

# THE COP IN THE STALL IS KING

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*“Senator Craig has been the victim of a set-up by the evil-minded police of Minneapolis-St. Paul that Stalin would have admired.”—Ben Stein*

The illustrated cover of the Mar. 22, 1948 issue of *Time* magazine, entitled “COMMUNISM’S BERIA—The Cop at the Keyhole is King,” depicts the chief of Stalinist Russia’s secret police, Lavrenti Beria, with his steely expressionless eyes, spying on us through a keyhole. The cover article, “Communists,” discusses the “police state mentality” which pervades in Communist regimes, “police states” where they have “developed the sinister side of the policeman’s role much further than any democracy has.” In Communist countries, the article explains, there are “policemen of the soul” whose “preventive policing is more concerned with thoughts, attitudes, feelings, than it is with overt acts.” This “new kind of policeman” necessarily “has to be everywhere”—including at the keyhole.

The concept of a new kind of policeman, a policeman of the soul, who is everywhere, is fundamental to appreciating the civil liberties issues raised by the arrest and investigation of Idaho’s U.S. Sen. Larry E. Craig, whose saga already has assumed legendary proportions. The “crime scene”—the airport men’s room where Craig was arrested—has become a place of pilgrimage for tourists, and a video of the restroom is even available on the Internet.

Last June 11, only six minutes after he first encountered an undercover police officer staking out a Minneapolis airport restroom to investigate allegations of sexual activity in that restroom, Sen. Craig was arrested by the officer on questionable misdemeanor charges. No words had

been exchanged and no sexual or indecent conduct had occurred. From the arrest until his release about 45 minutes later, Craig was subjected to custody, booking, photographing, fingerprinting, and custodial interrogation. On August 1 Craig, acting without a lawyer, pleaded guilty by mail to one of the misdemeanor charges and was sentenced to a fine and a suspended 10-day jail term. Subsequently, Craig retained an attorney and filed a motion to withdraw his plea. The denial of that motion by the convicting court is now under appeal. These and other basic facts of Sen. Craig's case are set forth in the Chronology at the end of this article.

And what were the two misdemeanors for which a U.S. Senator was subjected to a bathroom arrest? A technical charge of disorderly conduct, and an absurd charge of interfering with the arresting officer's privacy!

Although the universal view is that Sen. Craig blundered stupendously in pleading guilty without the advice of counsel, it is not the purpose of this article to recanvass that issue. Nor is it our purpose to explore whether Craig is, in the words of Franklin Kameny, "a self-deluding hypocritical homophobic bigot." Nor, finally, is it our purpose to critique the handling of Sen. Craig's case by the Minnesota courts.

Instead, this article focuses on the evils of police practices on exhibit in Craig's case.

These police practices, used to ensnare Sen. Craig and 40 others, suggest that the United States is joining the ranks of the countries that cultivate the sinister side of the policeman's role. American police are acquiring a police state mentality.

The June 11 episode tells us a lot about the dangerous notions American police now have about preventive policing. Most unfortunately, police have embraced, as Bob Barr observes, a dangerous "pre-emptive strike syndrome" which includes an over-the-top eagerness to make

“anticipatory arrests,” using the alleged commission of a minor crime as the pretext for making the arrest. Police now arrest toe tappers and foot-sliders whose conduct, the arresting officer infers, signals an interest in having sex.

In regard to the factual scenario of Sen. Craig’s activities in the restroom prior to his arrest, we must remember that he did he not commit, and was never charged with, a sex act or any indecent or lewd act. When we examine his alleged acts, we are not dealing with violent crime or sex with minors or nonconsensual or public sex acts. Nor did he ask anyone to commit such an act; he uttered not a word.

