Judge Wright's Finding Bill Clinton in Contempt

In September 2004, when I was preparing my essay, *Morality and Education,* which is posted at http://www.rbs0.com/morality.pdf, I recognized that few people were aware of the details of Judge Wright finding Bill Clinton in contempt in the *Jones v. Clinton* case. Because those details were a distraction in my essay on *Morality and Education,* I am posting quotations from Judge Wright in a separate document here. Beginning at page 6 below, I describe Bill Clinton's suspension from the practice of law in Arkansas and his subsequent resignation from the bar of the U.S. Supreme Court.

The citation to Judge Susan Webber Wright's opinion is:
Jones v. Clinton, 36 F.Supp.2d 1118 (E.D.Ark. 12 Apr 1999).

In his deposition on 17 Jan 1998, Bill Clinton gave testimony that was later recognized as false:

> ... the President testified in response to questioning from plaintiff's counsel and his own attorney that he had no recollection of having ever been alone with Ms. Lewinsky and he denied that he had engaged in an "extramarital sexual affair," in "sexual relations," or in a "sexual relationship" with Ms. Lewinsky. [FN5] [Presidential Deposition] at 52-53, 56-59, 78, 204. An affidavit submitted by Ms. Lewinsky in support of her motion to quash a subpoena for her testimony and made a part of the record of the President's deposition likewise denied that she and the President had engaged in a sexual relationship. When asked by Mr. Bennett [who was Clinton's attorney] whether Ms. Lewinsky's affidavit denying a sexual relationship with the President was a "true and accurate statement," the President answered, "That is absolutely true." Pres. Depo. at 204.
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> FN5. At the request of plaintiff's counsel, the term "sexual relations" was defined as follows during the deposition: "For the purposes of this deposition, a person engages in 'sexual relations' when the person knowingly engages in or causes ... 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.... 'Contact' means intentional touching, either directly or through clothing."

Jones v. Clinton, 36 F.Supp.2d at 1121-22.

Bill Clinton subsequently admitted what he euphemistically characterized as an "inappropriate relationship" with Monica Lewinsky. The Starr report[1] shows that Clinton clearly testified falsely in his January 1998 deposition. Judge Wright waited until after the completion of the impeachment process before finding Bill Clinton in contempt of court for his willful violation of discovery orders. Note that Judge Wright never mentioned the word "perjury" in her opinion. Instead she found Clinton had willfully failed to obey discovery orders. Judge Wright said:

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[1] The Starr Report, U.S. House of Representatives Report 105-310, 9 Sep 1998. HTML versions at http://thomas.loc.gov/icreport/2toc.htm , http://icreport.access.gpo.gov/report/2toc.htm and http://www.cnn.com/starr.report/ , among many other websites.

> On two separate occasions, this Court ruled in clear and reasonably specific terms that plaintiff was entitled to information regarding any individuals with whom the President had sexual relations or proposed or sought to have sexual relations and who were during the relevant time frame state or federal employees. See December 11, 1997 Order, at 3; Pres. Depo. at 53-55, 66, 78. [FN13] Notwithstanding these Orders, the 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. The President acknowledged as much in his public admission that he "misled people" because, among other things, the questions posed to him "were being asked in a politically inspired lawsuit, which has since been dismissed." Although there are a number of aspects of the President's conduct in this case that might be characterized as contemptuous, the Court addresses at this time only those matters which no reasonable person would seriously dispute were in violation of this Court's discovery Orders and which do not require a hearing, namely the President's sworn statements concerning whether he and Ms. Lewinsky had ever been alone together and whether he had ever engaged in sexual relations with Ms. Lewinsky.

Jones v. Clinton, 36 F.Supp.2d at 1127.

> At his August 17th [1998] appearance before the grand jury, the President directly contradicted his deposition testimony by acknowledging that he had indeed been alone with Ms. Lewinsky on a number of occasions during which they engaged in "inappropriate intimate contact." Pres. GJ Test. at 9-10. He stated he also was alone with her "from time to time" when there was no "improper contact" occurring. Id. at 134. The President began his testimony by reading a statement which reads in part as follows:
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> > 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 17th, 1998 deposition. But they did involve inappropriate intimate contact. These inappropriate encounters ended, at my insistence, in early 1997.

