

PSYCHOLOGICAL METHODS OF ELICITING STATEMENTS. PERSONAL SECURITY VERSUS DATA OBJECTIVITY

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ABSTRACT

The article describes the way of conducting the perfect interrogation, with particular protection of suspect's psychological comfort and protecting him from stress, in order to get the truth instead of the false confession of guilt.

The elements influencing the professional and objective conduct of interrogations were presented, with special consideration given to flexibility of approaching a suspect and handling the given case.

The paper also discusses forbidden interrogation techniques and describes the nine steps of an effective interrogation of F.E. Inbau, J.E. Reid and J.P. Buckley.

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According to Brunon Hołyst¹, every interrogation is some kind of a dispute between a person interrogated and an interrogator. Its essence is to find out the truth. In any dispute however, it is very important who takes the initiative to settle it, what – in this case – imposes the requirement of maintaining an active attitude on the interrogator for the entire duration of the interrogation. The patience and persistence of the interrogator will determine whether he succeeds in breaking defense tactics of the person interrogated.

Questions are the key element of any interrogation. Regardless of the form, method or adopted strategy, the way of formulating questions and their wording will determine the success of obtaining information essential for the positive outcome of an investigation. According to Jan Stanik², questions posed during an interrogation stimulate the whole interpersonal relation that occurs between an interrogator and a person interrogated – formally referred to as the procedural act of interrogation. Thus, psychological specificity of questions is crucial for their reception by a suspect, and their role is therefore vital for eliciting statements. The success of the whole interrogation will depend on how the questions are formulated and on the conditions of the interrogation itself.

According to the principle existing in the Polish legislation, no one can be forced to provide evidence against himself and, during interrogations of suspects, aiming at obtaining such evidence, the principles of professional ethics must be complied with without any concessions³.

Apart from the natural stress associated with the interrogation itself, an interrogated person cannot be exposed to any additional stress or inconvenience of psychophysical nature. The only acceptable stress, which may contribute to obtaining satisfactory statements, is brought by the situation of interrogation itself and may result from personal attitude of the person interrogated, e.g. when he decides to remain silent for a long time throughout the interrogation and therefore must spend more time in unusual and unfavorable conditions. An interrogator himself cannot be a cause of discomfort for a person interrogated. He should

¹ B. Hołyst, *Kryminalistyka*, Państwowe Wydawnictwo Naukowe, Warszawa 1981, p. 439.

² J. Stanik, *Psychologiczne problemy metod przesłuchań świadków*, „Przegląd Psychologiczny” 2004, vol. 47, No 2, p. 159–174.

³ T. Hanausek, *Kryminalistyka. Zarys wykładu*, Kantor Wydawniczy Zamkacz, Kraków 2005, p. 233.

be perceived, by the person interrogated, as someone to whom relevant information on the given offence might be provided in a safely manner, having regard to the suspect's psychological comfort. In order for him to do so, the interrogator should neither evaluate nor judge the committed act, should not moralize the person interrogated, and use neither professional jargon nor words with strongly negative connotations. Thus, the questions should be neutral in terms of values, should not entail accusation of guilt, and should be deprived of an excessive emotional load⁴. They also should not suggest answers, what is particularly important in the case of persons perceived as being likely to make false statements. Suggestive questions, such as e.g. 'Where you alone at that time?', are themselves carriers of an easy-to-use material for answering. Moreover, the closed character of such questions makes answering significantly easier for the person interrogated. As, for a lying person, it's much easier to limit his answer to short 'yes' or 'no'.

At the same time, the interrogator must bear in mind that very often both perpetrators and victims might understate, in their manner of speaking, negative weight of their actions, by e.g. saying 'touching' instead of talking about a rape and, with reference to deprivation of life, using such wording as 'causing harm'. The interrogator must try to notice these subtle differences, in a watchful manner, and to clarify the character thereof.

Forensics has developed the whole range of different methods of interrogating suspects. And the catalogue will never be closed, as a methodology of interrogation shall be characterized by, most of all, flexibility.

