



by Michael Craig

# He Talked Too Much

**Mr. Clinton was an ideal witness—for the other side.**

In the classic black comedy *Dr. Strangelove*, the title character possesses a mechanical arm with a mind of its own—periodically choking the Doctor, for instance, or springing into a Nazi salute. Likewise, at President Clinton's deposition in *Jones v. Clinton*, the witness's mouth seemed to operate of its own accord, running endlessly and practically biting its owner on several occasions.

On January 17, 1998, President Clinton had the distinction of being the first sitting president to be deposed in civil litigation. James Fisher, Paula Jones's attorney, was entitled to take Clinton's testimony under oath and, almost without exception, the president was required to answer the questions as posed.

Bill Clinton seems the kind of witness who would strike fear in the hearts of opposing lawyers: he is charismatic, confident, and used to pressure situations; he looks good in a dark suit; and he is well-educated in the law. Most important, as the president of the United States he can count on the presumptive respect of the average juror.

But depositions are like mug shots: No matter what you do, you cannot look good. I have taken 150 depositions in complex civil litigation, and, in nearly every one, the witness gave up damaging information, often when I was not even seeking it.

The people I have deposed—mostly corporate directors, leveraged buyout artists, and CEOs—are used to being in control and knowing the answers. An experienced lawyer knows how to take advantage of this. The lawyer engages the witness, encourages

him to tell his side of the story; and the more the witness talks, regardless of the content, the more he gives away.

At a deposition, the goal of a witness, especially one being deposed by the opposition, should be to give away as little information as the law requires. The best answers, in increasing order of importance, are "yes," "no," and "I don't remember." The last of these cuts off further inquiry without even preventing the witness from testifying at trial, because his recollection can later be refreshed by counsel. A party gains nothing by talking in a deposition, because helpful information can be provided by a sworn affidavit or at trial.

Trying to persuade opposing counsel is a waste of time; I have never been dissuaded from my theory of a case by a witness's self-serving description of events, and I would be surprised if any lawyer ever has been.

At a minimum, a party trying to tell his story gives the opposition a peek at his trial strategy. Worse, a chatty party witness can blow holes in his own case. It is better to answer questions in a piecemeal fashion than to tell a story. Saying everything at once makes it easier to spot the inconsistencies.

Bill Clinton, surprisingly, came off as an unsophisticated witness, revealing a desire to please the opposing lawyer, and telling prepared stories that suggested he had lots to hide. (Although the deposition was supposed to remain confidential, portions were submitted unsealed as an exhibit in response to defendants' motions for summary judgment. Many news organizations have reproduced those portions, which constitute more than half the deposition, on the Internet.)

## Willey Had the Heebie-Jeebies

For example, in his deposition testimony about Kathleen Willey, Clinton had a clear—practically transparent—agenda: paint Willey as so upset and distraught that she could have mistaken his concern for a sexual advance. Repeatedly, even though the questions did not call for it, the president referred to Willey's mental state. Even when asked for dates and times, he responded with gratuitous information about her desperate condition.

Regarding the encounter between the two on November 29, 1993, James Fisher asked: "What, if anything, do you recall being said in that meeting?" The question was potentially open-ended, but a smart witness would have stuck with what he knew, repeating it and otherwise keeping quiet. Clinton gave a long-winded answer including, "but she was, she was very upset that day, I remember this very well, and she didn't stay long, but she was quite agitated."

Fisher soon followed up by asking if the conversation occurred in the Oval Office. This called for a yes-or-no answer, but Clinton used it as an opportunity to re-establish his story: "I think it was partly in the Oval Office and partly in the dining room I have in back, which is—my memory is she was quite upset, I asked her if she wanted something to drink, she said she did, we went back there."

Clinton was asked if Willey had told him that she and her husband had some large debts to pay. After saying "I don't remember that," he went on to remind plaintiff's counsel that "she was obviously agitated" and "clearly upset."

