

THE ROLE OF QUESTIONS IN THE EXAMINATION

Dr. Violetta Kwiatkowska-Darul

Criminalistic' Department, Faculty of Law and Administration,
Nicolai Copernik University of Toruń
Gagarina st. 15, Toruń, Poland
Phone 6 114 007
E-mail vk@law.torun.pl

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*Recenzavo Lietuvos teisės universiteto mokslo prorektorius profesorius dr. Vidmantas Egidijus Kurapka ir
šio universiteto Teisės fakulteto Kriminalistikos katedros vedėjas profesorius dr. Hendryk Malevski*

I. The Initial Issue

In the opinion of famous processualist M. Lipczyńska “Contradiction of penal process is nowhere evident and distinct, as in questions of process parts. Precise and penetrative questions are more important for a defense of process parts interests than effective speech. If the rule of objective truth is found as one of the most important procession principles, then the role of questions, is showing up this rule is impossible to pass over” [1, p. 340].

The problem of methods of examination including the role of questions has been explored by W. M. Marston at the beginning of XX century. In Poland, the major explorations of efficiency of depositions were led by J. Stanik and his group. The main subject of his explorations was the method of examination in its “clear form” which means – spontaneous relations, direct examinations and cross-examinations.

These explorations proved that the closest depositions are gained by a spontaneous relations method, and the least close – by a cross-examination's method. The use of spontaneous relation gives less information, but the detected facts are very important for a case [2, p. 323–420].

In view of the above it is possible to confirm that an effective examination in its “clear form”, without using spontaneous relations supplemented by a questions, with exclusion of cross-examination, is not possible¹.

At the beginning of XX century psychologists Binet, Stern, Lipmann together with the another group of psychologists completed the partition of questions, dividing them into less or more suggestive. They marked out following kinds of questions:

1. Reported questions (not suggestive) – this is a kind of general questions which aim at gaining spontaneous relations, for example: What has witness seen? What was after that?

2. Definite questions (mostly not suggestive) – this is a kind of questions which are more detailed than the reported questions, for example: Which? Where? When?

3. Distributive questions (they contain a trace of suggestion) – this is a kind of questions which take into all possibilities concerning the state of object or incident, for example: Was the witness writing or sleeping?

4. Decidive questions (slightly suggestive), for example: Was it raining that day?

¹ The cross-examination is very popular in the anglo-saxon's process. This is a kind of process in which the witness is firstly examined by a process side who has summoned him to the court and then by an opposite side. The opposite side has a right to ask questions which are going to demonstrate the incompetence and even the dishonesty of the witness. During such a kind of examination it is permissible to use the suggestive and captious questions. More: [3, p. 61; 4, p. 208–213].

5. Expectative questions (suggestive) – kind of affirmative questions, for example: Did the author have a gun in his hand? or a kind of a negative questions, such as: Had not the author a gun in his hand?

6. Inseparative questions (remarkably suggestive) – this is a kind of questions which contain alternative or disjunction, for example: Did the author have a gun or an axe in his hand?

II. The Suggestion – Threat for a Penal Process

The suggestion is a kind of communication that aims at total acceptance of a proposition; in spite of no logical reason of their plausible existing. The consequence of suggestive question is an incompatible statement with the facts that examined person had noticed and had remembered from the past.

This kind of questions makes impossible coming at the objective truth – which is obviously the main target of the penal process. The problem of suggestion is not related with questions only. Examined person is also able to go under the suggestion because of:

- Experience related to the perception;
- Uncertain memories concerning what has already happened;
- The authority of the examiner to the examined person undoubtedly there is a possibility that the judges authority can impress examined person [5, p. 90];
- The opinion heard from the other persons before the examination;
- Fallacy visions concerning the treatment during the examining (for example: if I will forget to tell about something judge will rise up a penalty);
- Multimeaning of the same situation and difficulties in coming up to decision [4, p. 179].

It is also important to remember about un verbal suggestion, which can appear in the mode of voice, inflection, arrangement of the accent, motions and the mimicry etc. The previous deposition can also be suggestive for the examined person, because of the fact of memorizing rather previous deposition than the real facts.

Open for a suggestion are not only the ones who are tired, ill or being on the influence of drugs or alcohol, but also children, elder people and persons with low level of intelligence [6, p. 182; 7, p. 55–56].

