



Vorokhov V.S.*

DOI: 10.25108/2304-1730-1749.iolr.2017.51.36-69

Problems of preparing the witnesses to interrogation

Abstract: Proper organisation of witness' questioning is possible only if its preparation is based on scientific organisation of labour: formulated an aim of interrogation, defined its interim objectives, taken into account available evidential information, determined the needs in additional means of evidence receiving, created appropriate conditions to conduct investigative actions, resolved the issues concerning the place and time its conducting, chosen the methods of its performance and an order of fixation of the results.

Interrogation that takes the most important place in number of investigative actions should be especially thoroughly planned. Presence of the plan allows an investigator from the beginning correctly and entirely to determine a circle of interesting issues, comprehensively and in short time to examine them. When planning interrogation it is necessary to proceed from circumstances, which subjected to be established in compliance with the plan of entire investigation. The plan of interrogation must include the issues on all versions of investigation that brought by investigator. If interrogations conduct in frame of one version then circumstances, which might have an essential significance for the work of investigator on other versions, would be left unclear. Similar practice is inadmissible as it appears necessity of re-interrogation. Properly designed interrogation plan facilitates an exhaustive checking all versions of an investigator.

Keywords: interrogation of witness; preparation; investigator; criminal case; special issues; planning; tactics; tactical risk.

* **Vorokhov Vitaly Sergeevich** – PhD in Law, a lecturer of Mogilev Institute of the MIA of Republic of Belarus. (Belarus). E-mail: institutemvd@tut.by



According to the provisions of criminalistics, preparation of an investigator to witness' questioning consists of a number of preliminary measures that are concluded in-depth and comprehensive examination of criminal case files, familiarisation with special questions, some data on identity of interrogated person and also a planning of the questioning. The preparation to interrogation is required an investigator to have high level of knowledge, in particular, in field of criminalistics, criminal process, forensic psychology.

When preparing to interrogation of the witnesses an investigator should examine thorough a criminal case file in order to understand those circumstances, which will be the subject of forthcoming questioning. It will allow identifying the key issues that should be clarified, expressly and clear formulated them, and to make interrogation fully and comprehensively.

During examination of criminal case file an investigator has to select the materials in compliance with the interrogation's subject, determine the issues that should be asked a certain persons concerning the circumstances, which are subject to make clear and specify, to make notes for interrogation planning. Issuances on specific circumstances of case file have to have the marks about the fact in which documents they fixed, e.g. in an auditing record, expert's report, explanation note etc. Attentive and comprehensive examination of case file is a necessary condition to design correct investigative versions. Examination of case file should be began from initial data that has become a reason to institute criminal case as a nature of the materials and specifics of a case are required a concrete approach to be examined.

When examining case file, it is necessary to determine the circumstances, which have caused crime's commission, in order to investigate them further and propose preventive measures of their elimination as a high quality of investigative work does not mean only to disclose crimes and establish perpetrators but also crime prevention.



It established that successful investigation, unmasking the perpetrator often depends on qualitative works to primary materials: their timely seizure, careful examination for right using in investigation. Case file examination assists to determination of a circle of the witnesses, predetermines a correct selection the tactics of their interrogation.

Proper organisation of witness' questioning is possible only if its preparation is based on scientific organisation of labour: formulated an aim of interrogation, defined its interim objectives, taken into account available evidential information, determined the needs in additional means of evidence receiving, created appropriate conditions to conduct investigative actions, resolved the issues concerning the place and time its conducting, chosen the methods of its performance and an order of fixation of the results [4, p. 62].

At interrogation of witnesses an investigator needs often to touch the issues that required special knowledge. The knowledge of investigator in an area of special issues helps successful conducting of interrogation and correct fixation of testimonies received.

In preparing to interrogation of witness an investigator has to have minimum special knowledge to investigate successfully a concrete case. If a volume of them is too big and the investigator unable to command by them in process of investigation of criminal case, he may consult with specialist in examination of technological process, special documentation, technical condition of product output, quality of its manufacturing etc. Knowledge of these issues has a great significance to understand the separate circumstances of a case by an investigator, correct understanding and evaluation of testimonies of interrogated witness.