At the end of the questioning about Kathleen Willey, after Clinton denied that he had behaved sexually or improperly toward her, he was asked why she would

MICHAEL CRAIG is a lawyer and writer in Buffalo Grove, Illinois.

make up such a story. The question obviously called for speculation, and the proper response would have been, "I don't know." But after saying that, Clinton launched into a speculative answer, stating four times that Willey had been through a "difficult" or "terrible" time.

By insisting on telling a self-serving story when there was no question calling for it, Clinton called into question his own honesty; but at least this story was not full of holes. He was not so lucky regarding Monica Lewinsky.

### Betty the Beard

Again, rather than answering "yes," "no," or "I don't know," Clinton insisted on giving his inquisitor a coherent view from his perspective. His story was that the entire Lewinsky situation was the fault of Betty Currie, his secretary and most loyal staff member.

When asked if he was ever with Monica Lewinsky in his office kitchen, he said, "on a couple of occasions...she was there but my secretary, Betty Currie, was there with her. She and Betty are friends." This last superfluous comment was the tip-off that Clinton has a story he wants to tell. The question did not call for Clinton to involve Betty Currie in his testimony. He wanted to bring up her involvement.

When was the last time he saw Monica? "She came to see Betty sometime before Christmas. And she was there talking to her, and I stuck my head out, said hello to her."

This is already sounding strange. If Clinton had so little contact with her, and she was of so little importance, why did he make a point of sticking his head (and, metaphorically, his neck) out to say hello?

Clinton even testified that this was not a spontaneous act. "Betty said she was coming by and talked to her, and I said hello to her." A trial lawyer looks at this exchange and thinks the following: Betty Currie made a point of mentioning Monica Lewinsky was coming by, and Clinton made a point of saying hello. Things are looking a bit less innocent.

How did Monica Lewinsky get advice on moving to New York from Vernon Jordan? "I think Betty suggested that he meet with her. I thought he had given her some advice about her move to New York. Seems like

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that's what Betty said." Ken Starr is probably getting interested in this testimony by now. Monica and Betty had better be pretty close friends if Betty—and not Clinton—approached Vernon Jordan about helping this intern in connection with her move to New York. And Betty had better have a pretty close relationship with Jordan, because he did help her. Finally, if this is all Betty's doing, why is she reporting this back to Clinton?

The same pattern supposedly played out between Monica Lewinsky and U.N. Ambassador Bill Richardson. "I believe that, I believe that Monica, what I know about that is I believe Monica asked Betty Currie to ask someone to talk to him, and she, and she talked to him and went to an interview with him."

Clinton also blamed Betty Currie for the possibility that he unwittingly bought Lewinsky a gift at a shop in Martha's Vineyard: "I do remember that, because when I went on vacation, Betty said that, asked me if I was going to bring back some stuff from The Black Dog, and she said Monica loved, liked that stuff and would like to have a piece of it, and I did a lot of Christmas shopping from The Black Dog, and I bought a lot of things for a lot of people, and I gave Betty a couple of the pieces, and she gave I think something to Monica and something to some of the other girls who worked in the office."

In addition to once again laying the blame on Betty Currie, this answer is curious because Clinton admits that Betty mentioned that he should get Monica something, and he apparently agreed. Like the "hello" from the Oval Office, Clinton admits that this was not a chance event. This makes blaming Betty Currie seem even fishier. For this account to be true, Betty would have had to say, "When you're at Martha's Vineyard, you should pick up some things from The Black Dog. Monica Lewinsky—that intern you barely know—would love something from there."

Another thing that makes no sense about these stories is Betty Currie's con-



duct. She is supposedly the most loyal member of Clinton's staff. With her boss accused in a civil suit of sexual harassment, why would she take such an interest in a young, female intern, using the boss's connections to help her find a job and getting her boss to give the woman gifts?

The story, which Clinton could have avoided telling, sounds phony. He used Betty Currie as his beard, which goes a long way toward explaining why Kenneth Starr's office has been calling Currie repeatedly to testify before the grand jury.

This is the problem when you insist on giving the most information possible rather than the least: If there is any weakness in your story, it will eventually become obvious. Later in the deposition, this happened again when Clinton was asked about Jane Doe No. 2.