Police have never claimed that Sen. Craig engaged in a sex act or indecently exposed himself, and the senator was never charged with committing, or attempting to commit, a sex crime or the crime of indecent exposure. Instead Craig was arrested on trumped-up misdemeanor charges because allegedly he engaged in otherwise innocuous conduct—e.g., placing his travel bag against the front of the toilet stall, tapping his toes, moving his foot up and down and to the right, swiping his hands under the stall divider—which the arresting officer, based on his training and experience, thought was “a signal often used by persons communicating a desire to engage in sexual activity.” Thus, do American police infer crime and make arrests “from such abstract and arcane clues as hand signals and foot tapping,” writes commentator nathanbedford.

We must also remember that the private sex acts of consenting adults are constitutionally protected from criminalization, as are simple requests by one adult to another for private consensual sex. Even if Sen. Craig had specifically requested Karsnia to go to a hotel room and have consensual sex, no crime would have occurred, regardless of whether the consensual sex actually occurred. Of course it is a crime to solicit public sex, but Craig was never charged with anything like that—almost certainly because it would have been impossible to prove. Karsnia has never claimed that Craig solicited sex from him, and no actual or

attempted sex acts or indecent exposure took place.

This is why Craig was arrested on strained misdemeanor charges according to which a hapless citizen ensnarled in a police sting and on the verge of being taken into custody is deemed to have committed crimes against the arresting officer.

Relying entirely on what Arianna Huffington calls their “prognostication [and] mind-reading skills,” American police lurking in restrooms now, after fleeting encounters, and without a word being exchanged, arrest citizens for committing otherwise innocent acts if police think the acts suggest a desire for consensual sex with the officer in the adjoining restroom stall. The arrest is made on manufactured misdemeanor charges. Is this not what happens when the police have become policemen of the soul? Is this not an example of police concerned with thoughts and attitudes more than overt acts?

A police state mentality is also evidenced by the bizarre decision of Minneapolis airport police to stage the sex sting operation in the first place. The logical way to suppress sex acts in a public restroom is to patrol the restroom with uniformed officers and to post notices announcing the patrols and warning users of the bathroom of recent reports regarding sex acts in the restroom. The logical way, however, is not the police state way, and Minneapolis airport police elected instead to stage an undercover sex sting and to focus on arresting people for innocuous behavior if in the opinion of the police they were signaling a desire to engage in lewd conduct. Success of the operation therefore turned on the efforts of policemen of the soul. When it was shut down three months later, 41 men, including a U.S. Senator, had been arrested under the operation by police decoys.

Despite being asked, since the sex decoy operation was closed down, about the extent and staffing of the operation, airport police decline to provide any facts, saying such information “could compromise their ability to perform their duties.” Nowadays, when police engage in

activities of doubtful propriety and are questioned about it, they clam up and behave as if answering questions would endanger the national security. Here is the police state mentality cropping up again. How can a free society ensure that police make effective use of their resources and treat citizens fairly if police are permitted to conduct dubious undercover sex sting operations and then refuse to explain themselves to the public? Once a sex sting has been shut down, information on the resources used in the operation should be freely available and there should be no secrets. This is essential for police accountability. Police cannot carry out such an operation and justifiably expect to be able to hide anything. They have no privacy rights to be protected.

Dave Karsnia, the police detective who arrested Sen. Craig, is regarded by the law enforcement establishment as the very model of a modern policeman. AP news calls him “friendly and businesslike.” He is young, handsome, and projects an image of earnestness. He holds both bachelor’s and master’s degrees in criminal justice. In 2003, the Minneapolis airport police department named him its Officer of the Year, and two years later, at the age of 27, he was promoted to sergeant. When “things needed to get done, you could always count on him to get things done,” says one of his admiring college professors. “[H]e didn’t let too many things get by him.” Much of the press shares this gushing view of the officer, sympathetically describing him as “a rising young officer” with a “reliable reputation” who “shielded the men he arrested in the airport bathroom from embarrassment,” and who “chatted” with men after arresting them in the restroom.

Jack Lanners, chairman of the Minneapolis Metropolitan Airport Commission, says he is “proud” of the work done by Karsnia and other airport police who operated the bathroom sex sting.

