

BETWEEN THE LINES

October 1, 2018

A Tale of Two Testimonies

Introduction

The September 27th Senate Judiciary Committee hearing regarding Judge Brett Kavanaugh's nomination to the Supreme Court provides a unique opportunity to compare and contrast the testimony of two different individuals addressing similar issues. Dr. Christine Blasey Ford is called to testify regarding her accusations of sexual misconduct on the part of Judge Kavanaugh. The Committee hears her opening remarks and questions her regarding the validity of her accusations and, thereafter, Judge Kavanaugh is called upon to address them. The manner in which each responds to questioning is strikingly different and provides significant behavioral insights into the relative credibility of their statements.

At BIA, we apply our proprietary Tactical Behavior Assessment[®] (TBA[™]) methodology to analyze statements and provide objective insight into the completeness, transparency, evasiveness and confidence surrounding all types of business issues. Our methodology relies on the absence or presence of patterns of certain verbal and nonverbal behaviors. Two key indicators in the methodology are the extent to which someone responds directly to a question posed and the extent to which someone directly denies an allegation. Also, this analysis reflects our awareness that individuals expect to be examined on core aspects of an allegation, to which they are often prepared in advance to respond simply and directly. In a format less rigid than this hearing, well-crafted follow-up questions would be asked to test the reliability of such responses. Here, we focus on the responses to questions one degree or more removed from the core "did you do it," to assess the veracity and reliability of the information being provided.

Below is a summary of our analytical conclusions. We address the statements and responses of both Dr. Ford and Judge Kavanaugh in the order of their testimony.

Observations from Dr. Ford's Testimony

Dr. Ford's commentary falls on the low to medium end of BIA's spectrum of behavioral concern, indicating a high level of credibility. Dr. Ford either directly answers each question or attempts to answer to the best of her ability. However, there are behaviors present that suggest some flaws in her testimony typical of an analysis of lengthy remarks and questioning on a contested issue.

There is potentially some unacknowledged motivation behind Dr. Ford's actions.

Most significantly, in her opening remarks, Dr. Ford raises the issue of whether she is acting with any hidden or partisan agenda but does not explicitly state that she is not. Rather, she resorts to statements that she is "an independent person" and "no one's pawn" to persuade the Committee she was neither motivated to come forward by politics nor subject to influence from others. This need to rely on convincing statements rather than a direct assertion suggests she may have been subject to persuasion beyond mere encouragement from others to tell her story. The source of possible influence is not clear from her remarks, but the behaviors signal there may be some other, unacknowledged motivation behind her actions, whether of her own initiative or instigated by others.

Additionally, she states that her “original intent” was to “communicate with everyone,” which may indicate her motivation changed over time. Later in her testimony she reiterates for the Committee that she “was trying to get the information to you while there was still a list of other what looked like equally-qualified candidates” to make it seem she was not trying to sabotage the confirmation hearing. Her need to emphasize this point may be intended to diminish any potential appearance of being politically motivated, but her need to convince as well as repeat this point suggests this motivation could be at least somewhat a factor.

To further bolster her claim, she states that she knew coming forward would be “jumping in front of a train” to play up the difficulty of her decision and explain away why she waited to raise the allegation. This need to rely on convincing statements regarding the delay suggests she may have been subject to attempts at persuasion by others to tell her story. Given her remark about not being a “pawn,” it is possible she eventually came to suspect she was being manipulated and is trying to prevent others from reaching that same conclusion.

Dr. Ford may be uncertain about aspects of her account or is concerned about how it will be perceived.

There are also moments in Dr. Ford’s testimony when she claims to be unable to recall specific details about the incident or offers contradictory statements such as who arrived first at the party in question. Given the amount of time that has passed, that alone is reasonable. However, when asked specific questions such as how she knew it was Judge Kavanaugh who placed his hand over her mouth and pushed her into a room, she diverts to unnecessary detail about the nature of neurotransmitters and the hippocampus to boost the apparent validity of her statements by grounding them in science. The reason for her reliance on these references to enhance her credibility is not clear but may suggest the presence of uncertainty regarding some aspects of her statements or concern about whether they will be perceived as legitimate. Nevertheless, this does not automatically signal any intentional effort to mislead and would also be consistent with a fear that all of her testimony could be negated if there is doubt regarding some of the details.

Dr. Ford may be emphasizing the extent to which she has been victimized to garner greater sympathy.

Associated with her need to enhance her credibility, Dr. Ford appears to emphasize her role as victim. For instance, she states she has experienced PTSD from the incident. To make her account appear more sympathetic, she refers to her need to have had a second front door built in their home even though it does not look “aesthetically pleasing.” When asked whether there were other incidents in her life that contributed to her PTSD, she initially offers the non-answer statement of, “I think that’s a great question,” but never directly responds. She instead resorts to unnecessary scientific detail about the “etiology” and “multifactorial” nature of PTSD and eventually admits to having experienced “nothing as striking as that event.” The phrase inadvertently reveals that there have been other, albeit less severe, incidents in her life that contributed to her anxiety and PTSD. Her unwillingness to disclose more on this topic could be intended to place the weight of blame for her condition on this one alleged incident.

