

Criminalistic Features and Exemplary Parameters of Defense Speech

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Abstract

Criminalistic features and exemplary parameters of defense speech are investigated in the article.

In this research, in addition to large-scale scientific research in modern times it also speaks of the criminalization aspects of defense activities in parallel with the criminal-procedural aspects of defense activity which has been highlighted in separate scientific articles, as well as strategy, tactics and methodology of defense activity are explained and the various classifications (for example, colligation, coalition, group defense, etc.) of defense activity in the context of criminalistics situology (analysis of separate investigative conditions) are dealt on.

We think it is expedient to provide as much information as possible in the context of this article.

The works of prominent scholars who have studied the court of speech culture of different countries have been studied within the scope of this research.

It is advisable to apply the experience of foreign countries to systematize issues related to tactics of defense speeches, and to create exemplary models. Among the countries that have developed the highest level of court culture, the United States should first of all be mentioned. The contemporary US legal system has genesis of the Anglo-Saxon law system, the role of the case law in court cases, the existence of an institution of judges, and other conditions contributed to the fact that judicial trials in this country's judiciary and particularly criminal prosecution have become an extremely important issue.

During the speech defense mechanisms are the methods of behavior that the judge finds by following the behavior of the prisoner before him. Certain definitions have been created after such defense mechanisms have been investigated. Examples of the use of these mechanisms are based on information obtained from those individuals. Individual uses a variety of defense mechanisms, mainly one or two defense mechanisms. The most common types of them are investigated in the article.

Since the defense mechanisms are habit-forming, it's not easy to get new forms of behavior. For this reason, many individuals need high-level support to build more effective behaviors. At this stage, it is useful to use the science-behavioral techniques. The usefulness of these methods can enhance the sense of success of the accused, and such issues are reflected in the article.

Keywords: defense speeches, criminalism, crime, judge, prosecutor, lawyer, law, defense mechanism, court, proceedings, defendant, case law

The Criminalistics textbooks (1, 2, 8) published in Azerbaijan do not include the tactical and methodical issues of defense of public prosecution in the court, defense activity, as well as the tactical and methodical issues of defense activity in the court.

Nevertheless, the study of criminalistic literature shows that at present, the attention paid by the authors to the criminalistic aspects of defense activity is quite topical. For example, it is indicated in the investigation conducted by M.O.Bayev on "The tactic of professional defense against accusation in the criminal process of Russia" in 1998 that the tactic of professional defense against accusation was one of the sub-systems of general criminal tactics and that the professional defendant was the only one to ensure their effectiveness while performing separate investigations in the judicial investigation and therefore guide the provisions of the half-system (4, 9-12).

Similarly, V.V.Konin also points out in his investigation on "The tactic of the professional defense of the accused in the court of first instance," that the participation of the defendant in the pre-trial proceedings is one of the factors determining the defense tactics in the court. In V.V.Konin's work, besides the defense tactics related to the actions carried out in the court investigation, an independent paragraph was devoted to the study of the tactical system of tactics, which can be used by the defendant in the court speeches (7, 148-157). Y.V.Bochkaryova deals on the relation to the investigation of specific crimes from defense tactics in his investigation work on the theme "Tactics of professional protection against accusation of crime against property crimes at the initial stage of investigation" and in this sense

identifies the concept of criminatory defense tactics and identifies the concepts of criminalistic defense methodology (5, 58-61).

Along with large-scale scientific research in modern times, in separate scientific articles, criminal-procedural aspects of defense activity, as well as criminalistic aspects are highlighted. As a general rule, the literature describes criminalistic issues such as strategy, tactics, and methodology of defense activity, and defines different categories of defense activities (eg, colligation, coalition, group defense, etc.) in terms of criminalistic situology (analysis of separate investigative circumstances (5, 415-418, 6, 570-572)).