Actually, Karsnia’s activities, in the words of Bob Barr, “reveal aspects of our criminal justice system that ought to trouble us deeply.”

To begin with, let’s not airbrush things. Sgt. Karsnia is, Richard Cohen

as bluntly phrases it, “an undercover cop who spends his days protecting the public while seated on a commode.” Mark Steyn is even blunter: “Karsnia sounds weird and creepy: a guy who’s paid to sit in a bathroom stall for hours on end observing ankles.”

Karsnia willingly participated in a sex decoy operation that everyone agrees bordered on entrapment. Cleverly pretending to be other than a policeman, Karsnia lurked in public lavatories, sitting on a toilet inside a stall. He arrested people for everyday gestures. He arrested a U.S. Senator, after a wordless six-minute encounter which did not involve any sexual or lewd conduct, because in his opinion the senator had signaled nonverbally a desire to engage in sexual conduct. Later he personally insulted the senator at the end of an interrogation session, as the interrogation transcript reveals. His official reports of his dealings with Sen. Craig and the other people he arrested in the restroom are written in Orwellian copspeak and replete with suspiciously boilerplate phraseology. His account of what he did or did not do during his prearrest encounter with Sen. Craig is open to serious question.

What exactly was Karsnia doing during his six-minute prearrest encounter with Craig? Karsnia’s version of events during the encounter is doubtful, at least as to his own conduct, and probably in other respects. According to his own report, prior to the arrest Karsnia appears to have sat silently and passively on the toilet during the entire encounter, except that after Craig allegedly tapped his toes and moved his foot closer to Karsnia’s foot, Karsnia “moved [his] foot up and down slowly.” However, it is implicit in his report that while on the toilet Karsnia must have consulted his watch from time to time.

Interestingly, straight men are rarely bothered or harassed by men seeking public bathroom sex. There is a scientific research on the rituals used by men seeking impersonal sex with other men in public places. It shows that a person seeking to initiate such sex “engages in safeguards to ensure that any physical advance will be reciprocated,” writes expert Laura M. MacDonald. The initiator therefore adheres to “an elaborate

series of codes that require the proper response for the initiator to continue. Put simply, a straight man would be left alone after that first tap or cough or look went unanswered,” MacDonald adds. “[These] are all parts of a delicate ritual of call and answer.”

Sociologists have even categorized the successive ritual stages undertaken by initiators: approach, positioning, signaling, maneuvering, contracting, foreplay, payoff.

A classic study of male same-sex sexual activities in public bathrooms concludes: “I doubt the veracity of any person (detective or otherwise) who claims to have been ‘molested’ in such a setting without having first ‘given his consent’.” *Any detective.*

Karsnia’s community bathroom policing must be put in historical context. American police have a long history, dating back to the so-called “Pervert Elimination Campaign” in the 1940s, of using handsome young undercover officers who feign a desire to engage in sexual activities, in order to entrap males seeking same-sex sex. A common police practice was to create “honey traps”—stationing handsome undercover officers in public men’s rooms where they would loiter suggestively and arrest men lured into verbally propositioning them. Detective Karsnia carried this undercover technique a bit further. He arrested men who had never verbally propositioned him, men with whom he had never exchanged a word. *After encounters as brief as six minutes.*

Assume for present purposes that Karsnia is truthful in claiming that Sen. Craig engaged in the toe tapping and other prearrest conduct described in Karsnia’s official report. Assume also that Karsnia was right in concluding that Craig’s conduct amounted to a signal that Craig desired to engage in lewd acts with Karsnia. Assuming all of this, and keeping in mind the rituals followed by men seeking sex in restrooms, it seems unlikely that detective Karsnia did not in some way early on intentionally signal to Craig a pretended willingness to have sex.

