 99 F. Supp. 2d. at 1041.

[69] *Steele,* 99 F. Supp. 2d. at 1047.

[70] Order, *In re: Petition for Disclosure of Grand Jury Testimony,* Civ. No. GJ–99–24 (W.D. Ark. May 22, 2000) (under seal).

The court found that "there is absolutely no basis for the motion of the Eastern District judges and accordingly said motion is denied."[71]

This ruling was the culmination of nearly a year of efforts by the judges of the Eastern District to investigate these allegations. These efforts began in June 1999, apparently after some members of the court received copies of handwritten and typewritten documents that allegedly supported these allegations.[72] To pursue these allegations, the judges (1) sought copies of the report that Michael E. Shaheen Jr. prepared in connection with unrelated allegations that witnesses in the investigation received payments or other things of value in exchange for their testimony;[73] (2) petitioned for disclosure of the grand jury transcripts and exhibits from Mr. Shaheen's investigation conducted in the Western District of Arkansas;[74] and (3) ultimately, having obtained the report (but not the grand jury materials)—over the Independent Counsel's objection—from former independent counsel and federal judge Arlin Adams,[75] withdrew the petition and asked Judge Nangle to determine whether an ethics investigation was warranted based on the available materials.[76]

Chief Judge Wright and Judge Reasoner, while concurring in the filing of a petition for grand jury materials, declined to "sign Judge Wilson's brief."[77] When the judges withdrew their petition for grand jury materials and instead moved for an ethics investigation based on already available materials, only Judges Wilson, Woods, and Moody filed the motion;[78] Judges Wright and Reasoner, while concurring in the request, filed a separate concurring petition expressing their reluctance to join in the majority's specific allegations of misconduct.[79] Judge Howard recused himself, and Judge Eisele did not participate in the motion.[80]

Judge Nangle's ruling reflected that he "read and studied and re-read and restudied" the motion of Judges Wilson, Woods, and Moody, and its exhibits; the concurring motion of Chief Judge Wright and Judge Reasoner; the Independent Counsel's response and all exhibits; Mr. Shaheen's report; the withdrawn petition for disclosure of grand jury materials; the Independent Counsel's response; and [xxi] "all Eastern District of Arkansas and Eighth Circuit Court of Appeals rulings related to this question and all applicable case law."[81] On the basis of that consideration, he denied the motion as having "no basis."[82]

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[71] *Id.* at 2.

[72] Brief in Support of Petition for Disclosure of Grand Jury Testimony at 1–2, *In re: Petition for Disclosure of Grand Jury Testimony,* Civ. No. GJ–99–24 (W.D. Ark. Nov. 12, 1999) (under seal).

[73] Petition for Disclosure of Grand Jury Testimony at 1–3, *In re: Petition for Disclosure of Grand Jury Testimony,* Civ. No. GJ–99–24 (W.D. Ark. Nov. 12, 1999) (under seal).

[74] *Id.*

[75] Judge Adams had been appointed with former federal judge Charles Renfrew to oversee Mr. Shaheen's investigation.

[76] *See* Motion at 9–10, *In re: Petition for Disclosure of Grand Jury Testimony,* Civil. No. GJ–99–24 (W.D. Ark. Feb. 4, 2000) (under seal) [hereinafter "Motion"].

[77] Mem. from Susan Webber Wright, Chief Judge of the United States District Court, to William R. Wilson Jr., United States District Judge (Nov. 8, 1999).

[78] Motion, *supra* note 76, at 10.

[79] *See* Concurring Petition, *In re: Petition for Disclosure of Grand Jury Testimony,* Civ. No. GJ–99–24 (W.D. Ark. Feb. 4, 2000) (under seal).

[80] Motion, *supra* note 76, at 10.

[81] Order at 1–2, *In re: Petition for Disclosure of Grand Jury Testimony,* Civ. No. GJ–99–24 (W.D. Ark. May 22, 2000) (under seal).

[82] *Id.* at 2.

VI. The Courts Ruled in Every Case that the Independent Counsel and the Grand Jury Were Entitled to Evidence from White House Employees.

The Independent Counsel repeatedly faced invalid assertions of legal privileges that were either well recognized but unavailable under the circumstances or previously unrecognized. In the Iran-Contra investigation, President Ronald Reagan waived all claims to executive privilege and attorney-client privilege.[83] In the investigation of President Jimmy Carter, he too waived all privileges.[84] The assertion of privileges in this investigation required substantial litigation, including appellate litigation in the Supreme Court, and caused substantial delays in obtaining the testimony of government employees, including law enforcement officers, significantly increasing the costs of the investigation. In every case, the courts found that the grand jury was entitled to the evidence claimed to be shielded by privilege.

A. Privilege Litigation.

During the initial stages of the Lewinsky investigation, Bruce Lindsey (then Assistant to the President and Deputy Counsel),[85] Sidney Blumenthal (then Assistant to the President),[86] and Nancy Hernreich (then Deputy Assistant to the

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[83] *See* Peter J. Wallison, *Clinton's Claim of Privilege Is A Crime,* Wall St. J., Oct. 19, 1998 at A26 (stating that "Presidents have routinely waived executive privilege and attorney-client privilege when they had no objection to disclosing the information involved. President Reagan waived both [executive and attorney-client privilege] in the Iran-Contra matter, without adverse effect on the privileges themselves"); *see also* Final Report of the Independent Counsel for the Iran/Contra Matter, Vol. III at 704 (comments of former President Ronald Reagan).

[84] Paul Curran, *Answer the Questions, Mr. President,* Wall St. J., June 4, 1998 at A18 (contrasting President Carter's public pledge to cooperate and his subsequent conduct, including raising no claims of privilege, with President Clinton's public pledge to cooperate and his subsequent claims of privilege).

[85] Lindsey testified before the grand jury on November 20, 1997, February 18 and 19, March 12, and August 28, 1998.

[86] Blumenthal testified before the grand jury on February 26, June 4, and June 25, 1998.

President and Director of Oval Office Operations)[87] asserted executive privilege before the grand jury.[88] The staff members asserted the privilege despite former White House Counsel Lloyd Cutler's 1994 written opinion that the Administration would not invoke executive privilege in cases involving personal wrongdoing by any government official.[89] Lindsey, Blumenthal, and Hernreich's assertion of executive privilege to avoid answering questions[90] forced the Independent Counsel to file motions to compel each respective witness's testimony before the grand jury.[91]

[xxiiii] Immediately prior to a March 20, 1998 hearing on the motion to compel, the White House—without explanation—dropped its executive privilege claim as to Hernreich.[92] On May 1, 1998, Chief Judge Johnson granted the government's motions to compel Lindsey and Blumenthal to testify before the grand jury,[93] expressly rejecting the White House's assertions of executive privilege, attorney-client privilege, and work product protection.[94]

On July 27, 1998, the D.C. Circuit affirmed Chief Judge Johnson's order with respect to denying Lindsey's claim of "government" attorney-client privilege and rejected the White House's claim of "personal" attorney-client privilege.[95] Accordingly, the court of appeals affirmed Chief Judge Johnson's order compelling Lindsey to testify before the grand jury.[96]

[xxiv] On August 4, 1998—months after President Clinton had withdrawn his prior claim of executive privilege—White House Special Counsel Lanny Breuer appeared before the grand jury and invoked executive privilege.[97] Breuer refused

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[87] Hernreich testified before the grand jury on February 25 and 26, March 26 and 31, and June 16, 1998.

[88] The President also invoked executive privilege with respect to the testimony of White House counsels Cheryl Mills and Lanny Breuer. *See, e.g.*, Mills 8/11/98 GJ at 71–73; Breuer 8/4/98 GJ at 22–23.

[89] Lloyd N. Cutler, White House Counsel, Legal Opinion (Sept. 28, 1994).

[90] *See, e.g.*, Lindsey 2/18/98 GJ at 45–48 (Lindsey also asserted attorney-client privilege and work-product protection); Blumenthal 2/26/98 GJ at 10–13; Hernreich 2/25/98 GJ at 37–38.

[91] *See* Motion to Compel Bruce R. Lindsey to Testify, *In re: Grand Jury Proceedings,* Misc. No. 98–95 (D.D.C. Mar. 6, 1998); Motion to Compel Sidney Blumenthal to Testify, *In re: Grand Jury Proceedings,* Misc. No. 98–96 (D.D.C. Mar. 6, 1998), and Motion to Compel Nancy Hernreich to Testify, *In re: Grand Jury Proceedings,* Misc. No. 98–97 (D.D.C. Mar. 6, 1998).

[92] *See* Tr. at 7–10, *In re: Grand Jury Subpoenas to Bruce Lindsey, Sidney Blumenthal, and Nancy Hernreich,* Misc. Nos. 98–095, 98–096, and 98–097 (D.D.C. Mar. 20, 1998). Hernreich later acknowledged that the executive privilege was not hers to assert, withdrew any prior attempt to assert it, and agreed to testify. *See* Hernreich 3/26/98 GJ at 3–8. Before the grand jury, Hernreich ultimately testified: "I am now free to answer questions about those conversations." *Id.* at 3–4.

The assertion of executive privilege for Hernreich, an assistant who managed the secretarial work for the Oval Office, was frivolous. *See* Hernreich 2/25/98 GJ at 5–7. At the time that President Clinton was invoking executive privilege for one assistant, another assistant (Betty Currie) had already testified extensively. *See* Currie 1/27/98 GJ at 1–88. Even though the White House withdrew this claim, such an invocation caused a needless, but substantial, expenditure of litigation resources and delay of the grand jury process.

[93] Order, *In re: Grand Jury Proceedings,* Misc. Nos. 98–095, 98–096 and 98–097 (D.D.C. May 1, 1998).

[94] *See* Mem. Opinion, *In re: Grand Jury Proceedings,* Misc. Nos. 98–095, 98–096 & 98–097 (D.D.C. May 1, 1998).

[95] *See In re: Bruce R. Lindsey (Grand Jury Testimony),* 158 F.3d 1263 (D.C. Cir. 1998). The D.C. Circuit affirmed Chief Judge Johnson's May 1, 1998 order with respect to denying Lindsey's claim of attorney-client privilege and work product protection; however, the court held that the President could use Lindsey as an intermediary between himself and his private counsel, and that when he acted merely as an intermediary, the President's attorney-client privilege in communication with private counsel would apply to Lindsey's role as mere intermediary. *Id.* at 1280–82.

[96] *In re: Lindsey,* 158 F.3d. 1263 (D.C. Cir. 1998).

[97] Breuer 8/4/98 GJ at 96–97, 108–09.

to answer questions about whether the President told him about his relationship with Lewinsky or whether they had discussed the gifts President Clinton had given to Lewinsky.[98] On August 11, 1998, Chief Judge Johnson denied the executive privilege claim and ordered Breuer to testify.[99]

That same day, Deputy White House Counsel Cheryl Mills appeared before the grand jury and also repeatedly asserted executive privilege at President Clinton's direction.[100] The privilege was asserted not only for Mills's communications with the President, senior staff, and staff members of the White House Counsel's Office, but also for Mills's communications with private lawyers for the President, private lawyers for grand jury witnesses, and Betty Currie.[101]

When President Clinton testified before the grand jury on August 17, 1998, attorneys for this Office—at the grand jury's request—asked the President about his assertions of executive privilege and why he had withdrawn the claim before the Supreme Court.[102] The President replied: [xxv]

> I didn't really want to advance an executive privilege claim in this case beyond having it litigated, so that we, we had not given up on principal [sic] this matter, without having some judge rule on it. . . . *I strongly felt we should not appeal your victory on the executive privilege issue.*[103]

Notwithstanding this testimony, four days later, on August 21, 1998, the President filed a notice of appeal with respect to the executive privilege claim for Lanny Breuer, which Chief Judge Johnson had denied ten days earlier.[104] The President also asserted executive privilege when Bruce Lindsey appeared again before the grand jury on August 28, 1998—even though the President had dropped the claim of executive privilege for Lindsey while the case was pending before the Supreme Court in June.[105]

B. Secret Service "Protective Function" Privilege.

In addition to the President's and his staff's spurious claims of executive privilege and attorney-client privilege, the Secretary of the Treasury, with the full support of the Department of Justice, including the Solicitor General of the United States, claimed that the United States Secret Service ("Secret Service")—a federal law enforcement agency obligated by statute to cooperate in federal criminal investigations[106]—could shield its agents from giving testimony to a federal grand jury under a privilege referred to as the "protective function" privilege. The Independent Counsel sought the testimony from the President's Secret Service detail in an effort to obtain evidence from individuals who were likely to have [xxvi]

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[98] *Id.* at 96–97, 108–09.

[99] Mem. Order, *In re: Grand Jury Proceedings,* Misc. No. 98–278 (D.D.C. Aug. 11, 1998).

[100] Mills 8/11/98 GJ at 53–54.

[101] *Id.* at 53–54, 64–66, 71–74, 77–78.

[102] Clinton 8/17/98 GJ at 167.

[103] *Id.* (emphasis added).

[104] Notice of Appeal, *In re: Grand Jury Proceedings,* Misc. No. 98–278 (D.D.C. Aug. 21, 1998).

[105] Lindsey 8/28/98 GJ at 4–8. The Independent Counsel did not move to compel Lindsey's testimony due to the impending September 9, 1998 referral of information to the United States House of Representatives.

[106] 28 U.S.C. § 535(b).

been in a position to observe critical events relating to the conduct under investigation.[107] The Secretary of the Treasury's assertion of the previously unknown "protective function" privilege resulted in the refusal of active Secret Service agents to answer questions before a grand jury in an ongoing criminal investigation.[108]

On April 10, 1998, the Independent Counsel moved to compel members of the Secret Service to testify before a grand jury in the District of Columbia about observations and communications involving Monica Lewinsky and the President.[109] The Department of Justice argued that the Secretary of the Treasury, as the cabinet officer who oversees the Secret Service, had asserted the "protective function" privilege.[110] They argued that this privilege shielded from disclosure any "information learned by Secret Service agents and officers while performing protective functions in physical proximity to the President where the information would tend to reveal the President's contemporaneous activities."[111]

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On May 22, 1998, Chief Judge Johnson granted the motion to compel.[112] She concluded that no such protective function privilege existed.[113] The court recognized that the protective function privilege has no history in federal law and that the Secret Service has, in fact, "testif[ied] in judicial and non-judicial proceedings with respect to President Nixon's taping system and John Hinckley's attempted assassination of President Reagan."[114] The court found "that the Secret Service's own history, the lack of any constitutional support for the claimed privilege and the federal case law regarding newly asserted privileges under [Fed. Rules Evid.] Rule 501 all weigh against recognizing the privilege."[115]

The Secretary of the Treasury immediately appealed the decision to the D.C. Circuit where the appeal was briefed and argued by the Department of Justice and filed on behalf of Attorney General Reno.[116] Amici Curiae former Attorneys General of the United States William P. Barr, Griffin B. Bell, Edwin B. Meese, and Richard L. Thornburgh opposed the Secretary of the Treasury's position.[117] Although former President George Bush supported the assertion of the privilege, former Presidents Carter and Ford did not.[118] On July 7, 1998, finding that recog-

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[107] For example, on the issue of whether Lewinsky and the President were "alone," the Secret Service officers' and agents' testimony confirming that they were in fact alone on numerous occasions was authoritative and incontrovertible. *See, e.g.*, Ferguson 7/17/98 GJ at 23–35 (alone for approximately 45 minutes); Ferguson 7/23/98 GJ at 18–24; Bordley 8/13/98 GJ at 19–30 (alone for approximately 30 to 35 minutes); Garabito 7/30/98 GJ at 25–32; Byrne 7/30/98 GJ at 7–12, 29–32 (alone for 15 to 25 minutes); Muskett 7/21/98 GJ at 9–13, 22–32 (alone on Easter Sunday 1996). *See also* Fox 2/17/98 GJ at 19–20, 31, 33–37, 42, 49–50, 60–61, 66–67; *see also* Referral to the United States House of Representatives Pursuant to 28 U.S.C. § 595(c) Submitted by the Office of the Independent Counsel at 35 (Sept. 9, 1998) (discussing corroborative aspects of Officer Fox's testimony).

[108] *See In re: Grand Jury Proceedings,* Misc. No. 98–148 (NHJ), 1998 WL 272884, at *1 (D.D.C. 1998).

[109] *See id.* at *1.

[110] *See id.* at *4.

[111] *Id.* at *1.

[112] *See id.* at *6.

[113] *See id.* at *5.

[114] *Id.* at *3.

[115] *Id.*

[116] *See In re: Sealed Case,* 148 F.3d 1073, 1074 (D.C. Cir. 1998).

[117] *Id.; see also* Brief of the Amici Curiae in Opposition to the Proposed "Protective Function" Privilege at 4–7, *In re: Sealed Case,*148 F.3d 1073 (D.C. Cir. 1998) (No. 98–148 (NHJ)) (reflecting identity and interest of Amici Curiae former Attorneys General of the United States).

[118] *Id.* at 1075–77.

nition of the privilege "depends entirely upon the Secret Service's ability to establish clearly and convincingly both the need for and the efficacy of the proposed privilege,"[119] a unanimous panel of the D.C. Circuit held: "We do not think... that the Secret Service has shown with... compelling clarity... that failure to recognize the proposed privilege will jeopardize the ability of the Secret Service effectively to protect the President."[120] Accordingly, the D.C. Circuit affirmed the district court's decision denying recognition of the privilege.[121]

The Secretary of the Treasury, again through the offices of the Department of Justice, sought a stay of the district court's order pending the filing and disposition of a petition for a writ of certiorari in the Supreme Court.[122] The district court and court of appeals denied the stay.[123] The Secretary of the Treasury, represented by the Solicitor General, then filed a petition for certiorari.[124] Chief Justice [xxix]
William H. Rehnquist, acting as the Circuit Justice for the D. C. Circuit, denied an application for a stay pending disposition of the petition.[125] On November 9, 1998, the Supreme Court denied certiorari.[126]

The rejection of the protective function privilege by the D.C. Circuit delayed by more than three months the receipt of testimony from Secret Service agents and officers and resulted in even further litigation ending in the Supreme Court nearly six months after the original assertion of the privilege.

C. Attorney-Client Privilege (Crime-Fraud).

On February 2 and 9, 1998, a grand jury in the District of Columbia issued two subpoenas to attorney Francis D. Carter.[127] The grand jury sought to obtain evidence from Lewinsky's lawyer during the time she prepared and filed a false affidavit in the *Jones v. Clinton* lawsuit.[128] The subpoenas requested that Carter testify and turn over certain documents related to his representation.[129] Carter moved to quash the subpoenas under a number of privileges.[130]

In an unpublished order, Chief Judge Johnson rejected Carter's arguments [xxx]
that attorney-client privilege and work product immunity would justify his refusal to comply with the subpoena.[131] The court held that the crime-fraud exception to these doctrines applied because "Ms. Lewinsky consulted Mr. Carter for the

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[119] *Id.* at 1076.

[120] *Id.*

[121] *See id.*

[122] Emergency Motion for a Stay and an Order Under the All Writs Act Pending Disposition of Petition for Rehearing In Banc, *In re: Sealed Case,* No. 98–3069 (D.C. Cir. July 15, 1998).

[123] Mem. Order, *In re: Grand Jury Proceedings,* Misc. No. 98–148 (D.D.C. July 16, 1998); Order, *In re: Sealed Case,* No. 98–3069 (D.C. Cir. July 16, 1998).

[124] Petition for a Writ of Certiorari, *Rubin v. United States,* No. 98–93 (July 1998).

[125] Opinion, *Rubin v. United States,* No. 98–93 (July 17, 1998).

[126] *See Rubin v. United States,* 525 U.S. 990, 119 S.Ct. 461 (1998). Justice Ginsburg dissented from the denial of certiorari, asserting the Supreme Court should act as the "definitive judicial arbiter in this case." *Id.* Justice Breyer also dissented from the denial of certiorari, stating the Supreme Court should hear the case because of the importance of the President's physical security in our system of government. *See id.* at 990, 119 S.Ct. at 462. The D.C. Circuit later denied the suggestion for rehearing *en banc. In re: Sealed Case,* 129 F.3d 637 (D.C. Cir. 1997).

[127] *See In re: Sealed Case,* 162 F.3d 670, 672 (D.C. Cir. 1998) (per curiam).

[128] *See id.*

[129] *See id.*

[130] *See id.*

[131] *See id.* at 673 (describing the district court's decision).

purpose of committing perjury and obstructing justice and used the material he prepared for her for the purpose of committing perjury and obstructing justice."[132] The court directed Carter to comply with the subpoenas except to the extent that his compliance would "disclose materials in his possession that may not be revealed without violating Monica S. Lewinsky's Fifth Amendment rights."[133]

Lewinsky, Carter, and the Independent Counsel all appealed the district court's order.[134] The D.C. Circuit agreed with the Independent Counsel's position that full compliance with the grand jury's subpoenas did not implicate Lewinsky's Fifth Amendment rights.[135] The D.C. Circuit remanded the case to the district court,[136] and Carter subsequently testified and turned over the requested materials.[137]

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[132] *Id.* (internal quotation marks omitted).
[133] *Id.* (internal quotation marks omitted).
[134] *See id.*
[135] *See id.* at 675.
[136] *See id.*
[137] *See, e.g.,* Carter 6/18/98 GJ at 6.

