

SINS OF OMISSION

BILL CLINTON, *MY LIFE*. New York: Knopf, 2004. Pp. 957. \$ 35.00.

Reviewed by SOLOMON L. WISENBERG*

*My Life*¹ is the autobiography of William Jefferson Clinton (“Clinton”), a former President of the United States. Various portions of the book purport to address the scandals that surrounded Clinton’s presidency, many of which were investigated by Independent Counsel Kenneth W. Starr (“Starr”), for whom I was privileged to work. Having witnessed first-hand the Clinton Operation and its tactics, I expected, and found, in *My Life* a hard-hitting, partisan account of the former President’s travails at the hands of Starr and his Office of Independent Counsel (“OIC”). When any man judges himself, particularly for posterity, the verdict is usually in his favor. When the man in question is Bill Clinton, the well-informed reader anticipates a long-term, no-holds barred battle to set that verdict in stone. What surprised me, though, was the sloppiness of Clinton’s effort. The ablest men and women of the vaunted White House attack machine have gone onto other things, leaving the former President to operate the permanent campaign on cruise control. With respect to both his accusations and excuses, the quality of Clinton’s apologetic is consistent with the fare typically found on CNN’s Crossfire. In other words, it is almost unbearably sleazy.

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1. BILL CLINTON, *MY LIFE* (2004).

Even though only a small percentage of *My Life* is devoted to Judge Starr's inquiries, the number of President Clinton's material omissions and falsehoods on this topic is impressive. The conscientious reviewer is faced with a dilemma in handling the wealth of disinformation. Should he document and dissect every fib, thereby producing a catalogue of the President's latest whoppers? The length of such a review might well rival a volume in Martindale-Hubbell. Should he take a representative sample of the President's mendacities, covering three or four subject areas, in order to give the reader a capsule view of both the matters under criminal investigation and *My Life's* profound dishonesty in dealing with them? This was my original idea for controlling the length and subject matter of the review, but even this effort at limitation was doomed. The former President is such a superb verbal manipulator that almost every sentence of *My Life* devoted to the Clinton Scandals requires ten more sentences to fill in what the President left out.

I finally decided to focus on one small but significant topic, concerning which the record is sufficiently clear, to show how *My Life* confronts it. I confess at the outset that I chose Monica Lewinsky over Whitewater/Madison Guaranty Savings. This is not because fellatio is more interesting than bank fraud. (As a matter of fact, it is not.) Rather, the Lewinsky investigation merits special attention because it alone revealed, beyond any reasonable doubt, President Clinton's criminal obstruction of justice while in office.

It is important to remember that the Lewinsky criminal investigation grew out of the Paula Jones sexual harassment lawsuit. Ms. Jones's civil complaint alleged, among other things, that the President sexually harassed her during his tenure as Governor of Arkansas. Specifically, Ms. Jones claimed "the Governor made boorish and offensive sexual advances that she rejected, and that her superiors at work subsequently dealt with her in a hostile and rude manner and punished her in a tangible way for rejecting those advances."² Like many other women across the country, Ms. Jones took advantage of a federal civil rights statute in bringing her cause of action, and, like those other women, had an absolute right to her day in court—free from any perjury, obstruction of justice, or witness tampering by

2. Jones v. Clinton, 36 F. Supp. 2d 1118, 1120 (E.D. Ark. 1999) [Hereinafter *Jones I*].

the opposing party. Unlike many other civil rights plaintiffs, Ms. Jones was assisted during various stages of her action by political opponents of the President. Her legal case was weak on its face from the outset.

President Clinton, as both the defendant and the sitting President of the United States, had a number of legitimate options in dealing with Jones's complaint. First, he could claim complete immunity from private civil lawsuits while serving as the nation's chief executive officer. This is exactly the position that the President took, effectively delaying Jones's case for three years until the United States Supreme Court unanimously ruled against him. The Supreme Court held, in *Clinton v. Jones*,³ that the President's immunity claims would put him above the law, in contravention of longstanding precedent, most notably *United States v. Nixon*.⁴ But the Court also ruled that deference should be shown to the President and his office in the scheduling of litigation-related matters in Ms. Jones's case.⁵

Second, the President could move for a judgment on the pleadings, pursuant to Rule 12 of the Federal Rules of Civil Procedure.⁶ The President also did this, and United States District Court Judge Susan Webber Wright, whose integrity is never questioned in *My Life* and who ultimately dismissed Jones's entire complaint on a Motion for Summary Judgment,⁷ granted in part and denied in part the President's Rule 12(c) motion.⁸ This ruling had the effect of dismissing Jones's claims for defamation, due process deprivation of property, and due process deprivation of liberty.⁹

Third, the President could object to, and refuse to provide, information requested by Jones during discovery, forcing her to file motions to compel his responses. The President also did this, with some success, as part of a discovery process that Judge Wright described as "contentious and time-consuming."¹⁰

Fourth, the President could take a default judgment, explaining to the nation that Jones's allegations were false but

3. *Clinton v. Jones*, 520 U.S. 681 (1997).