In considering of special issues an investigator should: study primary materials, make notes on circumstances, on which it is necessary to receive special knowledge; learn instructions, guidance, memo and other materials that assist to understand these circumstances; if needs to consult with specialist in order to



understand better the stated circumstances and terminology. The knowledge allows to an investigator to disclose a witness in attempts of false testimonies.

Studying of special issues is necessary to investigator in order to be able correctly and competently with point of view of special terminology to formulate the questions to witnesses.

If investigator does not duly prepare to interrogation of witness then there would not be mutual understanding, investigator and interrogated would be spoken in different languages, and questioning would lead to formal recording of heard from witness without understanding of the gist of question, without understanding of testimonies' specifics. Knowledge of special issues helps an investigator to disclose those circumstances of crime, which would leave unclosed without his special preparation.

For examination of special questions in each concrete case and independence on nature and complexity of the case an investigator may use as sources of instructions, orders, guides, agreements, standards etc.

Familiarisation with data on identity of interrogated is an important element of preparation of investigator to questioning of witness.

Beginning an interrogation of witness, an investigator must know at which relationships are witness and accused person, with other witnesses on case, how the witness is interested in the results of case. It is important to have data that characterise moral appearance of interrogated. Where necessary he may reclaim from institution or enterprise where witness works information of his identity, examine his personal data, request his characteristic from a place of job, information on his physical and mental deficiencies, examine habits and clarify his inclinations etc.

Some criminalists recommend in-depth examination of data on identity of interrogated, which presented to be independent research. So, P.P. Tsvetkov points out that examination of this identity should be comprehensive: person-graphic



data, criminal legal features, world view, mental particularities, behaviour etc. [11, p. 16].

It seems that as rule it would be difficult to do it during interrogating of witnesses. Therefore, depending on the purposes it is necessary to establish reasonable volume and bounds of examination of interrogated person's identity. It is necessary to measure a level of significance of clarifying the data on identity of interrogated with reception of possible evidential information from him and its value in establishing of truth on c case.

It is necessary to note that examination of data on identity of interrogated is concluded in that this activity of investigator hardly finds its procedural reflection. Data of mental and physical particularities of a person an investigator receives from various channels, including those having a procedural nature (records of questioning and confrontations) so and non-procedural (data received in result of operation and searching activity), which are fixed only in memory of investigator [7, p. 94].

As rule, the data on identity of interrogated often has probabilistic character. So, watching for behaviour of questioned person in course of interrogation, an investigator advances presumptions about that or other mental states or characteristics, for example, fear, weakness, confusion, insolence, arrogance etc. These conclusions are approximate since information lying in their basis determined with entire set of reasons of witness' behaviour, which cannot always be established [5, p. 95].

During preparation to questioning it is very important to establish the type of higher nervous activity and temperament of a subject. Dependence on speed and intensity of flowing the mental processes of examined person, his temperament, there are determined the level of communication with interrogated, tactical techniques of questioning, the ways of establishing of psychological contact, time



and gist of brought information, which implies receiving of necessary evidential information.

Investigator should know the main characteristics of temperaments (sanguine, choleric, phlegmatic, and melancholic) and that how they are manifested [10, p. 150-151].

Establishing of temperament's type makes greatly easy conducting of interrogation for investigator, therefore it should be takes into account when preparing to it. I.F. Panteleev recommends "to be especially patient and insistent with melancholic; quick change of mood of sanguine allows choosing more favourable moment to clarify the questions that interested of investigator; readiness to rapid explosions of people with choleric temperament is obliged to interrogated to be especially attentive and preventative. It is no small importance for a choice that or other tactical techniques have individual features of character (isolation, mobilised, vainglory, boldness, hesitation, cowardice)" [8, p. 364].

