Clinton's Future: Can He Polish His Image and Keep His License to Practice Law?

Gerald Walpin
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The prologue to this article has already been written as part of contemporary events. William Jefferson Clinton, the forty-second President of the United States, will go down in history as the only President who: (i) was impeached; (ii) was the subject of a multi-year investigation; (iii) was a defendant in a very embarrassing lawsuit; (iv) publicly admitted to improper conduct with a young intern in the White House; (v) was held in contempt and sanctioned to pay a substantial fine by a federal court; and (vi) was the subject of charges seeking his disbarment as an attorney.

What remains is: Where does President Clinton go from here? Can he rehabilitate his reputation from that of a sex-crazed man who treats women as chattel to do his bidding, to that of the statesman that he so wished to have; or does he face continued public ridicule and regulatory sanction for his undisputed conduct?

I. REHABILITATION OF CLINTON'S REPUTATION

Clinton has well earned his reputation as the Teflon President who has been able to succeed in elections and maintain a very high rating for job approval in public opinion polls, while registering a low rating for honesty, trustworthiness, morals, and ethics.1 Two recent incidents indicate a concerted effort by Clinton to use what might be considered to be respectable segments of our society to polish his image. First, last year’s President of the American Bar Association (“ABA”), Philip Anderson, is a long-time Clinton friend and colleague from Arkansas. While law-

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yers may not be very high in reputation among Americans, the ABA holds itself out as having the noble purpose “to promote throughout the nation the administration of justice and ... to uphold the honor of the profession of law,” “[t]o achieve the highest standards of ... ethical conduct,” and “to stimulate conduct that reflects high moral ground.” Conveying the honor of an invitation from the ABA to be the keynote speaker at its annual lawyers convention would obviously be looked upon as a major polishing of Clinton’s tarnished reputation.

That is exactly what Clinton sought from his good friend Philip Anderson. All Clinton had to do was ask for the invitation, and the invitation from that prestigious lawyers’ group was given. And Clinton’s ABA cronies did not stop with inviting Clinton himself. Amazingly, one of the ABA units also invited Webster Hubbell to address some of the convention attendees on the subject of “Life as a Target,” thus suggesting that even this twice convicted felon must have been unfairly treated only because he was part of the Clinton circle. Has the ABA ever before given its podium to a convicted felon to claim—not that he was innocent—but that the Government was persecuting him? Can you imagine the ABA inviting Jimmy Hoffa, who always claimed that Attorney-General Robert Kennedy was persecuting him, to speak at such an important affair? Of course not.

Clinton’s use of the ABA was well-timed. The ABA’s invitation to Clinton was publicly announced in the same week that Chief Judge Susan Webber Wright of the United States District Court in Arkansas stated that “[s]anctions must be imposed” on the President for having violated the Court’s discovery orders “by giving false, misleading and evasive answers that were designed to obstruct the judicial process,” “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 conduct that undermines the in-

7. See Hentoff, supra note 6, at A22.
9. Id. at 1127.
tegrity of the judicial system.”\textsuperscript{10} That ruling was based on Judge Wright’s finding that the President’s testimony “was intentionally false.”\textsuperscript{11} As that court explained, “it simply is not acceptable to employ deceptions and falsehoods in an attempt to obstruct the judicial process.”\textsuperscript{12}

It is instructive in evaluating the ABA’s treatment of Clinton to consider how the ABA reacted to President Richard M. Nixon, another recent President who came under attack for professional misconduct. The ABA’s treatment of Nixon during and following the Watergate investigations was totally at variance from its recent treatment of Clinton. During the lengthy period of the Watergate inquiry while Nixon remained the President, the ABA carefully distanced itself from him. It never honored Nixon by inviting him to speak at its national meeting. Indeed, it publicly made clear its rejection of Nixon by adopting a resolution during its August 1973 meeting that condemned Nixon and his colleagues for their role in Watergate, and asked for “prompt and vigorous disciplinary” action to “be taken forthwith.”\textsuperscript{13} Among the reasons set forth in that resolution was that the Code of Professional Responsibility imposes on lawyers the obligation “to maintain the highest standards of ethical conduct,” and “enjoins lawyers from all illegal and morally reprehensible conduct” that “the news media have disclosed,” and which “cast aspersions upon the integrity of the profession.”\textsuperscript{14} It is noteworthy that the ABA issued this reprimand without awaiting any court finding of wrongdoing by Nixon. Likewise, the ABA’s failure to reprimand Clinton is all the more telling, particularly given that to do so would not involve any prejudgment of Clinton based solely on media reports since Judge Wright found illegal conduct by Clinton\textsuperscript{15}—a finding from which Clinton has not appealed.