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VII. The Independent Counsel's Announcement of His Findings and Conclusions in the Madison Guaranty/Whitewater Investigation Was Entirely Lawful and Appropriate.

On August 31, 2000, United States Senator Carl Levin charged that the Independent Counsel would be "defying the law" by announcing his findings and conclusions in the Whitewater/Madison Guaranty investigation.[138] On September 7, 2000, Senator Levin addressed the charge that such an announcement would violate the independent counsel statute in letters to the Special Division and to the Attorney General.[139] He also made a statement on the floor of the United States Senate charging that the disclosures, which he claimed to consist of material in the final report, were subject to lawful disclosure only by order of the Special Division.[140]

In a September 8, 2000 letter, the Independent Counsel responded that Senator Levin's charge was unjustified because the Independent Counsel's public statement was not a portion of a final report and because the U.S. Attorneys' Manual expressly authorizes public statements about matters that "'have already received substantial publicity.'"[141] The Special Division and the Attorney General, charged with oversight of the Independent Counsel, expressly declined to take any action despite Senator Levin's request that they do so.[142]

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[138] Press Release, Statement of Senator Carl Levin, (D–MI) on Independent Counsel Robert Ray's Intention to Release His Conclusions in the Whitewater Matter (Aug. 31, 2000).

[139] Letter from Carl Levin, United States Senate Committee on Governmental Affairs, to Robert W. Ray, Office of the Independent Counsel (Sept. 7, 2000).

[140] 146 Cong. Record S8274 (daily ed. Sept. 8, 2000) (statement of Senator Levin).

[141] Letter from Robert W. Ray, Independent Counsel, to the Honorable Carl Levin, United States Senator 3 (Sept. 8, 2000).

[142] Letter from Judge David B. Sentelle to Senator Carl Levin (Sept. 7, 2000); Letter from Robert Raben, Assistant Attorney General, Office of Legislative Affairs, to Senator Carl Levin (Jan. 9, 2001) (declining to take any further action and acknowledging that (1) no report had been filed, (2) the announcement was generally limited to publicly disclosed matters, (3) the subjects were exonerated in the announcement, and (4) "the Department necessarily should accord Mr. Ray a significant degree of independence and deference on matters within his jurisdiction").

VIII. Conclusion

[xxxii]

The allegations of professional and other misconduct and the claims of a right to withhold evidence ultimately were rejected. Nevertheless, the many attacks that accumulated during the course of the investigation had a substantial impact on the prompt completion of this Office's work, delaying in some cases for months access to available evidence. Responding to these allegations and claims also increased substantially the expense of this investigation, but it was essential to do so in order for the Independent Counsel to fulfill the mandates sought by the Attorney General and conferred by the Special Division. The Independent Counsel's prosecutorial decisions could not have been appropriately made unless the investigation and the grand jury had access to all relevant evidence. Moreover, it was imperative that this Office defend itself against unfounded allegations of misconduct. Public confidence in the integrity of the prosecutorial decisions of the Independent Counsel demanded nothing less.

Appendix D

The White House's Non-Compliance With Subpoena Requests for Electronically Maintained Documents

As of the date of the filing of the Final Report of the Independent Counsel *In re: Madison Guaranty Savings & Loan* regarding matters commonly referred to as Madison Guaranty/Whitewater,[1] the White House had failed to produce all documents called for by the Office of the Independent Counsel ("OIC") pursuant to grand jury subpoenas. Since then, additional documents have been produced. Following the decision not to prosecute President Clinton described in the body of this Final Report, this Office informed the White House and others that document production could cease and that the OIC's e-mail investigation was concluded. This Appendix describes the final status of the White House's production of electronically maintained documents. [i]

A. The Office of the Independent Counsel Concluded Its Investigation Regarding the White House's Failure to Properly Search Electronic Records in Compliance with Lawfully Issued Subpoenas.

As noted in the Madison Guaranty/Whitewater Final Report, this Office initiated an investigation as a result of the White House's failure to notify this Office of the problems experienced with its computer system and its inability to certify that all responsive documents to lawfully issued subpoenas had been produced.[2] This Office concluded that the White House's failure to search all records within its care, custody, and control, in response to lawfully issued subpoenas, could be divided into seven categories:

1. Failure to search reconstructed e-mail for the time period of January 1993 through June 1994;
2. Failure to search incoming e-mails to 526 users for the time period of August 1996 through November 1998; [ii]
3. Failure to search incoming e-mails of approximately 200 users for the time period of November 1998 through May 1999;
4. Failure to search over 600 backup tapes of former employees' hard drives;
5. Failure to search incoming e-mail from the Office of the U.S. Trade Representative, White House Military Office, White House Access and Visitor Entry System ("WAVES"), and any user of the All-in-One system;
6. Failure to search a correspondence database system known as Quorum; and

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[1] Final Report of the Independent Counsel *In re: Madison Guaranty Sav. & Loan Ass'n* (filed Mar. 2, 2001) (reporting on James B. McDougal's, President William J. Clinton's, and Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., and Whitewater Development Corporation) [hereinafter "Madison Guaranty/Whitewater Final Report"].

[2] Madison Guaranty/Whitewater Final Report, *supra* note 1, Vol. III, app. 3 at iii.

7. Failure to search the internal e-mail system in the Executive residence.

As of the time of the filing of the Madison Guaranty/Whitewater Final Report, all responsive documents had not been received from the White House. By agreement with the President, this Office, on January 19, 2001, declined prosecution, with prejudice, "of all matters within the January 16, 1998 jurisdictional mandate," which remained open at that time.[3]

1. Reconstructed E-mails for January 1993 through July 1994.

As noted in the Madison Guaranty/Whitewater Final Report, the White House developed the Automated Records Management System ("ARMS") in July 1994.[4] Upon learning that reconstructed e-mails from the time period January 1993 through July 1994 had not been searched in compliance with its outstanding subpoenas, this Office insisted upon an immediate search of all e-mails prior to July 1994 and the production of records responsive to subpoenas issued in connection with the Travel Office investigation, the investigation into the removal of
[iii] documents from Deputy White House Counsel Vincent W. Foster Jr.'s ("Foster") office following his suicide; and the Madison Guaranty/Whitewater investigation.[5] Since the filing of the Madison Guaranty/Whitewater Final Report, no additional documents have been received in connection with the Travel Office investigation, 29 additional documents have been received in connection with the Foster investigation, and 80 additional documents have been received in connection with the Madison Guaranty/Whitewater investigation.[6] After conducting a review of these responsive documents, the Independent Counsel concluded there was no need to alter any previous findings or conclusions.

2. The Mail2 and User-D Problems that Prevented E-mails from Being Records Managed.

As noted in the Madison Guaranty/Whitewater Final Report, two configuration errors prevented two categories of incoming e-mails from being recorded in ARMS for a period of time.[7] The Office of the Independent Counsel and the Department of Justice Campaign Finance Task Force entered into an agreement with the Executive Office of the President that allowed investigators access to, among other things, a limited number of Executive Office of the President backup tapes containing e-mail.[8] By January 19, 2001, the joint review by the
[iv] Campaign Finance Task Force and this Office had resulted in the production of

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[3] Letter from Robert W. Ray, Independent Counsel, to David E. Kendall, Attorney for William Jefferson Clinton (Jan. 19, 2001). *See* Order, *In re: Madison Guaranty Sav. & Loan Ass'n,* No. 94–1 (D.C. Cir. [Spec. Div.], Jan. 16, 1998).

[4] Madison Guaranty/Whitewater Final Report, *supra* note 1, Vol. III, app. 3 at iii–iv.

[5] *Id.* at iv–vi.

[6] *See id.*

[7] *Id.* at vi.

[8] *Id.* at xiv. Upon application of the Executive Office of the President on January 19, 2001, the Honorable Royce C. Lamberth, United States District Judge for the District of Columbia, authorized the

Continued—

956 responsive documents. The White House also began a search of the remaining restored backup tapes using limited search terms provided on December 14, 2000.[9] At the conclusion of the investigation, the Executive Office of the President had provided 6,971 documents responsive to these search terms.

3. The Searches of Hard Drives of Former Employees.

The Madison Guaranty/Whitewater Final Report detailed that hard drives of former employees were not routinely searched in response to subpoenas. The Independent Counsel requested, and ultimately received on November 15, 2000, all databases showing when the hard drives of former employees were backed up and then reallocated to other employees.[10] The Office of the Independent Counsel requested and received reallocation tapes of Monica Lewinsky on December 27, 2000.[11] The Independent Counsel declined prosecution of President Clinton prior to review of the Lewinsky reallocation tapes.

4. E-mail from the Quorum System and the Executive Residence.

The Office of the Independent Counsel provided limited search terms to the Executive Office of the President to be used in searching the restored backup tapes of the Quorum System and the Executive residence.[12] These terms were limited to those relevant to the Lewinsky investigation.[13] A search of these databases revealed 248 responsive documents; none of these documents had significant probative value. [v]

EOP to release custody of certain backup tapes to the National Archives. These tapes included all backup tapes of e-mails, departed employee hard drives, and Quorum tapes of interest to the OIC. Order, *Cara Leslie Alexander v. Federal Bureau of Investigation*, Nos. 96–2123, 97–1288 (D.D.C. Jan. 19, 2001).

[9] Letter from Julie F. Thomas, Chief Associate Independent Counsel, to Gregory S. Smith, Associate Counsel to the President (Dec. 14, 2000).

[10] Letter from Michael K. Bartosz, General Counsel Office of Administration, Executive Office of the President, to Julie F. Thomas, Chief Associate Independent Counsel (Nov. 15, 2000).

[11] Letter from Gregory S. Smith, Associate Counsel to the President, to Julie F. Thomas, Chief Associate Independent Counsel (Dec. 27, 2000).

[12] Letter from Julie F. Thomas, Chief Associate Independent Counsel, to Gregory S. Smith, Associate White House Counsel (Dec. 14, 2000); Letter from Gregory S. Smith, Associate White House Counsel, to Julie F. Thomas, Chief Associate Independent Counsel (Dec. 27, 2000).

[13] Letter from Julie F. Thomas, Chief Associate Independent Counsel, to Gregory S. Smith, Associate White House Counsel (Dec. 14, 2000); Letter from Gregory S. Smith, Associate White House Counsel, to Julie F. Thomas, Chief Associate Independent Counsel (Dec. 27, 2000).

B. The Independent Counsel Declined to Prosecute Allegations of Threats Made to Northrop Grumman Employees to Conceal the E-mail Problem.

This Office considered allegations that threats were made to Northrop Grumman Corporation employees to prevent public disclosure of the failure to search thousands of e-mails. The Independent Counsel found insufficient evidence upon which to support any charge within its jurisdiction.

1. Witnesses Differed on the Nature of the Alleged Threats.

As detailed in the Madison Guaranty/Whitewater Final Report, the witnesses disagreed as to the nature and tone of the conversations they had with Laura L. Crabtree (later married and referred to as Laura Callahan), Branch Chief for Desktop Systems, and Mark Lindsay, General Counsel for the White House Office of Administration, General Counsel.[14] No witness reported that they were told to lie to investigators or felt they were prevented from reporting matters to the appropriate law enforcement officials.[15]

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2. There Was No Substantial Evidence that Senior White House Officials Unlawfully Prevented Northrop Grumman Employees from Providing Information to Investigators.

The Independent Counsel found no substantial evidence that senior White House officials unlawfully prevented Northrop Grumman employees from providing information in any criminal investigation. Stephen O. Hawkins, formerly a supervisor with LOGICON, a division of Northrop Grumman, was supervising the Northrop Grumman contract at the White House in June 1998.[16] He stated he first became aware of the Mail2 problem and the requests for confidentiality being made of his employees when he received a complaint from James Wright, the Contracting Officer's Technical Representative, that Northrop Grumman employees might have been working outside the scope of their contract.[17] Hawkins quickly determined that his employees were indeed working on a project about which he had no knowledge and within a day met with Mark Lindsay.[18] Hawkins described his meeting with Lindsay as intimidating but not threatening.[19] Hawkins explained to Lindsay that Northrop Grumman employees, as subcontractors, could only perform work that had been approved by the Contracting Officer's Technical Representative or the Contracting Officer.[20] While

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[14] Madison Guaranty/Whitewater Final Report, *supra* note 1, Vol. III, app. 3 at xx–xxv.
[15] *Id.*
[16] Hawkins 4/19/00 Int. at 1–2.
[17] *Id.*
[18] *Id.* at 2–3.
[19] *Id.* at 3.
[20] *Id.*

Lindsay was angered by these restrictions, Hawkins said Lindsay never threatened him.[21] Shortly after this confrontation, Hawkins told his employees to stop their efforts on work outside the scope of the contract.[22] There was no substantial evidence that any employee was prevented from speaking with criminal investigators. There also was no substantial evidence that any employee was asked to tamper with or destroy e-mails in the course of the restoration project or otherwise to obstruct justice. [vii]

C. The White House's Failure to Produce All Relevant Documents Concerning Foster.

As noted in the Madison Guaranty/Whitewater Final Report, this Office delivered reallocation tape #554, listed as a backup tape of Foster's hard drive, to the FBI's Computer Analysis Recovery Team ("FBI CART") on November 16, 2000.[23] Forensic analysis of the tape by the FBI CART team revealed no evidence of tampering with the tape and that the tape contained 80 separate backup volumes of computer media.[24] The review of the contents of both this backup tape and the Pinnacle Optical Disk[25] resulted in the production of responsive documents. None of the documents caused the Independent Counsel to alter any previous findings regarding Foster's death or the handling of documents from Foster's office after his death.

The White House explained the reappearance of the tape as follows:

> On the morning of November 15, Sharon Whitt, the Contracting Officer's Technical Representative for the EOP's Tape Restoration Project ("TRP"), notified [Michael Bartosz] that she might have located Tape 554. Ms. Whitt had recently undertaken a search for Tape 554 following a conversation with Greg Smith regarding the EOP's previous unsuccessful efforts to locate the tape. In conducting her search, Ms. Whitt identified an entry in the Tape Restoration project Media Inventory which appeared to describe Tape 554.[26] [viii]

Specifically, Whitt located an entry and ultimately the tape which had been mislabeled as Item 6276 "bearing the front label 'WHO 9/3/97 554.'"[27] The Executive Office of the President was unable to track the chain of custody of the tape between August 7, 1995 and its discovery on July 17, 2000.[28] The Independent Counsel was unable to develop any additional information about the handling of the tape.

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[21] *Id.*

[22] *Id.* at 4.

[23] Madison Guaranty/Whitewater Final Report, *supra* note 1, Vol. III, app. 3 at xxxvii.

[24] Federal Bureau of Investigation Laboratory Report at 1–2, CART attachment at 1 (Jan. 23, 2001).

[25] *See* Madison Guaranty/Whitewater Final Report, *supra* note 1, Vol. III, app. 3 at xvii–xviii, xxxvi–xxxvii.

[26] Letter from Michael K. Bartosz, General Counsel Office of Administration, Executive Office of the President, to Julie F. Thomas, Chief Associate Independent Counsel (Jan. 19, 2001).

[27] *Id.*

[28] *See id.* at 2; *see also* Madison Guaranty/Whitewater Final Report, *supra* note 1, Vol. III, app. 3 at xxxiii.

Conclusion

The Independent Counsel concluded that there was no substantial evidentiary basis to support criminal charges against any persons involved in the White House's failure to produce electronically maintained documents in response to grand jury subpoenas issued during the course of this Office's various investigations. The allegations that witnesses were threatened to prevent disclosure to this or other investigations were unsubstantiated. Furthermore, given that there was no substantial evidence that electronic records had been intentionally withheld and that this Office's review to date of electronic records that had previously not been produced had provided no evidence that would alter any previous conclusion in any other matters, the Independent Counsel concluded that the discovery of further probative evidence was unlikely and that further investigation was, therefore, unwarranted. The matter is now closed. [ix]

Appendix E

Financial Information Regarding the Office of the Independent Counsel for the Period August 5, 1994 to March 31, 2001

This Appendix reflects the Office of the Independent Counsel's ("OIC") total expenses estimated by major areas of investigation. It also presents a Statement of Expenses, describing the total expenses and categories of each expense. The costs for each investigation were arrived at by estimating the percentage of each employee's work performed over the years on various investigations, and then allocating salary, overhead, and other expenses proportionately based on that percentage estimate. Although an estimate only, this information is still useful for assessing generally how resources were allocated among the many investigations assigned to this Office. [i]

From August 5, 1994 through March 31, 2001, this Office incurred expenses of approximately $65 million.[1] This figure includes approximately $17 million (26%) in costs incurred by federal agencies, but not reimbursed by this Office, whose personnel were detailed to this Office. These agencies, and the costs they incurred in support of this Office, are shown in the accompanying Statement of Expenses. The remaining $48 million represents direct expenses this Office incurred. Additionally, the Office projects an amount of $3.6 million will be spent during the six month period from April 1 through September 30, 2001.[2]

The $65 million in expenses is allocated into eight categories. Seven of the categories are major jurisdictional mandates or related matters assigned to this Office by the United States Court of Appeals for the District of Columbia Circuit, Division for the Purpose of Appointing Independent Counsels ("Special Division"). The eighth category, protective services, represented such a substantial expense of the Office that it is separately itemized. [3] [ii]

Cost accounting by investigation or other functional category was neither required by statute or regulation, nor performed by this Office. The approximate allocations, by major category, are as follows:

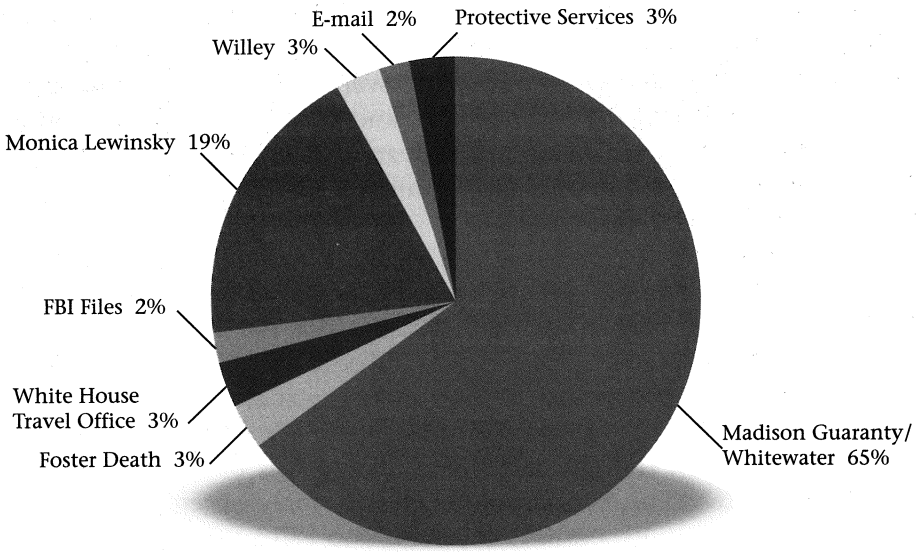
1.	*In re: Madison Guaranty Sav. & Loan Ass'n* (regarding Whitewater and other matters)[4]	$42,002,890
2.	*In re: Madison Guaranty Sav. & Loan Ass'n* (regarding the death of Vincent W. Foster Jr.)	$ 1,801,724
3.	*In re: William David Watkins* and *In re: Hillary Rodham Clinton* (a matter relating to the firing of the White House Travel Office employees)	$ 2,067,170
4.	*In re: Anthony Marceca* and *In re: Bernard Nussbaum* (relating to the FBI Files matter)	$ 1,834,436
5.	*In re: Madison Guaranty Sav. & Loan Ass'n* (regarding Monica Lewinsky and others)	$ 12,454,680
6.	*In re: Madison Guaranty Sav. & Loan Ass'n* (regarding Kathleen Willey, Julie Hiatt Steele, and related matters)	$ 1,975,440 [iii]
7.	*In re: Madison Guaranty Sav. & Loan Ass'n* (regarding failure to produce electronic records (e-mail))	$ 1,127,140
8.	Protective services	$ 2,252,104

[1] Offsetting a significant portion of these expenses were fines and restitution imposed by sentencing judges as a result of OIC investigations, prosecutions, and litigation. A total of $9,119,113 was imposed in criminal fines, civil penalties, assessments and restitution through March 2001. This figure represents 14% of the total costs of the investigation through March 2001.