There are likely undisclosed reasons behind Dr. Ford’s refusal to interview with the Committee.

Dr. Ford’s fear of flying as a rationale for initially refusing an interview with the Committee also comes into question. Dr. Ford claims that she initially wanted to avoid meeting with the Committee because she has a fear of flying. Yet, she acknowledges having traveled extensively, including numerous international destinations, for both work and leisure. She protests that it is “easier for me to travel going that direction when it’s a vacation” to substantiate her claim, but the need to convince again signals she is concerned others will perceive the fallibility of her statements. Soon after in her testimony on this matter she mentions the polygraph examination she underwent and refers to it as “almost as anxiety-provoking as an airplane flight.” This voluntary reference back to the issue of flying may be intended to further legitimize her claim that she did not want to meet because of a fear of flying. The inconsistency between her claim of having a fear of flight versus her actions, along with the effort to convince listeners of the legitimacy of her claim, suggests that there are other factors at play regarding her reluctance.

Later, when a Committee member reminds Dr. Ford that they had offered to meet with her in California, she merely responds, “Thank you.” She later states that she was not “clear” on what their offer entailed and seeks to convince that if the Committee were going to travel to her she “would have happily hosted” them. However, her remark that it was not “clear that that was the case” falls short of a response that she did not know of their offer. One would have expected that if this was indeed the first time she had been aware of this, she would have said so.

Collectively these behaviors suggest there are possibly undisclosed reasons for her unwillingness to meet with the Committee beyond her fear of flying.

Observations from Judge Kavanaugh's Testimony

Judge Kavanaugh's commentary, in contrast, falls on the highest end of the spectrum of BIA's level of behavioral concern. While he does deny certain aspects of the sexual assault allegation, Judge Kavanaugh notably fails to answer most of the questions posed during the hearing, and his remarks routinely do not represent direct denials of the allegations being made. Although he repeatedly asserts he is "innocent of this charge," this is considered a flawed denial and is not the same as specifying he did not do that of which he is accused. He also attempts to disparage the credibility of the accusations by referring to them as a "joke" and a "farce" and undermines the validity of the hearing itself by calling it a "new level of absurdity." When offered the opportunity to directly deny an assertion, he often does so only in a qualified manner. For example, when asked if he had ever become aggressive when drinking, he qualifies, "I *think* the answer to that is *basically* no," suggesting that he knows there have been times when he was aggressive while under the influence of alcohol. His reliance on qualified statements throughout his testimony signals his discomfort with being too anchored to any given response that may subsequently be proved untrue.

Judge Kavanaugh is concerned that an FBI investigation, along with other forms of independent inquiry, will have significant, negative implications for him.

From BIA's perspective, the most egregious behavior present in Judge Kavanaugh's testimony is his frequent reliance on unprovoked verbal attacks. He uses this as a strategy beginning with his opening statement when he repeatedly attacks the Democrats on the Committee for having taken so long to assemble and suggests they purposely hid the accusations until they could be "unleashed" or "sprung" on him, implying this was done intentionally to have more of a damaging effect and reduce his ability to defend himself. He frequently rails against these Committee members, stating at one point they have "replaced advice and consent with search and destroy" and repeatedly seeks to portray himself as a victim of efforts to "blow me up and take me down." Additionally, he often refers to the impact this matter has had on his family to potentially appear more sympathetic by complaining, "my life is totally and permanently altered." Some of his remarks seem intended to "paint the halo" for himself through references to a female friend who confided only in him regarding past sexual abuse or to his athletic and academic achievements and attendance at church. Expressions of anger in a stressful setting like this may be expected, but the persistent use of anger and attacking behavior to the degree evidenced here typically represents a significant attempt to discourage inquiry and to avoid disclosure of topics sensitive to the subject.

Additionally, some of Judge Kavanaugh's most significant behaviors occur when addressing the possibility of additional investigation by the FBI. When asked about the potential for such an investigation, he reiterates time and again that he wanted a hearing immediately, but this dodges the issue of the FBI's involvement in the matter. These behaviors include broad statements designed to convince the Committee that he is cooperative and open to all avenues of exploration into the allegations while consistently refusing to agree explicitly when pinned down. This is accompanied by frequent attempts to undermine the potential value of an FBI investigation by claiming it does not "reach a conclusion" and that further investigation should consist solely of his testimony before the Committee. Taken together, these behaviors suggest that Judge Kavanaugh is threatened by the prospect of additional investigation by the FBI.