Prof. J.H.Movsumov noted that, as in the prosecutor's speech, the defendant's speech also covered the socio-political assessment of the criminal case, the analysis of its actual circumstances and its legal nature, the character of the defendant's personality, criminal and civil liability. Unlike the public prosecutor, the defendant is obliged to make an excellent analysis of all cases of defendant's defense of the rights and legitimate interests of the defendant and to bring all the evidence in favor of the defendant. To this end, the defendant summarizes the court investigation, analyzes the materials collected from the case, and provides evidence to deny the prosecution or to mitigate the defendant's position and to express his / her discretion with regard to other matters that the court must solve (3, 246).

The final part of the defense speech also has different content, depending on the direction of the defense. In the case where the defense speeches are fully admissible, it should be completed with the request for maximum improvement of the position of the accused, based on confessions and regret. For this purpose, the application of the circumstances which facilitate the punishment of the accused from the court, the application of the lighter and lower limits of the penalty envisaged in the criminal law referred to the accused, the appointment of a lighter sentence for the offender to a lighter sentence, and the accused shall be asked to give a conditional sentence. In cases where partial confessions are made, the defense counsel may also be asked in the above-mentioned cases, in which case the part of the charge is partially denied and the accused is asked to be acquitted. Finally, in the event of a complete denial of the guilt and the accusation, in the result part of defense speech, the accused is justified. In the final part of defense speeches in all three directions, other proposals related to the final decision of the court may also be voiced.

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level of court culture, the United States should first of all be mentioned. The contemporary US legal system has genesis of the Anglo-Saxon law system, the role of the case law in court cases, the existence of an institution of judges, and other conditions contributed to the fact that judicial trials in this country's judiciary and particularly criminal prosecution have become an extremely important issue.

During the last century, the US Congress has adopted numerous laws that define the basic principles of law in many areas of federal law. Implementation of court rulings is based on the responsibility of the parties, not the courts. The Special Body under the Ministry of Justice controls the execution of sentences in prisons. These issues were widely analyzed in the works of prominent jurist scientists like F.Lourens, H. Kermit, F. Arntzen (10; 12; 23).

At public hearings, all proceedings before and after the process are recorded by the court secretariat in written or oral (in the form of a recording).

Court reports are important for recording the testimony of the accused and then listening to them. Acquaintance with the works of many American scholars who have investigated the gigantic volume of such records shows that there are specific features of defense speeches in US courts. The impact of the accused person's speech is very important. It is also important to note that the defendants' personal defenses are frequently encountered without the assistance of a lawyer. This is due to the fact that citizens are aware of the content and the nature of their rights and responsibilities, even at moderate levels.

Based on the analysis of literary texts learned on our part, it is possible to distinguish the following main styles of defense speeches: 1) Comprehensive speech; 2) Speech based on logical style; 3) Irregular expressions in speech; 4) Psychological impact; 5) Explanations associated with phenomenon ; 6) Proving the authenticity of expressions; 7) Mutual (interactive) style; 8) Mixed Expressive Speech.

We think it is expedient to provide as much information as possible in the context of this article.

1. Comprehensive speech

The criterion of conviction or the most important of these criteria, called "real or true criterion," is a comprehensive explanation (10, 34). The key issue here is that the accused person is in a detailed description of the event itself (11, 49). When explaining the circumstances of the case and providing other information, it is not only the result, but also the duty of witnesses to inform them of all the circumstances that are known to them and give them all the details of the case.

2. Speech based on logical style

Logical style or logic integrity is considered important in defense speech. The accused person's speech should be logical, as well as ideas and emotions must complete each other. For example, the accused should demonstrate a humanist person to be convincing when expressing his regrets, and should not be so cold when dealing with cruel details, but rather show that such details are horrified (12, 70).

3. Irregular Expressions in speech

At the court session, when the accused is inaccurate when crossing from one part of the incident to the other, his speech becomes tedious and turns into a set of irregular phrases. Logical structure should not be distorted when interpreting it from one part of the event to another or part of the event. Generally, speeches on nonconformist ideas are weakly effective (13, 31). The essence of the speech should be the style of speech based on common logic, interdependence, and convincing evidence.