4. *United States v. Nixon*, 418 U.S. 683 (1974).

5. *Clinton*, 520 U.S. at 713.

6. FED. R. CIV. P. 12(c).

7. *Jones v. Clinton*, 990 F. Supp. 657 (E.D. Ark. 1998).

8. *Jones v. Clinton*, 974 F. Supp. 712 (E.D. Ark. 1997).

9. *Id.* at 732.

10. *Jones I*, 36 F.Supp. 2d at 1121.

that the burdens of office did not afford him the time to litigate them. Fifth, he could settle out of court with Ms. Jones, while admitting no wrongdoing. (This is what the President did very late in the day, while Judge Wright's order granting the President's Motion for Summary Judgment, and dismissing Jones's complaint, was on appeal to the United States Court of Appeals for the Eighth Circuit.)¹¹ To be fair to the President, prior to Judge Wright's dismissal of her case, Ms. Jones was unwilling to settle absent some sort of apology or admission from the President.

Finally, the President could have moved for the imposition of sanctions against Jones for directing litigation against him "in his unofficial capacity for purposes of political gain or harassment."¹²

I know of no person, however, including the President, who has publicly asserted that he would be justified in obstructing justice, committing perjury, or tampering with witnesses simply because the Jones's litigation was facilitated by his political enemies. Even Clinton's staunchest defenders in the Senate Impeachment Trial conceded that such obstruction-related conduct, if committed, would be a fit subject for criminal prosecution after the President left office. And the President himself, in his grand jury testimony, specifically affirmed that he was bound to tell the truth, despite his strong disapproval of the plaintiff's tactics.¹³ To contend otherwise is to argue the straight Nixonian position—that the President of the United States is above the law.

As part of the *Jones* lawsuit, the President was bound, like all civil litigants, to participate in the discovery process by answering interrogatories, producing requested documents and tangible items and submitting to a deposition. On December 11, 1997, Judge Wright ordered 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 during the relevant time frame [of May 8, 1986, up to

11. Associated Press, *Testing of a President; Settlement in Jones Suit Against Clinton*, N.Y. TIMES, Nov. 14, 1998, at A10 (reproducing the settlement agreed to between President Clinton and Paula Jones).

12. See *Clinton v. Jones*, 520 U.S. 681, 708–09 (1997).

13. Clinton. G.J. Test. at 78 (Aug. 17, 1998).

the present] state or federal employees.”¹⁴ Such orders are par for the course in the discovery phase of a sexual harassment lawsuit, where evidence of favoritism on the part of a defendant toward inferiors who submit to sexual overtures, at the expense of inferiors who resist them, can be “relevant to [a] plaintiff’s case” and “might possibly [help] her establish, among other things, intent, absence of mistake, motive, and habit” on the defendant’s part.¹⁵ In federal court, one party is allowed to obtain written or oral information from the other party as long as the information sought “appears reasonably calculated to lead to the discovery of admissible evidence.”¹⁶ Judge Wright’s December 11, 1997 order was in force during the President’s January 17, 1998 deposition. It gave Jones’s lawyers the opportunity to obtain very embarrassing information about the President. But as Judge Wright herself stated on the record at the President’s deposition, “Unfortunately, the nature of this case is such that people will be embarrassed. I have never had a sexual harassment case where there was not some embarrassment.”¹⁷

We all know now that from November of 1995 until February or March of 1997, President Clinton and Monica Lewinsky were alone together on approximately fourteen occasions in the Oval Office Complex and that, on ten of these occasions, intimate contact occurred between them. We know this from the following combined evidence: Ms. Lewinsky’s testimony (exhaustively corroborated by White House records and Lewinsky’s contemporaneous written and oral accounts), the testimony of the President’s secretary, Betty Currie, and, the President’s own admissions in front of the grand jury, on television, and in *My Life*. Ms. Lewinsky also testified, without contradiction, that on nine of the ten visits in which intimate contact took place, most or all of that contact occurred in the hallway leading from the Oval Office to the kitchen/dining room area or in the bathroom off of that hallway.¹⁸ (There was

14. *Jones v. Clinton*, No. LR-C-94-290 (E.D. Ark., Dec. 11, 1997) (order compelling responses to interrogatories by defendant).

15. *Jones I*, 36 F. Supp. 2d at 1122 n.7.