The flexible attitude towards interrogation of the suspect is necessary, as the multiplicity of factors related to his personality, mental development, but also to the type of an offence itself, and even the tactics chosen by the suspect in submitting his statements, requires the interrogator to adjust, on an ongoing basis, and to modify his methods of obtaining statements.

According to the well-known researcher in the field of psychology, Philip Zimbardo, all techniques discussed in teaching materials for po-

⁴ M. Maciejewski, *Psychologiczna analiza sposobów przesłuchania świadków i reguł oceny ich zeznań w praktyce sędziowskiej a stopień przypisywanej im wiarygodności*, the doctoral dissertation prepared under the supervision of dr hab., prof. US Jan Stanik, Katowice 2009, p. 89.

lice officers are 'psychologically sophisticated' and 'extorting', and many of them violate the dignity of the person interrogated and his fundamental rights, often leading to false confession⁵.

Brunon Hołyst notices, however, that views of authors of such textbooks are based on their extensive experience, while Philip Zimbardo analyses interrogation techniques merely in the light of psychological literature related to such terms as attitude, submission and obedience⁶. Also, according to some views referred to by Zbigniew Marten⁷, psychological methods overly justify, with factors excessively subjective, clumsiness of testifying, from explaining behavior with situational reactions of superficial character, to referring to subconsciousness or unconsciousness of the person interrogated. The aim of the interrogation, adduced by Zbigniew Marten⁸, is primarily eliciting the truth from the person interrogated and securing material essential to formulate the indictment. Therefore, there is a difficult-to-solve dilemma, met by interrogators in their work on a daily basis.

F.E. INBAU, J.E. REID AND J.P. BUCKLEY'S NINE STEPS OF AN EFFECTIVE INTERROGATION

F.E. Inbau, J.E. Reid and J.P. Buckley⁹ proposed their authorial model of nine steps of an effective interrogation of suspects whose guilt seems definite or reasonably certain¹⁰. According to the authors, learning all possible facts of the suspect's case and getting to know his personality, allowing to determine his weak points and use them to overcome his reluctance to providing statements, are the prerequisite for commencing the interrogation.

During the first step, the suspect is subject to a 'direct positive confrontation', when he receives information that, as a result of the conducted intense investigation, there is evidence that he has committed the offence

⁵ P.G. Zimbardo, *The psychology of police confessions*, „Psychology Today” 1967, no 1, p. 17–27, cited after: B. Hołyst, *Psychologia Kryminalistyczna*, Wyd. Lexis Nexis, Warszawa 2009, p. 1201.

⁶ Ibidem, s. 1201.

⁷ Z. Marten, *Psychologia zeznań*, Wyd. Lexis Nexis, Warszawa 2012, p. 304.

⁸ Ibidem, s. 306.

⁹ B. Hołyst, *Psychologia...*, p. 1204–1207.

¹⁰ See: F.E. Inbau, J.E. Reid, J.P. Buckley, B.C. Jayne, *Criminal Interrogation and Confession*, 5th ed., Jones & Bartlett Learning, LLC, 2013.

he is accused of. Tadeusz Hanausek¹¹ calls this method a cumulative evidence disclosure, in other words a 'frontal attack', and explains that presenting the suspect, immediately and fully, with all collected evidence aims at avoidance of false and lengthy suspect's statements. Also setting a fast pace of the interrogation makes elaboration of 'false' answers difficult¹².

At this stage of the interrogation, the suspect's behavior is subject to intense observation. In this situation both a guilty person and an innocent one will strongly deny committing the offence, whereas a person who lies and does not confess to the committed act, in the case of repeated interrogation, will probably respond to accusations. As an effective method of using psychological effects, Tadeusz Hanausek¹³ also refers to the possibility of presenting the suspect with persons, corpses or documents related to his guilt.