There could be no possible reason, other than political, for the 180 degree turnabout made by ABA leadership—no resolution criticizing Clinton, and instead, an invitation honoring him. It should be difficult for the ABA leadership to shrug off Clinton’s perjury as unimportant. The Model Rules of Professional Conduct—in the drafting of which the

\begin{thebibliography}{99}
\bibitem{10} Id. at 1131 (citing National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 643 (1976)).
\bibitem{11} Id. at 1130.
\bibitem{12} Id. at 1131.
\bibitem{14} Id.
\bibitem{15} See Jones, 36 F. Supp. 2d at 1127. Judge Wright stated that President Clinton gave “false, misleading and evasive answers that were designed to obstruct the judicial process.” Id.
\end{thebibliography}
ABA boasts it played a major role—mandates that a lawyer shall not "engage in conduct involving dishonesty, . . . deceit or misrepresentation," nor "engage in conduct that is prejudicial to the administration of justice."16

The disparity in the ABA's response is not limited to the Clinton and Nixon incidents. I am reminded of the public statement issued by five former ABA presidents who criticized Court of Appeals Judge David B. Sentelle for having a social lunch with two conservative Senators prior to the Judge's vote to appoint Kenneth Starr as the Whitewater independent counsel.17 According to those former ABA presidents, they felt compelled to make the statement because of "the appearance of impropriety" which left the public "in doubt."18 Contrast that social luncheon with this official invitation by the ABA leadership to a person recently found to have committed obstruction of justice and to have willfully lied under oath.

Did the ABA's amazing stamp of approval alter the public perception of Clinton? Given the adverse articles and media comments on it, it appears more likely that the ABA's red carpet for Clinton reduced the ABA's reputation rather than uplifting Clinton's reputation.

Apparently not satisfied with only the ABA honor, another friend, William R. Ferris, whom Clinton had appointed as Chairman of the National Endowment for the Humanities, announced that Clinton had been chosen to give that agency's Annual Jefferson Lecture on the Humanities.19 According to that agency, the Jefferson Lecture is "the highest honor the federal government bestows for . . . achievement in the humanities,"20 meaning the fields of history, literature and philosophy. Prior recipients include famed philosophers and historians, such as Sydney Hook, Toni Morrison, Saul Bellow, Robert Penn Warren, and Lionel Trilling,21 no other President, or indeed any politician, has ever been given that honor in the almost thirty years of its existence.22

18. Id. (citing a joint statement of five former ABA presidents issued on September 20, 1999).
21. See id.
22. See Molotsky, supra note 19, at A25.
This attempt at polishing Clinton’s image backfired. Scholars quickly attacked it for politicizing the agency,\(^{23}\) causing Clinton quickly to decline the honor of giving the Jefferson lecture.\(^{24}\) The result added nothing to Clinton’s luster.

II. Clinton’s Membership in the Bar

The ABA’s invitation to Clinton was particularly incongruous because Judge Wright had filed a complaint against Clinton with the Committee on Professional Conduct of the Supreme Court of the State of Arkansas, by referring Clinton’s conduct to it for determination of whether he should be disbarred.\(^{25}\) And after almost a year of what appears to be unexplained inaction in violation of that Committee’s rules, the Supreme Court of Arkansas issued a writ of mandamus ordering the Committee to act,\(^{26}\) following which the Committee formally served President Clinton who then had thirty days to respond.\(^{27}\)

Having been President does not immunize a lawyer who commits misconduct from disbarment. Former President Nixon was disbarred because his conduct obstructed the due administration of justice while “at the time of the conduct in question [he was also] the holder of the highest public office of this country and in a position of public trust.”\(^{28}\)

But does it suggest that what was good for the Republican goose is good for the Democratic gander? After all, the charges against Clinton likewise involve obstruction of justice and the associated categories of willful false testimony and subornation of perjury.\(^{29}\)

While predicting the future is impossible, particularly of President Clinton, an analysis of the facts and controlling legal principles certainly provides a picture of what the future should be.

\(^{23}\) See id. at A25.


\(^{25}\) See Karen Alexander, Ethics Referrals by Judges Take Fast Track in Arkansas, LEGAL TIMES, Apr. 19, 1999, at 2. In fact, Judge Wright’s referral of the Clinton matter was the second complaint of Clinton’s conduct received by that committee. On behalf of the Southeastern Legal Foundation, Inc., L. Lynn Hogue, Esq., filed a complaint on September 15, 1998. See Verified Complaint at 1, In re Clinton (Ark. Sept. 15, 1998) (No. 73019).


\(^{27}\) See Neil A. Lewis, Panel on Lawyer Discipline Begins Case Against Clinton, N.Y. TIMES, Feb. 12, 2000 at A9.