[2] The Office's primary tasks from April through September 2001 will be to complete and submit its required reports, transfer documents and files to the National Archives and Records Administration,

Continued—

Estimated Costs per Major Category



The Special Division could have appointed separate independent counsels in each of these matters (excluding the protective services category). In assigning these matters to Independent Counsel Starr, an undetermined but clear economic advantage accrued: overhead or administrative expenses were less than if several independent counsels had been appointed. The administrative structure established for the initial (*In re: Madison Guaranty Savings & Loan Association*) investigation supported the requirements of the other investigations. Separate independent

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and review attorneys' fee petitions. Completing these statutorily mandated requirements may well continue past September 2001. As of the date of filing this Report, the date of final closing of the Office cannot be determined. A final accounting of the Office's expenditures will be provided by the GAO after the Office is closed.

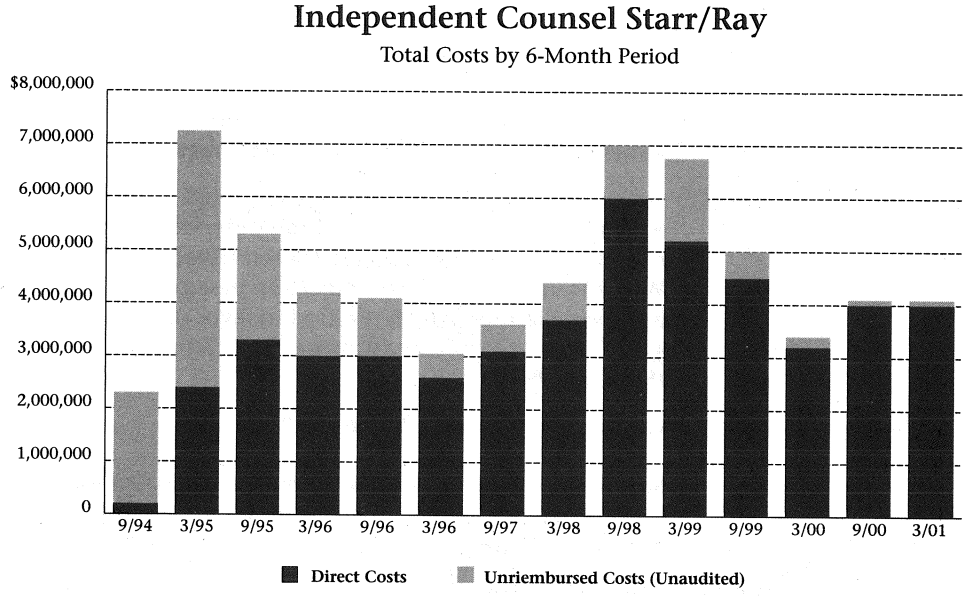
[3] Expenditures for protective services became significant as the Office received many serious threats regarding the safety and security of Independent Counsel Kenneth Starr during the Lewinsky investigation.

[4] This investigation included not only Madison Guaranty Savings & Loan, Whitewater Development Corporation, and Capital Management Services, and how James B. McDougal, William J. Clinton, or Hillary Rodham Clinton related to those institutions, but also (i) conflicts of interest issues relating to Rose Law Firm's and Webster Hubbell's representation of the Resolution Trust Corporation and later the Federal Deposit Insurance Corporation; (ii) Webster Hubbell's false statements to federal authorities; (iii) Webster Hubbell's billing practices while a partner at the Rose Law Firm; (iv) the Department of Justice's handling of the RTC's criminal referrals regarding Madison Guaranty; (v) contacts between the White House and the Department of Treasury regarding the RTC referrals; (vi) consulting contract payments made to Webster Hubbell while he and President Clinton were under investigation by this Office; (vii) circumstances relating to the disappearance and reappearance of the Rose Law Firm billing records detailing certain of Mrs. Clinton's legal activities while a partner at the Rose Law Firm; (viii) federal tax law violations by Jim Guy Tucker, John Haley and William Marks; (ix) federal currency transaction reporting violations involving the Perry County Bank; and (x) the removal of documents from the White House office of former White House Deputy Counsel Vincent Foster Jr. following his death. It was not possible to allocate expenditures among these unrelated, though often overlapping matters.

counsels would have required separate support structures such as office space, support personnel, facilities, office equipment, and other overhead functions.

Much of the Office's support structure and organization was inherited from regulatory Independent Counsel Robert B. Fiske Jr. The Attorney General in January 1994 appointed Mr. Fiske, and the Department of Justice (DOJ) established an administrative structure for his office as part of the DOJ. Upon Independent Counsel Starr's appointment, the DOJ transferred that structure to the OIC: office equipment, computer and telecommunications equipment, and supplies were assigned to Independent Counsel Starr's office. Additionally, many of the telecommunications services and other administrative services used by regulatory Independent Counsel Fiske continued to be used by Independent Counsels Starr and Ray. This avoided repeating startup expenditures and provided this Office with DOJ's telecommunications rates, which were significantly lower than commercial phone rates.

Costs of the Office were reported and audited by the GAO in six month periods. The following bar chart depicts these costs for each period. The notes following the chart list principal OIC activities associated with each period: [v]



Audit Period	Principal OIC Activities (Events as recorded in OIC Final Reports: Madison Guaranty Savings & Loan Association, Vincent W. Foster Jr., Travel Office, FBI Files, and Monica Lewinsky)
Prior to First Audit	Indictments: David Hale, Charles Matthews, and Eugene Fitzhugh, 9/23/93. Guilty pleas: David Hale, 3/22/94; Charles Matthews and Eugene Fitzhugh, 6/23/94.
1. 8/5/94 – 9/30/94	Appointment of Kenneth W. Starr and transfer of Madison Guaranty investigation from the Department of Justice to OIC, 8/5/94.

2.	10/1/94 – 3/31/95	Indictment: Neal T. Ainley, 2/28/95. Guilty pleas: Robert W. Palmer, 12/5/94; Webster L. Hubbell, 12/6/94.
3.	4/1/95 – 9/30/95	Indictments: Jim Guy Tucker, William J. Marks, Sr., and John Haley, 6/7/95; Jim Guy Tucker, James B. McDougal, and Susan H. McDougal; 8/17/95. Guilty pleas: Christopher V. Wade, 3/21/95; Neal T. Ainley, 5/2/95; Stephen A. Smith, 6/8/95; Larry Kuca, 7/13/95.
4.	10/1/95 – 3/31/96	Indictments: Herby Branscum Jr. and Robert M. Hill, 2/20/96. Trial commenced: Jim Guy Tucker, James B. McDougal, and Susan H. McDougal, 3/4/96. Substantial litigation: Appeal to the United States Court of Appeals for the Eighth Circuit from dismissal of Tucker tax case; reversed in favor of OIC position 3/15/96 (*United States v. Tucker*, 78 F.3d 1313 (8th Cir. 1996)).
5.	4/1/96 – 9/30/96	Trial commenced: Herby Branscum Jr. and Robert M. Hill, 6/17/96. Trial completed and convictions obtained: Jim Guy Tucker, James B. McDougal, and Susan H. McDougal, 5/28/96.
6.	10/1/96 – 3/31/97	Substantial litigation: Appeal to the United States Court of Appeals for the Eighth Circuit from order denying motion to compel notes from meetings between Hillary Clinton and White House Counsel over objection based on government attorney-client privilege; reversed in favor of OIC position 4/9/97 (*In re: Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir. 1997)).
7.	4/1/97 – 9/30/97	Guilty plea: William J. Marks, Sr., 8/28/97. Substantial litigation: Appeal from quashed subpoena for attorney notes re Vincent W. Foster Jr.; reversed in favor of OIC position, 8/29/97 (*In re: Sealed Case*, 124 F.3d 230 (D.C. Cir. 1997)).
8.	10/1/97 – 3/31/98	Guilty pleas: Jim Guy Tucker and John Haley, 2/20/98. Report: Court issued interim final report: *In re: Death Investigation of Vincent W. Foster Jr.*, 10/10/97.
9.	4/1/98 – 9/30/98	Indictments: Webster L. Hubbell, Suzanna W. Hubbell, Michael C. Schaufele, and Charles C. Owens, 4/30/98; Susan H. McDougal, 5/4/98. Report: Impeachment Referral forwarded to House of Representatives pursuant to 28 U.S.C. § 595(c), 9/9/98. Substantial litigation: Appeal to the United States Supreme Court regarding Foster's attorney's notes; United States Court of Appeals for the District of Columbia Circuit's decision upholding subpoena reversed contrary to OIC position, 6/25/98 (*Swidler & Berlin v. United States*, 524 U.S. 399 (1998)).

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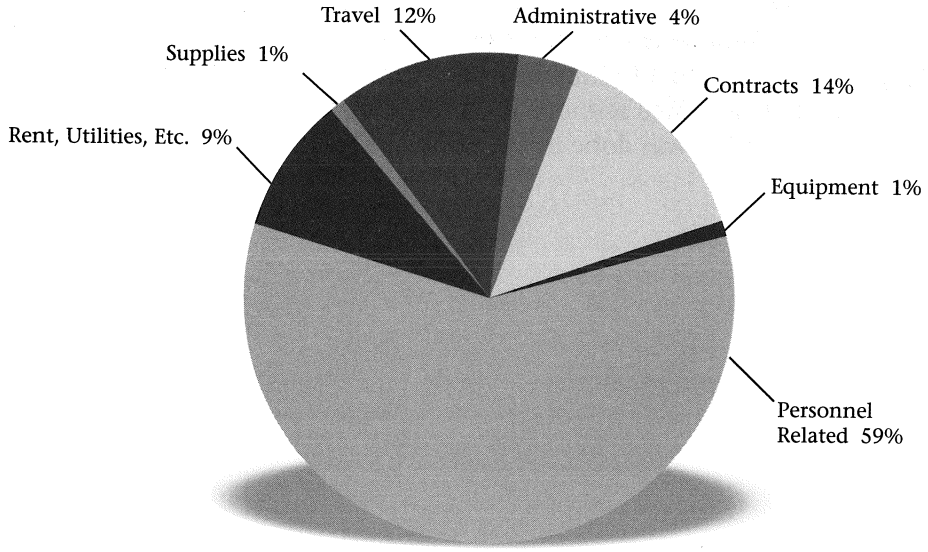
		Opposition to defendants' motion to dismiss indictment in Hubbell tax case; on 7/1/98 district court dismissed indictment as beyond jurisdiction of OIC and also dismissed as to Hubbell based on Fifth Amendment claim (*United States v. Hubbell,* 11 F. Supp.2d 25 (D.D.C. 1998)). Secret Service's appeal to the United States Court of Appeals for the District of Columbia Circuit from order compelling compliance with subpoena for testimony; affirmed in favor of OIC position, 7/7/98 (*In re: Sealed Case,* 148 F.3d 1073 (D.C. Cir. 1998)). Bruce Lindsey's appeal to the United States Court of Appeals for the District of Columbia Circuit from order compelling testimony over objection based on government attorney-client privilege; affirmed in favor of OIC position, 7/27/98 (*In re: Bruce R. Lindsey (Grand Jury Testimony),* 148 F.3d 1100 (D.C. Cir. 1998)). [vii] Mandamus action in United States Court of Appeals for the District of Columbia Circuit to overturn district court's decision to permit President's counsel from taking discovery of OIC regarding alleged 6(e) violations; reversed in favor of OIC position, 8/3/98 (*In re: Sealed Case,* 151 F.3d 1059 (D.C. Cir. 1998)). Briefing on OIC's appeal to the United States Court of Appeals for the District of Columbia Circuit from dismissal of Hubbell tax case.
10.	10/1/98 – 3/31/99	Indictments: Webster L. Hubbell, 11/13/98; Julie Hiatt Steele, 1/7/99. Trial commenced: Susan H. McDougal, 3/8/99. Substantial litigation: Argument before United States Court of Appeals for the District of Columbia Circuit on OIC's appeal from dismissal of Hubbell tax case; reversed in favor of OIC position on jurisdictional issue, affirmed contrary to OIC position on act of production immunity issue, 1/26/99 (*United States v. Hubbell,* 167 F.3d 552 (D.C. Cir. 1999)). Congressional Testimony: Independent Counsel Kenneth W. Starr testifies before the House Judiciary Committee regarding the Impeachment Referral, 11/19/98.
11.	4/1/99 – 9/30/99	Conditional guilty plea: Webster L. Hubbell, 6/30/99. Trial completed: Susan H. McDougal, 4/12/99. Trial: Julie Hiatt Steele, 5/3/99-5/7/99. Substantial litigation: Appeal to United States Court of Appeals for the District of Columbia Circuit from district court's dismissal of false statements charge against Webster Hubbell; reversed in favor of OIC position, 6/1/99 (*United States v. Hubbell,* 177 F.3d 11 (D.C. Cir. 1999)). Appeal to United States Court of Appeals for the District of Columbia Circuit on motion for summary reversal of district court's order requiring OIC to show cause why it should not be held in contempt for violating Rule 6(e); reversed in favor of OIC position, 9/7/99 (*In re: Sealed Case,* 192 F.3d 995 (D.C. Cir. 1999)).

		Congressional Testimony: Independent Counsel Kenneth W. Starr testifies before the Senate Governmental Affairs Committee, 4/14/99.
12.	10/1/99 – 3/31/00	Resignation of Kenneth W. Starr and appointment of Robert W. Ray, 10/18/99. Reports: Final Reports filed *In re: Bernard Nussbaum* and *Anthony Marceca* (matters related to the FBI files matter), 3/16/00. Substantial Litigation: United States District Court for the Eastern District of Arkansas ethics complaints filed by Francis Mandanici, Stephen Smith, and Julie Hiatt Steele; on May 18, 2000, each complaint was dismissed as without merit (*In re: Mandanici v. Starr,* 99 F. Supp.2d 1019 (E.D. Ark. 2000); *In re: Smith v. Starr,* 99 F. Supp.2d 1037 (E.D. Ark. 2000); *In re: Steele v. Starr,* 99 F. Supp.2d 1042 (E.D. Ark. 2000)).
[viii]		United States District Court for the Western District of Arkansas petition filed against OIC for access to grand jury materials and the subsequently filed ethics complaint against the OIC by judges from the United States District Court for the Eastern District of Arkansas; the petition for access to grand jury materials was eventually withdrawn and the ethics complaint was found to be without any basis.
13.	4/1/00 – 9/30/00	Appeal to the United States Supreme Court from the decision of the United States Court of Appeals for the District of Columbia Circuit on act of production immunity issue in the Hubbell tax case; affirmed contrary to OIC position, 6/5/00 (*United States v. Hubbell,* 530 U.S. 27 (2000)). Report: Final Report *In re: William David Watkins and In re: Hillary Rodham Clinton* (a matter relating to the firings of the White House Travel Office employees) filed, 6/22/00. Report: Final Report *In re: Anthony Marceca and In re: Bernard Nussbaum* publicly released, 7/28/00. Facilities: Little Rock office closed, 8/31/00. Investigation completed: Independent Counsel announced conclusion in the investigation *In re: Madison Guaranty Sav. & Loan Ass'n* (commonly referred to as "Whitewater"), 9/20/00.
14.	10/1/00 – 3/31/01	Related litigation: Chief Judge, U.S. District Court for the District of Columbia found former OIC spokesman Charles G. Bakaly, III not guilty of criminal contempt, 10/6/00. Report: Final Report publicly released *In re: William David Watkins* and *In re: Hillary Rodham Clinton,* 10/18/00. Agreement: OIC and William Jefferson Clinton, completing all remaining investigative and prosecutive matters, 1/19/01. Full and Unconditional Presidential Pardons Issued: Susan H. McDougal, Robert W. Palmer, Stephen A. Smith, Christopher V. Wade, 1/20/01.

		Report: Final Report filed with the Court: *In re: Madison Guaranty Sav. & Loan Ass'n*, 3/2/01.
15.	4/1/01 – 9/30/01	Report: Final Report submitted to the Court: *In re: Madison Guaranty Sav. & Loan Ass'n* (regarding Monica Lewinsky and others), 05/18/01. Shutdown: All investigative work and final reports completed; archiving of records continues; awaiting attorney fee petitions; notification to oversight committees of completion of investigation; notification to Attorney General of transfer of substantially completed remaining matters to Department of Justice, 5/01.

The pie chart below shows the percentage of each major expense category as listed in the Statement of Expenses, covering the period from inception of the Office of the Independent Counsel through March 31, 2001. [ix]

Major Expense Categories



The chart indicates that the majority of the expenses are related to personnel. Through March 2001, personnel compensation and benefits totaled $21.4 million and contractual services, such as criminal investigators, legal consultants, and computer support, totaled $8.7 million. These amounts, together with $17 million in unreimbursed expenses, totaled $47.1 million, or over 73% of all OIC expenses.

The third most costly category in this investigation, $8.1 million, was travel. In 1994, when Robert B. Fiske Jr. established the Office in Little Rock, he established a policy and practice, for security and confidentiality reasons, that personnel—investigators, prosecutors, and support staff—be selected from outside the Little Rock area. Consequently, most DOJ and other directly hired employees were in official extended travel status to Little Rock. Nearly every individual within the DOJ who worked for regulatory Independent Counsel Fiske in Little Rock was from out-of-town and in extended travel status. Similarly, FBI and IRS

agents and staff who worked in Mr. Fiske's investigation were from all over the country and were placed in extended travel status.[5]

[x]

28 U.S.C. § 594(b)(3)(A) allows an independent counsel, or others appointed by the independent counsel, to commute to or from the city in which the primary office of the independent counsel or person is located. When Independent Counsel Starr assumed responsibility for the investigation, he decided to continue Mr. Fiske's policy of hiring and detailing investigators, prosecutors, and staff from places other than Little Rock.[6]

Significant travel costs were also incurred during the Washington, D.C. phase of the investigation. All three independent counsels—Robert Fiske, Kenneth Starr, and Robert Ray—actively sought experienced prosecutors, and current and former federal investigators, to serve in Washington on the Madison Guaranty, Travel Office, FBI Files, and Lewinsky investigations. As a result, the Office incurred significant travel expenses to and from Washington. To the extent possible, prosecutors and FBI agents from the metropolitan Washington area were appointed or detailed. However, when DOJ resources were unavailable at the times and for the periods required during the investigation, prosecutors, agents and investigators were detailed to the OIC from other parts of the country. Authorized travel reimbursements for those commuting from FBI field offices and U.S. Attorneys' Offices to Washington, sometimes for one to two year periods, were substantial. This Office reimbursed travel expenses as the DOJ would do in similar situations and as was done in Mr. Fiske's office.

[xi]

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[5] $1.7 million of the travel dollars were directly reimbursed to the FBI and the IRS for FBI or IRS personnel sent to Little Rock and Washington. In an opinion forwarded to this Office from Clarence A. Lee Jr., Associate Director, Administrative Office of U.S. Courts, dated December 27, 1994, the Department of Justice said that agencies that support an independent counsel can request reimbursement from the independent counsel for costs those agencies incur in the course of their work for the independent counsel. Based upon that opinion, the FBI requested, and Independent Counsel Starr concurred, in reimbursing the FBI for the cost of travel the FBI incurred. The FBI did not request reimbursement for salaries and benefits of agents and staff.

[6] 28 U.S.C. § 594(b) allows for consideration of the cost to the government, amount of time required for the investigation, impact on the investigation, and the individual's circumstances who are "unable or unwilling to relocate." This Office found that most attorneys (including Independent Counsel Ray) and staff from places other than Washington or Little Rock were unable and unwilling to relocate and that such relocation was cost prohibitive.

Independent Counsel Kenneth W. Starr/Robert W. Ray

Statement of Expenses

(The accompanying Notes are an integral part of this Statement.)

Expenses by Major Categories (Note 1)	Expenses through March 2001	Percent of Total
Personnel Compensation and Benefits (Note 2)	$21,370,211	32.9%
Travel (Note 3)	8,079,562	12.4%
Rent, Communications, Utilities, Printing (Note 4)	5,997,153	9.2%
Contractual Services (Note 5)	8,681,683	13.4%
Supplies and Material	768,687	1.2%
Capital Equipment (Note 6)	857,340	1.3%
Administrative Costs (Note 7)	2,394,460	3.7%
Total Direct Costs	**$48,453,224**	**74.5%**
Indirect (Unreimbursed) Costs (Note 8) (Unaudited)	16,584,946	26.5%
Total Expenses through March 2001:	**$65,038,170**	**100%**
Estimated Expenses, April – September 2001:	3,544,646	
Less fines, penalties, assessments and restitution:	-9,119,113	
Net Costs Through September 2001:	**$59,463,703**	

Notes to the Statement of Expenses

Note 1—Accounting Policies and Reporting Requirements

Independent counsels are required by statute to prepare a Statement of Expenditures every six months. 28 U.S.C. § 596(c)(2) requires the Comptroller General to conduct financial reviews and audits of a statement and report the results to Congressional Committees. GAO audited and published statements every six months in publications entitled *Financial Audit: Independent Counsel Expenditures*. The most recent audit covered the period April 1 through September 30, 2000 and was published on March 31, 2001. Copies of the audit are available from the GAO. The GAO's reports have consistently passed favorably upon the Office's financial status and condition and internal and management controls. As stated repeatedly in the reports, "for the controls [in the OIC] we [GAO] tested, we found no material weaknesses in the internal control structure and its operations." GAO also stated, "Our audit tests for compliance with selected provisions of laws and regulations disclosed no instances of noncompliance that would be reportable under generally accepted government auditing standards." [xii]

28 U.S.C. § 594(h)(1)(a) requires independent counsels to submit expense reports every six months to the Special Division. Expenses differ from expenditures. Expenses include costs incurred during a given reporting period based upon obligations to vendors (accrual basis of accounting). In the expense reports, goods

and services received, or obligations thereof, may not necessarily have been paid during the relevant period. Expenditures include cash or equivalent payments made and recorded during the reporting period (cash basis of accounting).