16. FED. R. CIV. P. 26(b)(1).

17. Clinton 1/17/98 Depo. at 9, *Jones v. Clinton*, 990 F.Supp. 657 (E.D. Ark. 1998) (No. LR-C-94-290).

18. See Independent Counsel’s Report to Congress on the Investigation of President Clinton, Part I.C.2 (Sept. 9, 1998), available at <http://thomas.loc.gov/icreport/>

also intimate contact in the President's study, situated off of the above-mentioned hallway, and in the Oval Office itself.)¹⁹ According to Ms. Lewinsky, the hallway area was the preferred locale for intimate activity because it was the only place in the Oval Office Complex in which people could be totally shielded from outside view, since the windows in the Oval Office Complex were not curtained.²⁰ The President and Ms. Lewinsky agree that they were alone together for non-intimate encounters in the Oval Office itself on some occasions, both before and after their intimate encounters ended. Their last meeting alone together took place in the Oval Office on December 28, 1997, less than three weeks prior to Clinton's January 17, 1998 deposition in the *Jones* case and seventeen days after Judge Wright's discovery order requiring the President to provide information about his sexual relations or proposed sexual relations with federal employees.²¹ In that meeting, the President gave Lewinsky several gifts and the two of them discussed Lewinsky's strong preference not to testify in *Jones v. Clinton*. The President advised Lewinsky that other women had signed affidavits in an effort to avoid testifying.²²

As I mentioned, we know all of this now. But Paula Jones and her lawyers did not begin to suspect it until the fall of 1997. By the morning of the deposition they had obtained significant additional information about the Lewinsky affair from Linda Tripp, and Ms. Jones was unquestionably entitled, like all civil litigants, to hear the defendant's side of the story under oath.²³ In discussing his January 17, 1998 deposition and Judge Wright's December 11, 1997 order in *My Life*, President Clinton notes that the judge "had given Jones's lawyers broad permission to

(narrative account of Monica Lewinsky's Grand Jury testimony) [hereinafter Starr Report].

19. *Id.*

20. *Id.* President Clinton confirmed in his *Jones* deposition that "[t]here are no curtains on the Oval Office, there are no curtains on my private office, there are no curtains or blinds that can close the windows in my private dining room." Clinton 1/17/98 Depo. at 57, *Jones v. Clinton*, 990 F.Supp. 657 (E.D. Ark. 1998)(No. LR-C-94-290).

21. Starr Report, *supra* note 18, at Part I.H.3.

22. *Id.* at Part XII.E.

23. President Clinton complains that, since Jones's lawyers already knew the information they questioned him about, he was unfairly taken advantage of and trapped. CLINTON, *supra* note 1, at 802 (referencing Clinton G.J. Test at 79 (Aug. 17, 1998)). It is virtually a universal practice, however, in civil litigation, to test and attempt to disprove a witness' credibility through the deposition process.

delve into my private life, allegedly to see if there was a pattern of sexual harassment involving any women who had held or sought state employment when I was governor or federal employment when I was President.”²⁴ Clinton then complains that “[t]he stated objective could have been achieved less intrusively by simply directing me to answer yes or no to questions about whether I had ever been alone with women working for the government; then the lawyers could have asked the women whether I had ever harassed them.”²⁵

This is a fascinating remark. President Clinton never explains why he should have been subjected to a less onerous discovery standard than the typical defendant in a sexual harassment case.²⁶ Of far more importance, the President omits mentioning that Jones’s lawyer *did* repeatedly ask him, during the deposition, whether he had ever been alone with Ms. Lewinsky, and that the President repeatedly lied under oath in response:

Q. Mr. President, before the break, we were talking about Monica Lewinsky. *At any time were you and Monica Lewinsky together alone in the Oval Office?*

A. *I don’t recall*, but as I said, when she worked at the legislative affairs office, they always had somebody there on the weekends. I typically worked some on the weekends. Sometimes they’d bring me things on the weekends. She—it seems to me she brought things to me once or twice on the weekends. In that case, whatever time she would be in there, drop it off, exchange a few words and go, she was there. I don’t have any specific recollections of what the issues were, what was going on, but when the Congress is there, we’re working all the time, and typically I would do some work on one of the days of the weekends in the afternoon.

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

A. *Yes, that’s correct.* It’s possible that she, in, while she was working there, brought something to me and that at the time

24. CLINTON, *supra* note 1, at 772.

25. *Id.*

26. The President also fails to remind us that when Paula Jones’s lawyer first asked a specific question regarding whether “you and [Lewinsky] went down the hallway from the Oval Office to the private kitchen” his attorney Robert Bennett objected. Clinton 1/17/98 Depo. at 53–54, *Jones v. Clinton*, 990 F.Supp. 657 (E.D. Ark. 1998) (No. LR-C-94-290).

she brought it to me, she was the only person there. That's possible.

....

Q. Do you ever recall walking with Monica Lewinsky down the hallway from the Oval Office to your private kitchen there in the White House?

A. . . . [M]y recollection is that, that at some point during the government shutdown, when Ms. Lewinsky was still an intern but was working the chief of staff's office because all the employees had to go home, that she was back there with a pizza that she brought to me and to others. I do not believe she was there alone, however. I don't think she was. And my recollection is that on a couple of occasions after that she was there but my secretary, Betty Currie, was there with her. She and Betty are friends. That's my, that's my recollection. And I have no other recollection of that.