Examiner has to remember that the examination is a very complicated situation with high influence on the behavior of examined person. The sequence of difficulties is situations in which a basic activity of examined person cannot be realized. There are such kinds of difficulties as: overcharge, conflicts, threats and crisis situations. The sequence of situations indicated above are stress and frustration.

There is no doubt, that the examination as each new situation is very complicated for a person. It provokes different kinds of difficulties such as overcharge, conflicts between necessity of telling the truth and defense of accused person. Finally, it not only provokes the threat from accused person but also fear of being called to account for a false deposition.

As a consequence of a difficult situation can appear such a behavior of examined person, which in normal conditions would have never been revealed. The sense of threat provokes fear which causes negative influence on process of perception – disorders memorial process and concentration.

III. Phases of the Examination

As it was mentioned above, the effective examination using only “clear method” is impossible. In consequence, a mixed method of examination – spontaneous relations supplemented by a direct questions is usually used.

The regular examination is not possible if the sides of process are not prepared to carry out the activity. First of all, the examiner should get acquainted with already collected materials of the case (for example, the reports of witness's or accuser's deposition, the opinion of experts, the reports of the post-mortem examination).

In the opinion of P. Horoszowski, the improper knowledge about material collected in the case influences the examination. In effect the examination is restricted to the general statements only, which in sequences conduct to the false consolidations [9, p. 57].

It is helpful to get acquainted with the records of each case before the examination. The examiner should also prepare the written plan of examination which should contain following details:

- Various versions which need to be explained;
- Questions to the examined person and their rotation.

This does not mean that examiner cannot formulate the additional questions. The examination because of its dynamic character should be currently modified.

P. Horoszowski marked out three elements of plan, which should be taken into consideration during the examination:

- The circumstances needed to clear up during the examination;
- The evidences of these circumstances;
- The way of formulating of questions [10, p. 54].

The preplanned questions let to prevent trivial examination. They are pondered over and better prepared than shaping *ad hoc*.

The mixed method makes it possible to mark out four phases of examination [5, p. 110]:

1. Preliminaries;
2. Spontaneous statement;
3. Questions;
4. Terminal activities.

1. Preliminaries

The preliminaries are part of the examination, apart from identification of an examined person, instruction on vested rights and duties – examiner strikes up a contact with examined. Examiners task is to estimate the personality, emotional state, psychical condition and intellectual level of examined person. The closer cognizance of the examined person is helpful in formulating the accurate questions and modifying those prepared before the case.

The communication of examiner and examined person is useful not only to make a relation or discharge the tensile between both parts, but also to find out the specific of the language of examined person.

2. The Phase of Spontaneous Relation

A spontaneous statement is nothing else but a spontaneous relation. Usually it is defined as a continued relation of a examined person in the subject-matter.

To obtain such kind of relation is very difficult, and for this reason in many cases the interaction of examiner is a must. However, such has to be reduced to the minimum, because the examined one may be much better informed about the case than the examiner expected.

Spontaneous relations usually make it possible to know the examined better. Spontaneous relation, even extraneous with the main subject, is helpful in all the following events.

In the opinion of P. Horoszowski – “during the spontaneous relation more than once some word are mistold, which is then used to receive the answer for a very important question” [11, p. 207–208].

During the spontaneous statement examiner should not ask any additional questions more deliver the comments. If the examiner has any difficulties in obtaining a spontaneous relation, should he cover the phase of questions? The difficulties in obtaining the spontaneous relation can rise in particular with such personal evident sources as children [12, p. 29–30; 193–194; 13, p. 113–121], persons with any mental disorders and persons with low level of intelligence.

3. The phase of Questions

In the opinion of R. Wiśniacka, “even answers to the questions which generally are founded unsuggestive may contain more mistakes than the spontaneous relation, because of the fact that such spontaneous relation focuses mainly on facts which are memorized the best” [8, p. 227]. However, the questions apply to the memories which are uncertain and misty, on which witness did not pay a particular attention” [8]. That is why the examiner should formulate the questions very carefully. In his statements a witness is making known these facts which remained in his memory best.

The questions should be comprehensible for a examined person. The short, intelligible and clear questions bring an influence on the efficiency of remained process [14, p. 724; 15, p. 2]. The simplest questions are: What? Where? When? How? Why? And Who?