Jones v. Clinton, 36 F.Supp.2d at 1128.

In summarizing Clinton's testimony before the grand jury in August 1998, Judge Wright said:

> In addition, the President recalled a specific meeting on December 28, 1997, less than three weeks prior to his January 17th deposition, at which he and Ms. Lewinsky were alone together. The President went on to acknowledge that he tried to conceal his "inappropriate intimate relationship" with Ms. Lewinsky by not telling anyone about the relationship and by "do[ing] it where nobody else was looking at it," stating that he would have to be an "exhibitionist not to have tried to exclude everyone else."

Jones v. Clinton, 36 F.Supp.2d at 1129 [citations to Grand Jury testimony omitted].

> At his August 17th grand jury appearance, the President directly contradicted his deposition testimony by acknowledging "inappropriate intimate contact" with Ms. Lewinsky on numerous occasions. Pres. GJ Test. at 9-10, 38-39, 54. When asked by a grand juror what he meant by "inappropriate contact," the President stated, "What I meant was, and what they can infer that I meant was, that I did things that were — when I was alone with her, that were inappropriate and wrong." Id. at 92-93. The President repeatedly refused to provide answers to questions regarding specific sexual activity between himself and Ms. Lewinsky, instead referring to his statement acknowledging "inappropriate intimate contact" and stating that "sexual relations" as defined by himself and "most ordinary Americans" means, for the most part, only intercourse. Id. at 12, 22-24, 92-94, 102-03, 110-11, 139, 168. Nevertheless, the President, while claiming that he did not engage in intercourse with Ms. Lewinsky and did not engage in any other contact with her that would fall within the definition of "sexual relations" used at his deposition, acknowledged that the nature of his

"inappropriate intimate contact" with Ms. Lewinsky was such that he would have been an "exhibitionist" had it been viewed by others. Id. at 10, 12, 54, 96. The President went on to state that he did not believe he violated the definition of sexual relations he was given "by directly touching those parts of her body with the intent to arouse or gratify." Id. at 139, 168.

It is difficult to construe the President's sworn statements in this civil lawsuit concerning his relationship with Ms. Lewinsky as anything other than a willful refusal to obey this Court's discovery Orders. Given the President's admission that he was misleading with regard to the questions being posed to him and the clarity with which his falsehoods are revealed by the record, [FN15] there is no need to engage in an extended analysis of the President's sworn statements in this lawsuit. Simply put, the President's deposition testimony regarding whether he had ever been alone with Ms. Lewinsky was intentionally false, and his statements regarding whether he had ever engaged in sexual relations with Ms. Lewinsky likewise were intentionally false, notwithstanding tortured definitions and interpretations of the term "sexual relations." [FN16]

FN15. Indeed, even though the President's testimony at his civil deposition was entirely consistent with Ms. Lewinsky's affidavit denying "sexual relations" between herself and the President, the President's attorney later notified this Court pursuant to his professional responsibility that portions of Ms. Lewinsky's affidavit were reported to be "misleading and not true" and that this Court should not rely on Ms. Lewinsky's affidavit or remarks of counsel characterizing that affidavit. See Letter of September 30, 1998. The President's testimony at his deposition that Ms. Lewinsky's denial in her affidavit of a "sexual relationship" between them was "absolutely true" likewise was "misleading and not true."

FN16. The President seemed to accept OIC's characterization of his improper contact with Ms. Lewinsky as "some kind of sex" and as a "physically intimate" relationship. Pres. GJ Test. at 123, 136. Although the President did not disclose any specific sexual acts between himself and Ms. Lewinsky, he did state that oral sex performed by Ms. Lewinsky on himself would not constitute "sexual relations" as that term was defined by plaintiff at his deposition. Id. at 93, 100, 102, 104-05, 151-52, 168. It appears the President is asserting that Ms. Lewinsky could be having sex with him while, at the same time, he was not having sex with her.