4. Psychological impact style

It considers psychological impact in relevant cases of defense speech (14, 67), which is a commonly used style in American and European courts. (14, 67) . The appeal to emotions such as, fear, panic, regret, and so on. is the main line of this style. This technique can create a serious convincing effect when the tactics are selected correctly. Practice shows that lawyers or defendants who are skillfully using tactical-psychological techniques are able to change the course of their proceedings to their own benefit. It should also be noted that American courts are ahead of the courts of any country in the world for their freedom of expression. Citizens are usually the key of making sense of innocence about the judiciary and the public. As regards the cases that are expected to be executed in American courts, there is a special psychological atmosphere in the court, which seriously affects both the defendant's speech and the emotional state of the jury. The statements of the American courts that are expected to be executed (or removed) from the death penalty and the accuser's sentence are often characterized by a deep trace in their memory.

It is also crucial that the testimonies of those who are accused of psycho-attitudes are useful in helping their speeches. This is considered to be valid under the psychological pressure of another person witnessed during the same incident. For example, survivors of car accidents that have resulted in death say that the driver who has been charged not guilty and accuses the deceased driver. Here, the witness testifies to his benefit in the case when he/she does not know one of the drivers. He saw that one of the cars was driven by breaking the rules at high speed before the accident. In the case of favor of the accused, the fact that is based on the testimony of the accused has a great impact on the

formulation of the final opinion in the psychological effect of the accused or the judges.

5. Explanations associated with phenomenon

The phenomenon is abstract, with no clear explanation and, therefore, the lifestyle that everyone can have a unique idea about. For example, the accused person who committed a crime against the victim's immoral behavior is trying to justify the fact that this immoral behavior is a worse offense than his "normal" personality. M. Horvitz writes that the phenomenon in defense of the defendant's defense speech is not a realistic criterion for the expression of small children, as children usually need to explain phenomena (13, 110). By expressing his personal outlook on phenomena and his unique experiences, the defendant has the goal of overcoming the average statistical approach against himself, as well as creating a special attitude toward himself. Regardless of whether this is a sincere or a trick, this tactic will always have a serious effect when used skillfully.

6. Proving the authenticity of expressions

It is a serious matter to prove the authenticity of the statement in court practice (15, 111). Initially, the person who gives non-normal, surprising, descriptive expressions should make a convincing statement that they are real. Otherwise, such expressions can turn against him. For example, a victim of sexual harassment exaggerated the incident and stated in the testimony that the accused had a cold weapon and was threatened with a cold gun. When this detail does not confirm its accuracy, it is doubtful that the accuser's claim is generally questionable and is in the interest of the accused.

7. Mutual (interactive) style

During interrogation (confrontation), the accused establishes a summary of the events in his speech based on special logic methods. The judge interrupts the accuser's testimony and issues questions to witnesses and lawyers, and the testimony of the accused turns into a multilateral dialogue (16, 16). In such cases it is important that the accused to be prepared and careful for the expected questions.

8. Mixed Expressive Speech

Sometimes the accused go to different destinations in their speeches and talk about different topics. This form is known to the practice of judging where expressions cannot easily be adapted and such statements are often objectively assessed. In the American and European courts, lawyers or defendants have raised questions to witnesses and use their practice of directing them to give testimony in their favor. One of the most difficult things in the practice of judging is to define the limitations of such situations. In most cases, such questions can cause the

other party's objection, and the judge has to decide whether to accept or reject that objection.

Talking about the tactical aspects of the defense speech, it is also important to touch on the peculiarities of judicial culture in the Islamic East. Formation of court speech culture in Arabic-speaking civilization can be viewed as a cultural heritage that has passed through a multi-century historical development, which is a peculiar, world-wide development of the world's culture of speech, many aspects of learning for us. Our country is located in a unique geographical area, located at the intersection of West-East civilizations, synthesizing certain cultural features of both civilizations. Therefore, the development of the future cultural development of our country, including the development of court speech culture, should be based on the conceptual framework of the most progressive examples of both civilizations. As President of the Republic of Azerbaijan, Mr. Ilham Aliyev has repeatedly stated, our country has been able to create an example of multiculturalism for the world. In order to go further in this area, we believe that these issues are important.

Within the framework of this research, the works of prominent scholars who have studied the judicial culture of Eastern countries have been studied. Here, we hope to give a subtotal of the content of those works and to contribute to the creation of a useful knowledge system for judicial practice.