### **Baby, You Can Drive My Car**

Regarding an occasion on which Clinton (then still governor of Arkansas) had been alone in a Jaguar with the pseudonymous Ms. Doe, James Fisher asked if there had been a state trooper driving ahead of them in another car. The proper answer would have been, "I don't remember."

Instead, Clinton began reconstructing the incident, speculating, and throwing in self-serving details that would later make the story sound idiotic: "Well, there must have been. I remember the circumstances of the day quite well, and so I, there would have been a trooper with me all day, so if, if I got to drive the Jaguar, which I wanted to do, then the trooper would have been either behind or just ahead of me, that's what they always did. I didn't drive much like that, but it was too good an opportunity to pass up. I'd never driven a Jaguar before."

By adding "I remember the circumstances of that day quite well," Clinton had assured that opposing counsel would question him in the greatest detail possible. In addition, his glee over getting to drive a Jaguar made the story sound phony following an additional inquiry.

Fisher naturally asked: "What do you remember happening on that day?" The son of Clinton's first chief of staff as governor "was killed in a tragic car accident in his senior year in high school....[M]y recollection is it was on that trip when

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we got back to Little Rock after going up to see him that either she said do you want to drive the Jaguar or I said can I do it. We were both really profoundly sad, and we both cared a lot about the guy and about his son, and it was a very sad day." Not sad enough, apparently, for Clinton to pass up a chance to tool around in a hot sports car.

### **Never Let Them See You Sweat**

The best witnesses maintain a Sphinx-like outer calm. They never let the opposing lawyer know what they are thinking, or even if they are thinking.

Nothing is more disheartening for me as a lawyer than completing a deposition with the knowledge that I have not shaken my opponent's confidence. Conversely, it is a moral victory, possibly presaging a legal victory, when I leave the opposing party with at least small scars on his psyche. This is the stuff big settlements, and big legal blunders, are made of.

Bill Clinton became rattled several times during the deposition. When asked about whether he was ever alone with Monica Lewinsky in the private kitchen off the Oval Office, he launched into a long, non-responsive answer about how little privacy he has in the Oval Office area. "I was, after I went through a presidential campaign in which the far right tried to convince the American people I had committed murder, run drugs, slept in my

mother's bed with four prostitutes and done numerous other things, I had a high level of paranoia."

Clinton also testified that Danny Ferguson, the state trooper named as code-fendant in the Jones case and part of the group who contributed to the David Brock article in *The American Spectator*, came to him to say that the troopers had been offered money to lie. This testimony was a fairly straightforward explanation of a series of conversations, but Clinton ended it by saying that Ferguson told him he could not recant his stories: "He said I can't do that, they'll get me if I do. I don't know what he meant by that. And that's consistent with my experience with the *American Spectator* types over the last six years, and what I was told would happen if I ran for president."

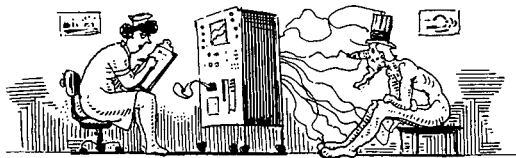
### **When Clinton Clammed Up**

Although Clinton talked incessantly during his testimony, he was no loudmouth. His attorney Robert Bennett had to remind him on at least six occasions to speak up in order to be heard. Lawyers to whom I described this were uniformly shocked. With a little coaching, even a shy, nervous, reluctant witness can be prepared to speak loudly enough to be heard.

Such instruction—understandably skipped by Bennett, who probably thought he would not have to teach the president of the United States how to speak—is routine for the simple reason that mumbling or allowing sentences to trail off are signs of lying.

Jones's lawyers must have been looking forward to taking advantage of this. The deposition was, after all, videotaped. On any excuse, they would have gotten portions admitted at trial, to show the contrast with a by-then-improved Clinton. They would have the opportunity to show him looking less like the leader of the free world and more like a Dick Tracy villain, mumbling into his tie.