Certainly the President's aggravation with what he considered a "politically inspired lawsuit" may well have been justified, although the Court makes no findings in that regard. Even assuming that to be so, however, his recourse for the filing of an improper claim against him was to move for the imposition of sanctions against plaintiff. See, e.g., *Clinton v. Jones,* 520 U.S. at 708-09, 117 S.Ct. 1636 (noting the availability of sanctions for litigation directed at the President in his unofficial capacity for purposes of political gain or harassment). The President could, for example, have moved for sanctions pursuant to Fed.R.Civ.P. 11 if, as he intimated in his address to the Nation, he was convinced that plaintiff's lawsuit was presented for an improper purpose and included claims "based on 'allegations and other factual contentions [lacking] evidentiary support' or unlikely to prove well-grounded after reasonable investigation." Id. at 709 n. 42, 117 S.Ct. 1636 (quoting Fed.R.Civ.P. 11(b)(1), (3)). The President never challenged the legitimacy of plaintiff's lawsuit by filing a motion pursuant to Rule 11, however, 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. "A lawsuit is not a contest in concealment, and the discovery process was established so that 'either party may compel the other to disgorge whatever facts he has in his possession.' " *Southern Ry. Co. v. Lanham,* 403 F.2d 119, 130 (5th Cir.1968) (quoting *Hickman v. Taylor,* 329 U.S. 495, 507, 67 S.Ct. 385, 91 L.Ed. 451 (1947)).

> In sum, the record leaves no doubt that the President violated this Court's discovery Orders regarding disclosure of information deemed by this Court to be relevant to plaintiff's lawsuit. The Court therefore adjudges the President to be in civil contempt of court pursuant to Fed.R.Civ.P. 37(b)(2).

Jones v. Clinton, 36 F.Supp.2d at 1130-31.

> ... the President's contumacious conduct in this case, 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.

Jones v. Clinton, 36 F.Supp.2d at 1131.

> In addressing only the President's sworn statements concerning his relationship with Ms. Lewinsky, this Court is fully aware that the President may have engaged in other contumacious conduct warranting the imposition of sanctions. [citation omitted] The Court determines, however, that this matter can be summarily addressed by focusing on those specific instances of the President's misconduct with which there is no factual dispute and which primarily occurred directly before the Court. While hearings might have been necessary were there an issue regarding the President's willfulness in failing to obey the Court's discovery Orders, the circumstances surrounding the President's failure to disclose his relationship with Ms. Lewinsky as ordered by this Court are undisputed and contained within the record. The President has essentially admitted that he intended to mislead plaintiff in her efforts at gaining information deemed by this Court to be relevant, and hearings would not assist the Court in addressing the President's misconduct regarding his failure to obey this Court's discovery Orders. Thus, no possible prejudice to the President can result from this Court utilizing summary procedures rather than convening hearings. Indeed, it is in the best interests of the President and this Court that this matter be expeditiously resolved. Hearings to address other possible instances of misconduct on the part of the President could possibly be quite extensive and would require the taking of evidence, including, if necessary, testimony from witnesses.
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> This is not to say that the Court considers other instances of possible Presidential misconduct in this case unworthy of the Court's attention. In fact, the Court fully considered addressing all of the President's possible misconduct pursuant to the criminal contempt provisions set forth in Fed.R.Crim.P. 42, but determines that such action is not necessary at this time for two primary reasons. [footnote omitted]

Jones v. Clinton, 36 F.Supp.2d at 1132-33.

Judge Wright then explained that (1) summary adjudication for contempt of court is appropriate only when contumacious conduct occurred in the presence of the judge and (2) "resolving the matter expeditiously and without hearings pursuant to Rule 42(b) is in the best interests of both the President and this Court." However, if Clinton wanted a hearing, then Judge Wright would give him a hearing:

> Nevertheless, the Court will convene a hearing at the request of the President should he desire an opportunity in which to demonstrate why he is not in civil contempt of court, why sanctions should not be imposed, or why the Court is otherwise in error in proceeding in the manner in which it has. In that regard, the Court will stay enforcement of this Memorandum Opinion and Order for thirty (30) days from the date of its entry in which to give the President an opportunity to request a hearing or file a notice of appeal. In addition, the Court will entertain any legitimate and reasonable requests from the President for extensions of time in which to address the matter. Should the President fail to request a hearing or file a notice of appeal within the time allowed, the Court will enter an Order setting forth the time and manner

by which the President is to comply with the sanctions herein imposed. Should the President succeed in obtaining a hearing, however, whether at his request or by way of appeal, any interests in an expeditious resolution of this matter and in sparing the President and this Court the turmoil of evidentiary hearings will no longer be a consideration. Accordingly, the President is hereby put on notice that this Court will take evidence at any future hearings — including, if necessary, testimony from witnesses — on all matters concerning the President's conduct in this lawsuit which may warrant a finding of civil contempt. [footnote omitted]

Jones v. Clinton, 36 F.Supp.2d at 1134.

Judge Wright concluded:

> ... there simply is no escaping the fact that the President deliberately violated this Court's discovery Orders and thereby undermined the integrity of the judicial system. Sanctions must be imposed, 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. Accordingly, the Court adjudges the President to be in civil contempt of court pursuant to Fed.R.Civ.P. 37(b)(2) for his willful failure to obey this Court's discovery Orders and hereby orders the following:
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> 1. The President shall pay plaintiff any reasonable expenses, including attorney's fees, caused by his willful failure to obey this Court's discovery Orders. Plaintiff's former counsel are directed to submit to this Court a detailed statement of any expenses and attorney's fees incurred in connection with this matter within twenty (20) days of the date of entry of this Memorandum Opinion and Order.
> 2. The President shall deposit into the registry of this Court the sum of $ 1,202.00, the total expenses incurred by this Court in traveling to Washington, D.C. at the President's request to preside over his January 17th deposition.
>
> In addition, the Court will refer this matter to the Arkansas Supreme Court's Committee on Professional Conduct for review and any action it deems appropriate.
>
> The Court will stay enforcement of this Memorandum Opinion and Order for thirty (30) days from the date of its entry in order to allow the President an opportunity to request a hearing or file a notice of appeal. Should the President fail to timely request a hearing or file a notice of appeal, the Court will enter an Order setting forth the time and manner by which the President is to comply with the sanctions herein imposed.
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> IT IS SO ORDERED this 12th day of April 1999.

Jones v. Clinton, 36 F.Supp.2d at 1134-35.

In her subsequent opinion on 29 July 1999, Judge Wright began by reviewing her previous findings.

> On April 12, 1999, this Court entered a Memorandum Opinion and Order adjudging William Jefferson Clinton, President of the United States, to be in civil contempt of court pursuant to Fed.R.Civ.P. 37(b)(2) for his willful failure to obey certain discovery Orders of this Court in a lawsuit brought against him by Paula Corbin Jones. The Court determined that the President violated this Court's discovery Orders by giving false, misleading and evasive answers that were designed to obstruct the judicial process, and that sanctions must be imposed, not only to redress the misconduct of the President in this case, 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. .... However, the Court stayed enforcement of its Order for thirty days to give the President an opportunity to file a notice of appeal or to request a hearing in which to demonstrate why he is not in civil contempt of court, why sanctions should not be imposed, or why the Court is otherwise in error in proceeding in the manner in which it has. The Court stated that should the President fail to file a notice of appeal or request a hearing within the time allowed, it would enter an Order

> setting forth the time and manner by which the President is to comply with the sanctions being imposed.

Jones v. Clinton, 57 F.Supp.2d 719, 720 (E.D.Ark. 29 July 1999).
[citations to 36 F.Supp.2d 1118 omitted]

Then Judge Wright tersely noted Clinton's response:

> The President subsequently notified this Court that while he disputes allegations that he knowingly and intentionally gave false testimony under oath, he will not request a hearing or file a notice of appeal. Accordingly, the Court addresses at this time the sanctions to be imposed in accordance with the April 12th Order.

Jones v. Clinton, 57 F.Supp.2d 719, 720 (E.D.Ark. 29 July 1999).
Judge Wright then ordered Clinton to pay plaintiff's attorneys $ 89,484 as compensation for their time and expenses.