We see the same types of behaviors when Judge Kavanaugh is asked about the potential testimony of Mark Judge. He tries to gain sympathy for Mr. Judge, casting him as a good but troubled friend who grappled with a nearly fatal addiction and then adds he also was diagnosed with leukemia. These statements are potentially also designed to dissuade the Committee from putting Mr. Judge through any questioning. In fact, during Senator Patrick Leahy's questioning, Judge Kavanaugh even goes on the attack by accusing Mr. Leahy of making "fun of some guy who has an addiction" to imply he is being not only unfair but also unscrupulous. To further discourage any consideration of interviewing Mr. Judge, Judge Kavanaugh repeatedly refers to a "sworn statement" previously provided by Mr. Judge to suggest any additional questioning is unnecessary. These efforts to persuade the Committee not to take this step indicate he is aware Mr. Judge would offer potentially damaging information.

Finally, Senator Harris asks Judge Kavanaugh if he has taken a polygraph test. Judge Kavanaugh repeats the same pattern of behavior in response to similar questions about his willingness to engage in independent verification outside of the Committee hearing process – namely trying to convince the Senator that he is amenable to whatever they want, then issuing a specific objection as to why the suggested approach is inappropriate or ineffective. He states, "No, the — I'll do whatever the committee wants. Of course, those are not admissible in Federal court, but I'll do whatever the committee wants, they're not admissible in Federal court because they're not reliable."

Judge Kavanaugh's drinking has likely been more extreme than he portrays.

When the topic of his drinking is raised, Judge Kavanaugh exhibits a level of flippancy in his remarks that is inappropriate for the setting and regularly escalates into verbal attacks. He again consistently fails to answer these questions directly and tries to turn the table on his interviewers by questioning their drinking habits. In several instances he indignantly challenges his questioners and petulantly asks, "Do you like beer, Senator," or "What do you like to drink," rather than directly answer their questions about his drinking habits. The closest Judge Kavanaugh comes to admitting having consumed alcohol to excess is to more generically state, "we drank beer," and to again qualify, "*sometimes probably* had too many beers." These remarks seem intended to make his behavior appear consistent with that of his peers, minimizing his misconduct, but suggest he did drink to excess on occasion.

Finally, Judge Kavanaugh is directly and specifically asked if he had ever experienced a blackout after drinking alcohol. In contrast to Dr. Ford's occasional inability to recall particular details such as dates, Judge Kavanaugh's failure to answer this question is strongly suggestive of a purposeful attempt to avoid disclosure of his experience in this regard, since the likelihood of someone experiencing a memory blackout and not being able to recall such an incident is low. Specifically, when asked if there was ever a time when he drank so much that he could not remember what happened, or part of what happened, Judge Kavanaugh goes on the attack, saying, "you're asking about, you know, black out. I don't know. Have you?" While Judge Kavanaugh may have intended to be flippant in his response to Senator Klobuchar, in fact he may have inadvertently revealed his true mindset when he states as part of his verbal attack, "I don't know."

In addition, Senator Booker asks Judge Kavanaugh, "You said clearly on the record, *I just want you to restate it* that you never in your life, after drinking heavily to the point of throwing up — and, again, you said you had a weak stomach — you said you never had gaps in memories. Never had any losses whatsoever. Never had foggy recollection about what happened. Is that correct, sir, yes or no?" In response, Judge Kavanaugh replies, "That's — That's what I said," using language that refers back to his earlier statement rather than simply answering the question in the manner requested. This behavior is significant because individuals find it psychologically easier to refer back to an earlier statement that is not wholly accurate, rather than to state the inaccurate answer another time. Also, the repetition of a prepared message over and over again allows individuals to narrowly control their narrative and avoid the risk of disclosing more information than intended.

As mentioned above, particularly notable is Judge Kavanaugh's response to Senator Coons' question regarding whether he was ever "aggressive" when drinking. Judge Kavanaugh displays numerous indications that he is not fully disclosing the facts. In addition to qualifying that he "thinks" the answer is "basically" no, he then goes on to state he does not understand the question, although the context should be clear: "I don't know really what you mean by that, like, what — what are you talking about?" Without letting Mr. Coons clarify, Mr. Kavanaugh repeats his qualified response: "I guess. I mean, I — I don't mean it that way, but 'no' is the *basic* answer, unless you're talking about something where — that I — I'm not aware that you're going to ask about." This amounts to an admission that the "basic" answer is different from the "complete" answer.

Judge Kavanaugh's pattern of responses indicates he believes his record of achievement should outweigh any indiscretions in his youth.