\(^{29}\) See 145 CONG. REC. S1458 (daily ed. Feb. 12, 1999) (article of impeachment in which the House accused President Clinton of perjury before the grand jury and the Senate ultimately acquitted); 145 CONG. REC. S1458-59 (daily ed. Feb. 12, 1999) (article of impeachment in which the House accused President Clinton of obstruction of justice and the Senate ultimately acquitted); Jones v. Clinton, 36 F. Supp. 2d 1118, 1130 (E.D. Ark. 1999).
A. Basic Principles on Disbarment

"‘[T]ruth is the cornerstone of the judicial system; a license to practice law requires allegiance and fidelity to truth.’"\(^30\) The Supreme Court of Arkansas has itself clearly stated that "[t]ruthfulness, honesty, and candor are necessary characteristics for establishing . . . good moral character and hence his or her fitness to practice law."\(^31\) The Model Code of Professional Responsibility and the Model Rules of Professional Conduct mandate that a lawyer shall not "engage in conduct involving dishonesty, . . . deceit or misrepresentation" nor "engage in conduct that is prejudicial to the administration of justice."\(^32\) Therefore, obstruction of justice and giving false testimony have been held to constitute "offenses which belie the basic character qualification required of a lawyer."\(^33\)

B. The Issue

Constitutional scholars and more simple talk show pundits have debated whether lying under oath, subornation of perjury, and obstruction of justice, arising out of sexual conduct, can establish a constitutional ground for impeachment.\(^34\) Whatever the answer to that constituency.
tional question, the above specified proscriptions imposed on lawyers establish that those offenses, if proven, warrant disbarment. Is Clinton guilty of any or all of these offenses? That decision is properly made by a due process panel after consideration of all relevant facts, including whatever Clinton offers in his defense. For the moment, however, it is worthwhile to examine the essentially undisputed facts on a limited number of the charges as well as Clinton’s own statements. Both strongly suggest a very good case against Clinton on each of these offenses.

C. Lying Under Oath

It would be well-nigh impossible for anyone—even Clinton—to dispute that he lied under oath. Indeed, Judge Wright expressly held that “the record demonstrates by clear and convincing evidence that the President,” under oath, gave “false, misleading and evasive answers . . . to obstruct the judicial process,” that “no reasonable person would seriously dispute” their falsity,35 and that Clinton’s conduct was “contumacious,”36 and “undermined the integrity of the judicial system.”37 Those “false . . . answers” related to two subjects: “[W]hether [Clinton] and Ms. Lewinsky had ever been alone together and whether he had ever engaged in sexual relations with Ms. Lewinsky.”38

1. Denial of Being Alone with Ms. Lewinsky

With regard to Clinton’s sworn denial that he had never been alone with Ms. Lewinsky, Judge Wright specified evidence that conclusively established its falsity.39 In his subsequent grand jury testimony, Clinton began by reading a carefully prepared statement in which he expressly admitted: “‘I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997 . . . . ‘40 He continued, in that grand jury testimony, to specify four to five occasions in which he recalled being alone with Ms. Lewinsky in the White House.41 In addition, he subsequently repeated to the grand jurors his admission that “‘I was alone with her.”42

36. Id. at 1131.
37. Id.
38. Id. at 1127.
39. See id. at 1127-30.
40. Id. at 1128 (quoting President Clinton’s Grand Jury Testimony at 9-10).
41. See id. at 1129.
42. Id. at 1130 (quoting President Clinton’s Grand Jury Testimony at 92-93).
Given Clinton’s admissions, Judge Wright did not find it necessary to refer to substantial independent evidence demonstrating the falsity of Clinton’s denial of being alone with Ms. Lewinsky. For example, the Referral from Independent Counsel Kenneth Starr quotes Ms. Lewinsky as testifying before the grand jury that she was alone with the President on numerous occasions and in various locations in the White House, including the Oval Office, the President’s private study, the private bathroom situated across from the study, and the hallway between the Oval Office and the private dining room. Betty Currie, the President’s personal secretary, also testified that Ms. Lewinsky and Clinton were alone together on several occasions in the Oval Office area. The parade of witnesses to their being alone also included six current or former members of the Secret Service, and a White House steward.

2. Denial of Sexual Relations with Ms. Lewinsky

Clinton testified under oath in his deposition that “I have never had sexual relations with Monica Lewinsky. I’ve never had an affair with her.” He repeated that denial several times under oath. In response to Ms. Lewinsky’s affidavit, which denied any “sexual relationship” with him, Clinton affirmed that it was “absolutely true.” And earlier, in responding to an interrogatory seeking “the name . . . of each and every [federal employee] with whom [he] had sexual relations when [he was] . . . President of the United States,” Clinton answered, under oath, “None.”