Richard Cohen is right: “dollars to donuts, [Karsnia] gave Craig a wink or the equivalent thereof. No cop is going to risk hemorrhoids and not come back with some arrests.” If, therefore, Karsnia is being truthful about Craig’s conduct in the restroom, then it is likely that he is not being truthful about his own conduct. Karsnia must have made one or more gestures designed to deceive Craig into believing Karsnia was receptive to Craig’s alleged signals. Perhaps one such gesture was Karsnia’s foot-moving, which he has never explained.

Thus, if Craig actually did what Karsnia says he did, Karsnia must previously have signaled to Craig a willingness for sex. If Craig had sent out a signal for having sex, and Karsnia had not responded favorably, then Karsnia would have been left alone from then on.

One of the first things Craig said to Karsnia during the recorded interrogation session was, “You solicited me,” and later in that session he told Karsnia, “But you shouldn’t be out to entrap people, either.” This suggests that Karsnia did something, made some gesture, suggesting a willingness for sex.

Of course, the other possibility is that Karsnia’s account of what Craig did in the bathroom is essentially false and that Craig did not signal anything.

Under either possibility, we are dealing with police state-type police conduct that is sinister.

In Sen. Craig’s case, misdemeanor criminal liability was stretched to the breaking point to authorize an anticipatory arrest. The interference with privacy charge, later dropped, required taking a statute enacted to ban use of hidden cameras in women’s rooms and twisting it to criminalize the harmless conduct of a man inside a toilet stall about to be arrested in a bathroom sex sting by a plainclothes detective in the adjacent stall.

Turning to the other crime for which Craig was arrested, the Minnesota



disorderly conduct statute had to be extended to its absolute maximum to allow Craig's arrest. "Disorderly conduct," Minnesota law school professor Dale Carpenter says, "is a notoriously nebulous crime, allowing police wide discretion in making arrests and charges for conduct that is little more than bothersome to police or to others." Disorderly conduct statutes usually contain broad catch-all provisions, and the Minnesota disorderly conduct statute is typical of this trend.

Relevant provisions of the Minnesota statute are set forth in the Appendix below.

After you have looked at it, note how broadly the statute sweeps and how much normal, innocent behavior is arguably criminal under the statute. Note that the statute defines as disorderly conduct many forms of conduct not, in any reasonable sense, disorderly. Note in the statute the vagueness of terms such as "offensive" and "anger" and the overbreadth of such terms as "disturb" and "resentment." Note that under the statute in order for there to be a violation it is not necessary that a defendant's conduct actually alarm, anger, or disturb others—only that it tend to do so. Note that it is irrelevant that a defendant does not know that his conduct would have this tendency, as long as a reasonable man would know it.

In essence, the disorderly conduct statute punishes forms of negligence—certain actions which might have various deleterious consequences if a reasonable man would be aware of these possible consequences, even though the defendant, for one reason or another, is not. Under the statute, criminal negligence which may or does result in no harm to anyone is defined as disorderly conduct.

In the case of Sen. Craig the reach of the statute was extended to its furthest degree. He was not charged with breach of or disturbing the peace. He was not charged with alarming, angering, or disturbing others. He was not charged with any obscene, boisterous, or noisy conduct. Instead, based on a wordless six-minute encounter, Craig was

charged with engaging in offensive or abusive conduct tending reasonably to arouse alarm, anger, or resentment in others, having reasonable grounds to know that it would tend to alarm, anger or disturb others. The theory was that Craig was guilty of this peculiar species of the offense of disorderly conduct because he had entered Karsnia's stall with his eyes, hands, and foot, and because this would cause anger, alarm, or resentment in a reasonable person, even though obviously the conduct did not tend to cause, or actually cause, anger, alarm, or resentment in police officer Karsnia.

This is preventive policing carried way, way too far.