We have noted above some of the numerous instances where Judge Kavanaugh fails to directly respond to Senators' questions. In many cases, he resorts to unrelated commentary in lieu of providing responsive information. The content of these statements is relevant in determining the mindset of a respondent and what is most important to him or her. Judge Kavanaugh's commentary reveals a striking pattern of insistent recitation of his past achievements over the objections of his questioners.

LEAHY: [. . .] Now, you've talked about your yearbook. In your yearbook, you talked about drinking and sexual exploits, did you not?

KAVANAUGH: Senator, let me — let me take a step back and explain high school. I was number one in the class...

LEAHY: And I — and I thought (ph)...

KAVANAUGH: ... freshman — no, no, no, no, no.

LEAHY: I thought we were in the Senate (ph)...

KAVANAUGH: You've got this all — I'm going to — I'm going to talk about my high school...

...

WHITEHOUSE: So the vomiting that you reference in the Ralph Club reference, related to the consumption of alcohol?

KAVANAUGH: Senator, I was at the top of my class academically, busted my butt in school. Captain of the varsity basketball team. Got in Yale College. When I got into Yale College, got into Yale Law School. Worked my tail off.

...

HIRONO: ... that James Roche said, your roommate, "Although Brett was normally reserved, he was a notably heavy drinker, even by the standards of the time. And he became aggressive and belligerent when he was drunk." So is your former college roommate lying?

KAVANAUGH: I would refer you to what I said in the sealed or redacted portion about his relationship with the other two roommates, and I'm going to leave it at that. I will say – Senator, you were asking about college. I got into Yale Law School. That's the number one law school in the country. I had no connections there. I got there by busting my tail in college.

This pattern reflects that Judge Kavanaugh feels he should be defined and evaluated based on what he has achieved academically, athletically and professionally, and that these factors should outweigh any indiscretions or bad actions about which he is being questioned.

Judge Kavanaugh's display of emotion is more likely a behavioral strategy to manage perceptions and mislead than a genuine response to the situation.

In the delivery of Judge Kavanaugh's opening statement, he repeatedly halts his remarks to appear to collect himself emotionally. Throughout his testimony the emotions accompanying his statements pendulum from anger to being on the verge of tears. BIA's methodology distinguishes genuine from feigned emotion based on three criteria. First, whether the emotion is directed externally or internally. An external targeting of the emotion, such as repeated angry attacks at his questioners, is considered a sign of feigned emotion, whereas an internal focus for the emotion, such as vehemently stating, "I didn't do it," is typically more genuine. Second, genuine emotion tends to build slowly while feigned emotion erupts suddenly. There are frequent emotional outbursts in Judge Kavanaugh's testimony that take on the appearance of eruptions, signaling they may be feigned. Third, genuine emotion takes more time to dissipate while false emotion goes away quickly. This third indicator is less consistent during the hearing as there are moments when he soon regains his composure and others where the emotion appears to continue to linger. However, in several instances, rather than recover his composure Judge Kavanaugh quickly pivots from tears into anger or vice versa, which is behaviorally concerning. This poses the question as to why individuals resort to feigned emotion during an interview.

In BIA's experience contrived emotion is typically used to inhibit further questioning by making the interviewer hesitant to raise sensitive issues. The emotion is used as a warning shot to deter others from probing further and is a typical weapon used by a desperate interview subject. One might presume given the import of this hearing and the lurid nature of the allegations that any reasonable person would become emotional. However, whenever feigned emotion is present it is considered a significant indicator of possible deception. The reason for this is the truthful person knows the facts are their ally, and the facts will ultimately reveal the truth and exonerate them. They do not need to resort to false emotion or attacks or convincing statements in lieu of the facts. The presence of emotion as a weapon is a very concerning behavioral symptom and suggests Judge Kavanaugh feels threatened by what could be revealed during the hearing or an FBI investigation.

Summary

While behaviors BIA considers significant in terms of credibility are present in each individual's testimony, the number, nature and intensity of behavioral indicators in terms of assessing an individual's credibility are prominently higher in Judge Kavanaugh's testimony, indicating that he is much less forthcoming in his testimony than is Dr. Ford. Beyond a direct comparison of Dr. Ford and Judge Kavanaugh, our analysis of the full hearing shows Dr. Ford demonstrating a low to medium level of behavioral indicators, consistent with credible testimony in a setting such as this. However, the TBA analysis of Judge Kavanaugh's testimony shows the highest levels of behavioral indicators, consistent with highly evasive testimony from an interviewee. BIA recommends further inquiry to delve into each of the matters we highlight in our analysis.

About this Report:

This report represents the application of BIA's Tactical Behavior Assessment® methodology and reflects BIA's assessment of the completeness and responsiveness of statements made during earnings conference calls, television interviews and other presentations. In each case, our assessment represents the opinion of BIA applying the Tactical Behavior Assessment® methodology and does not purport to indicate that any individual is in any specific instance being truthful or deceptive.

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