43. See REFERRAL FROM INDEPENDENT COUNSEL KENNETH W. STARR IN CONFORMITY WITH THE REQUIREMENTS OF TITLE 28, UNITED STATES CODE, SECTION 595(c), H.R. DOC. NO. 105-310, at 30-32 (1998) [hereinafter STARR REPORT].
44. See id. at 119.
46. Jones, 36 F. Supp. 2d at 1129 (quoting President Clinton’s Deposition at 78).
47. Id. at 1130 (quoting President Clinton’s Deposition at 204).
48. Id. at 1130 (quoting President Clinton’s Response to Plaintiff’s Second Set of Interrogatories at 5; President Clinton’s Supplemental Response to Plaintiff’s Second Set of Interrogatories at 2) (first alteration in original). It is noteworthy that this interrogatory contained no definition of the term “sexual relations,” and Clinton did not object to the interrogatory as needing a definition, obviously recognizing that the term has a well-understood meaning. This interrogatory was answered before the deposition, when:

At the request of plaintiff's counsel, the term “sexual relations” was defined as follows . . .: “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.”

Id. at 1121 n.5 (quoting Deposition Exhibit 1) (emphasis added) (second and third alteration in
Again, Judge Wright held that Clinton’s testimony on this subject was “intentionally false, notwithstanding tortured definitions and interpretations of the term ‘sexual relations,’” and enumerated evidence which made her finding indisputable. For example, in Clinton’s grand jury testimony, he described his conduct when alone with Ms. Lewinsky as “‘wrong,’” and “‘inappropriate intimate contact,’” and that he attempted to conceal an “‘inappropriate intimate relationship.’” He further conceded that these inappropriate contacts occurred “‘where nobody else was looking at [them]’” because “he would have to be an ‘exhibitionist not to have tried to exclude everyone else.’” When a grand juror attempted to pin the President down to admit in his own words what everyone knew he was describing by the term “‘inappropriate contact,’” this normally loquacious speaker limited his answer to “‘I did things . . . that were inappropriate and wrong.’” Clinton’s own lawyer notified the court that a denial of sexual relations between Clinton and Lewinsky was “‘not true.’”

No one has ever suggested any alternative to “sexual relations” as accurately describing Clinton’s “inappropriate intimate contact” with Lewinsky, particularly in view of Clinton’s admission that for him to have had other persons present during the contact would have made him an “exhibitionist.” Certainly, the conduct did not involve reading poetry or the Bible! These facts caused Judge Wright to hold that Clinton’s conduct with Lewinsky was in fact sexual relations, making Clinton’s denial “intentionally false.”

original). Certain Clinton apologists argued that Clinton’s testimony was not false under this definition, apparently on the assertion that it was not Clinton, but Lewinsky, who did the contact “to arouse or gratify the sexual desire of” Clinton, not vice-versa. Judge Wright, apparently recognizing that this argument had been attempted, made short-shrift of it by a footnote comment that “[i]t 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.” Id. at 1130 n.16. This semantic argument also ignored the reality that “sexual relations” by definition requires “two to tango” and that, in any event, this definition was non-existent at the time of his above interrogatory answer.

49. Id. at 1130.
50. Id. (quoting President Clinton’s Grand Jury Testimony at 92-93).
52. Id. at 1129 (quoting President Clinton’s Grand Jury Testimony at 38, 54).
53. Id. (quoting President Clinton’s Grand Jury Testimony at 38, 54).
54. Id. at 1130 (quoting President Clinton’s Grand Jury Testimony at 92-93).
55. See id. at 1130 n.15 (quoting Letter from Robert Bennett, President Clinton’s attorney, to the United States District Court (E.D. Ark.) (Sept. 30, 1998)). The attorney felt constrained to advise the court pursuant to his professional responsibility because of his role, at Clinton’s deposition, in proffering an affidavit by Ms. Lewinsky to that effect. See id.
56. Id. at 1130.
3. Collateral Estoppel

It is doubtful that Clinton, in a disciplinary hearing, would be permitted to relitigate Judge Wright’s findings that he lied under oath. Issue preclusion—otherwise known as collateral estoppel—makes Judge Wright’s prior determination conclusive against Clinton in a subsequent proceeding, given that Clinton’s lying was actually litigated, and was essential to the valid and final judgment which Judge Wright entered in holding Clinton in civil contempt. Courts have in fact held collateral estoppel applicable to professional disciplinary proceedings.

The principle basic to collateral estoppel is:

A party who has had a full and fair opportunity to litigate an issue has been accorded the elements of due process. In the absence of circumstances suggesting the appropriateness of allowing him to relitigate the issue, there is no good reason for refusing to treat the issue as settled so far as [Clinton] is concerned.

Judge Wright expressly stayed enforcement of her judgment holding Clinton in civil contempt for thirty days “in order to allow the President an opportunity to request a hearing or file a notice of appeal.” Clinton invoked neither alternative offered to him. Having been afforded that full opportunity further to litigate the factual findings made by Judge Wright, collateral estoppel should be held to preclude him from a belated attack on those findings in a subsequent proceeding.

4. Clinton’s Possible Defenses

Clinton’s defenders have suggested two defenses against any holding that his testimony was actionably false, both of which I will now discuss (assuming arguendo that collateral estoppel does not preclude these defenses).

