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How Does Congress Define 'Perjury'?

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ABSTRACT (ABSTRACT)

Yesterday Greg Craig, a White House lawyer, told the House Judiciary Committee that President Clinton's testimony about Monica Lewinsky was "evasive, incomplete, misleading, even maddening, but it was not perjury." It's a familiar refrain. Since acknowledging in August that he did something with Ms. Lewinsky, Mr. Clinton has based his defense on the claim that his statements under oath do not meet the legal definition of perjury.

The president bases his entire argument on Bronston v. U.S., a 1973 ruling by a unanimous Supreme Court interpreting the federal perjury statute. His first rebuttal -- issued moments before the Starr report -- devotes pages to the Bronston opinion: "The Supreme Court has made abundantly clear that it is not relevant for perjury purposes whether the witness intends his answer to mislead, or indeed intends a pattern of answers to mislead, if the answers are truthful or literally truthful."

Congress must take part of the blame for the president's cynical abuse of truth. In 25 years since the Bronston opinion, Congress has neither corrected the statute nor clarified its rejection of half-truths under oath – even though executive officials used the same defense of literal truthfulness to justify misleading answers in Congress's Iran-contra investigation.

FULL TEXT

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Without the Supreme Court's opinion excluding consciously stated half-truths -- statements under oath that are literally true but are false, misleading and deceptive in context -- from the definition of perjury, the President would have no defense whatever.

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Whether Mr. Clinton's conduct is impeachable is for Congress to determine. In a criminal prosecution, however, "legal accuracy" and literal truth very well might be a strong enough defense to avoid conviction.

This lax standard for truthfulness under oath corrupts the legal process. We law professors instruct our students in how to "prepare" witnesses to evade and mislead in depositions, while lawyers selectively insulate themselves from the facts to avoid "knowingly" eliciting perjured testimony.

If we understand the problem as ultimately not whether the President lied under oath -- he did -- nor whether perjury before a grand jury is an impeachable offense -- it can be -- but the standard of truth used to determine perjury, then we know that any truly constructive resolution to this crisis must fix the underlying problem.

Some courts have already taken constructive steps. The New York Court of Appeals, the state's highest tribunal, rejected the Bronston approach in interpreting the state perjury statute. Today in New York, "a defense to perjury may not be established by isolating a statement from context, giving it in this manner a meaning entirely different from that which it has when the testimony is considered as a whole."

Federal courts, however, are bound by the Supreme Court's literalist interpretation of the federal perjury statute. But in October the Sixth U.S. Circuit Court of Appeals rebelled. Affirming a perjury conviction of a crafty deponent, the appeals court held that Bronston applies only to unresponsive answers that should have alerted the opposing lawyer to press on. But "where the questions and answers proceed on a false premise of which {only} the defendant is aware, he may not evade the true intent of the line of questioning by stacking literally true answers on top of the false premise."

Under this largely untested view of Bronston, Mr. Clinton might be found guilty. "Because we believe that the crime of perjury depends not only upon the clarity of the questioning itself, but also upon the knowledge and reasonable understanding of the testifier as to what is meant by the questioning," the Sixth Circuit declared, "we hold that a defendant may be found guilty of perjury if a jury could find beyond a reasonable doubt from the evidence presented that the defendant knew what the question meant and gave knowingly untruthful and materially misleading answers in response."

Whatever else it does, Congress should sweep away this mess by enacting a law clarifying the meaning of perjury: "A person commits perjury who intentionally makes a materially false statement under oath. A person who gives an answer not literally false but consciously calculated to create a materially false impression when considered in the context in which it was given, also commits perjury."

Never again would we have to endure debates about what the meaning of "is" is. With this simple change, Congress would proclaim a new commitment to the truth, the whole truth and nothing but the truth.

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