Subsequently, the interrogator moves to the second step, the so-called 'theme development'. At this stage, the interrogator shall adopt an attitude of empathy and understanding, in order to gain the suspect's trust. Such an attitude is essential for overcoming the suspect's moral resistance to confess. This phase, according to its authors, is the most effective with regard to persons characterized by an appropriate level of emotionism. They also name several techniques useful at this stage. The suspect should be offered a possible moral excuse for having committed the offense. His sense of guilt should be reduced by *inter alia* underestimating moral weight of the committed act or noting that many people could commit a similar offence in similar circumstances.

The authors add that this technique is particularly effective in the case of persons who have committed sexual offences. Since, as a result of such an offence, a person is especially exposed to experiencing self-conscious emotions related to shame and a sense of guilt. Such an act is strongly condemned socially and illustrates inability of its perpetrator to control his own urges. It may also indicate inability of the given person to establish socially acceptable intimate contacts with other people.

Thus, in this phase of the interrogation, the suspect is provided with acceptable reasons for the offense's commission, what increases his propensity to confess. Also, affixing moral blame for the offense on the victim

¹¹ T. Hanausek, *Kryminalistyka...*, p. 241.

¹² M. Maciejewski, *Psychologiczna...*, p. 101.

¹³ T. Hanausek, *Kryminalistyka...*, p. 242.

or some particular circumstance, can make it easier for the suspect to partially confess.

For suspects of a low intellectual level and persons who depend on acceptance of others, verbal flatteries may be important at this stage of interrogation. For persons who have committed the offence for the first time, a positive result might be brought also by making them aware that criminal activity is not in their interests. The interrogator may use information gathered during preparation for the interrogation, e.g. on the suspect's family or his socially acceptable and constructive plans for the future.

From psychological point of view, drawing suspect's attention to the future, and cognitive availability of its bad or good course, will enable him to 'detach' mentally from the situation of interrogation and stimulate his motivation to make constructive decisions concerning his future. However, if it turns out, at this stage of the interrogation, that the suspect is a person of low emotional level and intentionally wants to mislead the interrogator, the interrogator should expose the suspect's minor lies and inaccuracies in his statements. As a result, the suspect will find himself in a psychologically disadvantaged situation, what ultimately can lead to breaking his defense mechanisms.

The 'apparent acceptance of prepared statements' method might be of use here, when the interrogator allows the person interrogated to present in detail the prepared statements, making impression that he accepts them and, subsequently, using known facts, points to discrepancies and challenges the statements. This procedure causes significant increase of the suspect's emotional tension, making it difficult for him to correct false statements¹⁴. This is the right moment to elicit true information about the offence. The interrogator should try to convince the suspect that further denial of participation in the given offence is unfavorable for him, as – regardless of his confession – the interrogator possesses information that the suspect was in the vicinity of the crime scene, thus confessing and establishing the truth may contribute to determining circumstances that will reduce the penalty.

With reference to persons of a low level of emotionality, also all techniques involving profit and loss balancing may bring successful results. Such persons will be guided, most of all, by assessment of their behavior in the light of potential benefits or desire to avoid the penalty. Additional-

¹⁴ M. Maciejewski, *Psychologiczna...*, p. 101.

ly, all techniques that consist in invoking confession of the accomplice may be effective in the case of such persons.

The interrogator should then embark upon the third step, consisting of 'handling denials'. According to the authors, this phase requires great caution and professional experience. The person interrogated, who persistently denies committing the offence, has psychological advantage over the interrogator. The interrogator should try, at all costs, to overcome the situation and take control over the interrogation, by presenting available information indicating the suspect's guilt. In this phase, the person interrogated should also be subject to intensive observation, as there is a qualitative difference between denying of guilty and innocent persons, which can be detected with the use of both verbal and non-verbal features.

An innocent person will deny in a spontaneous, powerful and direct way. Whereas, denials of persons guilty will be evasive, hesitating and modified. The innocent person, in this phase, will look the interrogator straight in the eyes, may even become aggressive and psychophysically stimulated, and intensity of denials will increase as the interrogation continues. At this stage, a 'good cop, bad cop' method will be effective, especially with regard to suspects who are calm or who poorly respond to the interrogator.