[57. See RESTATEMENT (SECOND) OF JUDGMENTS §§ 27, 29 (1982). Exceptions to issue preclusion do not apply because Clinton, although he elected not to do so, was afforded the “full and fair opportunity to litigate the issue” before Judge Wright, id. § 29, and could “have obtained review of the judgment in the initial action.” Id. § 28(1).

58. See, e.g., In re Bruzga’s Case, 712 A.2d 1078, 1079 (N.H. 1998) (applying the rule prospectively to attorney disciplinary proceedings); In re Pepe, 659 A.2d 1379, 1383 (N.J. 1995) (employing the rule in the case of an attorney who was also a judge); Choi v. New York, 549 N.E.2d 469, 470-72 (N.Y. 1989) (finding the rule applicable in a disciplinary proceeding against a doctor).


60. Jones, 36 F. Supp. 2d at 1135.]
a. The "Poor Recollection" Defense

Clinton's defenders say that not recalling is not the same as lying; after all, he is a busy man who could "forget" such details.\(^6\)

It is uniformly held that a witness who testifies under oath that he cannot recall an event can be convicted of perjury if the fact finder believes, beyond a reasonable doubt, that he does remember the event.\(^6\) Additionally, the burden of proof in a disbarment proceeding requires a standard of proof lower than the criminal beyond a reasonable doubt standard.\(^6\)

Whichever burden applies, could any fair minded person rationally believe that Clinton, when he testified under oath in the *Jones* case, did not remember having been alone with Ms. Lewinsky? First, Clinton's grand jury testimony only seven months later, in which he admitted being alone with Lewinsky and to having had intimate contact with her,\(^6\) contradicts his sworn lack of such recollection in the deposition.\(^6\) No one has suggested that anything occurred in the interim that suddenly refreshed his recollection!

In any event, practical common sense logic precludes accepting his "I don't recall" as plausible. Remember what happened during the times Clinton was alone with Ms. Lewinsky; as Clinton conservatively put it, there was "inappropriate intimate contact."\(^6\) No one suggests that Clinton had "forgotten" that he had engaged in such activities with Ms. Lewinsky. Even without applying a clearer well-known term descriptive of their conduct, we all know that it is not conduct in which one usually engages in unless alone.\(^6\) Hence, it is obvious that Clinton knew, when


\(^6\) See United States v. Ponticelli, 622 F.2d 985, 989 (9th Cir. 1980); United States v. Biaggi, 675 F. Supp. 790, 807 (S.D.N.Y. 1987) (indicating that a witness may be found guilty of perjury for falsely testifying in a deposition ancillary to a grand jury investigation if the witness actually remembered an event but stated that he did not).

\(^6\) The states are in disagreement as to whether the standard of proof in attorney disciplinary proceedings is "preponderance of the evidence" or "clear and convincing evidence." Compare Hurst v. Bar Rules Comm., 155 S.W.2d 697, 701 (Ark. 1941) (employing the "preponderance of the evidence" standard of proof), with In re Bruzga's Case, 712 A.2d at 1079 (adopting the "clear and convincing" evidence standard of proof). But both of those standards require a lower standard of proof than the criminal "beyond a reasonable doubt" standard. See Hurst, 155 S.W.2d at 701. As applicable to Clinton, the standard of proof in Arkansas for attorney disciplinary proceedings is the lesser "preponderance of the evidence" standard. See id. at 701.

\(^6\) See Jones, 36 F. Supp. 2d at 1128 (citing President Clinton's Grand Jury Testimony at 9-10).

\(^6\) See id. at 1127-28 (citing President Clinton's Deposition at 52-53, 56-59).

\(^6\) Id. at 1130 (quoting President Clinton's Grand Jury Testimony at 9-10, 38-39, 54).

\(^6\) See id.
he testified in the Jones deposition, that he had in fact been alone with Ms. Lewinsky on various occasions in the White House, and lied under oath when he testified that he could not recall.

b. Materiality

Clinton defenders have made the argument that intentionally false testimony under oath does not amount to perjury where the testimony concerned a matter not material to the litigation. And, these defenders continue, Clinton’s testimony concerning Lewinsky was clearly immaterial to the Jones lawsuit because the Judge ruled it inadmissible in any trial. However, there are at least three fatal defects to this defense.

First, while materiality is an essential element of the crime of perjury, materiality need not be established for the purpose of disbarment. Rather, it is simply lying under oath that is incompatible with an attorney’s duty to uphold the law. As noted above, disbarment can be ordered for “dishonesty, . . . deceit or misrepresentation,” without regard to any materiality element. The statement by a Justice of the Arizona Supreme Court, in favor of disbarment of a former Attorney General of the United States, is particularly apt:

Of all the offenses which a lawyer can commit, untruthfulness in judicial proceedings is one of the most egregious. Lawyers are required to be truthful in their practice even when not under oath. It is even worse when a man who has been Attorney General of the United States, and whose conduct should therefore be an example to the public and all other lawyers, commits these violations.