Examiner should make a use of questions like mentioned above and should avoid questions which are too complicated [16, p. 17], focused on more than one problem or subject, or require more than one answer.

The question should not contain the objection of the guilty. Such objection may rise from such questions as: Why did the witness stand there? Why you have announced it only today? etc.

In the opinion of T. Hanusek, the examiner should avoid “all professional language terms such as critical day, defunct or unidentified person etc [16].

The examiner should also avoid words connected with the emotional load for example: informer, murder or speculator etc.

The essential for an effective examination is also the rate of the speech of examiner. The fast and fluent speech could be incomprehensible for the examined person. The most difficult and the most painful questions should be left for the end of the examination in order not to break down the atmosphere of the examination.

The questions formulated during the examination, excluding the suggestive, unsuitable and unessential ones, aim at the completion, explanation or control of the statement.

The Completive Questions

The goal of the completive questions is to enrich the content of the spontaneous relation by the essential information, which was passed over by a witness. These questions aim to remove the gaps in the spontaneous relation [17, p. 139].

The Explanative Questions

There are two kinds of the explanative questions: precise and remindful.

The explanative-precise questions are similar to the completive questions but their concern is more detailed problems. The main target of such questions is to give the examiner much more precise information about the event, persons, situations and stuffs, which were formulated generally.

The explanative-remindful questions aim to remind the examined person about the circumstances which could have been forgotten. The draught of the remindful questions is to activate the memory.

During the legal proceedings the examiner should verify the conformity of the deposition submitted in the process, with these facts that were put together in the legal preparatory. If there will be a divergence between both kinds of deposition, the examiner should aim at explaining all doubts – using the explanative questions [18, p. 142].

The Controlling Questions

The controlling questions do not aim directly at consolidation of the real condition. Their concern is such problems as [16, p. 140–142]:

- **The source of knowledge about the offence** – the witness can make an impression that he has been an eye-witness but in fact he knows the facts from the other people. Such person may be a source of information about the other persons – direct witnesses of the offence;

- **The circumstances of perception** – which means: the lighting condition, the disturbance of the sound, the distance, the corner of observation, the time of event persistance, the language of the subject and possible local and moving impediments;

- **The functioning of senses and the level of perception of the examined person** – this kind of questions are focused on the subjective propriety of examined person and they could be related to quasi-experiments, for example: examiner asks the question with silent voice, etc.;

- **The level of intelligence and the level of understanding of used words** – the question of this kind are asked to help to check if the witness correctly understands the sense of used words, and also if the witness had a proper way of intellectual processes during the perception. It is possible that in a case the witness had not understand the right sense of the event this would cause the false interpretation of some elements of event, giving them the wrong sense. Asking the questions of this category could be helpful in coming up to a decision;

- **Susceptible on the suggestion** – the controlling questions are asked when the trace of suggestion is sensed after the relations, for example: the same version of depositions, the modification of statement, the usage of words incompatible to the level of intelligence and education of examined person;

- **The truthfulness** – the simplest way of checking the truthfulness of the examined one is to ask about details which are possible to check in the other way;

- **The information about the previous and the other already collected evidential sources and the relation with these facts of the examined person.**

At the beginning, the problem of suggestive questions and their inadmissibility was described. There are two more kinds of questions that should not be asked during the examination. Those are the unsuitable and unessential questions.

The unsuitability of the questions can cause:

- The logical faults in the formulation of the question (multimeaning of the question, incomprehensibility, too many questions for one answer etc.);

- The processual inadmissibility of the question (for example, the examiner is going to reveal the content of disposition of examined person, who after the examination has avoided them);

- The questions unadapted to the processual roles (for example: the question which should be directed to the expert was asked to the examined person);
 - The questions not connected with the case;
 - The tricky character of the question;
 - The offensive, grievous and trivial stylization of the question [1, p. 351; 17, p. 144];
 - The unadaptation of the question to the level of intelligence of the examined person.
- The unessential questions are not related with the case. They do not bring negative influence discussed above as unsuitable and suggestive questions.

4. The Phase of Terminal Activities

During these phases of the process the examiner has to verify if there is a need to complete the process, particularly the phase of questions.

