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To the Best of My Recollection: Memory Malingerers and Congressional Testimony

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Abstract. This article (1) describes some common concepts of clinical research on memory malingering and (2) advocates the heuristic value of these concepts for political committees seeking to devise methods that elicit truthful statements from individuals providing testimony.

"To the best of my recollection." "Frankly." "The truth is." "Honestly." "I swear that." These and similar phrases may telegraph that what is to follow may not be "the truth, the whole truth, and nothing but the truth." Yet frequently, the same phrases antecede the truth, at least so far as an individual is conscious of it and so far as truth has some ontological validity. How can one differentiate a time of truth telling from a time of spinning tales? As an example, let's consider testimony before a political committee such as one constituted by members of the United States Congress to explore anything from campaign finance irregularities to the merits of a nominee for high office.

The concepts of clinical researchers on memory malingering may be useful in differentiating truth from falsehood, because an individual seeking not to provide the truth before a Congressional committee may claim forgetfulness concerning crucial events. To expose the claim of forgetfulness as malingering, e.g., lying, clinical researchers would seek to demonstrate that manifestations of memory loss were (1) either false or exaggerated; (2) intentionally produced; and (3) motivated by external incentives, e.g., fear of felony conviction. How to do this?

One common approach of clinical researchers is that of qualitative analysis--especially focused on identifying a pattern of inconsistent responding. This inconsistency most often comprises exaggerated differences between the various components of an individual's purported memory loss that do not make sense according to empirical and scientific knowledge about memory functioning. Some specific qualitative signs of inconsistency and, therefore, feigned memory loss might include (1) "near misses" or "approximate answers," (2) significant discrepancies between the results of different interviewing techniques and other assessment strategies that "get at" the same memory content, (3) seeming not to remember "easier" information while remembering more "difficult" information, and (4) inconsistencies between alleged memory loss and observed behavior--the latter mystifyingly occurring or not occurring even when contraindicated by the memory loss.

Ideally, clinical researchers would advise a Congressional committee's staffers to develop an interviewing strategy (and overall assessment strategy) with information that individuals with an identical memory loss would remember, but the individual feigning memory loss would profess not to remember. This is because--as with other attempts at manifesting mental dysfunction--malingerers often "look worse" on assessment devices than those individuals with the "real thing."

IBPP recommends that a working group made up of savvy criminal, investigators, behavioral sciences specialists on memory, and committee counsels--the last to define the rules of the playing field--could best help committee members discharge their responsibilities as representatives of the polity that they represent and--unfortunately--of the parties and special interests as well. (See Ekman, P. (1986). *Telling lies*. NY: Berkley Books; Overholser, J.C. (1990). *Differential diagnosis of malingering and factitious*

International Bulletin of Political Psychology

disorder with physical symptoms, *Behavioral Sciences and Law*, 8, 55-65; Prigatano, G.P., & Amin, K. (1993). Digit memory test: Unequivocal cerebral dysfunction and suspected malingering. *Journal of Clinical and Experimental Neuropsychology*, 15, 537-546; Tombaugh, T. N. (1997). The test of memory malingering (TOMM): Normative data from cognitively intact and cognitively impaired individuals. *Psychological Assessment*, 9, 260-268.) (Keywords: Human Factors, Lying, Witness Testimony.)