It is a manifestation of the police state mentality to permit this highly technical form of statutory disorderly conduct to apply in the context of a citizen arrested in a bathroom sex sting. Disorderly conduct statutes should not be perverted to enlarge the arrest powers of undercover officers staging sex decoy operations. Nonviolent, nonthreatening behavior by an unwary, unarmed, soon-to-be arrested citizen should never be deemed to be a criminal offense against a wary armed policeman being backed up by a second armed officer. Use of the disorderly conduct charge in this context, like use of the interference with privacy charge, preposterously turns the arresting officer into a "victim" of a "crime" committed against him by the luckless arrestee. This cannot be what legislators intended.

In a sting operation, it ought to be a requisite for convicting the arrestee of disorderly conduct that not only would the arrestee's conduct have caused alarm, anger or resentment in a reasonable person, but also that the arrestee's conduct in fact did cause anger, alarm or resentment in the undercover officer. What a reasonable person would know ought not to be the sole governing standard when the supposed victim of the disorderly conduct is a police officer engaged in a sting and the alleged offender is a person arrested as part of the sting.

The investigation and arrest of Sen. Larry Craig is indicative that here in

America we are developing the sinister side of the policeman's role, that our police are embracing an extremist view of preventive policing more concerned with attitudes and feelings than overt acts, and that the police are nurturing a police state mentality.

The sex sting operation which netted Sen. Craig is a stunning example of police state-type overkill. A new kind of American policeman thinks that, in order to nip any crime in the bud, no matter how minor or harmless, he must be everywhere—even in public restroom stalls to rein in toe tappers and foot-sliders. And when he is an undercover officer stationed on a toilet in a public bathroom, then truly, as Sen. Craig found out, the officer sitting on that proverbial marble throne actually is in fact a king. In Stalinist Russia, the cop at the keyhole was king; in today's America, the cop in the stall is king.

Ben Stein is right: the story of Sen. Larry Craig's encounter with the bathroom task force "is a nightmare of out-of-control police. [All] that believe in individual rights should be rallying to his defense."

## **CHRONOLOGY**

**May 13, 2007** A California man is arrested in the main restroom for men in the Minneapolis-St. Paul International Airport after allegedly indecently exposing himself there.

**Mid-May 2007** Allegedly in response to citizen complaints of sexual activities in the main men's room, Minneapolis-St. Paul International Airport police decide to act. Tellingly, they do not take sensible steps proportionate to the problem. They do not target men who engage in sex acts or lewd behavior or expose themselves in that bathroom. They do not arrange for the restroom to be patrolled by uniformed officers at regular/irregular intervals. They do not post signs informing the public of the patrols or of previous problems with sexual activities in the restroom. They do not decide to remodel the restroom. Instead, in what may fairly be called a display of police state mentality overkill, they institute an undercover sex sting operation. They do this in spite of the

fact that the use of undercover decoys to deal with sex acts committed in public is a discredited law enforcement technique—a technique, indeed, in the same category as the technique of harassing and intimidating suspects.

Under the operation, a plainclothes police officer sits on the toilet in a stall and arrests any man in an adjoining stall who engages in foot-tapping or other facially innocent activities which, based on the officer's training and work experience, indicate a willingness to perform lewd acts (usually same-sex sexual acts). The undercover officer will be backed up by another plainclothes detective, who will take up a position outside the restroom, near the door.

Unless they have committed a sex act or indecently exposed themselves, the persons arrested will be charged with disorderly conduct, interference with privacy, or loitering, all misdemeanors. The disorderly conduct charge involves perverting an already overly broad disorderly conduct statute so as to widen the arrest powers of police undercover agents conducting sex stings. The interference with privacy charge involves a novel extension of a 1995 statute enacted in response to the problem of the use of hidden cameras in women's rooms.

**May 31, 2007** A plainclothes police officer with the airport police makes the first bathroom arrest under its undercover sex sting operation.