'Overcoming the objections' is another, fourth step of the interrogation. Guilty persons often switch from denials to objections (accusations), in order to gain the advantage in the interrogation. The interrogator must try to overcome this phase and to maintain an active position. It is especially important, when the suspect's denials weaken and his objections don't have the desired effect. The suspect adopts a passive attitude and doesn't want to participate in the interrogation. From psychological point of view, it is a very sensitive moment, when the interrogator must take rapid action, using his psychological dominance.

The fifth step involves 'procuring and retaining the suspect's attention'. When the suspect is showing signs of withdrawal, the interrogator must aim at reducing psychological distance between himself and the suspect, in order to regain the suspect's attention. This is the right moment to re-adopt the attitude of understanding and empathy, and to reduce physical distance by e.g. moving nearer to, leaning towards, physically touching the suspect and addressing him with his name.

The sixth step is a direct continuation of 'handling a passive mood of the suspect'. At this stage, the interrogator should focus on the sus-

pect's motives for committing the offence. Here, urging the suspect to tell the truth may be effective. The interrogator should try to prick the suspect's conscience for the committed act, refer to his sense of honesty or negative consequences of the offence for the victim. Such techniques are the most effective at this stage, as this is when the suspects are most likely to break down and, due to weakened resistance, they confess to committing the act or prove their defeat with silence of resignation.

In this case, the interrogator proceeds to the seventh step, where 'alternative questions are submitted'. The suspect is presented with two alternatives of the course of the offence. Both are blaming, but one is so-called an 'instrument of protection of the suspect's honor', and the other one contains reasoning repellent or unresponsive for the suspect. Psychological mechanism of this method consists in the fact that it's easier for the suspect to plead guilty, when he receives explanation or justification for the act he has committed. Self-incrimination is not easy, especially for a person who has committed some heinous act. Thus, providing him with the possibility to "save his face" can significantly contribute to his confession¹⁵.

The eighth step consists in an 'oral account of the details of the offence' and takes place when the suspect has adopted one of alternatives from the previous phase of the interrogation. At this stage, it is important to create safe conditions for the suspect, so he can describe the details of and reasons for the act he has committed. It is also important that there are no other people in the interrogation room, who could discourage the suspect from providing such information. If the interrogator has already used the 'good cop, bad cop' tactics before, it is the right moment for the bad cop to leave the interrogation room, what will bring the suspect psychological relief, facilitating further course of providing the statements.

The last, ninth step provides for 'converting the oral confession into a written one'. It is the most important point, completing fulfillment of the interrogation's objectives. The signed confession has higher legal and psychological value than the oral one. Besides, many suspects later recall their confessions or even deny they have ever taken place, whereas the written confession makes it significantly more difficult to back out both in legal and psychological contexts.

The authors explain the effectiveness of this model with psycho-social theories referring to the change of attitudes. The attitudes are shaped

¹⁵ B. Holyst, *Psychologia*..., p. 1207.

through evaluation of different actions, ideas, people, groups, things. Due to the attitudes, a person can predict his behavior. Thus, the confession depends on noticed positive and negative consequences of such behavior. This is why the interrogation techniques should focus on highlighting positive aspects of confession, even such as getting rid of psychological discomfort and reducing its negative aspects. Therefore, the police interrogation takes the form of persuasion, as a result of which the suspect is to think positive about the confession. The biggest weakness of this method, from the suspect's perspective, is the fact that the confession will lead to his conviction. However, in cases where the guilt of the suspects is pretty certain, the interrogator should try to convince them that not pleading guilty will also lead to the conviction. Undermining the negative attitude towards the confession is a condition to increase readiness to confess, which – according to the model of nine steps of an effective interrogation – is gradually developing¹⁶.