It is not necessary to carry out an active defense during the execution of the criminal justice of the Islamic countries. The accused may also be silent on the grounds of the charge against which he/she is accused. Based on the right of deprivation of liberty, the principle of non-compulsion of the accused himself to be charged and incriminated to his active involvement (*nemo-tenetur seismum accusare*) is based. The right to silence is considered to be a passive right, but does not prevent the accused from actively participating in the judiciary. The right to freedom is not related only to the action of the accused person, but to all kinds of legal proceedings. The principle of freedom of the accused is based on this right. This situation can not be used against the accused if he uses the right to defend himself. Proof of any act of conviction is considered to be the responsibility of the prosecution (9, 21).

We must note that the accused is not active outside the investigation. The defendant's ability to exercise defense rights in the broader sense of the advocate, or alone, depends only on his rights. In practice, we see a lawyer in the broad sense as a real owner of defense. The lawyer's personal protective function is usually incomplete. In other words, except the investigation process, only the advocate is an active party in the court process as a defense party.

The right to use collective defense by a lawyer in criminal proceedings does not mean that the removal of individual protection is restricted by the right of the accused. In this case, individual and public (collective) defense is being implemented together. The individual defense is maintained by the accused and the public defense is detained by the lawyer. For this reason, it is not always possible to explain the representative connection between the accused and the lawyer in the court. As noted, the lawyer does not represent the accused, but supports the legal defense of the accused or helps him / her in the preparation of defense. How the lawyer will fulfill these duties and what rights he was indicated in the Figh code.

Defending techniques during speech can help alleviate feelings such as stress, sin, conscience, and humiliation. This is more of an automated reaction, and in many cases it is unaware of himself/herself (18, 10).

In the course of the defense, defense mechanisms are the methods of behavior that the judge finds by following the behavior of the prisoner before him. After examining such defense mechanisms, the following terms were created. Examples of the use of these mechanisms are based on information obtained from those individuals. Individual uses a variety of defense mechanisms, one or two defense mechanisms. Their most common types are:

Denial: The accused avoids the responsibility of behaving in a way that creates public dissatisfaction and results in self-injury. Expressions like "I did not do", "It did not happen" and "They did not tell me" are quite common among individuals using the denial mechanism. The allegations of the individual can be contradictory to the words previously spoken or to the information available to the psychologist (21, 33).

Diversion: The accused accuses somebody or something weaker than himself / herself. A civil servant who is very little critical about the manager can not control his nervousness against his weaker colleague. The true roots of the behavior of an individual may arise from the words he speaks or from the psychologist's research (21, 30).

Imitate Others: The accused person admires a person or group and tries to repeat their attitudes. Individuals may be weaker in prestige, power, and glory. A person who is less self-affirming may be able to imitate the behavior of admired person or group (22, 65).

Abstract Concealment: The accused uses logical and analytical expressions, thereby tries to impress. The high level vocabulary used by the individual also covers technical and scientific concepts. In abstract concepts, abstract and intelligent words (21, 21) are not used in the abstract mechanism.

Reflection: The accused directs his feelings such as, anger, dubiousness, fear, frustration, and love to the judge and other individuals.

The judges and other individuals do not show similar attributes and behaviors to his/her speech. Sometimes, in this case, the accused is angry and aggressive about the judge (21, 21).

Logical appearance (rationalism): The accused does not accept responsibility for the difficulties he/she faces, and he / she accuses other people and situations. It's like trying to save himself. Individuals typically state their position in a convincing and appreciated form and resist the assessment of other disclosures. Individuals often complaining and being complaint of judges may be shown as an example to this situation (21, 22).

To react: The accused becomes very excited and extremely cautious when interpreting definitive and ethical judgments. Individuals, while complaining about others, are talking about their exemplary attitude. Particularly, he/she is based on purity, system and sex. The accused can act aggressively and make unacceptable statements of sexual nature. The rapid change in the cause of the individual's behavior can lead to the appearance of salient patterns of behavior (21, 22).