....

Q. At any time were you and Monica Lewinsky alone in the hallway between the Oval office and this kitchen area?

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

....

Q. At any time have you and Monica Lewinsky ever been alone together in any room in the White House?

A. I think I testified to that earlier. I think that there is a, it is—I have no specific recollection, but it seems to me that she was on duty on a couple of occasions working for the legislative affairs office and brought me some things to sign, something on the weekend. That's—I have a general memory of that.²⁷

How does Clinton deal with his actual deposition testimony in *My Life*? He simply ignores it. In 957 rambling, overwritten pages you will not find one reference to these highly specific questions or to the President's answers. The President instead recounts that Jones's

lawyers asked, among other things, how well I knew [Lewinsky], whether we had ever exchanged gifts, whether we had ever talked on the phone, and if I had had "sexual relations" with her. I discussed our conversations,

27. Clinton 1/17/98 Depo. at 52–53, 56–59, Jones v. Clinton, 990 F.Supp. 657 (E.D. Ark. 1998) (No. LR-C-94-290) (emphasis added), quoted in Jones I, 36 F. Supp. 2d at 1127–28.

acknowledged that I had given her gifts, and answered no to the “sexual relations” question.²⁸

The President then continues that Jones’s

Rutherford Institute lawyers kept asking the same questions with slight variations over and over again. . . . At the beginning of my deposition, my attorney, Bob Bennett, had invited the Rutherford Institute lawyers to ask specific and unambiguous questions about my contact with women. At the end of the discussion of Lewinsky, I asked the lawyer who was questioning me if there wasn’t something more specific he wanted to ask me. Once again he declined to do so.²⁹

(This constitutes the entire discussion, in *My Life*, of the content of the Jones lawyers’ deposition questions and the content of the President’s responses.) To hear Clinton tell it, Jones’s lawyers, in failing to ask more “specific and unambiguous questions,” missed a golden opportunity. “I was relieved but somewhat concerned that the lawyer seemed not to want to ask specific questions, nor to want to get my answers to them. If he had asked such questions, I would have answered them truthfully, but I would have hated it.”³⁰

The knowledgeable reader, armed with a good memory and steeped in the record of *Jones v. Clinton*, may wonder what could be more “specific and unambiguous” than questions such as: “At any time were you and Monica Lewinsky together alone in the Oval Office?” —to which the President responded “I don’t recall”; or “At any time were you and Monica Lewinsky alone in the hallway between the Oval office and this kitchen area?”—to which the President responded “I just, I don’t remember. I don’t believe we were alone in the hallway, no.”; or even, “At any time have you and Monica Lewinsky ever been alone together in any room in the White House?”—to which the President responded “I have no specific recollection.”³¹ There was nothing technical or confusing about these questions, and the President and his lawyers fully expected him to be queried about his relationship with Lewinsky. If the President would not truthfully answer these specific, somewhat embarrassing, questions, pertaining to his being alone with the young Lewinsky in various

28. CLINTON, *supra* note 1, at 773.

29. *Id.*

30. *Id.*

31. See *supra* text accompanying note 27.

Oval Office rooms and hallways, how likely is it that he would have truthfully answered specific questions about breast fondling, fellatio, cigars, and cunnilingus? But most readers have forgotten, or never knew, the minutiae of the *Jones* case and the Lewinsky affair, and *My Life* is written with these readers in mind.

How many of us remember, for example, that when one of Paula Jones's lawyers tried to ask the President the "specific and unambiguous" question of whether he had walked down the inner Oval Office hallway with Ms. Lewinsky, the President's attorney, Robert Bennett, objected, in an effort to prevent the question from being asked, and made reference to Ms. Lewinsky's affidavit? Judge Wright interrupted Mr. Bennett and scolded him for these remarks, directing Bennett "not to comment on other evidence that might be pertinent and could be arguably coaching the witness at this juncture."³² How many of us remember Mr. Bennett's response to Judge Wright? "I'm not coaching the witness. In preparation of the witness for this deposition, the witness is fully aware of Ms. Lewinsky's affidavit, so I have not told him a single thing he doesn't know."³³ How many of us have learned that there was a recess in the deposition only a few minutes before this exchange, and that during this recess: 1) the President and three of his attorneys specifically discussed Lewinsky's affidavit, 2) the President and Bennett reviewed Paragraphs Six and Eight of the affidavit, 3) the President "expressly 'consented to' placing Lewinsky's affidavit 'on the record at the deposition,'" and, 4) the President "indicated he would affirm Paragraphs 6 and 8"?³⁴ How many of us also know that in Paragraph Eight, in addition to denying a sexual relationship with the President, Lewinsky swears that: "The occasions that I saw the President after I left ... the White House in April, 1996 related to official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people