Note 2—Personnel Compensation and Benefits

Of the $21.4 million in personnel compensation and benefits, $5.3 million were reimbursements to the DOJ and IRS for attorneys and other support staff detailed to the investigation.

Note 3—Travel

Travel included expenditures for investigation-related transportation, lodging, meals, miscellaneous and related expenses incurred by personnel appointed by the Office, personnel from other agencies detailed or assigned to the Office, witnesses being interviewed by the Office or appearing before grand juries and at trials, and consultants or contract employees employed by this Office.

Note 4—Rent, Communication, and Utilities.

This category includes office space rent, telephone charges, utility bills, office equipment rentals, transportation of equipment, office parking charges and printing. Of the $5.99 million, through March 2001, $3.9 million was for office rent. The major office costs were in 1001 Pennsylvania Avenue, Washington, D.C. and two separate locations in Little Rock, Arkansas. In both locations, the amount of square footage fluctuated during the period 1994–2001, depending upon needs in those locations.

The maximum square footage in the Washington office reached 16,225 from December 1998 to May 2001. In July 1998, the Washington office expanded into Alexandria, Virginia (6,900 square feet). The Virginia office was selected because of its location and low cost; it cost one-third of the Washington space. The main Washington office is expected to be vacated in January 2002, when the lease expires. In January 2002, all remaining Washington functions will in any event be consolidated into the Virginia office.

In Little Rock, the maximum square footage reached 13,200 from January 1995 to September 1996. All space in Little Rock was relinquished in August 2000. In addition, the FBI provided a garage in Little Rock for voluminous records storage from 1994–2000 and the General Services Administration provided a basement office in the Little Rock federal building from 1996–1999, both at no charge to the OIC.

Note 5—Contractual Services

Contractual services include the costs for criminal investigators, legal consultants, trial preparation, computer support and maintenance services, financial services, office renovations and security, equipment maintenance services, and other professional investigative services.

Note 6—Capital Equipment

Capital equipment includes office equipment purchases such as computers, printers, audio-visual equipment (such as equipment needed for trials and grand

juries), TVs, VCRs, copiers, facsimiles, furniture, and other assets. All equipment and furniture assets were inventoried and sight audited every six months. At the conclusion of the investigation, all assets will be or will have been transferred to the Department of Justice or other federal agencies. [xii]

The $857,340 shown represents the actual amount paid for the acquisitions, not the actual value held by the Office's inventory.

Note 7—Administrative Services

The Administrative Office of the U.S. Courts (AOUSC) charged an administrative fee of 3% of all expenditures for performing disbursement, personnel, payroll, accounting, and advice and counsel functions for the Office. Payment of the fee was automatically posted to the AOUSC-generated monthly Status of Funds report. From inception to March 31, 2001, these fees totaled $1.33 million.

In addition, the AOUSC incurred expenditures on behalf of all independent counsels that were not directly attributable to any one independent counsel. For each six month period, GAO allotted a percentage of these AOUSC costs to each Independent Counsel, based upon an average number of personnel on each office's payroll. Through September 2000, GAO allotted $1.1 million as this Office's share.

Note 8—Indirect (Unreimbursed) Costs

Indirect costs included the federal employee payroll (mostly personnel compensation and benefits) and travel costs for FBI and IRS investigators and support staff assigned to this Office by various federal agencies. These costs were incurred by the employees' respective agencies.

The cumulative amounts (unaudited) provided by each agency through September 2000 were:

	Dollars (unaudited)
Department of Justice	$105,924
FBI	12,871,770
U.S. Marshals Service	2,046,161
Internal Revenue Service	1,561,091

Appendix F

Investigation Chronology

In Re: Madison Guaranty Savings & Loan Association, Div. No. 94–1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998) (Regarding Monica Lewinsky and Others)

1993

[i]

1/20/93 William Jefferson Clinton is inaugurated President of the United States.

1994

5/6/94 Paula Jones files a sexual harassment lawsuit against President Clinton.

6/30/94 President Clinton signs the Independent Counsel Reauthorization Act into law.

8/5/94 Kenneth W. Starr is appointed statutory Independent Counsel. The Department of Justice transfers the Madison Guaranty/Whitewater investigation to the Office of the Independent Counsel.

1995

7/10/95 Monica S. Lewinsky begins a White House internship.

11/15/95 President Clinton begins an intimate relationship with Lewinsky.

1996

4/5/96 Lewinsky is transferred from the White House to the Pentagon.

1997

1/20/97 President Clinton inaugurated for a second term of office.

12/5/97 Lewinsky's name appears on the *Jones v. Clinton* witness list.

12/19/97 Lewinsky is served with a subpoena to appear for a *Jones v. Clinton* deposition and to produce gifts from President Clinton.

12/24/97 Lewinsky completes her last day of work at the Pentagon.

12/28/97 Lewinsky meets with President Clinton and receives gifts, later giving a box containing gifts from President Clinton to Betty Currie.

1998

[ii]

1/7/98 Lewinsky signs an affidavit to be filed in *Jones v. Clinton.*

1/12/98 The Office of the Independent Counsel receives information that Lewinsky is attempting to influence the testimony of a witness in *Jones v. Clinton.*

1/16/98 Attorney General Janet Reno asks the Special Division to appoint an independent counsel to investigate Lewinsky's activities relating to the *Jones v. Clinton* litigation; the Special Division, in a sealed order, appoints Independent Counsel Starr to investigate the Lewinsky matter.

1/17/98 President Clinton is deposed in *Jones v. Clinton.*

1/18/98 President Clinton meets with Betty Currie to discuss his deposition.

	1/21/98	The Lewinsky matter is widely reported in the national media. President Clinton publicly denies having had sexual relations with Lewinsky; he further denies asking anyone to lie.
	1/23/98	Betty Currie is added to the witness list in *Jones v. Clinton.*
	1/27/98	Betty Currie is served with a subpoena for a deposition in *Jones v. Clinton.*
	1/27/98	Betty Currie testifies before United States District Court for the District of Columbia Grand Jury 97-2.
	1/29/98	Judge Wright grants Independent Counsel's motion to stay discovery in *Jones v. Clinton* so as not to interfere with this Office's criminal investigation.
	1/29/98	The Special Division unseals the Lewinsky jurisdictional mandate.
	4/1/98	Chief Judge Wright grants summary judgment in favor of President Clinton in *Jones v. Clinton.*
	7/7/98	The United States Court of Appeals for the District of Columbia Circuit affirms the district court's order compelling the grand jury testimony of Secret Service agents (*In re: Sealed Case,* 148 F.3d 1073 (D.C. Cir. 1998)).
	7/17/98	President Clinton is served with a grand jury subpoena.
	7/27/98	The United States Court of Appeals for the District of Columbia Circuit rejects Bruce Lindsey's appeal from the district court's order compelling his testimony despite government attorney-client privilege objections (*In re: Bruce R. Lindsey (Grand Jury Testimony),* 148 F.3d 1100 (D.C. Cir. 1998)).
[iii]	7/28/98	Lewinsky and the Office of the Independent Counsel reach an Immunity and Cooperation Agreement. Lewinsky turns a blue dress over to investigators.
	7/30/98	The Office of the Independent Counsel sends Lewinsky's blue dress to the FBI Laboratory.
	8/3/98	The United States Court of Appeals for the District of Columbia Circuit grants the Independent Counsel's petition for a writ of mandamus to prevent President Clinton's personal counsel from taking discovery of the Office of the Independent Counsel's staff regarding alleged Fed. R. Crim. P. 6(e) violations (*In re: Sealed Case,* 151 F.3d 1059 (D.C. Cir. 1998)).
	8/3/98	President Clinton gives a blood sample to investigators from the Office of the Independent Counsel.
	8/6/98	Lewinsky testifies before the grand jury for the first time.
	8/17/98	FBI Laboratory confirms that the DNA sample taken from Lewinsky's dress matches the blood taken from President Clinton. President Clinton testifies before the grand jury, acknowledging an improper relationship with Lewinsky.

9/9/98	Independent Counsel Starr forwards a Referral to the United States House of Representatives pursuant to 28 U.S.C. § 595(c).
11/9/98	The United States Supreme Court denies the Secretary of the Treasury's petition for writ of certiorari seeking to overturn the United States Court of Appeals for the District of Columbia Circuit's affirmance of the district court's order compelling the grand jury testimony of Secret Service agents (*Rubin v. United States*, 525 U.S. 990, 119 S. Ct. 461 (1998)).
11/19/98	Independent Counsel Starr testifies before the House Judiciary Committee regarding the Referral.
12/19/98	The House of Representatives votes two articles of impeachment of President Clinton.

1999

2/12/99	Following trial, the United States Senate's votes on the House Articles of Impeachment fail to garner the concurrence of two thirds of the Members present necessary for conviction of President Clinton.
4/12/99	Chief Judge Wright holds President Clinton in civil contempt for his conduct during discovery in *Jones v. Clinton*.
4/14/99	Independent Counsel Starr testifies before the Senate Governmental Affairs Committee regarding the future of the Independent Counsel Act. [iv]
6/30/99	The Independent Counsel Reauthorization Act expires.
9/7/99	The United States Court of Appeals for the District of Columbia Circuit grants the Independent Counsel's motion for summary reversal of the district court's order requiring the Office of the Independent Counsel to show cause why it should not be held in contempt for violating Rule 6(e) (*In re: Sealed Case,* 192 F.3d 995 (D.C. Cir. 1999)).
10/18/99	Independent Counsel Starr resigns. The Special Division appoints Robert W. Ray Independent Counsel.

2000

1/27/00	The Arkansas Supreme Court orders its Committee on Professional Conduct to begin formal disciplinary proceedings against President Clinton.
2/15/00	The Arkansas Supreme Court Committee on Professional Conduct serves a formal complaint on President Clinton.
5/18/00	Allegations of ethical misconduct filed by Francis Mandanici, Stephen Smith, and Julie Hiatt Steele in the United States District Court for the Eastern District of Arkansas are rejected as without merit. (*In re: Mandanici v. Starr,* 99 F. Supp.2d 1019 (E.D. Ark. 2000); *In re: Smith v. Starr,* 99 F. Supp.2d 1037 (E.D. Ark. 2000); *In re: Steele v. Starr,* 99 F.Supp.2d 1042 (E.D. Ark. 2000)).

	5/22/00	The Arkansas Supreme Court Committee on Professional Conduct recommends President Clinton's disbarment for "serious misconduct" in *Jones v. Clinton.*
	7/11/00	United States District Court for the District of Columbia Grand Jury 2000-03 is empaneled to continue investigating the Lewinsky matter.
	8/4/00	Independent Counsel Ray sends his annual report to Congress and confirms the existence of ongoing investigations.
	8/7/00	Independent Counsel Ray informs the Special Division of the empanelment of a grand jury to hear evidence in the Lewinsky matter.
	8/17/00	Judge Richard D. Cudahy of the Special Division discloses to the Associated Press that a grand jury has been empaneled in the Lewinsky matter.
	8/18/00	The Justice Department's Office of Legal Counsel provides the Independent Counsel with a formal opinion that a former President may be prosecuted for crimes of which he was acquitted by the Senate.
[v]	10/6/00	Chief Judge Norma Holloway Johnson finds Charles G. Bakaly, III, a former spokesman for the Office of the Independent Counsel, not guilty of criminal contempt.
	10/16/00	The Justice Department's Office of Legal Counsel provides the Independent Counsel with a formal opinion that a sitting President is constitutionally immune from indictment and criminal prosecution.
	11/9/00	The Arkansas Supreme Court Committee on Professional Conduct asks President Clinton to admit or deny whetner he testified falsely in his *Jones v. Clinton* deposition. Following timely requests for extension of time to respond, President Clinton is ordered to reply by January 22, 2001.
	11/21/00	Independent Counsel Ray calls David Kendall to request a meeting with President Clinton.
	12/8/00	The Office of the Independent Counsel re-interviews Lewinsky.
	12/21/00	David Kendall agrees to Independent Counsel Ray's meeting with the President.
	12/27/00	Independent Counsel Ray meets with President Clinton.

2001

	1/5/01	David Kendall meets with the Arkansas Bar regarding a proposed Agreed Order of Discipline of President Clinton.
	1/10/01	The Arkansas Bar authorizes an Agreed Order of Discipline.

1/19/01	President Clinton executes an Agreed Order of Discipline and acknowledges false testimony under oath; Independent Counsel Ray thereupon resolves all investigative matters remaining before the Office.
5/18/01	The Independent Counsel submits his Final Report concerning *In re: Madison Guaranty Savings & Loan Association,* Div. No. 94-1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998) (regarding Monica Lewinsky and others).

Comments

SIDNEY BLUMENTHAL

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January 11, 2002

United States Court of Appeals
For the District of Columbia Circuit

FILED JAN 11 2002

Special Division

HAND DELIVERY

Ms. Marilyn R. Sargent
Chief Deputy Clerk
United States Court of Appeals
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: In re Madison Guaranty Savings & Loan (In re Monica Lewinsky)

Dear Ms. Sargent:

On behalf of Mr. Sidney Blumenthal, I enclose his comments to the report in the above-referenced matter.

If you have any questions, please call me at 202.383.7133.

Thank you.

Very truly yours,

Dimitri J. Nionakis

Enclosure

COMMENT OF SIDNEY BLUMENTHAL TO
OFFICE OF INDEPENDENT COUNSEL REPORT
IN RE MADISON GUARANTY SAVINGS & LOAN
(IN RE MONICA LEWINSKY)

Comment to page xxii, footnote 86:

Mr. Blumenthal was also interviewed by the Office of Independent Counsel on August 24, 1999.

LAURA L. CALLAHAN

RALPH L. LOTKIN
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November 20, 2001

UNDER SEAL

Mark J. Langer
Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Re: Laura L. Callahan

Dear Mr. Langer:

This responds to your letter dated October 5, 2001 in which you notified me and my client, Ms. Laura L. Callahan, as to the submission of a Final Report by the Independent Counsel in Division No. 94-1, *In Re: Madison Guaranty Savings & Loan Association (Regarding Monica Lewinsky and Others)*. You indicated that Ms. Callahan and I could review portions of the Report in which Ms. Callahan is mentioned and submit to you "any comments or factual information for possible inclusion in an appendix to the Report."

Having undertaken a review of the relevant portions of the Final Report with Ms. Callahan on November 19, 2001, and pursuant to my telephone conversation of this date with Julie Thomas, Esq., Deputy Independent Counsel, I Callahan respectfully submit the following brief comments on behalf of my client:

(1) On Page v of Appendix D, the reference to "Laura Crabtree Callahan" should be corrected to "Laura L. Crabtree". At all times while employed by the Executive Office of the President my client was known as Laura L. Crabtree since she was not married at the time and had not changed her last name to Callahan.

(2) Two reports of the Independent Counsel have now been submitted which separately include an appendix addressing the White House email matter. In the first Independent Counsel Report (the subject of the Court's order of April 27, 2001) the White House email situation is discussed without conclusion or recommendation by the Independent Counsel. The most recent report also references the email matter but goes on to conclude that there was insufficient evidence upon which to support any charge concerning so-called threats to Northrup Grumman

Corporation employees. Obviously, this is a conclusion with which Ms. Callahan agrees and has vigorously so contended from the outset.

Unfortunately, however, release of the first Independent Counsel Report without reference to the conclusions contained in the second Report will likely give rise to renewed speculation and criticism of Ms. Callahan's role and conduct in the email matter. Only the second Report finally puts the issue to rest with a clear and concise statement that insufficient evidence was adduced supporting any of the allegations against her. To date, Ms. Callahan has endured the spurious allegations with quiet dignity and without comment. Her patience should be rewarded with an effort by either the Independent Counsel or the Court to foreclose the possibility of further discomfort to her and her family.

In this light, I request consideration be given to either merging the relevant portions of the two appendices into one document or, if not possible, referring to the latter document (and its conclusion) as an editor's note to the first document in order to avoid the likely revitalization of efforts to disparage Ms. Callahan prior to release of the second Independent Counsel Report.

In my discussion with Ms. Thomas, I understood her to appreciate our concerns. She also suggested that we present this issue in a formal communication to the Court so that it may be considered by the appropriate individuals.

Should you have any questions, please do not hesitate to contact me. Again, we appreciate the courtesy extended to Ms. Callahan and trust these comments will be given appropriate consideration.

Sincerely,

Ralph L. Lotkin
Counsel to Laura L. Callahan

ROBERT HILL

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January 9, 2002

United States Court of Appeals
Mark J. Langer, Clerk
District of Columbia Circuit
333 Constitution Avenue Northwest
Room 5409
Washington, D.C. 20001-2866

RE: Madison Guaranty Savings & Loan Association (Regarding Monica Lewinsky and Others)
My client: Robert Hill

Dear Mr. Langer:

Having reviewed the draft of the Office of Independent Counsel's report I hereby submit the following comments on behalf of Mr. Hill.

COMMENTS FOR INCLUSION IN AN APPENDIX TO THE REPORT

Mr. Hill takes exception to the Report's characterization of "contumacious conduct" on his behalf for his noncompliance with a grand jury subpoena issued under exceptional circumstances. Mr. Hill also takes exception to the assertion that his conduct delayed the investigation by more than six months. Mr. Hill refused to comply with independent counsel's subpoena in that it appeared to be

totally unrelated to independent counsel's grant of authority. Mr. Hill's actions must be viewed in context. At the time of his noncompliance there were many unanswered questions concerning the boundaries of independent counsel's jurisdiction including significant constitutional issues. The only avenue to obtain clarification from the Eighth Circuit concerning these significant issues was by refusing to comply with the subpoena.

On June 28, 1995 the Office of Independent Counsel served grand jury subpoenas duces tecum on Robert M. Hill individually and Robert M. Hill, P.A. (Mr. Hill's inactive professional association through which he once practiced accounting). The subpoenas requested document production evidencing contributions by him and his relatives to the 1990 William Jefferson Clinton gubernatorial campaign and Mr. Clinton's 1992 presidential campaign. The subpoena also requested document production evidencing transfers of funds from Mr. Hill and his P.A. to certain listed persons, for the most part relatives. On July 18, 1995 Mr. Hill filed under seal a motion to quash or modify the subpoenas.. On August 17, 1995 the United States District Judge overseeing the matter entered an Order under seal denying the motion to quash or modify the subpoena. Several days later the Office of Independent Counsel asked the Court for an order compelling Mr. Hill to produce by a date certain the documents called for by the subpoenas. The Court ordered Mr. Hill to produce the documents called for on August 31, 1995. Mr. Hill and Mr. Branscum who had received similar subpoenas and filed the same motions did not comply. The Office of Independent Counsel filed a show cause motion. Following a hearing before the supervising

Judge on September 8, 1995 Mr. Hill and Mr. Branscum were given one week to comply. In order to proceed to the Eighth Circuit they refused and were held in contempt and ordered to pay daily fines. Having been held in contempt Mr. Hill and Mr. Branscum could then proceed to the Eighth Circuit with the significant issues raised in their motions to quash. Constitutional issues of first impression were raised in the Eighth Circuit and resolved in that Court's opinion.

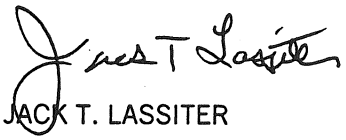
At trial Independent Counsel's case rested primarily on the testimony of a former bank president compromised by a cooperation agreement struck with the Office of Independent Counsel. His testimony conflicted with Mr. Hill's and Mr. Branscum's and obviously the jury did not trust this individual enough to convict either Mr. Hill or Mr. Branscum. Following the trial in which a jury acquitted Mr. Hill and Mr. Branscum on certain counts and hung on others, the Office of Independent Counsel received permission from the court to interview jurors. After interviewing jurors that were agreeable to speak with them the court and defendant were notified that the Office of Independent Counsel would not retry the case.