**June 11, 2007** Today the “undercover officer in the restroom” stratagem ensnares an important politician. Shortly after noon on this Monday, Sen. Larry Craig is arrested in the main men's room at the Minneapolis-St. Paul International Airport on misdemeanor charges of disorderly conduct and interference with privacy. The arrest occurs only six minutes after Craig encounters the blonde, good-looking, 29-year old arresting officer, a plainclothes detective sergeant named Dave Karsnia who is seated on a toilet inside a stall. This is the twelfth arrest made by Karsnia under the decoy operation.

Karsnia and the officer stationed outside the men's room take their prisoner to the Airport Operations Center, where before being released Craig is detained for about 45 minutes during which he is interrogated by Karsnia, booked, photographed, and fingerprinted.

According to a report prepared the next day by detective Karsnia—a report which is very precise about the time frame—the sequence of events on June 11 was:

**Noon** Today's bathroom sting operation commences when Karsnia perches himself on a toilet in a stall in the airport restroom he is staking out. "On 6/11/07, at about 1200 hours, I was working a plainclothes detail involving lewd conduct in the main men's public restroom and proceeded to an unoccupied stall in the back ..."  
Meanwhile a second plainclothes detective positions himself immediately outside the restroom.

**12:13 p.m.** Karsnia first sees Craig, who is, in the words of Karsnia's report on the incident, "standing outside my stall."

**12:13 to 12:15 p.m.** During this two-minute period, Karsnia says he "could see through the crack in the door from his position. Craig would look down at his hands, 'fidget' with his fingers, and then look through the crack into my stall again. Craig would repeat this cycle for two minutes. I was able to see Craig's blue eyes as he looked into my stall."

**12:15 p.m.** The "male in the stall to the left of me flushed the toilet and exited the stall. Craig entered the stall and placed his roller bag against the front of the stall door. My experience has shown that individuals engaging in lewd conduct use their bags to block the view from the front of their stall."

**12:16 p.m.** "Craig tapped his right foot. I recognized this as a signal used by persons wishing to engage in lewd conduct. Craig

tapped his toes several times and moved his foot closer to my foot. I moved my foot up and down slowly. ... Craig ... moved his right foot so that it touched the side of my left foot which was within my stall area.”

**12:17 to 12:19 p.m.** “I saw Craig wipe his hand under the stall divider for a few seconds. The swipe went in the direction from the front (door side) of the stall towards the back wall. His palm was facing towards the ceiling as he guided it at the stall divider. I was only able to see the tips of his fingers on my side of the divider. Craig swiped his hand again for a few seconds in the same motion to where I could see more of his fingers. Craig then swiped his hand in the same motion a third time for a few seconds.”

**12:19 p.m.** Now, six minutes after first encountering Craig and without previously exchanging a word, Karsnia displays his police credentials and arrests Craig. He and the other detective then escort their prisoner to the airport’s Police Operations Center.

**12:28 p.m.** At the Police Operations Center, Karsnia begins his custodial interrogation of Craig. The interrogation session is audio recorded, and the written transcript exists. Craig is given the Miranda warnings and waives his rights to remain silent and to have an attorney present. At no place in that transcript does it appear that Craig was informed for what crime he had been arrested. In the interrogation Karsnia makes it clear to Craig that the only way for Craig to avoid being taken to jail is for him to be “cooperative.”

During the interrogation, Craig and Karsnia disagree almost entirely about what supposedly happened in the restroom. Craig denies any improper conduct. At one point he tells Karsnia, “You solicited me.” Later he says, “But you shouldn’t be out to entrap people, either.” Although Karsnia uses several police interrogation techniques on Craig—such as accusing him of lying to a police officer—Craig disputes all of Karsnia’s claims of inappropriate conduct, at one point telling the officer: “All right, you saw something that didn’t happen.” In reply to

this, Karsnia heatedly insults Craig whom he knows is a politician: “Embarrassing, embarrassing. No wonder we’re going down the tubes.”

**12:36 p.m.** The eight-minute interrogation session ends without Craig having incriminated himself.

**1:05 p.m.** After being booked, fingerprinted, and photographed, Craig is released from custody. It has only been 46 minutes since Craig’s arrest.