32. Clinton 1/17/98 Depo. at 53, *Jones v. Clinton*, 990 F. Supp. 657 (E.D. Ark. 1998) (No. LR-C-94-290).

33. *Id.*

34. FINAL REPORT OF THE INDEPENDENT COUNSEL FINAL REPORT OF THE INDEPENDENT COUNSEL *IN RE: MADISON GUARANTY SAVINGS & LOAN ASSOCIATION, REGARDING MONICA LEWINSKY AND OTHERS* (2002), at 31, available at <http://icreport.access.gpo.gov/lewinisky.html> (Quoting Affidavit and Supplementary Affidavits of Robert S. Bennett) [hereinafter FINAL REPORT].

present on all of these occasions.”³⁵ To summarize, how many readers of the quoted passage in *My Life* know that, far from being willing “to answer yes or no to questions about whether I had ever been alone with women working for the government,” or to answer truthfully “specific and unambiguous questions about my contact with [Lewinsky],” the President: 1) attempted to prevent such questions from being asked, 2) deliberately used Lewinsky’s false affidavit in support of this attempt, and, 3) blatantly lied under oath about being alone with Lewinsky when his attempt failed?

The sympathetic, forgetful reader may ask why the President should be expected to recall one specific line of questioning from his *Jones* deposition testimony. The answer is quite simple. To date, Bill Clinton is the only sitting President in United States history who has been held in contempt of court. The judge who held him in contempt was Susan Webber Wright. The case was *Jones v. Clinton*.³⁶ The reason for the order of contempt? According to Judge Wright’s written opinion, “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.”³⁷ Which questions and answers did Judge Wright focus on?

Although there are a number of aspects of the President’s conduct in this case that might be characterized as

35. *Id.*

36. *Jones I*, 36 F. Supp. 2d 1118.

37. *Id.* at 1127. Judge Wright’s findings regarding Clinton’s civil contempt through obstruction of the judicial process are essentially synonymous with the elements of a criminal obstruction under the omnibus clause of Title 18, United States Code, Section 1503. In other words, had a criminal trial jury reached the same conclusion that Judge Wright did, using the “beyond a reasonable doubt” standard, Clinton could have easily been found guilty of obstruction of justice under Section 1503.

As to obstruction of justice, 18 U.S.C. § 1503 is satisfied whenever a person, with the “intent to influence judicial or grand jury proceedings,” takes actions having the “natural and probable effect” of doing so. *United States v. Aguilar*, 515 U.S. 593, 600, 115 S.Ct. 2357, 132 L.Ed.2d 520 (1995) (citations and quotation marks omitted); see *United States v. Russo*, 104 F.3d 431, 435–36 (D.C.Cir.1997).

In re Sealed Case, 162 F.3d 670, 674 (D.C. Cir. 1998). Perjurious statements are among the “actions” covered by the statute. See *Russo*, 104 F.3d at 435–36. In fact, one of the main reasons Judge Wright gave for declining to determine whether the President’s conduct amounted to criminal contempt was her desire not to create double jeopardy problems for the OIC in the event that they decided to prosecute Clinton criminally for the same conduct. See *Jones I*, 36 F. Supp. 2d at 1133.

contemptuous, the Court addresses at this time only those matters which no reasonable person would seriously dispute were in violation of the Court's discovery Orders and which do not require a hearing, namely the President's sworn statements concerning whether he and Mrs. Lewinsky had ever been alone together and whether he had ever engaged in sexual relations with Ms. Lewinsky.³⁸

Why weren't hearings required? "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."³⁹

In other words, Judge Wright held the President in contempt for lying under oath in a willful effort to obstruct the judicial process. In the interests of "sparing the President and this Court the turmoil of evidentiary hearings" she chose the two instances of lying under oath that were clear, undisputed, and on the record.⁴⁰ One of those two instances was Clinton's testimony as to whether he was ever alone with Monica Lewinsky. *My Life's* complete failure to admit, deny, or address in any way the President's actual false testimony on this topic is stunning and yet quite typical of the memoir's approach to the various scandals of the Clinton Presidency.

Perhaps President Clinton has something to say about Judge Wright's contempt order, even if he will not adequately address what prompted it. Yes, one paragraph's worth, in a manner of speaking. But even here he does not deal with her specific findings or admit that he was held in contempt. Instead, he whines that

In April 1999, Judge Wright sanctioned me for violating her discovery orders and required me to pay her travel costs and the Jones's lawyers' deposition expenses. I strongly disagreed with Wright's opinion but could not dispute it without getting into the very factual issues I was determined to avoid and taking more time away from my work. It really burned me up to pay the Jones lawyers' expenses; they had abused the deposition with questions asked in bad faith in collusion with

38. *Jones I*, 36 F. Supp. 2d at 1127.