Paula Jones's appeal ensures that the case will be with us for the rest of the Clinton presidency. But because her chances of prevailing on appeal are so remote, it is unlikely that Clinton will have to testify at a trial or that his testimony will surface anywhere other than the Internet. In this regard, his famous luck appears to have held. ❧



by Steve Chapman

# Child Abuse

Does every hack pol have to hide behind "our children"?

American politics is growing infantile, and like many regrettable national developments, this one has been exacerbated, if not led, by Bill Clinton. Judging from his public pronouncements, the president thinks obsessively about children—and that's leaving aside the 21-year-olds in the White House intern pool. He finds it impossible to make his way through a speech without reminding everyone of his boundless and inexhaustible concern for the well-being of the short set. His visit to Africa, which is not unique among continents in being home to many children, was an opportunity for him to lay on the sentiment like whipped cream on a banana split. The goo got thickest in Uganda, where he promised to deliver \$120 million for such noble purposes as providing access to the Internet for schools that, as it happens, lack electricity. "We want to do all these things in education, in health care and agriculture and nutrition," he confessed soulfully, "because we want to see the light that is in these children's eyes forever, and in the eyes of all other children." At that point, millions of parents, teachers, and other Americans who devote much of their time and energy to helping young people must have solemnly pondered the president's words and said to themselves: Gag me with a spoon.

The speech was unusually mawkish even by Clinton standards, but perfectly in character. From his wife, once chairman of the board of the shrewdly

STEVE CHAPMAN is a syndicated columnist on the staff of the Chicago Tribune.

named Children's Defense Fund, he learned years ago the wisdom of characterizing every political position as a selfless effort to minister to the young. After four middle-school kids and a teacher were shot to death in Jonesboro, Arkansas, he reflexively appealed to Americans to "come together for the sake of the children." He doesn't mind taking this impulse to ludicrous lengths, as in a speech he gave last November arguing that the world should demand Saddam Hussein's cooperation with United Nations weapons inspectors. "We must not allow the 21st century to go forward under a cloud of fear that terrorists, organized criminals, drug traffickers will terrorize people with chemical and biological weapons," the president declared. "It is essential that those inspectors go back to work. The safety of the children of the world depends on it." Saving millions of mere adults from choking on mustard gas or inhaling deadly anthrax spores would hardly be worth the trouble. But threaten the kids? Now you're asking for it. Clinton's invocations of children bring to mind Oscar Wilde's remark about the death of Little Nell in Dickens's *The Old Curiosity Shop*, that only someone with a heart of stone could read it without laughing.

Clinton is not alone in shamelessly exploiting children for political advantage. For that matter, neither are liberals. But they don't let themselves be outdone by anybody. CDF founder Marian Wright Edelman was a pioneer in this regard. It was certainly no accident that the nation's chief form of support for idle adults was for decades known as Aid to Families with

Dependent Children. Aid to Dependent Adults, you must admit, would have been a tougher sell. After repeated defeats on free trade, organized labor has now tried to make it an issue of whether we like to see sad-eyed urchins laboring in sweatshops abroad. In fact, about the only issue on which the left stoutly refuses to proclaim the importance of children is the one which most tangibly affects the little ones: abortion.

But the right is not above playing this game. When Congress voted to place unconstitutional restrictions on communications that happen to be transmitted by electrons over the Internet instead of by ink and paper in the form of magazines and books, the law was billed as stemming purely from the desire to shield innocent youths from coarse words and pictures. Likewise with New York Mayor Rudy Guiliani's campaign to close down dozens of "adult" nightclubs, book stores, and video retailers. Norman Siegel, executive director of the New York Civil Liberties Union, says that citizens who turned out at community forums in support of a crackdown invariably asked why their eight-year-old daughters should have to walk past seedy establishments advertising peep shows and lap dances. Adults don't like to admit they want their own sensibilities walled off from manifestations of the carnal. When famously hard-nosed drug czar Barry McCaffrey inveighs against needle-exchange programs that try to prevent AIDS transmission by giving drug addicts sterile hypodermic syringes, he says he is concerned solely about the message they send to "young people." Sure he is. And I'm Timothy Leary.

The advice to politicians from their pollsters is that adults should be seen and  
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