I might suggest that it is even worse when the President of the United States, who is the chief law enforcement officer of this country, commits these violations.

Even if materiality were a required element for disbarment, very little evidence is required to establish it. For example, a perjury charge was upheld by the Supreme Court of Illinois—in a case not dissimilar to

69. See id.
70. See, e.g., In re Dougherty, 180 N.Y.S.2d 971, 973-74 (1st Dept. 1959) (“Whether the questions propounded . . . were sufficiently relevant to the inquiry . . . so as to subject respondent to prosecution for perjury is of no moment [because] [t]he concededly false answers given and respondent’s lack of candor, whether technically perjurious or not, breached the standards of professional ethics.”). See also In re Budnitz, 425 Mass. 1018 (1997).
the Clinton-Lewinsky situation—against a community leader, for lying in a deposition about his sexual conduct with a woman even though the deposition was never used in the trial.\textsuperscript{73}

Finally, and perhaps most conclusive, Judge Wright herself expressly held that Clinton’s testimony concerning his conduct with Lewinsky \textit{was} material to the Jones case.\textsuperscript{74} Before any false testimony from Clinton, the court had rejected objections by Clinton’s counsel to interrogatories that required information about Clinton’s relationship with Lewinsky.\textsuperscript{75} Judge Wright held that Jones 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 . . . state or federal employees.”\textsuperscript{76}

Thereafter, the court decided to exclude evidence concerning Lewinsky only because, based on the false Clinton deposition testimony and the false Lewinsky affidavit offered during the Clinton deposition, “the Court anticipated that” both would “deny a sexual relationship and that plaintiff would attempt to rebut their denials with extrinsic evidence that could be inadmissible” under Rule 608(b) of the Federal Rules of Evidence and would, in any event, require a trial-within-a-trial, thereby “frustrat[ing] the timely resolution of this case and cause undue expense and delay.”\textsuperscript{77}

Effectively taking judicial notice of the “immateriality” spin which Clinton defenders had put on that ruling, Judge Wright later expressly held that “contrary to numerous assertions, this Court did not rule that evidence of the Lewinsky matter was irrelevant or immaterial to the issues in plaintiff’s case.”\textsuperscript{78} Judge Wright repeated “that such evidence might have been relevant to plaintiff’s case,” probative to “establish, among other things, intent, absence of mistake, motive, and habit on the part of the President.”\textsuperscript{79}

Judge Wright, to be certain that the public understood the meaning of her ruling in this very public case, thus went out of her way to clarify the obvious: someone who lies under oath to deprive a party of very material evidence that would, if truthfully given, have supported that

\textsuperscript{73} See People v. Davis, 647 N.E.2d 977, 978-79 (Ill. 1995).
\textsuperscript{74} See Jones v. Clinton, 36 F. Supp. 2d 1118, 1131 (E.D. Ark. 1999).
\textsuperscript{75} See \textit{id.} at 1121.
\textsuperscript{76} \textit{id.} at 1121 n.4.
\textsuperscript{77} \textit{id.} at 1122 n.7.
\textsuperscript{78} \textit{id.}
\textsuperscript{79} \textit{id.} (quoting Jones v. Clinton, 993 F. Supp. 1217, 1222 (E.D. Ark. 1998)).
party's case, cannot claim immunity because his lies made the subject unhelpful and thus inadmissible.\textsuperscript{80}

5. Summary of Lying Under Oath Ground
Judge Wright referred to Clinton's dual positions as "a member of the bar and chief law enforcement officer of this Nation" in holding that "the President's contumacious conduct . . . was without justification and undermined the integrity of the judicial system."\textsuperscript{81} She then went on to quote the statement by the Court of Appeals for the Fourth Circuit, in \textit{United States v. Shaffer Equipment Co.},\textsuperscript{82} that "'[o]ur adversary system depends on a most jealous safeguarding of truth and candor,'"\textsuperscript{83} requiring that "'[t]he system can provide no harbor for clever devises to divert the search, mislead opposing counsel or the court, or cover up that which is necessary for justice in the end.'"\textsuperscript{84} Judge Wright therefore held that "[s]anctions 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 willfully . . . engaging in conduct that undermines the integrity of the judicial system."\textsuperscript{85}

It does not require much discussion to conclude that the same reasoning applies in spades to a disbarment proceeding, which is the Bar's process to police its members adherence to conduct which safeguards the integrity of the judicial system. After all, as already noted, "'a license to practice law requires allegiance and fidelity to truth.'"\textsuperscript{86}

\textbf{D. Subornation of Perjury}

For some time, the media was inundated with the assertion that Clinton could not be guilty of subornation of perjury because Ms. Lewinsky volunteered at the end of her grand jury testimony that he had

\textsuperscript{80} See \textit{id.} at 1131. Judge Wright's holding that Clinton's false testimony was material is also an essential component of her finding that Clinton violated this Court's discovery orders "by giving false, misleading and evasive answers that were \textit{designed} to obstruct the judicial process." \textit{Id.} at 1127 (emphasis added). By definition, only material false testimony can obstruct the judicial process.