39. *Id.* at 1132.

40. *Id.* at 1134.

Starr, and they had repeatedly defied the judge's order not to leak. The judge never did anything to them.⁴¹

The amnesia-afflicted reader does not even discover, from reading this paragraph, that the President of the United States was held in contempt of court by a federal district judge, much less that the contempt was based on the court's finding that the President lied under oath with the specific intent to obstruct justice. In *My Life's* telling, the President was "sanctioned" by Judge Wright, just because he "violat[ed] her discovery orders." All of Judge Wright's references to Clinton's sworn falsehoods and to the content of those falsehoods are simply omitted.

The passage on Judge Wright's sanctioning of the President is illustrative of the mishmash of omissions, lies, and half-truths one finds throughout *My Life*. The omissions I have noted. The lies are easy to spot. No Clinton deposition questions were asked "in collusion with Starr" or with anyone in Starr's office. Clinton provides no factual support for this falsehood, because none exists.⁴² Nor does he explain why the Jones lawyers' questions were asked in bad faith. In a deposition or trial, a question asked in bad faith is an innuendo-laced query proffered without any "good faith" basis for doing so. The President's attorney, Robert Bennett, understood this definition when he objected to the question: "Did it ever happen that you and [Lewinsky] went down the hallway from the Oval Office to the private kitchen?"⁴³ Bennett objected "to the innuendo."⁴⁴ He questioned "the good faith of Counsel, the innuendo in the question. Counsel is fully aware that Ms. Lewinsky has filed, has an affidavit which they are in possession of saying that there is absolutely no sex of any kind in any manner, shape or form, with President Clinton."⁴⁵ Judge

41. CLINTON, *supra* note 1, at 830.

42. Clinton's defamations of Kenneth Starr are particularly outrageous and permeate *My Life*. For example, in discussing Starr's testimony before the House Judiciary Committee, Clinton reports that Starr "admitted violating the law on grand jury secrecy." *Id.* at 829. An intentional violation of Rule 6(e) of the Federal Rules of Criminal Procedure, which governs grand jury secrecy, is a criminal act, so Clinton's charge is quite serious. In reality, however, Starr repeatedly and specifically denied violating grand jury secrecy rules, when he testified before the Judiciary Committee. *Impeachment Inquiry Pursuant To H. Res. 581: Appearance Of Independent Counsel Before the House Committee on the Judiciary*, 105th Cong 89, 90, 180 (Nov. 19, 1998) (questioning of Kenneth Starr, Independent Counsel).

43. Clinton 1/17/98 Depo. at 53-54, Jones v. Clinton, 990 F.Supp. 657 (E.D. Ark. 1998) (No. LR-C-94-290).

44. *Id.*

45. *Id.*

Wright noted that Jones's lawyer, "Mr. Fisher is an officer of this Court, and I have to assume that he has a good faith basis for asking this question. If in fact he has no good faith basis for asking the question, he could later be sanctioned."⁴⁶ Of course, the Jones team had a good faith basis for questioning the President about Lewinsky, having been briefed the night before by Linda Tripp, and they were never sanctioned on this account.

What about the half-truths in *My Life*'s one paragraph devoted to the President's contempt of court?⁴⁷ According to Clinton, he was "sanctioned" for violating Judge Wright's "discovery orders." The Jones lawyers "had repeatedly defied the judge's order not to leak. The judge never did anything to them."⁴⁸ Taken as a whole this is true, but misleading. Here is the rest of the story. Judge Wright noted, in her written opinion holding the President in contempt, that "there are a number of aspects of the President's conduct in this case that might be characterized as contemptuous."⁴⁹ She then referenced the President's "possible violation of this Court's admonition not to discuss the deposition with anyone."⁵⁰ Judge Wright was referring both to her oral admonition, at the end of the deposition, to the President and others in the room "not to say anything whatsoever" about the substance of the deposition, and to her October 30th Confidentiality Order upon which the oral admonition was based.⁵¹ Wright was troubled by Clinton's grand jury admission that he questioned his secretary, Betty Currie, the day after the deposition "in order to ascertain information regarding some of the questions that were asked of him by plaintiff's counsel."⁵² But Judge Wright did not sanction the

46. *Id.*

47. CLINTON, *supra* note 1, at 830.

48. *Id.*

49. *Jones I*, 36 F. Supp. 2d at 1127.

50. *Id.* at 1127 n.14.