Data on identity, which received during preparation to interrogation, have great significance for choosing of questioning time, sequence of interrogation of few witnesses, determination of time to bring the most compelling evidences etc. In course of preparation to interrogation at examination of identity of interrogated person it is often resolved the issues associated with determination of the ways of establishing of psychological contact, manners of behaviour of investigator during questioning.

As an aim of cognition at interrogation is a reception of information, assisting to establishment of truth on a case, knowledge and use of psychological particularities of interrogated person helps to investigator to establish psychological contact with him and determine an application of which techniques are more effective for receiving of testimonies. This is a complex process that requires certain preparation of investigator in an area of psychology, when it necessary to take into account how the techniques can be applied to questioned



persons, through which are examined his mental particularities, and also the state of interrogated person that caused with the fact that he became a participant of proceedings.

Methods facilitating to studying of mental particularities of interrogated persons borrowed by forensic psychology from general psychology and adapted to the aims and objectives of investigative actions. Specificity of interrogation like investigative act is concluded in the fact that questioning is conducted in a short period of time. This circumstance dictates necessity strict selection of psychological methods to achieve the aims of interrogation.

Observation is the most important of these methods. The observance aims to establish certain features of character and signs of temperament that testify mental background of interrogated person. Observing an investigator examines the manners of interrogated person, his communicability, reaction into asked questions, psychological state caused by procedural position. During evaluation of the results one should not forget that the observed person is in unaccustomed environment. Interrogated person restrains himself, often thinks in advance the line of behavior and leads himself in appropriate manner; this circumstance should be taken into account during questioning. Data received in result of observance can be supplemented and corrected in process of further interrogation. Besides observation of interrogated, an investigator may use such method like conversation, which does not assume the strictly regulated procedural regime. In course of interrogation, a subject of which limited, conversation with questioned person aims to free exchange of abstract information to establish psychological contact. Typically this psychological method is applied by investigator with purpose of clarification of demographic data on a person and circumstances, by which is preceded the interrogation. During conversation are clarified also other information on identity, for example, state of sense organs, mental state, type of memory and kind of reproduction, i.e. data, which significantly impact on



assessment of the testimonies and choice of tactical techniques of interrogation's conducting. Dependence on age of interrogated and his procedural status the directness of ascertaining indicated data will be different. So, in conversation with minor an investigator ascertains his ability to concrete perception, fantasizing and their role in formation of his testimonies.

Establishing ever small psychological characteristic will facilitate to development of more effective tactical line and right evaluation of the testimonies, help to find layers in the testimonies, which appeared due to fear, strong emotional state and have no objective information about crime event.

In addition, for studying mental particularities of interrogated might be used the method of independent characteristics, which assumes collection of data on identity of interrogated person from individuals who contacting to him, e.g. relatives, friends, neighbours and others. Information received is widely used to establish psychological contact, choosing of tactical techniques of interrogation and assessment that information, which will be obtained during questioning.

As rule, the method of independent characteristics might be manifested in three forms: receiving of information on identity through requests, from testimonies of other persons, with operational way. Each of the forms might be chosen by investigator in compliance with the task of forthcoming interrogation, with importance of information, which should be received, and other circumstances. Data received in result of application of the method of independent characteristics should be compared by investigator with direct observation and assessed in critical manner.

Application of indicated methods assists to establish psychological contact, determine the tactical techniques of interrogation and also correct evaluation of information received.

In course of questioning, dependence on its psychic tension, the character of psychic manifestation might be different. Therefore it is important to establish



which of irritants impel a person to giving of testimonies, and which act negatively. I.A. Matusevich notes that if to take in account mental particularities of a person then one may anticipate how an individual will be led him in such situation like an interrogation, how he will react into the questions and which tactical techniques should be applied during questioning [9, p. 73].

Diagnosing an identity of interrogated person an investigator has to understand his inner world. Entering into the inner world of the interrogated person and studying his, the investigator receives ideas on identity in the basis of many data, among of which internal manifestations of interrogated, data on his behaviour and character of activity, on possibilities of imitation of course his reasoning. Knowledge of these circumstances will determine a choice of individual approach to interrogated person.