Decline: Any maturation in the actions of the accused is seen. He/she can say that he/she is more reliable and more perfect in his past life. It is possible to show many reasons, such as addiction, stubbornness, and attraction during the use of this defense mechanism. For example, an individual cries when he is talking about subjects covering social responsibilities or silent on a regular basis (21, 27).

Hiding Senses: Individuals do not want to discuss certain issues or difficult to remember those events. The judge may have previously received information about the circumstances of the person who spoke or did not report very little in the debate, and in particular the cases of shame, guilt, or fear. The accused may refuse to speak sensitive topics such as, sexual life, aggression, or parenthood.

Correction: The accused makes some movements related to the past behaviors that need to be changed or modified. In particular, the judge believes that the person reacts exaggeratedly in the result of any mistake.

The process of defense speech can be studied in three consecutive stages of the speech process:

- a) The person accused of initiation or intercourse can feel the difference in defense responses;
- b) During an integration, the second phase the accused understands why and how to use the defense mechanisms;
- c) In the latter merger phase, the accused is able to draw up a defense speech used to a more acceptable level.

In many cases, it is pointed out that a systematic sequence is necessary to formulate defensive speeches, from the point of view of

unifying till awareness. Without disclosing thoughts and feelings, confronting the accused with his/her defense mechanisms increases his resistance and further enhances the usage of the defense mechanisms. To accuse the defense speech in aggressive forms is called a metaphorical "defamation of defense." This situation extends extremely the accused and increases his resistance. The stages of the psychological influence are achieved through the skillful manipulation of the rhetoric of defense applications (22, 105).

Contact stage

The objectives of this first stage are to define the defense tactics chosen by the accused and to support him/her when he/she reacts aggressively reactions. In defense speeches, the defense speeches that people use in their aggressive situations are widely used. The reason for this is the fact that the parties to the conflict are often non-professional lawyers, who usually conduct the conflict based on their personal life experience.

Emotions that can not be avoided are the main motives for guiding the defendant's speech. Therefore, the accuser's lawyer must feel the emotions he/she has suffered. It is important to approach the person with sensitivity, to explain his/her feelings and to tell the court.

While lawyers may limit the use of objective tests, it is also possible to better understand and communicate with those who speak through such tests. Methods such as completing sentences, drawing pictures, recalling past memories are important in understanding the identity of the accused and understanding the defense mechanisms he/she uses. It should be taken into consideration that teenagers who use defense tactics without disclosing the circumstances of the case sometimes find it difficult to recall past memories.

In determining the defense tactics of the accused, it is important to pay attention to how he completes his sentences. In particular, it is possible easily to detect defense mechanisms called "logic" (20, 317).

These issues related to court speech tactics have been studied comprehensively by M.Hocson, C. Brown (19,589; 17).

Merging stage

It is possible to pass through the merging stage of the defendant's speech only after a positive communication has been established. It is understood that they are fragile, they are discovered. The objectives of defense tactics are investigated and explained to him/her why and how to use these tactics.

The main issue at this stage is the confrontation that the judge implements. During the confrontation, the changes in the behavior of the accused are more focused. His/her words and behavior, as well as the discrepancies in his speech before and after, are disclosed by a lawyer-

psychologist. It is also necessary to detect the wrongdoing of the accused, as well as the issues that he or she enters in silence (21, 8).

During the confrontation there should not be a prosecution tone, should be treated with understanding and kindness. The lawyer is trying to understand the purpose of the defense mechanisms used by the defendant in the courtroom, and may also provide explanations. Contradictions between past attempts of the accused and the present state are interpreted. When commented, the defendant should be given time to understand, and this process should be done professionally and in dignity.

Integration stage

The stage of integration is a stage in which sincere behaviors, more accurate and appropriate ideas and feelings are combined. Speaking at this stage pleases the discussion of changes in behavior. The denial used as a defense mechanism has now been regarded as a means of concealing truth and leading to individual defeat. At all stages of the consultation process, the judge's behavior should encourage the defendant and instill confidence in his / her free will. In the stage of integration, this encouragement intervention is particularly useful (21, 19).