51. *Id.*

52. *Id.* In fact, in addition to violating Judge Wright's Confidentiality Order, Clinton's post-deposition discussions with Currie arguably constituted witness-tampering. He had repeatedly told Jones's lawyers during the deposition that they "would have to ask Betty" in order to get the answers to certain of their questions. Thus, he knew that he had turned Currie into a potential witness. Then, once the deposition was over, the president almost immediately tried to find Currie and, having found her, proceeded to remind Currie on two separate occasions that she "could see and hear everything" that went on during Lewinsky's White House visits. This, as both Currie and the President knew, was false. As the President admitted at the grand jury, he never allowed Currie to watch him and Lewinsky engage in inappropriate intimate activity. "I mean, it's almost humorous,

President for this conduct, by holding him in contempt or otherwise, even though he “may have violated the Confidentiality Order,” because

the record in this case suggests that there were violations of the Confidentiality Order attributable to other individuals within the jurisdiction of the court as well. Ascertaining whether the President or other individuals violated the Confidentiality Order—either with respect to the deposition or otherwise—would require hearings and the taking of evidence. For reasons to be stated, the Court determines that such hearings are not in the best interests of the President or this Court.⁵³

To put it bluntly, Judge Wright was being fair. She would not sanction the President alone for leaking information in violation of her discovery orders, even though he effectively admitted to it in his grand jury testimony, when there was also evidence of similar contemptuous behavior on the part of unknown persons affiliated with Paula Jones. Wright could not, however, ignore the President’s sworn lies, uttered, in her presence and in violation of her specific December 11th Order, with the specific intent to obstruct the judicial process. *My Life* obscures all of this, making it seem like both Clinton’s and Jones’s lawyers may have violated similar “discovery orders” but that only Clinton was punished.

Another reason that President Clinton probably remembers his testimony pretty well concerning whether he and Mrs. Lewinsky were ever alone together is that Judge Wright, after holding him in contempt, referred Clinton to the Arkansas Supreme Court’s Committee on Professional Conduct, “for review and any disciplinary action it deems appropriate.”⁵⁴ Judge Wright’s order holding the President in contempt served as the basis of her referral to the Committee on Professional Conduct and served as the basis of the Committee’s subsequent Complaint of Disbarment against the President. That Complaint repeated the allegation that “Mr. Clinton gave false, misleading and evasive answers that were designed to obstruct the judicial process” and that “Mr. Clinton gave intentionally false

53. *Clinton*, G.J. Test. at 37, 53 (Aug. 17, 1998).

54. *Jones I*, 36 F. Supp. 2d at 1127 n.14.

Id. at 1132.

deposition testimony regarding whether he had ever been alone or ever engaged in sexual relations with Ms. Lewinsky.”⁵⁵

The Arkansas disbarment proceedings were initiated and commenced entirely independently of either Independent Counsel Kenneth Starr or his successor Robert Ray. The President ultimately signed an Agreed Order of Discipline in the Circuit Court of Pulaski County, Arkansas, suspending him from the practice of law for five years. The Agreed Order of Discipline also recounted the findings in Judge Wright’s contempt order against the President, specifically referencing her ruling that the President gave “false, misleading and evasive answers” with respect to whether he had ever been alone with Lewinsky and that such answers were “designed to obstruct the judicial process.”⁵⁶ Mr. Clinton admitted and acknowledged, and the Pulaski County Circuit Court found, that the President “knowingly gave evasive and misleading answers, in violation of Judge Wright’s discovery orders, concerning his relationship with Ms. Lewinsky.”⁵⁷ Clinton also admitted 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.”⁵⁸ The court accordingly found that Clinton’s conduct violated Model Rule 8.4(d) of the Arkansas Model Rules of Professional Conduct, which “states that it is professional misconduct for a lawyer to ‘engage in conduct that is prejudicial to the administration of justice.’”⁵⁹

Not surprisingly, *My Life* completely ignores the basis and genesis of the Committee on Professional Conduct’s Complaint of Disbarment against Clinton and implies that his suspension from the practice of law was the brainchild of Robert Ray. “Near the end of my term, Ray wanted his pound of flesh, too: a written statement admitting that I had given false testimony in my deposition, and an agreement to accept a temporary suspension of my law license in return for Ray’s shutting down

55. Complaint for Disbarment ¶ 6(b), Neal v. Clinton, NO. CIV 2000-5677, 2001 WL 34355768 (Ark. Cir. 2001), available at <http://www.freerepublic.com/forum/a395d6de161cf.htm> (last visited May 28, 2005).

56. Agreed Order of Discipline, Neal v. Clinton, NO. CIV 2000-5677, 2001 WL 34355768, at *1 (Ark. Cir. Jan. 19, 2001).

57. *Id.* at *2.

58. *Id.*

59. *Id.* (citing ARK. MODEL RULES OF PROF’L CONDUCT R. 8.4(d)).

the independent counsel's investigation."⁶⁰ That's all folks, as far as any comments about professional misconduct and the Arkansas Bar are concerned. Clinton doubted that Ray would actually pull the trigger and indict him.