Relationship of observance or interrogated and choice of interrogation tactics acquire a certain interest for theory and practice of interrogation. Flexibility and variety of the latter is mostly determined with observation for interrogated person and express-assessment of manifestation his internal and inner state. Changes in behaviour of interrogated (rudeness, politeness, conflict nature, pandering, flat relationship), his mood (fun, sad, state of despair, fear), his appearance, mimics, pantomime (turned pale, grimace of fright, perplexity, wondering, anger, trembled of hands etc.) allow an investigator to make certain conclusions and re-design interrogation's tactics in effective direction. Selection of appropriate tactics is also considered like ability to penetrate in identity and during questioning to manage with behaviour of the latter. As G.G. Dospulov rightly notes, such managing is achieved owing to action of the mechanism of feedback that provides an investigator with information on results of his impact, on tactical situation. The informing feedback has an important practical significance for investigator. In compliance with reaction of interrogated in impact he corrects his behaviour. If the



investigator does not understand this feedback, his controlling effect will not reach the aim [6, p. 96].

Mandatory condition of high quality of investigative work is a planning of investigation. Main rules of planning developed by criminalistics facilitate to performing of requirements that required by the law to preliminary investigation – objectivity, completeness and comprehensiveness.

Determination of the versions of investigation and objectives subjected to clarification on each version, establishing of sequence and time of conducting the investigative measures form the main elements of planning of preliminary investigation. Designing of the versions allow targeting the direction of investigation and collecting evidential material. Planning of investigation of a concrete crime brings entire the work of an investigator into coherent system, allows conducting each investigative action in the most expedient and tactically correct manner.

Interrogation that takes the most important place in number of investigative actions should be especially thoroughly planned. Presence of the plan allows an investigator from the beginning correctly and entirely to determine a circle of interesting issues, comprehensively and in short time to examine them. When planning interrogation it is necessary to proceed from circumstances, which subjected to be established in compliance with the plan of entire investigation. The plan of interrogation must include the issues on all versions of investigation that brought by investigator. If interrogations conduct in frame of one version then circumstances, which might have an essential significance for the work of investigator on other versions, would left unclear. Similar practice is inadmissible as it appears necessity of re-interrogation. Properly designed interrogation plan facilitates an exhaustive checking all versions of an investigator.

Interrogation plan of witness determined with combination of the circumstances that subjected to establishing, which cover a subject of interrogation



during investigation of certain crime. Though the bounds of investigation and a subject of interrogation in preliminary investigation are often vague, especially in its primary stage, nevertheless, a plan of questioning should be marked proceed from them. The subject of interrogation is determined by investigator before planning of interrogation, but the plan not only concretises it, but also schedules the programme of real investigation of the circumstances, a witness of which was an interrogated person. Plan of questioning assumes a certain system of interrogation, assignment of which is to establish more fully and objectively the circumstances that necessary on a case. It is designed to arrange an interrogation in more reasonable way, in order of subsequent clarification those circumstances, which an interrogated person knows. Preparation to questioning finds its fuller and completed reflection in designing of interrogation plan.

Being a flexible, movable programme, the interrogation plan of witness determines the tactical techniques of questioning. It is inappropriate to make written plans of interrogation on one-two simple circumstances. Though, an absence of written plan does not mean that interrogation will be conducted randomly. The interrogation might be conducted in compliance with mental plan of investigator. Written plan is necessary when comes to conduct an interrogation of witness either on many or on complicated circumstances; re-interrogation; confrontation and other.

There is recommended different forms of written interrogation plan in criminalistical literature, but the gist of them with some variations is one and comes down to the chapters on: a) circumstances that subjected to clarification; b) materials that are available in case file on these circumstances; c) formulation of the issues; d) bringing the materials, materials evidences, documents.

