IV. Analysis of Potential Violations of Federal Criminal Law

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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.

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[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) fed-

[47] eral 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]

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 adminis-

[48] tration 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

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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 [52]
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.

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]

[53] 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]

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.

[54] 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]

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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).