But I was ready to get on with my life and didn't want to complicate Hillary's new life in politics. However, I couldn't agree to intentionally giving false testimony because I didn't believe I had. After carefully rereading my deposition and finding a couple of instances in which I gave answers that were not accurate, I gave Ray a statement that said that though I had tried to testify lawfully, some of my responses were false. He accepted the statement.⁶¹

Here again is the all-too-familiar Clintonian pattern of omission and deceit, the very "knowingly . . . evasive and misleading" statements that characterized his political life and led to the humiliation of a contempt citation and suspension from the practice of law. In truth, the Committee on Professional Conduct's civil complaint against Clinton was already six months old when Robert Ray approached the President about resolving the Lewinsky matter.⁶² Ray met with Clinton in December of 2000 and told him that the President needed to issue a public statement acknowledging his false testimony, resolve his pending matter with the Arkansas Bar, and accomplish both of these tasks before his term of office expired.⁶³ The Committee on Professional Conduct's demand for a five year suspension of Clinton's law license was conveyed to the President and his attorneys without the knowledge or participation of Ray.⁶⁴ Ray's insistence that the President conclude his business with the Committee on Professional Conduct unquestionably hastened and facilitated Clinton's agreement to, in his lawyer's words, "this harsh settlement" with the Arkansas Bar,⁶⁵ but the Committee's disbarment proceeding against the President, based squarely on his own false statements designed to obstruct the judicial process, was an Arkansas affair.

60. CLINTON, *supra* note 1, at 873-74.

61. *Id.* at 874.

62. Reviewer's interview with Robert Ray.

63. *Id.*

64. *Id.* See Letter from David E. Kendall to Robert W. Ray (Jan. 19, 2002) in FINAL REPORT, *supra* note 34, at Appendix A-1, 58-60, available at <http://a255.g.akamaitech.net/7/255/2422/13may20041220/icreport.access.gpo.gov/lewinsky/appa1.pdf>.

65. *Id.* at 59.

By not even mentioning the Agreed Order Of Discipline and the language contained therein, *My Life* again avoids confronting the specific testimony at the heart of the matter, testimony so blatantly false that Judge Wright saw no need to hold a hearing before finding the President in contempt of court for obstruction of justice. Instead Clinton focuses on his public statement (in which he acknowledged giving false testimony), but brags that he never admitted to intentionally giving false testimony. Here too, however, the President plays it crooked.

In his public statement, required by Robert Ray and given one day before leaving office, the President referenced Judge Wright's civil contempt finding as well as his signing of the "consent order" (in reality the Agreed Order Of Discipline) resulting in the suspension of his law license.⁶⁶ He then stated

I have had occasion frequently to reflect on the Jones case. In this Consent Order, I acknowledge having knowingly violated Judge Wright's discovery orders in my deposition in that case. I tried to walk a line between acting lawfully and testifying falsely, but I now recognize that I did not fully accomplish this goal and that certain of my responses to questions about Ms. Lewinsky were false.⁶⁷

The only violations, knowing or otherwise, of "discovery orders" at issue in the Arkansas Bar proceeding were the President's alleged "false, misleading and evasive answers . . . designed to obstruct the judicial process . . . [concerning] whether he and Ms. [Monica] Lewinsky had ever been alone together and whether he had ever engaged in sexual relations with Ms. Lewinsky."⁶⁸ The discovery order in question held that Paula Jones was entitled to certain information. By implication, Jones was entitled to truthful information, otherwise the providing of false information would not violate the discovery order. How does one knowingly violate an order to provide the opposing party with truthful information, without, by virtue of that fact, knowingly and intentionally providing false statements? The President does not explain. A witness is generally entitled to

66. President Clinton's Statement on Conclusion of Whitewater Investigation (Jan. 19, 2001), available at <http://archives.cnn.com/2001/ALLPOLITICS/stories/01/19/clinton.transcript/>.

67. *Id.*

68. FINAL REPORT, *supra* note 34, at 78.

give true but misleading information, to try, in the President's words, "to walk a line between acting lawfully and testifying falsely," but when he slips up and gives information both false and misleading, how can he argue that his statements were not intentionally false? The President does not explain. How does a man, even a busy man, not recall, under oath, being alone with the woman who performed fellatio on him? The President does not explain.

And that is the whole point. He does not have to explain what he refuses to acknowledge. I said in the beginning of this review that *My Life* was a sloppy piece of work. It is, but the sloppiness will typically be discovered only by those who investigated, as prosecutors or reporters, the Clinton scandals or those willing to ferret out the truth in the public record.⁶⁹ I also compared *My Life* to CNN's *Crossfire*. Like most cable television news shows, *My Life* is not an honest attempt to deal intelligently with controversial issues. It is merely an effort to reassure the faithful. And that is a shame, because a blunt, honest effort by the President to confront his accusers would have made for a fascinating read. But Mr. Clinton seems literally incapable of mounting such an effort.

69. And these intrepid souls will have a tough time of it, as the President failed to include footnotes in his memoir, even for direct quotations.