Formulation of the issues is presented to be the most difficult when planning of interrogation. It is necessary to formulate only main issues that constitute the core of interrogation. It cannot be predicted absolutely all issues that arising during



interrogation, but it does not exclude their planning. Having available the plan, an investigator can specify main issues, supplement them and change if necessary. The issues of plan might be divided into the few separate ones. Availability formulated complex issues in the plan will rid an investigator of inaccuracy, errors.

The issues in plan should be expressed in an order that determines an interrogation's tactics and facilitates the establishment of causation of the one circumstances of a case from others. Provision on the known consistency of formulation of the issues should be considered as tactical technique of investigator that aimed to clarify necessary data during questioning. Here, it cannot be limited with conditional scheme; this is a matter of experience, level of qualification

Planning an interrogation, investigator has clearly to understand when it should be conducted. The interrogation of witness before clarifying circumstances, data of which should be received in advance, entails the incompleteness of testimonies and deprives an investigator of important circumstances on a case.

The plan has to contain the note on formulation of control questions that facilitates to checking and correct evaluation of testimonies. In course of questioning they do not arise always, therefore it is reasonable to plan them. These questions might be found and formulated only in result of in-depth examination of case file, thorough analysis of circumstances collected.

When planning, investigator mentally checks its effectiveness at questioning and chooses possible variants of deviation from the plan if it is not useful in interrogation. Such checking of the interrogation's programme is one of the necessary elements of reflexive thinking of an investigator. Possibility of changing of the programme determines largely preparedness of an investigator to any sudden during questioning [1, p. 28].

When a case is investigated by a group of investigators, then it is necessary to make a collaborative plan of interrogations, determine the subjects of questioning,



content and time their conducting, useful sequence or simultaneity that may assist to success of investigation and clarification of necessary circumstances.

Stated allows to make a conclusion that main functions of an interrogation plan concluded in systematization of evidential material, determination of questioning tactics and opportunities to use interrogation results for further investigation.

Knowledge and usage of tactical risk have an important significance when it is prepared a questioning, and especially in course of interrogation planning and determination its tactics that depend on investigative situation and the situation, which may be created during the interrogation.

As rule, the problems of a risk in criminalistical tactics associated with resolution of thought tasks and making of decisions in conditions of uncertainty of evidential base or its incompleteness or absence on certain reasons. With all the variety of thought tasks, which are met in course of investigation and court proceedings, they might be divided into the two big groups: the tasks-algorithms, solution of which defined by law or theoretical provisions of criminalistics, and the tasks of heuristic ones, during solution of which there is no logic ways, there need a search. The search means the analysis of evidences, investigative situation, the situation of that or other investigatory action and other data that impact on problem's solution. Just in these situations an issue on tactical risk and making decisions and actions, the results of which might not be defined clearly. To risk in tactics as an investigation process so and in tactics of separate investigative (procedural) action means to lose or gain information that is an important for investigation in conditions of information insufficiency, its probabilistic nature, a person and his psychological particularities in respect of who the actions or techniques are conducted, which associated with tactical risk.

Under tactical risk is understood such situation of investigative process, when during realization of tactical solution an investigator is admitted negative



consequents. At tactical risk an opportunity of negative consequents is admitted when make a decision in absence of awareness in coming of more advantageous situation [3, p. 25-26].

There are available clearer definitions of tactical risks in criminalistical literature. So, R.S. Belkin under tactical risk understood an opportunity appearance of negative consequents during realization of tactical decision, pointing out that absence of an alternative needs to make decision despite the risk. Mathematical theory of the games, data of which are used in theoretical designing of the criminalistical tactics, notes that conditions of risk are available, when a person, who makes decision, cannot be sure in concrete result and has to be ready to carrying out the worst of possible variants [2, p. 191].

Specificity of investigative process, absence or low volume of the evidential information, contraction of interested persons are caused applying to tactical risk and are made the latter as a quite typical action.