FORBIDDEN INTERROGATION METHODS

Among psychological methods of eliciting statements, there are methods completely forbidden from the point of view of both psychology and ethics. Already in 1920s, Robert House, known as the father of the 'truth serum', claimed that under influence of some narcotic substances, with childish simplicity and honesty, the suspect answers all questions he is asked¹⁷. In the post-war years, that substance was used by CIA to overcome the resistance to provide statements¹⁸.

One of forbidden methods, involving the use of psychoactive substances, is so-called narcoanalysis. Initially, it was used in mental health care to reveal causes of a patient's complexes, in order to reduce or remove them. For that purpose, substances like scopolamine, aqueous solution of sodium salts, amytal, pentothal or methedrine were used. These substances weaken the person's will, what increases the possibility of revealing even intimate details of the given person's private life. After the proper substance is injected, speech of the person becomes slurred, breathing

¹⁶ Ibidem, p. 1208.

¹⁷ G. Geis, *Is scopolamine veritas. The early history of drug-induced statements*, "Journal of Criminal Law. Criminology and police Science" 1959, No. 50, p. 347–357, cited after: B. Hołyst, *Psychologia...*, p. 1334.

¹⁸ Z. Marten, *Psychologia zeznań*, Wyd. Lexis Nexis, Warszawa 2012, p. 288.

deepens, the person starts yawning and feels drowsy; this is when communication with the examined is established¹⁹. In psychiatric practice however, these measures didn't bring the expected results and were not able to give better outcomes than usual methods of clinical trials²⁰.

In order to understand possible effects of narcoanalysis, its way of affecting the human psyche has to be explained. Most of all, it causes subjective experiences connected to the state of consciousness. Higher function of critical thinking is subject to regression, and ability to tell the difference between subjective and objective states, in the assessment of the surrounding reality, decreases. Such a state causes the need to compensate and support the fading functions, by finding some enhancement or conductivity, which will decrease the fear of losing control. Through meeting this need, the person becomes dependent on suggestions of the police officer or the physician and starts perceiving such a person as the authority²¹.

Personal boundaries of the person subject to narcoanalysis get blurred in his state of awareness, and substitute identification with a person representing the authority takes place, whose commands and requests might be treated as his own. All doubts, discrepancies or hesitations are weakened, and acceptance of suggestions made by the authority is strengthened. The given suggestions may become even stronger than the objective reality. Then, such a person may be subject to monomotivation, meaning that will do anything to adjust his behavior to ideas and thoughts he experiences as the subjective reality²². The person interrogated, while in the state of narcoanalysis, is totally dependent on the interrogator. This state is particularly dangerous to a human, impacting both his psyche and physiology. Thus, narcoanalysis should be a totally prohibited method of interrogation in every civilized country.

Hypnosis is another method of interrogation, raising many ethical doubts. Like narcoanalysis, hypnosis is a technique of repealing or narrowing the awareness. One of the biggest difficulties in using hypnosis is the lack of clear determination of psychological mechanisms that accompany it.

¹⁹ B. Hołyst, *Psychologia...*, p. 1332.

²⁰ T. Bilikiewicz, *Psychiatria kliniczna*, p. 272, cited after: B. Hołyst, *Psychologia...*, p. 1333.

²¹ B. Hołyst, *Psychologia...*, p. 1333.

²² T. Sikora, *Użycie substancji halucynogennych a religia*, Kraków 1999, cited after: B. Hołyst, *Psychologia...*, p. 1333.

According to Philip Zimbardo, one of the most known world psychologists, hypnosis is the most commonly known but the least understood method of changing consciousness of all methods known in the world²³. There are many opinions on what the hypnosis is. One of them claims that it is a special state of mind, different from sleep, unconsciousness and wakefulness. It is believed that a person who is in the state of deep hypnosis is dependent on a hypnotizer, who has a power over him. It is also believed, that the hypnotizer can manage a behavior of the person hypnotized, both during the hypnosis itself and after regaining full awareness. Different states and situation might be suggested to such persons. Hypnosis gives the possibility to return to memories and experiences of the events that were, for some reasons, forgotten or blocked²⁴. However, even supporters of hypnosis as the method of interviewing witnesses or interrogating suspects believe that it should not be used as a procedural act, since concerns could rise that evidence obtained with the use thereof may be a result of pressure, suggestion or violence used by the interrogator. Thus, this method should be applied only to support psychological or psychiatric expert opinions, especially towards people suffering from memory blockade and willing to get rid of it²⁵. But even here, many doubts are raised concerning the effectiveness thereof.

