

What Exactly Do You Mean?

From Bill Clinton to Larry Craig, politicians are rushing to the evasive arts.

BY RANDALL D. ELIASON

Sen. Larry Craig's press conference concerning his arrest in a Minneapolis airport-restroom sex sting provided a textbook example of how the art of evasion has become an everyday part of our political discourse.

Craig's precise and repeated statement—"I am not gay"—calls to mind President Bill Clinton's famous podium-thumping denial concerning Monica Lewinsky: "I did not have sexual relations with that woman."

Thanks to the soft-core porn of Ken Starr, we know that the president and Monica did engage in certain sexual acts. But the president later defended his statement by claiming that the things he did with Lewinsky did not fall within his definition of "sexual relations."

The president's initial denial was, to be charitable, quite misleading. Yet through the careful phrasing he left himself a hook, however slender, on which to hang a claim that he was technically truthful.

Was Craig taking notes?

DEFINE 'GAY'

Clinton certainly did not invent these word games, but in recent years they have risen to a high art form in Washington. Statements may not be taken at face value, but must be carefully parsed for any possible ambiguity or alternate interpretation. Denials are crafted that are clearly intended to create a false impression, while still leaving the speakers an "out" to claim they were truthful if challenged down the road.

Recall, for example, Karl Rove's denial on CNN of any involvement in the "outing" of CIA agent Valerie Plame: "I didn't know her name. I didn't leak her name."

It turned out, of course, that Rove *had* been involved in leaking the fact that former Ambassador Joseph Wilson's wife worked at the CIA. But he apparently had not used her name, so his statement was technically true—even though, if we assume that Wilson is not a polygamist, Rove had effectively done precisely what he denied doing.

Or consider Craig's repeated claim at his Aug. 28 press conference: "I am not gay." This is supposed to sound as if the Idaho Republican is refuting the charges in the police report. But it evades the key question, which is: "So, Senator, when you were sitting in that stall, were you just tapping your toes to a particularly snappy tune on the airport Muzak, or was something else going on?"

After all, there may be many men—including married men with children—who do not consider themselves to be truly "gay" but do occasionally have sex with other men. This may or may not be true of Craig; we don't know. But no matter what additional information comes to light, he can always maintain that his statement was truthful, at least as he defines the terms. It's positively Clintonesque.

THE POWER OF CROSS

When someone repeatedly employs the same precise phrase (such as "I am not gay" or "her name"), little bells go off in the head of a trial attorney. Why the careful attention to the exact wording? What is not being said, and what is being concealed?

Trial attorneys are trained to expose these evasions and ambiguities, primarily through cross-examination. For example, probing the truthfulness of the impression that Craig clearly intended to leave with his audience takes only two simple questions: (1) "Senator, what is your personal definition of what it means to be 'gay'?" and (2) "Were you, as the police claimed, trying to solicit sex in that men's room stall?"

Of course, statements at a press conference are not subject to cross-examination. Speakers such as Craig usually take no questions, perhaps fearful that a reporter or two may have taken a trial advocacy course. They throw a denial out there, see if it takes, and if necessary can always fall back to the claim that it wasn't really a denial at all.

How did it come to this? Perhaps the answer lies in the legal standards concerning the crime of perjury. The law requires that if someone is to be charged with perjury, there

must be no ambiguity in his or her testimony. The prosecution must prove precisely what the witness said and meant, and that it was an intentional lie.

This rule protects witnesses from being indicted based on a misunderstanding or confusion about the questioning. We don't want witnesses to be reluctant to testify for fear of an unjustified perjury charge. Thus the legal hurdle for bringing a criminal perjury case is set very high.

It is the job of the examiner to eliminate any ambiguities through precise questioning and through the probing of evasive answers. This is difficult to do. It requires the ability to think on your feet, listen carefully to the witness, and abandon your script to follow where the testimony leads you.

The ability to do this well is what makes a great cross-examiner. The inability of most questioners to do this well is one reason that perjury prosecutions are relatively rare.

BEYOND PERJURY

This is why those clamoring for Attorney General Alberto Gonzales to be charged with perjury for his testimony before Congress are likely to be disappointed. For example, Gonzales testified that there was no serious disagreement within the administration about the warrantless domestic surveillance program. When evidence emerged that there were, in fact, significant disagreements, the attorney general responded that he had been referring to a different aspect of the "program."

Although many may find it maddening, this is likely a viable defense to perjury. The language is potentially

ambiguous, and those asking the questions failed to nail it down. While some of the attorney general's answers may have been evasive or misleading, anyone seeking to make them into a criminal case will face an uphill battle.

But the legal shield designed to protect witnesses from unfounded perjury charges should not become a sword wielded by government officials to mislead the public. There is a great deal of deceptive conduct that may not be criminal—but that doesn't make it right.

Yet these word games are now a regular feature of our political landscape. We have come to accept, and even expect, evasions and deceptions from public officials that would not be tolerated by a reasonably alert parent of a typical adolescent.

It would be nice if officials held themselves to a higher standard of candor than simply "could this get me indicted?" Until that day arrives, however, to evaluate the statements of politicians we all need to learn to think like cross-examiners.

As I write this, Craig, who everyone thought had announced his resignation, is now arguing that he said only that it was his *intent* to resign, which means he might not *really* resign . . .

And the games go on.

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