Applying of an investigator to the tactical risk is determined by number of circumstances, which are the following: 1) informational uncertainty that allows reaching some kind of decisions; 2) time constraints that is felt during whole investigation, especially in period of brought of person as accused; 3) procedural necessity of conducting of investigatory actions directed to receiving of information, which assists to disclose of crime; 4) confidence of investigator in his supremacy, which determined by professional features, investigative experience, some typicality of similar situations, where the risk brings convincing success [2, p. 192-193].

Assessment of forthcoming tactical risk depends of two groups of the factors: objective and subjective. The objective factors, which impact on making a decision in conditions of tactical risk, are an amount of evidences at investigation and level of their reliability, availability of information, which may assist to receiving of new evidences, a period of investigation or period of investigative action,



behaviour of a person, in respect of whom will be applied the tactical risk, temperament and person's character – his impressionability, reaction on irritant, suddenness of applying information, which used in process of the tactical risk.

Subjective factors determining possibility of the tactical risk are: analysis and evaluation by an investigator a set of available evidences and operational information; assessment of possibility of information's impact received in situation of the risk on a person participating in some kind of investigative action; selection of situation of investigatory action, when received information might be presented; preparation of information; a choice of the tactics of follow-up behaviour of the result or absence of any its impact. In situation of tactical risk it is very important an investigator 's confidence in his positive influence, so the slightest uncertainty is fixed by a person, in respect of which information is used, and even sometimes a suddenness of evidences showed, presence of which have not been supposed, may not have a proper impact.

Tactical risk may facilitate to receiving of significant evidences, retraction of alibi, references to witnesses' testimonies, who are not previously interrogated, admission of guilt etc. In addition, tactical risk is fraught with threat of information loss, which might be used in future, and as well as transmission such information into the hands of a witness, accused, victim, which might be used in future during the tactical fighting by these persons.

References

1. Babaeva E.U., Gayduk A.P. and others. Posobie dlya sledovateleyi. Rassledovanie prestuplenyi povyshennoyi obschestvennoyi opastnosti [Manual for investigators. Investigation of crimes of high social risk]. Moscow, 1998, 448 p.

2. Belkin R.S. Kurs kriminalistiki: t. 3: Kriminalisticheskie sredstva, priemy i rekomendatsii [Course of Criminalistics: vol. 3: Criminalistical means, techniques and recommendations]. Moscow, 1997, 480 p.



3. Boginsky V.K. Refleksivnoe upravlenie pri doprose [Reflexive techniques at interrogation]. Kharkov, 1983, 206 p.
4. Vasilyev A.N., Karneeva L.M. Taktika doprosa pri rassledovanii prestupleniy [Tactics of interrogation at investigation of crimes]. Moscow, 1970, 208 p.
5. Glazyrin F.V. Izuchenie lichnosti obvinyaemogo i taktika sledstvennykh deystviy [Studying of identity of accused person and tactics of investigative actions]. Sverdlovsk, 1973, 198 p.
6. Dospulov G.G. Psikhologiya doprosa na predvaritel'nom sledstvii [Psychology of interrogation in preliminary investigation]. Moscow, 1969, 216 p.
7. Jafarov J.A. Investigative actions and organizational measures in criminal process and criminalistics. Juridical Sciences and Education, no. 39, Baku, 2013, pp. 91-101.
8. Kriminalistika. Uchebnoe posobie [Criminalistics. Textbook]. Pod red. N.I. Porubova [Ed. by N.I. Porubov]. Minsk, 2007, 575 p.
9. Matusevich I.A. Izuchenie lichnosti obvinyaemogo v protsesse predvaritel'nogo rassledovaniya prestupleniy [Studying of identity of accused person in process of preliminary investigation]. Minsk, 1975, 226 p.
10. Platonov K.K., Golubev G.G. Psikhologiya [Psychology]. Minsk, 1973, 209 p.
11. Tsvetkov P.P. Issledovanie lichnosti obvinyaemogo [Examination of identity of accused person]. Leningrad, 1973, 208 p.