

BETWEEN THE LINES

June 23, 2017

Sessions Gives Himself Permission to Say “No”

Introduction

Executives refuse to answer questions for a variety of reasons – “competitive reasons,” “we don’t report by country,” “that approval is still pending” – to name a few. While their reasons for refusing to answer are often reasonable, management teams sometimes use these same types of responses as convenient smokescreens to avoid questions they should actually be able to answer, but in doing so would reveal unfavorable information. BIA uses its proprietary Tactical Behavior Assessment® (TBA™) methodologies to analyze verbal and nonverbal behaviors that are indicators of the completeness and reliability of commentary from company management. BIA’s approach to analyzing corporate disclosures can be effectively applied to determine when an executive is refusing to answer for reasons other than what they claim.

In this edition of *Between the Lines*, we examine the recent testimonies of former FBI Director James Comey and Attorney General Jeff Sessions, both of whom refused to answer many questions during their hearings before the Senate Intelligence Committee on June 8, 2017, and June 13, 2017, respectively.

Our analysis reveals that while Mr. Comey’s refusals are likely legitimate, Mr. Sessions’ are likely part of a behavioral strategy to preclude transparency.

There are refusals, then there are *refusals*; Sessions’ are the latter.

From the outset, Mr. Sessions signals to the Senate Intelligence Committee that, “consistent with long-standing Department of Justice practice,” he does not intend to answer certain questions so as not to “violate my duty to protect the confidential communications I have with the President.” While neither the legality of this position nor the degree to which this is official DOJ policy is clear, under these circumstances his explanation for not answering certain questions initially may seem reasonable. However, behavioral analysis of Mr. Sessions’ refusals indicates that, while he may be concerned about protecting the President’s rights to use executive privilege in the future, he is likely taking advantage of this refusal to hide potentially damaging information.

Specifically, Mr. Sessions is asked:

- If he or any officials in the DOJ have been involved in any discussions about potential presidential pardons for individuals implicated in the investigation into Russia’s interference in the 2016 U.S. presidential elections.
- If he ever discussed Mr. Comey’s handling of the Russia investigations with President Trump or anyone else.
- If the Russia investigation had ever come up in his discussions about firing Mr. Comey.
- If the President ever expressed his frustration with Sessions’ decision to recuse himself from the investigation.

In response to these questions, Mr. Sessions repeatedly states that he is not able to comment as it would be a violation of the “long-standing policy” of the Department of Justice. It is notable that Mr. Sessions is often compelled to defend and enhance perceptions about the policy and his choice to use it, stating that it is “founded in the co-equal branch powers in the constitution of the United States,” “I am protecting the President’s constitutional right,” and that there is a “real principle at stake.” In making these statements, he is attempting to cast his refusals as irrefutable and serving a higher purpose than that of the committee’s, reflecting a mindset that suggests he harbors doubts about the validity of his claims.

When pressed to answer if the policy is written down and if he has seen it, Mr. Sessions offers the qualified response: “I think” it is written down, indicating that Mr. Sessions has not actually seen the policy. He adds that he “talked about it” and “consulted” with senior career attorneys before appearing before the committee and that “it’s [his] judgement” and that he “believe[s]” adhering to this policy is “consistent with [his] duties.” This reveals that the policy is more likely a common practice within the DOJ rather than an official rule. When pressed further on the legal basis for his refusal to answer, Mr. Sessions states, “What we try to do, I think most cabinet officials” is to “protect the right of the President” to assert executive privilege in the future. The qualifiers “I think” and “most... officials,” however, suggest that some officials would feel justified in providing answers to the same types of questions. This suggests that Mr. Sessions’ refusal to answer is a personal decision rather than one required to comply with DOJ policy.

Further evidence of this is apparent in Mr. Sessions’ qualified statements when asked if he would make himself and any documents available in the future for further examination by the committee. He states that he will commit to appear “as appropriate,” “provide appropriate responses” and “try to be responsive.” This series of qualifications indicates that Mr. Sessions does not intend to be completely forthcoming if he is asked to appear in the future. In fact, he attempts to discourage the idea by stating, “I don’t think it’s a good policy to continually bring cabinet members or the attorney general before multiple committees going over the same things over and over,” further signaling his predisposition to be less than fully cooperative.

Mr. Sessions is also asked if going into closed session would change his ability to speak more frankly. In response, he states, “I’m not sure,” and “not cooperating” with special counsel “may or may not be a factor” in closed session. The fact that he cannot commit one way or the other about his ability to speak in closed session suggests that his rationale for refusing to answer in the open session is not clear or well-defined. This is further evidence that Mr. Sessions is using the “long-standing policy” as a device to stonewall the committee’s investigation.

Comey’s refusals are no stonewall.