The Office of Independent Counsel issued in excess of 144 grand jury subpoenas in preparation of this indictment and trial. They also subpoenaed before the grand jury Mr. Hill's 16 year old son and 76 year old mother along with numerous other relatives and friends. The cost of trial of this matter and the investigation was in the millions of dollars.

This prosecution had no relation to the original grant of authority to the Office of Independent Counsel to investigate the Clinton's, James McDougall, the

Whitewater Land Development and Madison Guaranty and demonstrates the potential for abuse of prosecutorial authority inherent under the former Independent Counsel law. Since the cash at issue in the CTR counts was neither deposited nor withdrawn in relation to criminal activity, whether or not a CTR should have been generated under normal circumstances would have constituted a regulatory issue with the FDIC at worst.

Sincerely,



JACK T. LASSITER

JTL:vl

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EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

January 11, 2002

By Hand Delivery

UNDER SEAL

Hon. Mark J. Langer
Clerk of the Court
United States Court of Appeals, District of Columbia Circuit
United States Courthouse—Fifth Floor
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

In re: Madison Guaranty Savings & Loan Assn.
Report (Regarding Monica Lewinsky and Others
(Div. 94-1))

Dear Mr. Langer:

Pursuant to 28 U.S.C. § 594(h)(2) and the sealed Order of the Division for the Purpose of Appointing Independent Counsels, entered October 5, 2001, please accept this letter which I file on my own behalf, since I am a person mentioned in the Report Regarding Monica Lewinsky and Others (In re: Madison Guaranty Savings & Loan Assn. (Div. No. 94-1)), prepared by the Office of Independent Counsel ("OIC"). This letter constitutes written comments and factual information that I request be included in an appendix to the Final Report.

I respond here to only a single point in the OIC's Report: the assertion in Appendix C of the Report that the President's legal team had made "unfounded" and "unsubstantiated" allegations that the OIC had wrongfully leaked sealed grand jury information. This assertion is demonstrably untrue. As the OIC knows, there was no final adjudication of this matter because the OIC itself requested in March 2001 that the President withdraw the show cause motions he had filed. The President agreed. There remain, however, numerous undisturbed judicial findings that there is, in fact, probable cause to believe that the OIC engaged in the illegal dissemination of sealed grand jury information.

In late January and early February of 1998, numerous stories suddenly began appearing in the media containing detailed and highly prejudicial information about the OIC's grand jury investigation. The stories revealed matters being presented before the grand jury, as well as the aims of the investigation. The provenance of these stories was no mystery: reputable news organizations do not make up attributions like "Sources in Ken Starr's office" and "Sources in Starr's office." As one respected journalist has recently written, "[many] reporters . . . benefited from the prosecutor's leaks in the days before the scandal broke and immediately thereafter. The press was clearly in collusion with the prosecutor,

receiving extremely damaging information while refusing to divulge its sources . . . .

[T]he public often had no idea . . . [of] the motivation of those who leaked it."[1]

The following are simply representative samples (with emphasis added):

> [F]ederal law enforcement sources tell NBC News they're prepared to offer the young intern a choice between immunity and prosecution. One law enforcement source put it this way, quote, 'We're going to dangle an indictment in front of her and see where that gets us.' [David Bloom, "Newest Clinton Sex Scandal Causing Republican Calls for Impeachment," NBC Nightly News, January 21, 1998]
>
> Prosecutors painted a different picture [of Vernon Jordan's assistance]. 'Monica says . . . that she dealt directly with the President, who set the assistance in motion,' one lawyer said, speaking on condition of anonymity." [Thomas Galvin, "Monica Keeping Mum -- For Now Fends Off Query on Affairs," New York Daily News, January 23, 1998]
>
> [S]ources in Ken Starr's office tell us that they are investigating [a report that at some point someone caught the president and Ms. Lewinsky in an intimate moment], but they haven't confirmed it. [Claire Shipman, "Still No Deal Between Monica Lewinsky and Whitewater Prosecutor Ken Starr Regarding White House Sex Scandal," NBC News Special Report, January 25, 1998]
>
> For example, sources in Starr's office told me yesterday they had drawn up a subpoena for Ronald Perelman, the Revlon head who put Clinton pal Vernon Jordan on his board. [New York Post, January 27, 1998]

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[1] Marvin Kalb, One Scandalous Story: Clinton, Lewinsky, & 13 Days That Tarnished American Journalism 64 (2001). Kalb notes the OIC's use of "carefully timed leaks to key reporters, to disclose information helpful to Starr's case and harmful to the President's." Id. at 117. Another commentator has noted that the OIC released a great deal of "misinformation" during this period: "All of this misinformation had a distinct purpose—to persuade official Washington, and Lewinsky herself, that Starr had a strong case." Jeffrey Toobin, A Vast Conspiracy 285 (1999).

> The decision to drop Monica Lewinsky from the Paula Jones case has no impact on the investigation of whether President Clinton lied under oath about an alleged affair, a source in Whitewater counsel Kenneth Starr's office said yesterday. [Thomas Galvin, "Impeachment? Case Vs. Clinton Is Still A Bit Fuzzy," New York Daily News, January 31, 1998]
>
> Some members of Mr. Starr's legal team are also concerned that Ms. Lewinsky's 'proffer,' the summary of her proposed testimony, does not reflect some snippets of conversations that she claimed to have had with Mr. Clinton on 20 hours of tapes secretly recorded by a friend. But one lawyer insisted that the omissions 'are not significant.' [Don Van Natta, Jr. & John M. Broder, "Lewinsky Would Take Lie Test in Exchange for Immunity Deal." New York Times, February 2, 1998]
>
> One official involved in the discussions about whether Ms. Lewinsky would cooperate with the investigation by Kenneth W. Starr, the Whitewater independent counsel, said prosecutors had set a deadline of Friday at noon for her lawyers to indicate whether she would talk to prosecutors. If the deadline passes without a deal, the official said, Ms. Lewinsky could face prosecution on charges of lying under oath about her relationship with the President. [Don Van Natta, Jr. & James Bennet, "Starr Turns Down Limit on Questions to Clinton's Aides," New York Times, February 5, 1998]
>
> Sources in Starr's office [are] suggesting that if Monica Lewinsky does not negotiate an immunity deal quite soon they are prepared to go ahead and press charges against her. [John King, "Investigating the President: Lewinsky Immunity Talks Collapse," CNN Early Edition, February 5, 1998]

Many journalists sourced their stories directly to the OIC and the law enforcement officials working with the OIC. Nevertheless, the OIC denied it was the source of these leaks. In a February 6, 1998, letter to me responding to remarks I had made at a press conference earlier that day announcing the filing of a show

cause motion to find the source of the numerous grand jury leaks, Independent Counsel Starr declared: "From the beginning, I have made the prohibition of leaks a principal priority of the Office. It is a firing offense, as well as one that leads to criminal prosecution. In the case of each allegation of improper disclosure, we have thoroughly investigated the facts and reminded the staff that leaks are utterly intolerable." An earlier press release from the OIC, dated January 21, 1998, had been categorical in its denials: "Independent Counsel Kenneth W. Starr issued the following statement today from his office in Washington, D.C.: 'Because of confidentiality requirements, we are unable to comment on any aspect of our work.'"

The facts turned out to be otherwise. In a series of sealed show-cause motions, counsel for the President identified 111 instances of illegal grand jury leaks, and after several hearings, the District Court entered a sealed order dated June 19, 1998[2] finding that movants had established "that several articles establish prima facie violations" of Criminal Rule 6(e)[3], governing grand jury secrecy. Slip op. at 6. The Court found that the nature of disclosures to the media of Rule 6(e)

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[2] In re Grand Jury Proceedings, Misc. No. 98-55 (consolidated with Misc. No. 98-177 and Misc. No. 98-228) (D.D.C.).

[3] Federal Rule of Criminal Procedure 6(e) states that "an attorney for the government . . . shall not disclose matters occurring before the grand jury" except under very limited circumstances, all of which are for court or investigation purposes. Rule 6(e) does not allow for disclosures to the press absent a special disclosure hearing.

material had been "serious and repetitive," and that "the OIC defines material protected by Rule 6(e) too narrowly," id. at 5 (footnote omitted).

In a subsequent Order issued on June 26, 1998, the District Court set a hearing date of July 6 for the OIC to appear and "show cause why it should not be held in contempt for violating this Court's orders that sealed judicial decisions shall not be revealed to the public as well as alleged violations of Rule 6(e)," Slip op. at 5. The Court allowed movants a very limited right to participate in discovery relating to the illegal leaks, and it explicitly warned that "[s]hould the Court find a direct violation of Rule 6(e), the Court reserves the right to take any appropriate steps, including referring the matter to the United States Attorney, the Department of Justice, or a special master for criminal contempt investigation and proceedings." Id. at 2 n.1. The Court declined to stay the contempt proceedings, declaring that:

> while there is a substantial public interest in continuing the grand jury investigation expeditiously, there is also a substantial public interest in stopping the many leaks that have come out of this case. Not only do the leaks damage the investigations' targets and its witnesses, each leak erodes respect for the judiciary and the orders sealing the pleadings and hearings in this grand jury matter.[4]

[4] In re Grand Jury Proceedings, Misc. Action No. 98-55 (consolidated with Misc. Action. Nos. 98-177 and 98-228) (July 9, 1998) (Slip op. at 10). Chief Judge Johnson noted the OIC's contention "that '[i]t is impossible to disclose what the United States may have represented to press sources without revealing protected information,'" but she ruled that "[g]iven that the Order does not require release of privileged Rule 6(e) material and in fact forbids this, the Court fails to understand

The OIC took an emergency appeal, applying for a writ of mandamus from the Court of Appeals for the District of Columbia Circuit to limit movants' participation in the discovery process. The Court of Appeals granted this relief, noting, however, that "the IC does not contest the district court's finding that the movants have satisfied their burden to establish a prima facie case . . . or that a show cause hearing is now required . . . ." In re: Sealed Case No. 98-3077, 151 F.3d 1059, 1067 (D.C. Cir. 1998).[5] It observed that it was "keenly aware that allegations that a government official has violated Rule 6(e)(2) are not to be taken lightly" and quoted Justice Frankfurter's observation that "'[t]o have the prosecutor himself feed the press with evidence . . . is to make the State itself through the prosecutor, who wields its power, a conscious participant in trial by newspaper, instead of those methods which centuries of experience have shown to be indispensable to the fair administration of justice.'" Id. at 1059 (quoting Stroble v. California, 343 U.S. 181, 201 (1952) (dissenting opinion)). The Court of Appeals remanded for further evidentiary proceedings, noting that the District Court "may, if it so chooses,

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why it would be 'impossible' to disclose OIC contacts with the press without revealing Rule 6(e) material." Id. at 7.

[5] The Court of Appeals emphasized that "[t]he only issue before us . . . is not whether a show cause hearing will go forward in the district court as to whether the IC or members of his staff have made unauthorized disclosures to the press but rather the manner in which the hearing will be conducted." 151 F.3d at 1067.

appoint a special master or other individual to collect evidence and submit a report to the district court for its review and adjudication." 151 F.3d at 1076.

On remand, Chief Judge Johnson made numerous findings. In all of the media reports it addressed, the District Court found prima facie violations by the OIC of the rule mandating grand jury secrecy. Order, September 25, 1998, In Re Grand Jury Proceedings, Misc. No. 98-228, 1998 U.S. Dist. LEXIS 17290, at *32. The Court found, variously, statements "directly breaching grand jury confidentiality;" revealing witness testimony; revealing "the scope, focus, and direction of the grand jury investigation;" disclosing the status of immunity negotiations with a potential target; disclosing the possible indictment of the target; disclosing "the credibility of the testimony of a potential target;" disclosing "the content of a witness's proffer gathered as a result of the grand jury investigation;" and disclosing a host of other information, all amounting to improper prima facie violations of Rule 6(e). Id. at **8-28.

The Court emphasized that the secrecy requirements of Rule 6(e) are vital to the proper functioning of the grand jury system; they serve "several distinct interests," promoting honest and open testimony, as well as protecting the reputations of "persons who are accused but exonerated by the grand jury." Id. at

*3. "Therefore," the Court held, "enforcing Rule 6(e) is of the utmost importance to the integrity of our grand jury process." Id.[6]

Chief Judge Johnson termed the prima facie violations "serious and repetitive," and held that "a complete and thorough review of these allegations must be undertaken." Id. at *32. The Court appointed a Special Master to investigate the leaks. See id. The Court charged the Special Master with collecting and reviewing evidence, and with submitting a report to the Court when his investigation was concluded. The Court chose to focus on 24 of the media reports counsel had identified -- not because others were innocuous or proper, but "in order to avoid overburdening the Special Master." Id. at *12 n.4. The Special Master's

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[6] This is a well-established principle of law. See, e.g., United States v. Smith, 123 F.3d 140, 148 (3rd Cir. 1997) (secrecy is necessary "to the proper functioning of the grand jury system"); Finn v. Schiller, 72 F.3d 1182, 1190 (4th Cir. 1996) ("compromising grand jury secrecy is a serious matter. . . . Courts must not tolerate violations of Rule 6(e) by anyone," especially government prosecutors, who may make improper disclosures "in an effort to pressure a target into a plea agreement"); United States v. Eisen, 974 F.2d 246, 261 (2d Cir. 1992) ("breach of grand jury secrecy can jeopardize the defendant's right to a fair trial"); In re Grand Jury Proceedings, 841 F.2d 1264, 1268 (6th Cir. 1988) (listing "several distinct interests" served by grand jury secrecy, including protection of persons exonerated by grand jury); Anaya v. United States, 815 F.2d 1373, 1379 (10th Cir. 1987) ("purpose for grand jury secrecy is to protect the sanctity of the proceeding and to protect the participants from detrimental publicity").

investigation was conducted in camera over a period of approximately two and a half years. Movants were not involved.[7]

In February 2001, the OIC asked the President and the other plaintiffs to withdraw the cases related to the 1998 leaks, since other outstanding issues had been settled. We agreed to do so because two and a half years had passed, the President had left office, another Independent Counsel was in office, and it was time to move on. As I noted at the subsequent hearing on the withdrawal of the

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[7] During this time, movants filed one more show-cause motion, over a New York Times article, entitled "Starr Is Weighing Whether to Indict Sitting President," which appeared during the President's impeachment trial on January 31, 1999. In its responsive pleadings, the OIC acknowledged that the information disclosed in that article was "confidential," and that such disclosures, if by someone from within the OIC, "would have been unauthorized and improper." Opposition to Motion for Order to Show Cause, at 2. However, a sworn declaration by OIC staffer Charles G. Bakaly, III was suddenly withdrawn by the OIC on March 8, 1999. On March 11, Bakaly resigned, and the OIC was ordered to show cause why it should not be held in contempt. The OIC appealed the ruling.

The Court of Appeals reversed, holding that the Times statements -- which concerned OIC prosecutors' opinions on the feasibility of indicting President Clinton for obstruction of justice and perjury -- were too remote from the grand jury to constitute protected reports of secret grand jury proceedings. The Court did not deal with the leaks under investigation by the Special Master or generally exonerate the OIC; rather, it noted specifically that Rule 6(e) covers matters "likely to occur" or "clearly anticipated" to occur before a grand jury. Id. at 1002-03. The Court also noted that internal DOJ guidelines bar the disclosures the OIC made in connection with the Times article, though such guidelines are not enforceable through contempt proceedings. See id. at 1003.

show-cause motions, "there are some controversies . . . best left to history."[8] But the OIC was never exonerated in connection with those leaks, and the leaks were never explained. The undisturbed judicial findings that Chief Judge Johnson made and that are a matter of public record give the lie to the Report's assertion that the leak allegations were "unfounded" or "unsubstantiated."

Sincerely,

David E. Kendall

[8] Transcript, at 4, In re Sealed Cases, Misc Docket Nos. 98-55, 98-177, 98-228, 99-214 (March 6, 2001).

MONICA S. LEWINSKY

MONICA S. LEWINSKY

United States Court of Appeals
For the District of Columbia Circuit

FILED FEB 1 1 200

Special Division

11 February 2002

Ms. Marilyn Sargent
U. S. Court of Appeals for D.C. Circuit
333 Constitution Avenue, N.W. Room 5409
Washington, DC 20001

Dear Ms. Sargent:

Please find attached my response to Independent Counsel Robert Ray's Report Re: Madison Guaranty Savings & Loan (Regarding Monica Lewinsky and Others).

Thank you for all of your kind assistance.

Sincerely,

Monica S. Lewinsky

UNDER SEAL

Response to
Independent Counsel Robert Ray's Report
In re: Madison Guaranty Savings and Loan
(Regarding Monica Lewinsky and Others)

SUBMITTED BY:

Monica S. Lewinsky
MONICA S. LEWINSKY

11 February 2002
DATE:

RESPONSE FROM MONICA LEWINSKY
RE: INDEPENDENT COUNSEL ROBERT RAY'S FINAL REPORT

The prosecutor has more control over life,
liberty and reputation than any other person in America.
-- Justice Robert H. Jackson

From a speech delivered at
Second Annual Conference of US State
Attorneys 1 April 1940

I am grateful for the opportunity to respond to the Final Report of independent Counsel Ray.

PROSECUTORS SERVING JUSTICE OR SERVING JUST US?

I. ATTORNEY CLIENT PRIVILEGE AND THE RIGHT TO COUNSEL

I respectfully object to the labeling of the motion to quash Francis D. Carter's subpoenas for testimony and work product, as it pertained to his representation of me, as "spurious." I was within my full rights to assert my attorney/client privilege and I believe Judge Johnson's ruling that the crime fraud exception applied to my communications with Mr. Carter was wrong. Even as she ruled in the Office of the Independent Counsel's (OIC) favor on this point, Judge Johnson did not rule nor suggest my attempt to preserve the privilege was a frivolous/spurious claim.

The second issue which arose from the subpoenaing of Mr. Carter dovetails with the issue of whether the OIC acted improperly in their approach to me on 16 January 1998 -- more specifically, with regard to my being a represented person and whether or not there was a possible violation of my 6th Amendment right to an attorney. There can be no question that I was represented by counsel on 16 January and that the subject matter of that representation coincided with the OIC/FBI sting. I expressed a desire to speak to my attorney. My requests were discouraged strongly and with veiled threats.

II. ALLEGATIONS OF MISCONDUCT

After an initial reading of the Independent Counsel Ray's final report, I requested to view four documents that are referenced as footnotes in the report: Jo Ann Harris' Special Counsel Report re: 16 January 1998 (requested with names redacted for privacy), Memo from H. Marshall Jarrett in the Office of Professional Responsibility to Atty. General Janet Reno re: allegations against Independent Counsel Starr, 15 October 1999 letter form Attorney General Janet Reno to Independent Counsel Starr, and all documents currently under seal re: subpoena of Frank Carter, Esquire.[1] Independent Counsel Ray's response was that he "could not comply with my request" because the documents relating to allegations of professional misconduct by an attorney in his office were protected by the privacy act of 1974 and subsequently, the correspondence between the Independent Counsel and the Attorney General are confidential on these matters.[2] Being denied access to the information that was used to weigh the veracity of the allegations greatly hindered my ability to accept or even understand these findings; I was disappointed, to say the least.

The overriding purpose of a report such as this one is to shine the disinfectant light of day on government proceedings. Much was made for the need to dispense with ordinary citizens' rights to privacy in the pursuit of truth and justice. How, then, can a claim for privacy for the prosecutors be made now? I ask that all the underlying documentations supporting the OIC's conclusions that there was no misconduct on 16 January 1998, be made public.

If there is any doubt as to the OIC's desire to marginalize the issue of my treatment under questioning that day, one has to go no further than to the prohibitions of my immunity agreement. I was expressly prevented from making any public comment directly relating to 'the matter' or investigation. Even after I was finally given modified permission to speak to a few journalists, a provision was intact that 16 January 1998 among some other topics, was still off limits. I was not released from those provisions until 21 January 2001. It is not difficult to infer from that that they themselves were aware their conduct would be scrutinized and perhaps, found unacceptable.

III. 302s AND STARR REPORT

Rather than revisit all of the highly personal and offensive information that was publicly aired in the Starr report, Mr. Ray understandably states, "The facts have already been recorded by this Office in its Impeachment Referral (and exhibits) to Congress that is in excess of

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[1] Letter from M. Lewinsky to Independent Counsel Ray, 30 November 2001 See Appendix
[2] Letter from Independent Counsel Ray to M. Lewinsky, 14 December 2001 See Appendix

8,000 pages... that is the official record, and does not begin to encompass the vast public record on the subject."[3] Because I was precluded from commenting on the accuracy of the Starr report when it was published and to the extent the Ray report incorporates the Starr report, which it assuredly does, I wish to comment now to ensure an accurate record.