**June 12, 2007** Detective Karsnia prepares a two-page typed report of his arrest and investigation of Craig. The “Narrative Title” of the report is “Lewd Conduct.” The complaint Karsnia will file against Craig on June 25 closely tracks the language of the June 12 report.

**June 25, 2007** Craig is formally charged under a criminal complaint accusing him of the misdemeanors of disorderly conduct and interference with privacy. The complaint is signed by Karsnia and approved by the prosecuting attorney.

**June/July 2007** Without having consulted an attorney, Craig speaks with the Minnesota prosecuting attorney several times via telephone in late June and July. During these conversations Craig engages in plea negotiations, and is told that if he pleads guilty to the disorderly conduct charge, the other charge will be dropped. He is also informed what the sentence will be if he pleads guilty to the disorderly conduct charge.

**Aug. 1, 2007** Still not represented by counsel seven weeks after his arrest, Craig pleads guilty by mail to the disorderly conduct charge. Craig does not know that he is only person arrested in the decoy operation to be charged with both misdemeanors. Nor does Craig know that only half of the restroom arrestees have been charged with interference with privacy.

**Aug. 8, 2007** Reviewing the documents, a Minnesota state judge

accepts the mailed-in guilty plea and sentences the absent Craig to 10 days in jail and a fine of \$1,000. The jail portion of the sentence and one-half the fine are suspended on the condition that Craig not commit any similar offenses for a year. The interference with privacy charge is dismissed.

**Aug. 13, 2007** Having arrested, in addition to Sen. Craig, 40 other men on misdemeanor charges, police at the Minneapolis-St. Paul International Airport terminate their restroom sex sting operation.

**Aug. 27, 2007** As a result of a news leak from an unknown source, the story of Sen. Craig's arrest is made public by Roll Call, a District of Columbia newspaper. The story instantly becomes headline news across the country and generates storms of controversy.

Also on this day, Craig issues a statement saying that at the time of the June 11 incident he had not been involved in any inappropriate conduct, that he should not have pled guilty, and that he should have sought the advice of an attorney in resolving the charges against him.

**Sept. 1, 2007** Craig announces that he will resign from the U.S. Senate at the end of the month.

**Sept. 11, 2007** Now represented by counsel, Craig files in the convicting court a motion to withdraw his guilty plea, contending that, because the plea was not knowingly and understandingly entered, it would be a manifest injustice not to allow him to withdraw it.

**Sept. 26, 2007** The convicting court conducts a hearing on Craig's motion to withdraw his plea.

**Oct. 4, 2007** The convicting court denies Craig's motion to withdraw the plea. The court's 27-page opinion is haunted by a dreamy unreality as the court "sets out to prove that Craig's boneheaded, career-ending admission of guilt was in fact an 'intelligent plea,'" as Bruce Reed writes. According to the court, Craig's uncounseled guilty plea



was “calm and methodical.”

Also on this day, Craig announces his disappointment with the trial court’s denial of his motion and reveals that he has changed his mind and will not resign from the U.S. Senate. Instead, he will serve out the rest of his term, which ends in January 2009, but not run for re-election.

**Oct. 15, 2007** Craig files an appeal asking the Minnesota Court of Appeals to reverse the denial of his motion to withdraw the guilty plea.

**Dec. 14, 2007** This was the deadline for Craig’s attorneys to submit their briefs in support of the appeal.

## **APPENDIX**

Relevant Provisions of Minn Stat. Ann. § 609.72, subd. 1(3), to Which  
Sen. Craig Pled Guilty

### **Minnesota Statutes Annotated § 609.72**

#### **Disorderly Conduct**

**Subdivision 1. Crime.** Whoever does any of the following in a public or private place, ... knowing or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor:

\* \* \*

**(3)** Engages in offensive, obscene, abusive, boisterous, or noisy conduct ... tending reasonably to arouse alarm, anger, or resentment in others.