To be sure, Mr. Comey refuses to answer a fair number of questions during his appearance with the committee. The nature of his refusals, however, are clear and direct and leave the option open for Mr. Comey to provide more information in a closed session. For example, when asked if, at the time of his departure, the FBI was able to confirm any criminal allegations contained in the Steele Dossier, Mr. Comey replies, “I don’t think that is a question I can answer in open session because it goes into the details of the investigation.” This statement (which is typical of all of Mr. Comey’s refusals throughout his appearance) clearly spells out the reason why he is not able to answer the question – an external, conditional constraint. Furthermore, Mr. Comey is clear that he cannot answer in an “open session,” which implies that he would share this information in a closed session. In fact, at one point, when asked a series of questions related to the investigations of former National Security Advisor Michael Flynn’s calls with the Russian ambassador, Mr. Comey replies, “I don’t think I can talk about that in an open setting,” but then adds, “maybe in a classified setting we can talk more about that.” This signals that Mr. Comey is predisposed to share information under different circumstances and that his refusal in the open setting is not an effort to block the committee’s inquiries. The consistency of Mr. Comey’s approach as to what he can and cannot answer stems from a reference to a clear principle and policy. By contrast, Mr. Sessions’ reference to a policy and principal is much less clear, and his refusals are accordingly less consistent and clearly supported.

Sessions stonewalls in other ways, too.

Senator Ron Wyden prefaces his line of questioning with an admonition of Mr. Sessions, stating that the “American people have had it with stonewalling.” He then asks his question.

Question: “Mr. Comey said your continued engagement with the Russian investigation was “problematic,” and he, Mr. Comey, could not discuss it in public... In your prepared statement, you stated you received only ‘limited’ information necessary to inform your recusal decision. But given Director Comey’s statement, we need to know what that was. Were you aware of any concerns at the FBI or elsewhere in government about his contact with the Russians or any other matters relevant to whether you should step aside from the Russian investigation?”

Answer: “I am not stonewalling. I am following the historic policies of the Department of Justice. You don’t walk into any hearing or committee meeting and reveal confidential communications with the President of the United States who is entitled to receive confidential communications in your best judgment about a host of issues and have to be accused of stonewalling for not answering, so I would push back on that.”

“Secondly, Mr. Comey, perhaps he didn’t know but I basically recused myself the first day I got into the office because I never accessed files, I never learned the names of investigators, I never met with them, I never asked for any documentation. The documentation, what little I received was mostly already in the media and was presented by the senior ethics professional responsibility attorney in the department. And I made an honest and proper decision to recuse myself as I told Senator Feinstein and the members of the committee I would do when they confirmed me.”

Analysis: Not only does this response fail to answer the question, but Mr. Sessions' use of qualifiers – that he “basically” recused himself in his first day in office and that the documentation he received was “mostly” already in the media – suggests that there were moments in the office when Mr. Sessions did not behave as though he were recused, and that he saw some amount of non-public and potentially relevant material. Furthermore, when Senator Wyden points out that Mr. Sessions did not answer the question, Mr. Sessions laughs and asks, “what is the question?” This is an attempt to dismiss the importance of the question and brush off the topic.

Senator Wyden repeats his question.

Question: “Mr. Comey said that there were matters with respect to the recusal that were problematic and he couldn't talk about them. What are they?”

Mr. Sessions responds angrily.

Answer: “Why don't you tell me! There are none, Senator Wyden. There are none. I can tell you that with absolute certainty. This is a secret innuendo being leaked out there about me and I don't appreciate it. And I've tried to give my best and truthful answers to any committee I've appeared before and it's really, people are suggesting through innuendo that I haven't been honest about matters, and I have tried to be honest.”

Analysis: In some cases, confrontational circumstances may elicit a genuinely angry response to such a question. However, in this case, Mr. Sessions' anger elevates immediately, which signals the emotion is not likely genuine, but a tactic to stave off accusers. Also, his statements are meant to discredit his accusers rather than assert his own integrity. His statement that he has “tried to be honest” is a weak effort to defend himself and falls short of saying that he actually has been honest. Furthermore, when asked again what was problematic about his recusal, Mr. Sessions laughs and states, “some of that leaked out of the committee that he said in closed session.” This return to the dismissive attitude and the effort to cast the comments (and the committee) in a negative light by characterizing them as “leaks” are further attempts to shut down the topic without providing any insight into the matter. The mercurial rise and fall in angry emotion, coupled with the attacks on his accusers, constitute an aggressive attempt to shut down the line of questioning and allow Mr. Sessions to sidestep providing any insight into the matter. This provides strong behavioral evidence that there is merit to the accusations that his recusal is problematic.

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. BIA does not make stock recommendations. Under no circumstances is BIA's analysis intended to be a recommendation to buy or sell the securities of the company which is the subject of this report.

About BIA:

Business Intelligence Advisors (BIA) is the leading Intelligence Solutions research and advisory firm. Founded in 2001 on the principle that Intelligence techniques originally developed for the national intelligence community could be powerfully applied to the private sector, BIA has developed a ground-breaking suite of service offerings to provide clients with an edge in collecting and evaluating information critical to their success – whether that means making a more informed investment decision, identifying hidden risks, or enhancing due diligence efforts. BIA's services, which include proprietary Behavioral Intelligence Research, Expert Advisory, Investment Intelligence, and Learning & Development Solutions, are delivered by a team of in-house experts from the national intelligence and finance fields.

www.biadvisors.com