Arkansas Bar

In April 1999, Judge Wright had referred Bill Clinton's misconduct to the Arkansas bar for disciplinary action.

> In addition, the Court will refer this matter to the Arkansas Supreme Court's Committee on Professional Conduct for review and any disciplinary action it deems appropriate for the President's possible violation of the Model Rules of Professional Conduct. [FN19] Relevant to this case, Rule 8.4 of the Model Rules provides that it is professional misconduct for a lawyer to, among other things, "engage in conduct involving dishonesty, fraud, deceit or misrepresentation," or to "engage in conduct that is prejudicial to the administration of justice." The President's conduct as discussed previously arguably falls within the rubric of Rule 8.4 and involves matters that the Committee on Professional Conduct may deem appropriate for disciplinary action. [FN20]
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> FN19. The Committee on Professional Conduct acts as an arm of the Arkansas Supreme Court in matters relating to the supervision and licensing of Arkansas attorneys, of which the President is one, and that Court has exclusive jurisdiction over the conduct of Arkansas attorneys and has the power to make rules regulating the practice of law and the professional conduct of attorneys of law. See *Neal v. Wilson,* 920 F.Supp. 976, 987- 88 (W.D.Ark.1996), *aff'd,* 112 F.3d 351 (8th Cir.1997). In that regard, the Arkansas Supreme Court has adopted the American Bar Association's Model Rules of Professional Conduct as the State of Arkansas's code of professional responsibility. See *In re Arkansas Bar Ass'n,* 287 Ark. 495, 702 S.W.2d 326 (1985).
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> FN20. In referring this matter to the Committee on Professional Conduct, this Court does not thereby relinquish jurisdiction to address the matter itself and issue sanctions. Rather than having been displaced, the authority of this Court to sanction attorneys is independent of, and in addition to, the power of review possessed by the Committee on Professional Conduct. See *Harlan v. Lewis,* 982 F.2d at 1261 (noting that "[a] district judge must have the power to deal with conduct of attorneys in litigation without delegating this responsibility to state disciplinary mechanisms," and that "[s]tate disciplinary authorities may act in such cases if they choose, but this does not limit the power or responsibility of the district court").

Jones v. Clinton, 36 F.Supp.2d 1118, 1132 (E.D.Ark. 12 Apr 1999).

There were two complaints about Bill Clinton's conduct filed at the Committee on Professional Conduct of the Arkansas Supreme Court. First, Mr. Hogue, a law professor, filed a complaint in September 1998. Second, Judge Wright filed a complaint in April 1999. When the Committee ignored those complaints, Hogue petitioned the Arkansas Supreme Court for a writ of mandamus, compelling the Committee to process the complaints against Clinton. In an extraordinary decision, the writ of mandamus was granted.[2]

On 19 Jan 2001, the President Clinton's last day in office, a deal was reached in which Bill Clinton was punished by a public admission of misconduct, suspension of his law license for five years, and a $ 25,000 fine. The unreported Agreed Order of Discipline says, in part:

> 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.

Neal v. Clinton, 2001 WL 34355768 at *1 (Ark.Cir. 19 Jan 2001).

> 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.

Neal v. Clinton, 2001 WL 34355768 at *2 (Ark.Cir. 19 Jan 2001).

The Agreed Order of Discipline concludes:

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

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[2] *Hogue v. Neal,* 12 S.W.3d 186 (Ark. 27 Jan 2000).

> 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.

Neal v. Clinton, 2001 WL 34355768 at *2-3 (Ark.Cir. 19 Jan 2001).

U.S. Supreme Court

On 1 Oct 2001, Bill Clinton was suspended from practice of law before the U.S. Supreme Court, with the following terse notice from the Court:

> Bill Clinton, of New York, New York, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

In re Discipline of Clinton, 534 U.S. 806 (2001).

Bill Clinton initially announced he would oppose his disbarment at the U.S. Supreme Court, however, on 9 Nov 2001, Bill Clinton resigned from the bar of that Court.

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created 25 Sep 2004, revised 2 Oct 2004

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