According to Józef Wójciszek, hypnosis is in fact a form of autohypnosis and no one can be subject thereto without his will. Hypnosis does not switch off consciousness entirely, and the person hypnotized will not be able to follow all instructions of the hypnotizer, as human personality remains intact under hypnosis, and therefore the person hypnotized will not do anything contrary to his will. A person who lied before hypnosis is able to lie during it. Józef Wójciszek agrees only with a thesis that hypnosis can cause hypernesia, when a person, as a result of amnesia or alcohol consumption, is able to reconstruct his memory record²⁶.

²³ P.G. Zimbardo, F.L. Ruch., *Psychologia i życie*, 1994, p. 295, cited after: Z. Marten, *Psychologia...*, p. 288.

²⁴ L. Chertok, R. De Saussure, *Rewolucja psychoterapeutyczna. Od Mesmera do Freuda*, Warszawa 1988; T.B. Ludy, *Historia współczesnej psychologii*, Warszawa 2008; J. Siuta, *Psychologia zjawisk hipnotycznych*, Kraków 2010, cited after: Z. Marten, *Psychologia...*, p. 292.

²⁵ Z. Marten, *Psychologia...*, p. 292–293.

²⁶ J. Wójciszek, *Hipnoza w prawie karnym i w kryminalistyce*, Kraków 1989, cited after: T. Hanausek, *Kryminalistyka...*, p. 262.

Brunon Hołyst provides an example of a soldier, responsible for gun warehouse in which three hand machine guns were lost, examined with the use of hypnosis. The soldier was unable to explain what had happened with the arms and the investigation brought no results. The soldier's superiors asked a hypnosis specialist for assistance in explaining the situation. During the hypnosis, the soldier confessed that he had been under the influence of alcohol and, while intoxicated, he had thrown the guns into a nearby pond, and then he had forgotten about it. The guns were indeed found at the location indicated by the soldier²⁷. Hypnosis may therefore prove to be useful in obtaining statements, but – due to a number of ethical doubts related thereto and the lack of knowledge on the true mechanisms of its impact on humans – it should be excluded from procedural acts of interrogation.

FINAL REMARKS

Methods of obtaining statements during interrogation, presented in this paper, vary in the degree of interference in the human psyche. Some of them contribute to creating favorable conditions for the suspect's psyche to submit statements. While other methods resort to different types of psychological tricks, aiming at successful extraction of the truth.

Each method entails risks of different kinds. In extreme cases, they can even contribute to false confession, especially with regard to persons of low mental resistance and particularly vulnerable to suggestions or approval of the interrogator. Undoubtedly, the most important goal of the interrogator is to find out the truth. But, as he has to respect the principles of professional ethics, the interrogation cannot involve undesired methods of obtaining statements. In the course of the interrogation, we are dealing with legal norms, determined in the process of interpretation and consistent with the will of the legislator. The same norms, however, may be contrary to the mechanisms of the human mind functioning.

Therefore, it's important to remember that psychology should not be used to establish legal norms consistent with logic, ethics and the law, but it should assess these norms and their interpretation as consistent with the mechanisms of the human mind functioning²⁸. It is a huge challenge for both forensics and psychology.

²⁷ B. Hołyst, *Psychologia...*, p. 1204–1207.

²⁸ R. Makarowski, *Psychologia w procesie sądowym – Art. 391 § 1 k.p.k.*, „Gazeta sądowa”, październik 2002, cited after: M. Maciejewski, *Psychologiczna...*, p. 105.

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