IV. The Documentation of the Examination

The examination is a kind of a processual activity that has to be reported. The report of the examination should contain the following:

- The mark of the activity, for example: the report of witness' examination;
- The place of the activity;
- The time of the activity;
- Persons which were taking part in the examination;
- The course of the examination.

The report is not the best form of the documentation. In the opinion of E. Locard, "reported deposition is only like a mummified corpse without everything that was alive and honest in it" [19, p. 230; 20, p. 1066]. There is no doubt that E. Locard wanted to indicate the deficiencies of report having in mind that it is not able to give back the atmosphere of the examination, which means: the behavior of the examined person, the mode of his voice, inflection, motions and the mimicry and all the other emotions which are connected with the examination. It is really difficult to describe an unspoken voice of the body of examined person [10, p. 131].

It is also inadmissible to make a summary of statement of examined person. In the report all asked questions and all given answers should be marked, because only the questions and answers together let to understanding the whole issue [1, p. 351]. The report should also be possible to check.

V. The Conclusion

The examination is one of the most important processual activities which puts up a high requirement to a subject, performing these activities. In the opinion of E. Locard, "receiving the deposition is a two-sided activity, in which the examiner shall put a lot of his personality" [21, p. 67].

In the point of view of the examined person the negative influence on the examination reveals the routine habits which might evidence in:

- The superficial examination;
- The confidence of examiner;
- The over trust of intuition;
- The professional intuition.

The negative influence on an examination also may cause an inexperience of examiner in the psychology domain. The examiner should realize that in spite of having no influence on the perception's and memory's processes, he is able to bring decision influence on the examination.

There are marked out such kinds of factors making the examination uneffective as [22, p. 95]:

- The initial, auto-suggestive hypothesis of examiner brings an influence on kinds of his questions and also makes his perception selective;
- The tendency of examined person to adherence the examiner's expectations;
- Making down the deformation of vision, which might be brought about by incorrect techniques of examination. As a sequences of this situation are the suggestive memories, visions.



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Klausimų vaidmuo apklausoje

Dr. Violetta Kwiatkowska-Darul

Torunės Mikalojaus Koperniko Universitetas, Lenkijos Respublika

SANTRAUKA

Žinomos proceso specialistės M. Lipczyńskos teigimu, rungtyniškumas baudžiamajame procese niekur taip nedviprasmiškai nepasireiškia kaip šalių klausimuose. Teisingai suformuluotų klausimų dėka įmanoma nustatyti objektyvią tiesą.

Apklauso metodikos tyrimai buvo atliekami jau praėjusio amžiaus pradžioje. Lenkijoje tokio pobūdžio tyrimus atliko J. Stanikas. Jo tyrimai atskleidė, kad tiksliausieji parodymai gaunami taikant spontaniškos apklausos metodą (tokieose pasisakymuose pasitaiko mažiausiai klaidų), o mažiausiai patikima yra informacija, gauta kryžminės apklausos būdu (pasisakymuose yra daugiausia klaidų).

Vykstant laisvam pasakojimui gaunama mažiausiai informacijos, bet informacija yra labai svarbi bylai. Efektyviausias tiesos atskleidimo būdas yra mišrus apklausos metodas, kuriame spontaniško laisvojo pasakojimo stadija siejama su kryptingais klausimais, papildančiais ir kontroliuojančiais laisvą pasakojimą.

Tiesos nustatymo atžvilgiu pavojingi yra menamieji klausimai ir veiksmai, nes taip suformuluoto klausimo atsakymas gali neatitikti to, ką matė ir įsiminė apklausiamasis.

Tokie klausimai kliudo nustatyti materialią tiesą, o ji yra pagrindinis proceso tikslas.

Apklausa – tai vienas pagrindinių procesinių-kriminalistinių veiksmy, keliančių didelius reikalavimus juos atliekančiam subjektui. Neigiamą įtaką apklausai turi paviršutiniškas jos atlikimas, per didelis apklausą atliekančio subjekto pasitikėjimas savimi ir psichologinio pasirengimo nebuvimas. Kiekvienas atliekantis apklausą turi žinoti, kad nors jis negali daryti įtakos apklausiamojo asmens stebėjimo ir jo atminties procesams, jis gali paveikti apklausos procesą.