The factual basis of Independent Counsel Kenneth Starr's report to Congress relies in large measure on my direct sworn testimony and information gleaned from FBI 302s created by FBI agents following my debriefing sessions. These 302s create the false impression of accurately recording my statements: e.g. "According to Ms. Lewinsky...in Ms. Lewinsky's recollection... and Ms. Lewinsky recalls." Many of the facts and statements attributed to me were supported in part by the interviews the OIC conducted where the debriefing was simply noted by an agent in an FBI 302 report. None of these debriefing sessions were tape recorded or transcribed.

The 302s are memoranda memorializing the impressions of the agent who was present. Furthermore, there is an illusion that my attorney and/or I have adopted these reports by naming the attorney present in the report when neither of us was ever given an opportunity to verify any of them for accuracy. *Let me state clearly that I do not adopt them, and I stand only by my testimony that I have given sworn under oath.*

My testimony and that of my friends who were dragged before the grand jury should have sufficed. By supplementing testimony with the inaccurate 302s, they were guaranteed to be included in the appendix which almost insured their public release. Not only did I not have the knowledge of their inclusion in the report and therefore possible release to public, but I didn't have the opportunity to verify or request redactions of private information.

The 302s paint me in the worst light. For example, there is an obsessive focus on one particular sexual act and emphasis on a small portion of telephone calls of a sexual nature that are reflected in the 302s and ultimately in the Starr report. The incomplete pictures drawn by the 302s and then echoed in the Starr report have left the indelible impression that I was eager to divulge the details of my personal life for legal purposes and then, most egregiously, public consumption. The focus on this one act contributed to the already erroneous impression that the relationship had been a one-way servicing arrangement rather than a mutual relationship.

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[3] Ray Report page 17

In addition, I do not vouch for the accuracy of the transcripts of the so called Tripp Tapes for the following reason: I had to listen to the 20 hours of tape recorded conversations between Linda Tripp and myself. Unbeknownst to my attorney and me, it was just days before the report was to be turned over to Congress. There were a number of occasions where errors in transcription occurred, errors that did not alter the content but added to the humiliation, nonetheless. They were pointed out to the attorney in attendance and she concurred; they would be fixed. The transcripts were never corrected before they were sent to Congress, nor was a correction addendum ever attached, even at a later date.

CONCLUSION

I believe that during the main part of this investigation from its inception, to my "sojourn" at the Ritz Carlton, (as it has been so inaccurately characterized) to the nation's "sojourn" through the banal private details of two people's mistake and their attempt to cover it as a result of one woman's venom (people often forget that the Paula Jones' team would have had no idea about me had it not been for Linda Tripp) the judges of this country may have found that no law was broken; but I will forever contend that the spirit of the law was abused. In my opinion, it is not as the final report states, "If any one lesson is to be learned from this office's experience, it is that a prosecutor can serve only one function – to seek justice under the criminal law,"[4] rather it's a lesson in a quintessential Orwellian groupthink. The venerable Justice Robert Jackson was more prescient in the beginning of the paragraph of his famous quote that "the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility" where he continues says most eloquently, "The qualities of a good prosecutor are as elusive and as impossible to define as those which mark a gentleman. And those who need to be told would not understand it anyway."

[4] Ray Report page 61

TAB 1

MONICA S. LEWINSKY

30 November 2001

The Honorable Robert Ray
Independent Counsel
Washington, D.C.
By fax 202. 514.8802

Dear Mr. Ray:

I would like to formally request from you the opportunity to review the following documents so that I may understand fully and prepare accurately a response to your report submitted under seal to the three-judge panel:

- Joanne Harris Report Re: 1.16.98 filed 12.6.01 (*with names redacted if you wish)
- Memo from H. Marshall in OPR at the Justice Dept. to Atty. General Janet Reno Re: allegations against Independent Counsel Starr
- 10.15.99 letter from Atty. General Janet Reno to Independent Counsel
- All documents currently under seal re: Subpoena of Frank Carter, Esq.

You refer to all of these documents in the body and footnotes of your report but do not include the reports with the appendices; this makes parts of the report impossible for me to comprehend.

It is my understanding that Mr. Cacheris requested the Harris report on my behalf from your office on 10 November 2001, and Ms. Thomas informed us the next week that this document would not be made available to me. You stated in the report, and I'm paraphrasing, that part of the reason the report was necessary was to ensure the public's confidence in the integrity of the prosecutorial decisions of the Independent Counsel's Office. Am I not part of that public?

Respectfully,

Monica Lewinsky

Monica Lewinsky

cc: Plato Cacheris, Esq.

TAB 2

Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, D.C. 20004
(202) 514-8688
Fax (202) 514-8802

December 14, 2001

CONFIDENTIAL
REFERS TO MATTERS UNDER SEAL

VIA FACSIMILE TRANSMISSION (202-807-9581)

Monica S. Lewinsky

Re: Your letter of November 30, 2001

Dear Ms. Lewinsky:

I write in response to your letter dated November 30, 2001, a copy of which is attached for your convenience. By letter dated December 12, 2001, Plato Cacheris, your counsel, consented to my responding directly to your letter rather than through him. In your letter you requested the opportunity to review certain documents referenced in our final report.

As independent counsel, I have a statutory obligation to file final reports that fully and completely describe the work of this office. *See* 28 U.S.C. §.594(h)(1)(B). Mindful of that statutory obligation and mindful as well of the confidential and sensitive nature of the work of this office, my staff and I prepared a report that tried to balance the need to disclose information to ensure the public's understanding with the need to protect the rights of persons and government agencies named in the report *See* 28 U.S.C. § 594(h)(2). While no balancing can be perfect or satisfy everyone, I believe that the report fully satisfies the public's need for information to understand the work of this office.

The first three documents that you request relate to certain allegations that persons in this office may have violated rules of professional conduct. Such allegations are necessarily sensitive and confidential, as are the internal documents regarding investigations of such allegations. The Department of Justice does not release such information to the public. Such documents have been found to be prohibited from public disclosure under the Privacy Act of 1974. *See* 5 U.S.C. § 552a.

Persons accused of professional misconduct have a substantial privacy interest in documents regarding those allegations The attorney general and the independent counsel have a strong expectation of confidentiality in the contents of their correspondence regarding sensitive issues. Because of the confidential and sensitive information in these documents, none of them

would be appropriate for public disclosure absent a clear legal right and some compelling reason in support of disclosure.

In your request for review, you assert that while these three documents are mentioned in the report, your not having access to them "make parts of the report impossible for [you] to comprehend." As to the allegations of professional misconduct leveled against members of this office, the report informs the reader that nine specific allegations were investigated by the Department of Justice. The Department found eight of them unworthy of further action and referred the ninth back to this office. This office appointed Jo Ann Harris to examine that allegation, and that allegation has been resolved as described in the report.

While I can understand your desire to examine the underlying documents, the details contained in these documents are not required for the public to understand the events described in the report and outlined above. I therefore cannot find a compelling reason to publicly disclose these documents and cannot do so, absent an appropriate order of the court, in view of the substantial interest of certain individuals under the Privacy Act in keeping the documents confidential. In short, I cannot comply with your request to review these documents.

Finally, you also seek to review "All documents currently under seal re: Subpoena of Frank Carter, Esq." I cannot release sealed documents without the permission of the court nor could I disclose matters occurring before the grand jury without a court order. If you believe that you have a legal basis for seeking such orders from the court, you will have to pursue your remedies there.

While I therefore must decline your request, I hope that you can understand the substantial privacy and confidentiality constraints under which I must act.

Very truly yours,

Robert W. Ray
Independent Counsel

cc: Hon. David B. Sentelle
Hon. Peter T. Fay
Hon. Richard D. Cudahy
Plato Cacheris, Esq.

FRANCIS T. MANDANICI

FRANCIS T. MANDANICI
ATTORNEY AT LAW

Residence:
180 Pearsall Place
Bridgeport, CT 06605
(203) 368-1775

January 10, 2002

Ms. Marilyn R. Sargent,
Chief Deputy Clerk
United States Court of Appeals
District of Columbia Circuit
3rd and Constitution Ave., N.W.
Washington, D.C. 20001

Re: Appendix To Final Report
Division for the Purpose of Appointing Independent Counsels, Division No. 94-1
In Re: Madison Guaranty Savings & Loan Association
(Regarding Monica Lewinsky and Others)

Dear Ms. Sargent:

With reference to your letter of October 5, 2001, please find enclosed my comments in the form of a Reply which I am requesting be included in the appendix to the Final Report of Independent Counsel Robert W. Ray. My request is made pursuant to 28 U.S.C., Sec. 594(h)(2), which states that people named in any Final Report of an Independent Counsel can submit comments or factual information to be included in an appendix to the Final Report. This reply concerns the Final Report in the above matter *Regarding Monica Lewinsky and Others* in which I am mentioned in Appendix C, xiv-xviii, Appendix E, i-xiii, and Appendix F, iv. Regarding an earlier Report by Mr. Ray mentioned in your letter to me of April 27, 2001, I have not filed a reply.

Sincerely,

Francis T. Mandanici

In Re: Madison Guaranty Savings & Loan Association
(Regarding Monica Lewinsky And Others)

Reply By Francis T. Mandanici
To Final Report By Independent Counsel Robert W. Ray Supplementing
Ethical Complaints Against Kenneth W. Starr

The Independent Counsel Robert W. Ray in his Final Report concerning the Whitewater investigation offers a summary of my ethical grievances against former Whitewater Independent Counsel Kenneth W. Starr that is as flawed as President Clinton's first summary of his sexual relationship with Monica Lewinsky. Ray, much like Clinton, fails to provide the whole truth.

Ray in his Report refers to only four of the five grievances that I filed in the United States District Court in Arkansas and Ray fails to mention a fifth grievance that I filed which, as explained later, apparently resulted in six federal judges filing their own grievance against Starr or his office that was pending at the time that Starr resigned as Independent Counsel. But that grievance was never publicly disclosed, possibly because it might appear that Starr's resignation was as a result of the judges' pending grievance.

Concerning the four grievances that Ray does mention in his Report, Ray states that in those four grievances I charged that Starr (1) was subject to conflicts of interest in connection with his investigation involving the Resolution Trust Corporation (RTC) because his law firm had been sued by the RTC; (2) Starr's planned acceptance of the deanship at the School of Public Policy at Pepperdine University reflected a conflict of interest (but Ray does not mention that the conflict involved Richard Mellon Scaife who was a severe critic of President Clinton and who funded Starr's deanship by providing over one third of the start up costs for the school); (3) Starr's Independent Counsel's Office had improperly leaked grand jury material about Susan McDougal and Hillary Clinton; (4) Starr or his staff solicited false

testimony from McDougal and Julie Hiatt Steele; (5) Starr violated the Independent Counsel Act in his testimony before the House Judiciary Committee regarding a referral pursuant to the Independent Counsel Act; and (6) Starr had a conflict of interest because of his representation of the tobacco companies at the same time that he was Independent Counsel (but Ray fails to mention that the tobacco companies who hired and paid Starr had as their most powerful enemy the target of Starr's investigation, President Clinton).[1]

Without giving any more details as to my actual allegations, Ray concluded in his Report that all of the above grievances were dismissed as "without merit" [2], "emphatically rejected" by the court [3], and Ray stated that a court labeled my ethical charges against Starr as "ridiculous", "the stuff that dreams are made of", indicating "no suggestion of bias or conflict" and finally "nonsense".[4]

The partial truth is that one judge did say those things but the whole truth is that other judges and Starr's own personally chosen ethics expert disagreed. Ray mentions that my earlier three grievances were addressed by the federal court in Arkansas and dismissed because the court found that there was an alleged "absence of specific evidence".[5] However, Ray fails to disclose that a federal judge in that case agreed with me that Starr suffered from at least an appearance of a conflict of interest because the deanship that he was offered at Pepperdine University's School of Pubic Policy after he finished his investigation of President Clinton was funded in large part by Scaife who was a severe critic of President

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[1] Ray provided this summary in the Report's Appendix C, pages xiv-xv, wherein he also listed the dates of the four grievances as September 11, 1996, March 11, 1997, June 19, 1997, and June 4, 1999.
[2] Ray Report, Appendix C, page xiv, Appendix E, page vii, App. F, page iv.
[3] Ray Report, Appendix C, page xviii.
[4] Ray Report, Appendix C, page xviii.
[5] Ray Report, Appendix C, page xv.

Clinton. Judge G. Thomas Eisele of the United States District Court in Little Rock addressed the merits of my claim in a dissenting opinion from the dismissal on technical grounds and noted that news reports revealed that Scaife "has used his fortune to press a media campaign discrediting President Clinton" and that his foundation had contributed "1.1 million dollars toward the 2.75 million dollars in start up costs for the school of public policy" where Starr had been offered the deanship after he finished his investigation of President Clinton.[6]

Judge Eisele further proclaimed that

> "it is difficult to argue that Mr. Starr is not laboring under at least an appearance of conflict.... In the situation before the Court, Mr. Scaife, said to be a bitter opponent of President and Mrs. Clinton, especially with respect to Whitewater-related issues, has apparently helped to arrange and make possible the very career opportunities that Mr. Starr wants to pursue as soon as he completes his work as Independent Counsel. It appears that Mr. Starr may be involved in a third-party conflict of interest-that is, the independent counsel has an obligation to a non client third party that could compromise the independent counsel's neutrality in a matter under investigation...
>
> Even if not true in fact, there is the **inevitable appearance that Mr. Starr may consciously or subconsciously tailor his prosecutorial decisions to please his benefactor**."(Emphasis added.)[7]

Judge Eisele later stated that "I believe that Mr. Starr is laboring under the appearance of a serious conflict of interests stemming from the Pepperdine-Scaife allegations. No one has challenged that conclusion."[8]

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[6] In Re Starr (Starr I), 986 F.Supp. 1144, 1153(E.D. Ark. 1997)(decision by Judge Wilson disqualifying himself from considering my grievance since he knew President Clinton, which contained a preliminary opinion of Judge Eisele concerning my ethical charges. In a later ruling where my grievance was dismissed on technical grounds, Judge Eisele in a dissenting opinion adopted his earler opinion. In Re Starr (Starr II), 986 F.Supp. 1159, 1163, 1168(E.D. Ark. 1997)).

[7] Starr I, supra, 986 F.Supp. at 1154.

[8] Starr II, supra, 986 F.Supp. at 1168.

Despite Judge Eisele's statement that Starr suffered from at least the appearance of a conflict of interest, three other judges dismissed the grievance without appointing a lawyer to investigate the matter which I contended was mandatory under the court's grievance rules.[9]

Since Judge Eisele clearly stated that Starr suffered from at least the appearance of a conflict of interest, I attempted to appeal the dismissal of my grievance that was based on grounds other than on the merits. Unfortunately, three judges on the United States Court of Appeals For The Eighth Circuit stated that I had no standing to appeal in that I was only a private citizen with no connection to any Whitewater case.[10] However, the federal appellate judge who wrote the opinion dismissing the appeal on technical grounds felt that the merits of the case were so important that he publicly stated that he agreed with Judge Eisele's opinion that Starr suffered from at least the appearance of a conflict of interest. Judge Theodore McMillian of the Eighth Circuit in a lengthy footnote stated that he agreed with Judge Eisele's conclusion that "Mandanici's allegations, if true, demonstrate that Starr suffered under at least an appearance of conflict with respect to the Pepperdine-Scaife issue, thereby triggering the district court's duty to refer the matter for investigation [under the court's grievance procedure rule]."[11] Judge McMillian agreed with Judge Eisele that the "alleged Pepperdine-Scaife conflict ... has nothing to do with Mr. Starr's political views.

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[9] Starr II, supra, 986 F.Supp. at 1160. Rule V(A) of the court's Model Federal Rules of Disciplinary Enforcement states that "[w]hen misconduct or **allegations of misconduct** which, if substantiated, would warrant discipline on the part of the attorney admitted to practice before this Court shall come to the attention of a Judge of this Court, whether by **complaint** or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the Judge **shall** refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate." (Emphasis added.) Starr II, supra, 986 F.Supp. at 1160, note 2. Despite the mandatory nature of the word 'shall', the court ruled that it had the discretion not to appoint counsel to conduct even a preliminary investigation. Starr II, supra, 986 F.Supp. at 1160.

[10] Starr v. Mandanici, 152 F.3d 741, 748-750(8th Cir. 1998).

[11] Starr v. Mandanici, supra, 152 F.3d at 746, note 15.

Rather it puts Mr. Starr's personal, financial, and career interests in possible conflict with his duty as independent counsel to exercise his prosecutorial power and discretion fairly and even-handedly."[12]

However, not only did Ray ignore the opinions of Judge Eisele and Judge McMillian who clearly contradicted the judge that Ray chose as the authority on the Scaife conflict, but on another issue raised in my grievance Ray totally ignores Starr's personally chosen ethics expert who resigned because he believed that Starr had violated the Independent Counsel Act and abused the powers of his office in aggressively seeking the impeachment of President Clinton. Ray stated that one of my claims that was rejected by a court was that "Starr violated the Independent Counsel law in his testimony before the House Judiciary Committee regarding a referral under the [Independent Counsel Act]".[13]

But Ray in a classic example of the sin of omission, fails to mention that it was not I who originally claimed that Starr violated the Independent Counsel law regarding his testimony but it was Starr's own personally chosen ethics expert, Samuel Dash, who not only made that claim but resigned because of it. As the nation knows, Starr appeared before the House Judiciary Committee to advocate that Congress should impeach President Clinton based on the grounds that Starr provided in his impeachment report that Starr had earlier supplied to the Committee pursuant to the Independent Counsel Act.

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[12] Starr v. Mandanici, supra, 152 F.3d at 746, note 15. Judge James Loken disagreed with Judge McMillian's view that there appeared to be a violation of ethical rules. Judge Loken stated that "[s]ome of the most successful [prosecutors] were activists with well-publicized political ambition" which was a good thing since the "very reason political activists are effective prosecutors is because of their 'impure' political motives." Starr v. Mandanici, supra, 152 F.3d at 754-755.

[13] Ray Report, Appendix C, page xv.

Dash in his resignation letter to Starr dated November 20, 1998, stated that he had advised Starr that he was resigning because Starr had rejected his "strong advise" and personally appeared before the House Judiciary Committee and "serve[d] as an **aggressive advocate** for the proposition that ... President [Clinton] committed impeachable offenses." (Emphasis added.)[14] In his letter to Starr, Dash stated that

> "**you have violated your obligations under the Independent Counsel statute and have unlawfully intruded** on the power of impeachment which the Constitution gives solely to the House. As Independent Counsel you have only one narrow duty under the statute relating to the House's power of impeachment. **That one duty, under Section 595(c) of the statute, is to objectively provide for the House substantial and credible information that may constitute grounds for impeachment.**
>
> The statute does not, and could not constitutionally give the Independent Counsel any role in impeachment other than this single informing function....
>
> But your role and authority as a provider of information to the House stopped there. **You have no right or authority under the law, as Independent Counsel, to advocate for a particular position** on the evidence before the Judiciary Committee or **to argue that the evidence in your referral is strong enough to justify the decision by the Committee to recommend impeachment**....
>
> **By your willingness to serve in this improper role you have seriously harmed the public confidence in the independence and objectivity of your office.** Frequently you have publicly stated that you have sought my advice in major decisions and had my approval. I cannot allow that inference to continue regarding **your present abuse of your office** and have no other choice but to resign." (Emphasis added.)

Starr responded with a letter to Dash defending his actions. The statute that Dash mentioned, 28 U.S.C., Sec. 595(c), states that an independent counsel has the obligation to provide the Congress with "substantial and credible information which such independent counsel receives ... that **may** constitute grounds for an impeachment." (Emphasis added.)

In his prepared written Statement to the Judiciary Committee released prior to his testimony, Starr stated that on many occasions President Clinton lied, made false statements

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[14] *See* attached letter from Dash to Starr, dated November 20, 1998.

and obstructed justice. But of much greater significance is the fact that Starr strongly advocated that President Clinton's actions deserved impeachment and to buttress that opinion Starr exerted a great deal of effort to persuade the Judiciary Committee to adopt his views as to the proper standards for impeachment and to view him as an authority on the issue since he was a former federal judge.

In a subsequent article published in Newsweek magazine, Dash stated that

> "Starr's opening statement before the committee ... was an **aggressive indictment accusing the president of impeachable offenses**... I do not question the substance of Starr's argument for impeachment. I **strongly objected to his inserting himself into the political format of the Judiciary Committee inquiry** and serving as the committee's chief prosecution witness." (Emphasis added.) Newsweek article of November 30, 1998.