\textsuperscript{81} \textit{Id.} at 1131.

\textsuperscript{82} 11 F.3d 450 (4th Cir. 1993).

\textsuperscript{83} \textit{Jones}, 36 F. Supp. 2d at 1131 (quoting \textit{Shaffer Equip. Co.}, 11 F.3d at 463).

\textsuperscript{84} \textit{Id.} at 1131 (quoting \textit{Shaffer Equip. Co.}, 11 F.3d at 457-58) (alteration in original).

\textsuperscript{85} \textit{Id.}

never asked her to lie. Those who were responsible for this argument get an "A" for spin control and an "F" for legal knowledge.

No one disputes that the crime of subornation of perjury requires an agreement to commit perjury. But there is likewise no dispute on the practical reality that few persons bent on suborning perjury will do so by telling a prospective witness "I ask you to lie." Rather, it is more likely accomplished by a wink or a nod, or by putting the created "facts" into leading questions to the prospective witness, asking "isn't this what you recall."

For that reason, a subornation of perjury prosecution can be sustained through circumstantial, not just direct, evidence. There is no requirement that there be evidence that the defendant told the witness that he "should come in . . . and provide a false alibi." Obviously, a truthful affidavit by Ms. Lewinsky—one that affirmed the intimate activities between her and Clinton, as the two of them, with differing degrees of detail, later admitted—would not have prevented Ms. Lewinsky from being called to testify. If anything, it would have had Jones’ attorneys panting to obtain her testimony. Thus, Clinton must have known that he was implicitly asking Ms. Lewinsky to lie in a sworn affidavit in an attempt to convince the judge in the Jones case to preclude any discovery on the Clinton/Lewinsky relationship. To put the finishing touches on this neat package of proof establishing subornation of perjury, the President was an active participant in using Ms. Lewinsky’s affidavit for just that purpose. As soon as Ms. Lewinsky’s name was raised in the deposition of the President, his attorney, Robert Bennett, objected to the questioning on the basis that Ms. Lewinsky had furnished an affidavit denying a

88. See People v. Sharpe, 216 P.2d 519, 521 (Cal. Dist. Ct. App. 1950) ("The crime of subornation of perjury requires an agreement to commit perjury followed by the actual commission of perjury.").
89. See United States v. Duranseau, 26 F.3d 804, 810 (8th Cir. 1994).
90. Id. at n.2 (quoting the District Court’s Sentencing Transcript at 117-19).
sexual relationship "of any kind in any manner, shape or form." It is reported that the President carefully watched Mr. Bennett as he made the statement and remained silent, not correcting what he knew to be a false representation to the judge.

Of course, there is no doubt that Ms. Lewinsky's affidavit was false. She has said so herself. And the embarrassed Mr. Bennett, who obviously made his representation to the court, based on what his client had told him, has since formally told the court that "portions of Ms. Lewinsky's affidavit were... 'misleading and not true.'"

This thumbnail sketch of the evidence strongly indicates subornation of perjury.

E. Obstruction of Justice

As already noted, Judge Wright expressly found that Clinton was guilty of "obstruct[ing] the judicial process" and "undermin[ing] the integrity of the judicial system"—two synonyms for obstruction of justice. Moreover, although Judge Wright did not find it necessary to do an in-depth analysis of the law of obstruction of justice and all relevant undisputed facts, such an analysis independently supports a conclusion that Clinton committed that crime.

An obstruction of justice requires that a person, "directly or indirectly, ... give[], offer[, or promise[] anything of value to any person ... with [an] intent to influence the testimony under oath ... of [that recipient at]... a trial, hearing, or other proceeding." The "something of value" can even be the return of property that is rightfully the witness's property. It can certainly be the finding of gainful employment. Furthermore, asking the witness to lie in return for something of value is not an essential element of the crime; it is sufficient that the defendant

92. Id. at 15 (quoting President Clinton's attorney, Robert Bennett).
93. See id. at 15; see also Jones v. Clinton, 36 F. Supp. 2d 1118, 1129-30 (E.D. Ark. 1999) (indicating that the President's attorney, Robert Bennett, questioned President Clinton about Monica Lewinsky's statement that she did not have a "sexual relationship" with Clinton, to which Clinton responded that Lewinsky's statement was "absolutely true").
95. Jones, 36 F. Supp. 2d at 1130 n.15 (quoting Letter from Robert Bennett, President Clinton's attorney, to the United States District Court (E.D. Ark.) (Sept. 30, 1998)).
96. Id. at 1127, 1131.
97. Id. at 1131.
99. See, e.g., State v. Halleck, 308 N.W.2d 56, 58 (Iowa 1981) (noting that, although money offered to a witness actually was owed to that witness, it nonetheless constituted a bribe).
intended thereby to convince the witness to color or shade her testimony in any way. 100