Concerning the official referral report, known as the Starr Report, that Starr had submitted to Congress, Dash in a letter to the Editor published in the Washington Post stated that he had been

> "successful in getting the initial accusatory language advocating impeachment out of the report. The referral report that finally was sent to the House was an entirely different presentation than Mr. Starr's testimony **advocating impeachment**....
>
> [T]he [referral] report did not - and could not, as Mr. Starr's opening statement did - charge that the president committed impeachable offenses.
>
> The difference is fundamental. Mr. Starr's referral report was lawful and mandated by statute. That mandate, however, did not convert Mr. Starr, as The Post alleges, 'into Congress's impeachment investigator.'....
>
> [T]he executive branch independent counsel [should] not ... become the **accuser advocating impeachment before the committee**. Mr. Starr's willingness to play that role **violates not only separation of powers principles**, but the Constitution's demand that the sole power of impeachment is in the House. Having sent his narrative referral report to the House - strong as it was - Mr. Starr **could not lawfully intrude on the impeachment process itself by abandoning the carefully drafted narrative of the referral and arguing, as an accuser, that the president *had* committed impeachable offenses.** Nowhere in the referral report was that accusation made." (Emphasis added.) Washington Post letter to the Editor, published November 24, 1998.

Thus Dash's basic accusation was that the referral statute, 28 U.S.C., Sec. 595(c), only allowed Starr to provide information that "may" constitute grounds for impeachment but Starr went far beyond that by aggressively advocating that President Clinton "*had* committed impeachable offenses."

But Ray never mention's Dash's resignation or Dash's charge that Starr violated the Independent Counsel Act and abused the powers of his office.[15] It certainly weakens Ray's claim that all my grievances were found to be without merit when Ray fails to mention that one of my claims was based on the formal opinion of Starr's ethics expert that he had violated the law and abused the powers of his office. For Ray not to mention Dash's resignation letter is like President Clinton forgetting about the dress.

Regarding my claim that Starr had a conflict of interest in investigating the RTC since the RTC had sued his law firm[16], Ray fails to mention that the Justice Department found that Starr "may have suffered a technical conflict of interest ... [but] no such conflict exists at this point" and thus the matter was not of such an "extreme" nature as to require the Justice Department's exercise of its statutory power to remove Starr as independent counsel.[17] Although the conflict was not so severe as to require the firestorm of the Justice Department trying to remove Starr as Independent counsel, it still was a conflict that constituted an ethical violation.

Regarding the single judge that Ray selected as the authority on my ethical complaints against Starr, that judge was appointed to address my fourth grievance that I filed

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[15] It is possible that Ray mentions Dash in other parts of his Report but I was allowed to review only the parts of the Report pertinent to my grievances and Dash was not mentioned in those parts.

[16] Ray Report, Appendix C, pages xiv-xv.

[17] Starr I, supra, 986 F.Supp at 1146.

which added the charge by Starr's own ethics expert Dash that Starr had violated the Independent Counsel Act and abused the powers of his office. In that fourth grievance I also asked the court to reconsider my earlier grievances that had been dismissed on grounds other than on the merits. Also, Stephen Smith and Julie Hiatt Steele who both had been prosecuted by Starr and thus had more standing to file complaints adopted my grievance.[18] However, rather unexpectedly, all the federal judges in Little Rock, even those who had presided over Paula Jones' lawsuit against President Clinton and the trial of McDougal and Governor Jim Guy Tucker, disqualified themselves.[19] The formal disqualification of all the judges apparently because they had some type of conflict of interest, raises the question of whether such a conflict of interest should have caused them to disqualify themselves from all Whitewater matters including the trial of McDougal and Tucker.

After all the judges disqualified themselves, the chief judge of the United States Court of Appeals For The Eighth Circuit appointed Judge Warren Urbom from Nebraska to preside over the grievances filed by myself, Smith and Steele.[20] Then there was another surprise when Judge Urbom disqualified himself stating that "after becoming appraised of the nature of the matters involved in these assignments and reflecting upon my relationship with the identifiable persons whose legitimate interests are at stake, I am confidant that I must disqualify myself... My impartiality might reasonably be questioned".[21]

Then came the appointment that gladdened Starr's heart in the same way as if President Bush or former Vice President Gore could have selected a single justice on the Supreme Court to decide the Florida recount issues that probably determined the election.

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[18] Ray Report, Appendix C, pages xiv, xv.
[19] Ray Report, Appendix C, page xvi.
[20] Ray Report, Appendix C, page xvi.
[21] Ray Report, Appendix C, pages xvi-xvii.

The chief judge of the Eighth Circuit chose Judge John F. Nangle from Missouri to decide the grievances. Nangle prior to being appointed to the federal bench had been the Republican of the Year in Missouri and the President of the Missouri Association of Republicans.[22]

Disregarding the opinions of Judge Eisele and Judge McMillian that Starr suffered from at least the appearance of a conflict of interest regarding Scaife and also minimizing the expert opinion of Starr's personally chosen ethics expert that Starr had violated the Independent Counsel Act, Nangle dismissed my complaint as being without any merit and labeled my charges against Starr as "ridiculous", "absurd", "frivolous", "nonsense", and "the stuff that dreams are made of".[23]

Nangle dismissed the grievance without first referring the matter to counsel to conduct some type of investigation despite the fact that the court's grievance procedure rule states that "[w]hen ... **allegations of misconduct** which, if substantiated, would warrant discipline on the part of an attorney ... come to the attention of a Judge ..., the Judge **shall** refer the matter to counsel for investigation ..." (Emphasis added.)[24] However, to get around the disciplinary rule that required referring any "allegations of misconduct" to counsel for an investigation, Nangle interpreted the rule as not requiring a referral to counsel for an investigation unless the person who files the grievance not only alleges misconduct but actually substantiates or proves it. Nangle stated that "allegations must be substantiated

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[22] *See* Almanac of the Federal Judiciary.
[23] Ray Report, Appendix C, page xviii, Mandanici v. Starr, 99 F.Supp.2d 1019, 1031, 1033, 1028, note 17, 1035, 1033(E.D.Ark. 2000).
[24] Rule V(A) of the Model Federal Rules of Disciplinary Enforcement, Mandanici v. Starr, supra, 99 F.Supp.2d at 1026, note 11.

before counsel is appointed".[25] Thus Nangle placed the burden on the person filing the grievance to first have enough evidence to already discipline the attorney without any investigation. Thus according to Nangle there would never be any need to refer the matter to counsel for an investigation since the person who filed the grievance had already proved the misconduct and the court could then discipline the attorney.

Considering the weakness of Nangle's rulings, which using his own words could be labeled as absurd, ridiculous and nonsense, I filed an appeal with the United States Court of Appeals For The Eighth Circuit but Ray had the appeal dismissed not on the merits but on technical grounds that I never was directly affected by any of Starr's actions. Ray claimed that the appeals court should "dismiss the appeal of Francis T. Mandanici because he lacks standing, which therefore deprives this Court of jurisdiction."[26] Ray claimed that the court "lacks subject matter jurisdiction over this appeal because there is no 'case' in which Mandanici is a party. He is simply an informant or witness who lacks standing."[27]

The Court of Appeals adopted Ray's argument that my appeal should be dismissed without considering the merits. The Court stated that "[t]he appeal is dismissed for lack of jurisdiction."[28]

Thus Nangle's opinion that my charges against Starr were absurd, frivolous and nonsense were never affirmed on appeal because Ray was quick to move to have the appeal cut short and dismissed on a technical ground. Nangle's opinion that my charges were

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[25] Mandanici v. Starr, supra, 99 F.Supp.2d at 1027.
[26] Motion Of The United States To Dismiss Appeal For Lack Of Subject Matter Jurisdiction, page 1, Francis T. Mandanici vs. Kenneth W. Starr, United States Court of Appeals For The Eighth Circuit, docket # 00-2545.
[27] Motion Of The United States To Dismiss Appeal, page 4.
[28] Judgment dated July 19, 2000, Francis T. Mandanici vs. Kenneth W. Starr, United States Court of Appeals For The Eighth Circuit, docket # 00-2545.

without merit does not have much of the weight of the law behind it since it was never ratified on appeal and simply was one judge's opinion. That opinion was not only minimized by the lack of appellate oversight but was weakened by the very nature of the words used. The rhetoric in the opinion was more of that of a radio talk show host or Republican Man of The Year than a federal judge. None other than Justice Scalia has noted that "judges have been know to be" "politically partisan".[29]

But what is perhaps most shocking is that at approximately the same time that Nangle was dismissing my ethical claims as ridiculous, absurd, and nonsense, he was also dismissing the ethical claims filed by six federal judges against Starr or his office but Nangle refused to disclose that decision that would have placed me in the company of six federal judges. Nangle's scathing criticism of me would have fallen on deaf ears if the public knew that he also was dismissing the ethical charges of six judges as being also "without merit."

When I was allowed to review the parts of the Ray Report concerning myself, I learned for the first time that the chief judge of the Eighth Circuit had originally appointed Judge Urbom to address a grievance filed by six of the seven federal judges in Little Rock against the Independent Counsel's Office. In his Report, Ray publicly discloses for the first time that

> "[a]ll of the judges of the Eastern District of Arkansas, except for Judge Howard, had initiated a **separate ethical inquiry** and in connection with it, sought material from a grand jury investigation related to this office in the Western District of Arkansas conducted by Michael E. Shaheen, Jr. See Petition For Disclosure of Grand Jury Testimony, No GJ 99-24(Western District, Arkansas, November 12, 1999... All of the judges of the Western District recused themselves from consideration of that petition resulting in the appointment of Judge Urbom to consider the petition". (Emphasis added.)[30]

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[29] Morrison v. Olson, 487 U.S. 654, 730, 108 S.Ct. 2597, 101 L.Ed.2d 569(1988)(Scalia, J., dissenting).

[30] Ray Report, Appendix C, page xvii. There are six other judges in the Eastern District other than Judge Howard. Those judges are Susan Webber Wright, Stephen M. Reasoner, William R. Wilson, James M. Moody, G. Thomas Eisele, and Henry Woods.

Ray discloses in his Report that the six federal judges in the Eastern District were among the complainants who filed requests seeking "the **appointment of special counsel to investigate alleged prosecutorial misconduct** against [the Independent Counsel's] office" but Ray notes that "[n]o counsel was ever appointed". (Emphasis added.)[31]

Judge Urbom then recused himself and the chief judge of the Eighth Circuit then appointed Judge Nangle to address the grievance of the six judges as well as the grievance of myself, Smith and Steele.[32]

Ray initially noted in his Report that Nangle dismissed the judges' grievance as being without merit [33], but Ray later in his Report gives more details about the grievance filed by the six judges. Ray states that Starr resigned as Independent Counsel on October 18, 1999, and then Ray states that concerning "the petition filed against the Office of Independent Counsel for access to grand jury material and the **subsequently filed ethics complaint against the Office of Independent Counsel by judges from the United States District Court for the Eastern Distinct of Arkansas**, the petition for access to grand jury materials was eventually withdrawn and the ethics complaint was found to be without any merit". (Emphasis added.)[34] Ray does not disclose the date when the judges filed their ethical complaint nor when Nangle dismissed it as being without merit. However, it appears that the judges' petition for the disclosure of grand jury testimony was filed in February, 1999 [35], which was prior to Starr's resignation in October, 1999.

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31 Ray Report, Appendix C, page xiv.
32 Ray Report, Appendix C, page xvii.
33 Ray Report, Appendix C, page xiv.
34 Ray Report, Appendix E, page xviii.
35 Ray Report, Appendix C, page xvii.

Unlike the situation involving my grievance where Ray details Nangle's scathing criticism of me, Ray does not give much detail as to the grievance filed by the judges nor provides any citation as to a formal ruling dismissing that grievance.

Ray's failure to provide any real details and Nangle's decision to keep his decision under seal necessitates that we rely on circumstantial evidence to determine whether Starr resigned at a time when, and perhaps because, there was an ethics complaint filed against him or his office by six judges. In April,1998, Starr publicly stated that he was no longer going to take the job at Pepperdine because he wanted to finish his investigation of Clinton.[36] However, Starr changed his mind for some reason and resigned in 1999 even without any immediate employment since his old law firm, Kirkland & Ellis, made him wait six months after his resignation to rejoin the firm. A source familiar with the negotiations at the firm stated that "He's not allowed to come back for six more months".[37]

In addition to the above circumstances, there is the aforementioned fifth grievance that I filed against Starr that Ray fails to mention in his Report but which directly concerns the investigation by Shaheen in the Western District of Arkansas that was the subject of the judges' grievance. In a grievance submitted to Judge Eisele, dated April 21, 1998, I charged that Starr had a conflict of interest involving Scaife far more significant than the earlier conflict involving Scaife'e funding of Starr's job because now Scaife was actually involved in Starr's investigation since Scaife's money was possibly implicated in witness tampering. In that grievance I referred to and attached a letter dated April 9, 1998, from the then Deputy Attorney General Eric Holder to Starr. In that letter Holder informed Starr that the Justice

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[36] New York Times, article by Stephen Labaton, published April 17, 1998.
[37] The New Yorker, article by Jeffrey Toobin, November 29, 1999, page 42.

Department has been provided information that David Hale, a key witness for Starr in his Whitewater investigation

> "may have received cash and other gratuities from individuals seeking to discredit the President during a period when Hale was actively cooperating with your investigation... [which might constitute] possible criminal witness tampering.... We are concerned that if he was quoted accurately by the press, one of the participants in these alleged payments has made what could reasonably be interpreted as a threat against a witness....
>
> Section 597(a) [of the Independent Counsel Act] permits an independent counsel to refer matters, in writing, back to the Department of Justice. There have been suggestions that your office would have a **conflict of interst**, or the appearance of a conflict, in looking into these matters, because of the importance of Hale to your investigation and **because the payments allegedly came from funds provided by Richard Scaife**. Should you believe that this matter would be better investigated by the Department of Justice, we would be prepared to accept a referral from you."(Emphasis added.) [38]

Starr responded in a letter dated April 16, 1998, that "we have concluded that any investigation of these allegations may involve at most the **appearnce of a conflict of interest**". (Emphasis added.)[39]

Judge Eisele in a letter to me dated September 8, 1998, referred to an earlier letter in which he had stated that my complaint was premature since it would be appropriate for the court to wait until the Attorney General and Starr could come to an agreement as to who should control the investigation.[40] In the second letter, Judge Eisele noted that the Attorney General and Starr had reached an agreement that the person that Starr had designated, Michael Shaheen, could conduct the investigation. Judge Eisele stated that it was the

> "Court's view that Mr. Shaheen was given the power, the resources, and the independence to conduct the investigation in a thorough and professional manner. That conclusion also made it clear that it would not be necessary or appropriate for this Court to pursue on its own any separate investigation. Therefore, **assuming no change in circumstances, this Court will not separately investigate your letter complaints of April 21 or August 21, 1998**." (Emphasis added.)

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38 *See* attached letter from Holder dated April 9, 1998.
39 *See* attached letter from Starr dated April 16, 1998.
40 *See* attached letter from Judge Eisele dated September 8, 1998.

However, Judge Eisele perhaps as a prophet then concluded that

> "[w]e understand that the investigation by Mr. Shaheen is under way and that the results thereof will eventually be reported to an independent panel of judges. After that, we can determine whether any **further action by this Court is warranted**." (Emphasis added.)

A copy of the above letter from Judge Eisele to me was mailed to Starr.[41] Thus Starr and Ray were aware of my ethical charge that Starr had a conflict of interest in being involved in or having any influence over the investigation by Shaheen involving Starr's former benefactor Scaife.

Judge Eisele is a judge for United States District Court For The Eastern District Of Arkansas, which is the court where the six judges preside who filed the "ethical inquiry" involving Shaheen's investigation.

Thus since Judge Eisele mentioned that "further action" might be necessary after the Shaheen report was filed, then it appears that the further action was the "ethical inquiry" involving Shaheen's investigation filed by Judge Eisele and the other judges of the Eastern District of Arkansas.

It is unclear why the six judges apparently requested the "appointment of special counsel to investigate alleged prosecutorial misconduct" or why they withdrew their request for access to grand jury material involving Shaheen's investigation or why Nangle found that their ethics complaint was without any merit.[42] We do know that Ray's decision not to prosecute President Clinton was dependent upon Clinton resigning as a lawyer and member of the state bar in Arkansas for five years.[43] We do not know whether the ethical inquiry of

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[41] *See* attached letter from Judge Eisele dated September 8, 1998, notation as to who was mailed copies.

[42] Ray Report, Appendix C, page xiv, Appendix E, page viii.

[43] New York Times, article by Neil A. Lewis, published January 20, 2001.

the six judges had anything to do with Starr's resignation or whether Starr's resignation caused any of the judges involved to conclude that the ethical complaint was moot since Starr no longer had any control over Shaheen or his investigation involving Scaife. However, it is interesting to note that Starr's status as a lawyer in the Eastern District of Arkansas is presently listed as "inactive", apparently at his request so that he would not have to pay a $10.00 fee to maintain active status.

Some of the above questions might be answered after Ray's Report becomes public but at the time that I am writing this Reply, the portions of the Report that I reviewed are still confidential and I cannot make any inquires in which I might disclose the reasons for any questions that I might ask. Once Ray's Report is published, then it would appear that not only I but many others would be interested in knowing the circumstances involving the "ethical inquiry" filed by the six federal judges and whether it had anything to do with Starr's resignation at a time when he had to wait six months before his old law firm would take him back.

However, it is not only ironic but outrageous that Starr was obsessed with investigating and exposing what many would consider the private matter of Clinton's sex life, *but* the Office of Independent Counsel was successful at hiding an "ethical inquiry" filed against it by six federal judges. The six judges apparently were among the complainants who sought the appointment of a "special counsel to investigate" the special prosecutor's office.

But even if Starr's resignation had nothing to do with the "ethical inquiry" by the six federal judges, Ray's conclusion in his Report that all the ethical charges against Starr were without merit is a conclusion that ignores not only reality but two federal judges who stated that Starr suffered from at least an appearance of a conflict of interest involving Scaife.

Ray's conclusion also ignores Starr's personally chosen ethics expert who stated that Starr violated the Independent Counsel Act and "abuse[d]" the powers of his office by aggressively advocating for the impeachment of President Clinton.

January 10, 2002

Francis T. Mandanici
Bridgeport, Ct.

GEORGETOWN UNIVERSITY LAW CENTER

Samuel Dash
Professor of Law

November 20, 1998

Honorable Kenneth W. Starr
Independent Counsel
Suite 490 N.
1001 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Ken:

I hereby submit my resignation as outside consultant and advisor to you and your Office of Independent Counsel, effective at noon today.

My decision to leave has nothing whatsoever to do with the many unfounded and misinformed attacks on your conduct as Independent Counsel. Through most of your tenure, I have been fully informed by you and your staff on all major decisions made by your office. I have advised you on these matters and have approved most of the decisions made. On some I agreed with you and your staff at the outset. As to others, where I disagreed, you showed your willingness to be open to my advice and you came to different decisions. From my special vantage point, as an experienced professional outsider with no personal or professional stake in the outcome of your investigations, I found that you conducted yourself with integrity and professionalism as did your staff of experienced federal prosecutors.

I resign for a fundamental reason. Against my strong advice, you decided to depart from your usual professional decision-making by accepting the invitation of the House Judiciary Committee to appear before the committee and serve as an aggressive advocate for the proposition that the evidence in your referral demonstrates that the President committed impeachable offenses. In doing this you have violated your obligations under the Independent Counsel statute and have unlawfully intruded on the power of impeachment which the Constitution gives solely to the House. As Independent Counsel you have only one narrow duty under the statute relating to the House's power of impeachment. That one duty, under §595(c) of the statute, is to objectively provide for the House substantial and credible information that may constitute grounds for impeachment.

The statute does not, and could not constitutionally give the Independent Counsel any role in impeachment other than this single informing function. The House is not dependent on the Independent Counsel for information related to its impeachment role. It can get its information

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from many sources, including through its own process, and does not need a referral of information from the Independent Counsel before it can decide to have an impeachment inquiry. The referral you made to the House was proper under the statute. But your role and authority as a provider of information to the House stopped there. You have no right or authority under the law, as Independent Counsel, to advocate for a particular position on the evidence before the Judiciary Committee or to argue that the evidence in your referral is strong enough to justify the decision by the Committee to recommend impeachment. Constitutionally, as you have recognized, the House has the *sole* power of impeachment. As an executive branch independent prosecutor you may not intrude on that sole power, even if invited by the Committee.

Your referral to the House under the statute presented all the evidence you had about the Lewinsky matter which you believed was substantial and credible. As I have said, that was your only lawful responsibility under the statute governing your office. The House Committee has excellent lawyers advising it and did not need you to summarize your referral and to argue for impeachment. Indeed the Committee does not have a right to impose upon you as Independent Counsel to be its prosecuting counsel for impeachment. By your willingness to serve in this improper role you have seriously harmed the public confidence in the independence and objectivity of your office. Frequently you have publicly stated that you have sought my advice in major decisions and had my approval. I cannot allow that inference to continue regarding your present abuse of your office and have no other choice but to resign.

Sincerely,

Samuel Dash

Office of the Deputy Attorney General
Washington, D.C. 20530

April 9, 1998

The Honorable Kenneth W. Starr
Independent Counsel
Office of the Independent Counsel
1001 Pennsylvania Avenue, NW
Suite 490-North
Washington, DC 20004

Dear Judge Starr:

As you are aware, the United States Attorney's Office for the Western District of Arkansas was recently provided with information suggesting that David Hale, who we understand is a witness in various matters under your jurisdiction, may have received cash and other gratuities from individuals seeking to discredit the President during a period when Hale was actively cooperating with your investigation. In addition to being possible criminal witness-tampering, see, e.g., 18 U.S.C. § 201(b)(3-4), (c)(2-3), 18 U.S.C. § 1512(b), this information may be of a sort that you have an affirmative obligation to disclose to parties matters being handled by your office, and may, of course, influence your future deliberations on the various matters still pending under your jurisdiction. We are also concerned that if he was quoted accurately by the press, one of the participants in these alleged payments has made what could reasonably be interpreted as a threat against a witness. After confirming that the information warranted further investigation, we are therefore providing you with all information on this matter in our possession at this time.

It is our view that you have investigative and prosecutorial jurisdiction over these allegations, because your jurisdiction specifically encompasses obstruction and witness tampering matters arising out of your investigation, which this does. Since the matter appears to us to be within your jurisdiction, and given these unique facts, the Department lacks jurisdiction to investigate it. 28 U.S.C. § 597(a).

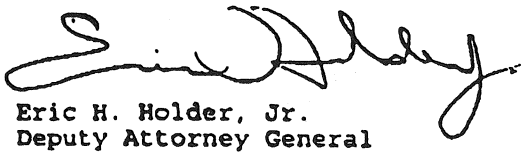
In the course of your exploration of these allegations, however, should you develop any evidence of misconduct by any member of your staff, including FBI agents assigned to assist you, the Office of Professional Responsibility (OPR) is prepared to take appropriate action. In light of the Department's potential supervisory role in this matter, please inform OPR of

the results of your investigation of these allegations. I am also forwarding a copy of this letter to OPR. This will help to assure the public that these allegations were properly handled by those with appropriate jurisdiction over them.

Section 597(a) permits an independent counsel to refer matters, in writing, back to the Department of Justice. There have been suggestions that your office would have a conflict of interest, or the appearance of a conflict, in looking into this matter, because of the importance of Hale to your investigation and because the payments allegedly came from funds provided by Richard Scaife. Should you believe that this matter would be better investigated by the Department of Justice, we would be prepared to accept a referral from you.

If you have any questions or concerns about this referral, please feel free to contact me.

Sincerely,



Eric H. Holder, Jr.
Deputy Attorney General

cc. Richard Rogers, Acting Counsel,
Office of Professional Responsibility

Office of the Independent Counsel

1001 Pennsylvania Avenue, N.W.
Suite 490-North
Washington, DC 20004
(202) 514-8688
Fax (202) 514-8802

April 16, 1998

VIA HAND DELIVERY

Attorney General Janet Reno
U.S. Department of Justice
Tenth Street and Constitution Avenue, N.W.
Washington, DC 20004

Dear Attorney General Reno:

This is in response to Deputy Attorney General Holder's letter of April 9, 1998, referring to the Office of the Independent Counsel ("OIC") certain allegations that David Hale, a witness who has been cooperating with our office, may have received cash and other gratuities from individuals seeking to discredit the President. While noting that our jurisdiction explicitly includes obstruction of justice and witness tampering in connection with our investigation, Mr. Holder suggests that the OIC "would have a conflict of interest, or the appearance of a conflict, in looking into this matter."

Preliminary information indicates that most if not all of the alleged FBI-supervised contacts between David Hale and Parker Dozhier occurred prior to August 1994 -- i.e., while the investigation was being conducted under the auspices of the Department of Justice. To the extent that any activity of potential investigative interest may have taken place, it thus appears -- at least initially -- that it occurred almost entirely before the point at which I became Independent Counsel.

Nonetheless, after reviewing the allegations that have been made regarding Mr. Hale, we have concluded that any investigation of these allegations may involve at most the appearance of a conflict of interest on the part of the OIC. We also note, however, that the Department of Justice may have not only an appearance problem but multiple actual conflicts of interest in connection with an investigation of Mr. Hale, including (1) a conflict potentially arising from the fact that the Department of Justice, which under the Ethics in Government Act is statutorily precluded from investigating the matters that the OIC is

currently looking into, would itself be investigating the OIC; (2) a conflict potentially arising from the fact that Mr. Hale has provided information that is damaging to the President of the United States; and (3) a conflict arising from the fact that, because the alleged FBI-supervised contacts between David Hale and Parker Dozhier appear largely to have been prior to August of 1994, any activity of investigative interest that may have occurred took place primarily during the time that the investigation was being conducted on behalf of the Department of Justice.

We are deeply concerned that the above considerations would create actual conflict of interest problems in any investigation of these allegations by the Department of Justice, particularly when viewed in combination with the positions that the Department has taken on the various testimonial privileges that are hindering our investigation.

To address these important issues, the OIC has developed several proposed alternate mechanisms for investigating this matter in a manner that comports fully with our respective obligations and with the public's interest in the proper and honest administration of justice. We believe it is appropriate for the OIC and the Department of Justice to attempt to reach agreement on which of these mechanisms should be implemented, to assure public confidence in the discharge of our responsibilities in our respective investigative jurisdictions. I look forward to the opportunity to meet with you, at your earliest convenience, to discuss these alternate mechanisms and our mutual interest in a complete, thorough, and unbiased investigation.

Sincerely,

Kenneth W. Starr

Kenneth W. Starr
Independent Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
U.S. POST OFFICE & COURTHOUSE
P.O. BOX 3684
LITTLE ROCK, ARKANSAS 72203

G. THOMAS EISELE
SENIOR JUDGE

September 8, 1998

Mr. Francis T. Mandanici
180 Pearsall Place
Bridgeport, CT 06605

Dear Mr. Mandanici:

This will acknowledge the receipt of your letter of August 21, 1998, in which you inquire as to the status of your "grievance" dated April 21, 1998. In your August 21, letter you noted my original response dated May 5, 1998. That response, in toto, states:

> This will acknowledge receipt of your letter-complaint of April 21, 1998.
>
> Since I have no "Whitewater" or "Independent counsel" cases pending before me, I am treating your current letter-complaint as a matter for the Court as a whole to resolve. This response is therefore, being written to you at the direction of the non-recusing members of this Court.
>
> We are of the opinion that your complaint, insofar as it relates to the conduct of the prospective investigation of the Hale-Dozhier-Scaife-Independent Counsel allegations, is, at a minimum, premature. It would be inappropriate for the Court even to consider your complaint until the Attorney General and Mr. Starr determine who shall be in control of, or participate in, that investigation.
>
> Trusting that you understand the reasons for the Court's position on your request, I am.

As you are probably aware, the Attorney General and the Independent Counsel ultimately agreed upon a mechanism under 28 U.S.C. § 597(a) to investigate the allegations that Mr. Hale may have received cash or other gratuities from individuals seeking to discredit the President during a period when Hale was actively cooperating with Mr. Starr's investigation. See Mr. Holder's letter to Mr. Starr dated April 9, 1998, a copy of which you attached to your letter of April 21, 1998. As you noted, this would entail an investigation into the role, if any, of Mr. Scaife or organizations associated with him.

When the arrangement finally agreed upon between the Attorney General and the Independent Counsel was made known to this Court, the judges participating unanimously accepted it as a reasonable and fair way, under all of the facts and circumstances, to effectively

conduct that investigation. It was our Court's view that Mr. Shaheen was given the power, the resources, and the independence to conduct that investigation in a thorough and professional manner. That conclusion also made it clear that it would not be necessary or appropriate for this Court to pursue on its own any separate investigation. Therefore, assuming no change in circumstances, this Court will not separately investigate your letter complaints of April 21 or August 21, 1998.

We understand that the investigation by Mr. Shaheen is under way and that the results thereof will eventually be reported to an independent panel of judges. After that, we can determine whether any further action by this Court is warranted.

Trusting that this explains the position of this Court, I am,

Sincerely yours,

For the Court

G. Thomas Eisele

cc: Attorney General Janet Reno
Independent Counsel Kenneth Starr
Mr. Michael Shaheen
Eastern District Judges

CHERYL D. MILLS

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January 11, 2002

HAND DELIVERY

UNDER SEAL

Hon. Mark J. Langer
Clerk of the Court
United States Court of Appeals for the District of Columbia Circuit
United States Courthouse-Fifth Floor-Room 5409
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

RE: In re: Madison Guaranty Savings & Loan Assn. (Report regarding Monica S. Lewinsky and others), Div. No. 94-1.

Dear Mr. Langer:

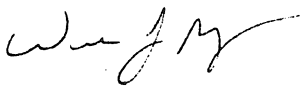
Pursuant to 28 U.S.C. § 594(h)(2) and the sealed Order of the Division for the Purpose of Appointing Independent Counsels, entered October 5, 2001, please accept this letter filed on behalf of my client, Cheryl D. Mills, a person mentioned in the Office of Independent Counsel's Report Regarding Monica Lewinsky and Others in the referenced matter. This letter constitutes written comments and factual information that I request be included in an appendix to the Final Report.

I respond here to only a single point of the OIC's Report. Footnote 106 to the main body of the Report describes a pager message that Ms. Mills sent to Ms. Betty Currie on January 24, 1998. To the extent the OIC report suggests or implies anything other than the following, it is inaccurate:

Ms. Currie and Ms. Mills were and are long-time personal friends. On January 24, 1998, Ms. Mills paged Ms. Currie to check on her, out of concern for her well-being at a time when Ms. Currie's role in the matters under investigation had suddenly placed her in the national media spotlight. Ms. Mills wanted Ms. Currie to know that she remained available to her as a friend during a time of personal crisis. The message, as quoted in Ms. Mills' grand jury testimony, makes that abundantly clear.

For the OIC to imply, however obliquely, anything improper or unethical about this communication says more about the OIC's bias than about Ms. Mills' conduct.

Very truly yours,



William J. Murphy

KATHLEEN WILLEY SCHWICKER

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

Division For The Purpose of
Appointing Independent Counsel
Ethics in Government Act of 1978, As Amended

Special Division

Division No. 94-1

In Re: Madison Guaranty Savings & Loan
(Regarding Monica Lewinsky and Others)

Before Sentelle, Presiding, Fay & Cudahy, Senior Judges

Comments of Kathleen Willey Schwicker

NOW COMES KATHLEEN WILLEY SCHWICKER and, pursuant to the Order of this Honorable Court filed October 5, 2001 in the above entitled cause, respectfully submits her comments and factual information for possible inclusion in an Appendix to the Final Report of Robert W. Ray, Esquire, the Independent Counsel appointed October 18, 1999.

It is the position of this witness that the Final Report is both misleading and factually deficient. Although certain selected facts and occurrences are described, the Report neglects to address many significant incidents, persons and situations connected with Kathleen Willey's four years as an important and respected cooperating witness of the Office of Independent Counsel ("OIC"). Over that four year period, Ms. Willey spent many hours being interviewed by OIC's federal investigators. Moreover, she testified fully and completely before two federal grand juries, and told her story several times on national

television.

The information and testimony furnished by Kathleen Willey directly and specifically contradicted testimony given under oath by President William Jefferson Clinton in the course of his deposition given in the case of Jones v. Clinton. The matter concerned an encounter between the President and the witness. Ms. Willey alleged that the President assaulted her physically; she identified several acts of physical contact, all of which were sexual and unwanted. In his deposition, President Clinton categorically denied each and every allegation. Because Ms. Willey's charges were so detailed and because President Clinton's denials were so unequivocal, it is clear that one of the other was lying. It appears from the Report that the OIC has concluded that Ms. Willey's credibility is not such as to support a conviction of the President for perjury or for witness tampering.

Thus, the Report states:

> . . . Linda Tripp's testimony that Willey had a previous romantic interest in President Clinton (and appeared to view his alleged advances positively) departed from Willey's testimony. Tripp's co-operation with this office in the Lewinsky Investigation ultimately yielded evidence about President Clinton's conduct with Monica Lewinsky that was contrary to the President's testimony. Thus, evidence supplied by Linda Tripp regarding Willey that was consistent with President Clinton's testimony would likely be favorably received by a jury.

Any attempt to pit Linda Tripp's credibility against that of Ms. Willey is disingenuous at best.

First: Ms. Tripp originally testified that Ms. Willey

"viewed positively" the President's advances. She has, however, repeatedly amended that testimony. She has been quoted as saying that she could have been wrong and may have misread Kathleen Willey's flustered demeanor. Furthermore, during an interview on television with Larry King, Ms. Tripp stated, "Oh, you can believe Kathleen Willey; she's an honest woman."

With reference to Ms. Willey's alleged "romantic interest in President Clinton" there is not one shred of evidence to support that conclusion. Ms. Willey's sole interest in Governor, later President Clinton, was political. She and her husband were both die-hard Democrats who campaigned for Mr. Clinton in his presidential campaign. After the election, Ms. Willey volunteered to work for the Clinton Administration in the Old Executive Office Building.

The only "romantic interest" was shown not by Ms. Willey, but by Mr. Clinton. During the campaign, Mr. Clinton made several (documented) phone calls to Ms. Willey attempting to meet her, though she did not know it at the time, the meetings were not intended to discuss policy or tactics.

While it is true that Linda Tripp's testimony (and tapes) eventually proved perjury and subornation of perjury against the President, there is no reason to believe that any of Tripp's testimony would cast doubt upon Kathleen Willey's credibility. On the contrary, Linda Tripp's testimony, together with that of

other witnesses known to the OIC, actually corroborated Ms. Willey's account of the Oval Office encounter. The President, in the words of the Report, "emphatically denied making any sexual advances toward Willey . . . he agreed they had physical contact, but not of a sexual nature." The witnesses who saw Ms. Willey when she came out of the Oval Office, including Ms. Tripp, testified that she was ruffled, flustered and seemed to be confused. Ms. Tripp even referred to the President's "advances".

The Report further addresses the alleged differences between Ms. Willey's deposition and her grand jury testimony and her "acknowledgment of false statements to the OIC". The Report states:

> Concerns about the probative effect of Willey's testimony would likely be sufficient to negate a conclusion that the person [charged] probably be found guilty, by an unbiased trier of fact."

When the facts are known, neither the foregoing allegations, not the conclusion can be sustained. Prior to giving her deposition in the Jones case, Ms. Willey was subjected to an ongoing harassment calculated to force her either to refuse to testify altogether or to falsify her testimony. Shortly after receiving the deposition subpoena, her attorney was visited by one of the President's lawyers, who suggested that Ms. Willey assert her Fifth Amendment Privilege to avoid testifying. Soon an unsolicited package was received by Ms. Willey's attorney. It contained a form Motion to Quash the subpoena, a form Affidavit

and a Memorandum of Law.

While the pressure was being applied to Ms. Willey's attorney, she was being afflicted with thinly veiled attempts to scare her into complying with the President's wishes: her automobile tires were flattened by a nail gun; an unidentified female tried to obtain custody of Ms. Willey's animal; (a cat that mysteriously disappeared); an individual tried to get directions to the witness' home from the local post office, and became abusive when he couldn't get the information; a long time friend of President Clinton tried to coax Ms. Willey to change or reconsider her statements about President Clinton; and private investigator, Jarred Stone, using an alias, called Ms. Willey and told her to be careful because "there are people out to hurt you".

As the date for her deposition approached, Ms. Willey was becoming more and more frightened for herself, her lawyer and her family. Then the final blow fell. As she was walking her dogs in a secluded area, she was approached by a man in a jogging suit. During the ensuing conversation, the "jogger" displayed an intimate knowledge of Ms. Willey, her missing cat (by name), the vandalized tires, her children (by name), her lawyer (by name) and his children (by name). Not only was the stranger intimidating, he also hinted at dire results unless the witness cooperated. As she ran away, he called after her, "You're just

not getting the message, are you?"

Kathleen Willey was originally a reluctant witness in the Jones case. She had no desire to relive the encounter with the President, and to become involved in the scandal that was developing. The unrelenting intimidation to which she had been subject added real terror to that reluctance. As a consequence, she fenced with the Ms. Jones' attorney during the first part of the deposition. When the judge cleared the court after a recess, she told, as best she could, her account of the events. Even then, her fear compelled her to omit some of the more embarrassing elements of the President's behavior. She tried to tell the truth and hoped that the omission of details might satisfy those who had been attacking her. That hope was dashed two days later, in the early morning, when Ms. Willey found the skull of a small animal on her front porch facing the door.

Approximately two months later, Kathleen Willey told the same story, but in greater detail. The deposition had been a defining moment and she realized that she must go all the way. She had been given a grant of immunity by the OIC and promised protection as long as she remained a witness.

The false statement to the OIC is likewise insufficient to affect general credibility. Four years after her husband's suicide, Ms. Willey found herself in a relationship with a younger man. The relationship was short and Ms. Willey felt

angry and victimized. When the OIC investigators later asked her about "other relationships", she became embarrassed and disavowed any relationship because she felt it was unimportant. When she was confronted with the evidence, she readily admitted the facts and her reasons for not bringing it out earlier. This venial deviation is insufficient to affect Ms. Willey's credibility adversely, particularly in view of other evidence and opinions that the OIC chose to ignore.

The FBI investigators assigned to the OIC told Ms. Willey that she was the most investigated witness that they had ever been assigned to interview. They estimated that she had experienced more than 75 hours of interrogation over a period of about one year. In all those hours, the only matter that was concealed is the humiliating experience of a failed short relationship.

In this connection, the Report's observation concerning Ms. Willey's two polygraph examinations is likewise misleading. The Report states that the first examination was "deemed" inconclusive, and the second "suggested" the witness was being truthful. We submit that the verbs should be reversed. When the OIC suggested that Kathleen Willey submit to a polygraph examination, she enthusiastically agreed, despite the vehement objections of her attorney. The first test was given in Richmond by an agent with little experience. A single question was poorly

worded and therefore ambiguous. Confused, Ms. Willey hesitated before answering, and that hesitation caused the result that the test was inconclusive. Five days later, Ms. Willey was retested in Washington by the FBI's top polygrapher. The test was fully successful and Ms. Willey was deemed to be truthful.

Inexplicably, the OIC that now would cast a shadow over Ms. Willey's credibility, vouched for that credibility when she testified for the prosecution in the case of United States v. J. Steele. Significantly, that case involved a charge of perjury based upon an alleged conversation with Ms. Willey. All of the witnesses supported and corroborated Ms. Willey's testimony. The Report asserts that Ms. Steele, "was not acquitted". True, she was not; the jury was hung nine to three for conviction. This is another misleading statement calculated to denigrate an honest witness. Yet all of Ms. Willey's testimony in the Steele trial was fully corroborated by at least six other witnesses.

But more: the Report states:

> "In short, there was insufficient evidence to prove . . . that President Clinton's testimony regarding Kathleen Willey was false. Accordingly, the OIC declined prosecution and the investigation of potential criminal wrongdoing relating to Willey's allegations is now closed.

In opposition to that conclusion, the witness Kathleen Willey Schwicker respectfully requests that, in addition to the foregoing, the following facts and circumstances likewise be included in an Appendix to the Report in the interest of fairness

and completeness:

First: An attorney for one of the President's friends hired investigator Jarred Stone to investigate Ms. Willey and "find dirt". He did investigate exhaustively, and none was found.

Second: Clinton aide, Sidney Blumenthal, said to journalist Christopher Hitchens the day after Ms. Willey's appearance on "60 Minutes", "Willey may have high numbers now, but they will be down by the end of the week". That day, Willey's letters to the President were illegally released to the press.

Third: Ms. Willey was interviewed for several hours by attorneys and investigators from the House of Representatives Committee on the Judiciary during the impeachment inquiry into President Clinton. The interview consisted, for the most part, of specific and searching cross-examination. After the impeachment was voted in the House, Ms. Willey was informed that she was to be one of the principal witnesses against President Clinton in the Senate trial of the impeachment charges. The Senate refused to permit live witnesses to appear, so she was never called.

In summary, the Report as submitted, is both misleading and woefully destitute of facts to support the conclusions of the OIC concerning the alleged "problems" with the credibility of

Kathleen Willey. It is obvious that, for one reason or another, the OIC has elected to forego indicting William Jefferson Clinton for perjury, obstruction of justice and witness tampering. That is a decision peculiarly in the discretion of the prosecutor. When, however, that decision is based upon relatively insignificant facts, culled selectively from a mass of credible evidence; and when from those incomplete facts, misleading, if not false conclusions are employed to denigrate and humiliate a witness who cooperated at the risk of her reputation and physical safety, justice and fairness demand that the full story be made a part of the record.

WHEREFORE, the witness KATHLEEN WILLEY SCHWICKER, respectfully request that these comments be made a part of the Appendix to the Final Report of the Independent Counsel.

Respectfully submitted,

Kathleen Willey Schwicker 1/7/20

KATHLEEN WILLEY SCHWICKER