The sequence of facts relevant to Ms. Lewinsky’s job search is illuminating. On July 3, 1997, Ms. Lewinsky wrote to the President, effectively demanding his help in obtaining a job or else she would have had to disclose their relationship to her parents. 101 However, nothing appears to have been done for Ms. Lewinsky at that time. Then on October 1, the President was served with interrogatories in the Jones case seeking information about his sexual relationships with women besides his wife. 102 Almost immediately—three months after Ms. Lewinsky’s initial request—Clinton called Ms. Lewinsky to inform her that he would now begin to help her find a job in New York. 103 The next day, on October 11, the President and Ms. Lewinsky met and discussed her employment situation, at which time the President said he would get her a necessary reference from her supervisor at the White House, and enlist Vernon Jordan’s help. 104 Ten days later, Ms. Lewinsky received an offer of employment from Ambassador Richardson at the United Nations, which she rejected. 105 During the apparent calm in the Jones case the President refused to answer the embarrassing interrogatory which might be considered to have called for information about his relationship with Ms. Lewinsky. 106 There was then no further movement by Clinton to help Ms. Lewinsky’s employment search for about seven weeks.

Then, on December 5, all hell broke loose in the Jones case: Jones’ lawyers listed Ms. Lewinsky as a witness. 107 Two days later, Clinton met with Mr. Jordan and, amazingly, just four days later, Mr. Jordan met with Ms. Lewinsky to discuss his contacts in the private sector in New York who might be able to offer her employment. 108 On December 11, the judge in the Jones case ordered Clinton to answer the potentially embarrassing interrogatory, to the extent of identifying government employees with whom he had engaged in sexual relations with since 1986. 109 Astonishingly, within one week, Ms. Lewinsky obtained inter-

100. See id. at 59.
102. See id. at 83, 181.
103. See id. at 76.
104. See id. at 76-77.
105. See id. at 79, 81.
106. See id. at 83.
107. See id. at 88.
108. See id. at 93.
views for jobs with major corporations, which Mr. Jordan had arranged.\footnote{110}{See STARR REPORT, supra note 43, at 110-11.}

Shortly thereafter, on December 19, Ms. Lewinsky was served with a subpoena to give a deposition in the \textit{Jones} case.\footnote{111}{See id. at 96.} That same day, the President and Mr. Jordan spoke on the telephone twice and Mr. Jordan met with the President.\footnote{112}{See id. at 96, 98.} Mr. Jordan then shepherded Ms. Lewinsky to an attorney that he chose for her, and discussed with her both the subpoena and her job search.\footnote{113}{See id. at 99.} The day after Ms. Lewinsky executed what she (and President Clinton’s attorney, Mr. Bennett) now concedes was a false affidavit denying any sexual relationship with the President,\footnote{114}{See id. at 109.} she interviewed for a job with a New York company, arranged by Mr. Jordan.\footnote{115}{See id. at 110-11.} The interview did not go well, but that did not deter further assistance to her; Mr. Jordan made a phone call to the Chairman of the Board, resulting in a job offer to Ms. Lewinsky.\footnote{116}{See id. at 96, 98.} When Ms. Lewinsky notified Mr. Jordan that she received the offer, Mr. Jordan informed Betty Currie by stating “‘mission accomplished,'”\footnote{117}{Id. at 111 (quoting Vernon Jordan’s Grand Jury Testimony at 39).} and, when he also informed the President, he responded to Mr. Jordan “thank you very much.”\footnote{118}{Id.} Shortly thereafter, Ms. Lewinsky’s attorney delivered Ms. Lewinsky’s false affidavit denying a sexual relationship with Clinton.\footnote{119}{See id. at 115.}

An objective disbarment panel might conclude that these efforts to obtain a job for Ms. Lewinsky were totally unrelated to Ms. Lewinsky’s affidavit and possible testimony (that panel might also conclude that Santa Claus exists). But it is at least conceivable, and probably likely, that the panel would conclude that the job finding efforts—out of proportion for a young intern with little experience—were intended as something of value to induce Ms. Lewinsky to submit a false affidavit to the court in Little Rock. “[A]ll the government has to establish is that [President Clinton] should have reasonably foreseen that the natural and probable consequence” of his conduct would prevent “the due administration of justice.”\footnote{120}{United States v. Silverman, 745 F.2d 1386, 1393 (11th Cir. 1984).} If that is the conclusion, it is obstruction of justice, and a ground for disbarment.
III. CONCLUSION

Will the protectors of the sanctity of the bar in Arkansas, and any other court in which the President is admitted to practice law, perform their policing obligations on President Clinton, as a member of the bar, just as they properly did on former President Nixon? Time will tell.