However, since the defense mechanisms are habit-forming, new forms of behavior are not easy to achieve. For this reason, many individuals need high-level support to build more effective behaviors. At this stage, it is useful to use the science-behavioral techniques. The usefulness of these techniques can enhance the sense of success of the accused. Another method may be to behave in a more desirable way in the behavior that the accused wants to do. For example, an accused person using the denial mechanism takes responsibility for his/her behavior within a day or a week.

Another way is to avoid the use of this mechanism by seeing the moment when the prisoner will use the defense mechanism and also to record the number of such cases. This can be done within a certain period of time. The accused can enjoy these results and also control his/her behavior.

References:

Literature in Azerbaijani:

1. Criminalistics. Textbook / scientific editor. F. Javadov. Baku: Law, 2010, 752 p.
2. Criminalistic methodology / scientific editor. F. Javadov. Baku: Law, 484 p.

3. Movsumov J.H. Soviet criminal process. Textbook. Baku: Maarif, 1989, 312 p.

Foreign Literature

In Russian:

4. Baev M.O. Tactics of professional defense against charges in the criminal process of Russia. Ph.D Sciences, Voronezh, 1998, 194 c.

5. Bochkareva E.V. Tactics of professional protection against charges of committing crimes against property at the stage of preliminary investigation. Ph.D Surgut, 2003, 218 c.

6. Zorin R.G. Criminalistic and criminal procedural aspects of countering the defense of charges in criminal proceedings // Scientific works of RAYUN, 2008, No. 8, p. 570-572.

7. Konin V.V. Tactics of professional protection of the defendant in the court of first instance. Ph.D Kaliningrad, 2003, 195 c.

8. Criminalistic / D. Suleymanova. Baku: Ishig, 2000, 680 p.

b) In English

9. Bassam Tibi. Political Islam, World Politics and Europe. Routledge. 2008 p. 33

10. Friedman, Lawrence M. American Law in the Twentieth Century, 2002, Los Angeles Univ press. p.120

11. Hall, Kermit L. The Magic Mirror: Law in American History. New York, 1989, p.189

12. Hall, Kermit L. et al. American Legal History: Cases and Materials, Manhattan, 2010; p.752

13. Horvitz, Morton J. The transformation of American law: 1780 - 1860, 1977, New York, p. 385

14. Horvitz, Morton J. The transformation of American law, 1870-1960: the crisis of legal orthodoxy, Michigan Univ. 1994, 300 pp.

15. Howe, Mark de Wolfe, ed. Readings in American Legal History, New York, 2001, Law Society p. 540

Johnson Herbert. American legal and constitutional history: cases and materials. New York, 2001, 733 pp.

17. Jonathan Brown, Hadith: Muhammad's Legacy in the Medieval and Modern World, Oneworld Publications, 2009. ISBN 978-1851686636, Chapter 2

18. Joseph Lowry. In The Cambridge Companion to Muhammad (Editor: Jonathan E. Brockopp), Cambridge University Press, 2010. ISBN 978-0521713726, pp. 92-94

19. Wael B. Hallaq. Was al-Shafii the Master of Architecture of Islamic Jurisprudence? // International Journal of Middle East Studies, 1993. Vol. 25, No. 4, pp. 587-605;

c) In Arabic

20. Seyyed Mohammed Jabr المؤمنون الكتاب الرحيم الرحمن الله الآية - المؤمنون الكتاب الرحيم الرحمن الله الآية - المؤمنون الآية الآية - المؤمنون الآية الآية - المقدمس California Univer. 1990. 627 p.
21. Fuad Mohammed Abd al-kebisi. القانون و الشريعة في الاعيان اجارة. Michigan Univer. America. 2000, 413 p.
22. Samir Aliya. القاعدة القانونية القاعدة نظرية: والشريعة القانون لدراسة المدخل. مقارن دراسة: الشرعية Michigan Univer. America. 2009. 183 p.

d) In Turkish

23. Friedrich Arntzen, Psychologie der Zeugenaussage 4. Auflage; Expression
24. Psychology Credibility Criteria, İstanbul, 2001 4. Issue c. 123

Internet sources:

25. <http://az.trend.az/news/society/2286658.html>
26. <http://bizimyol.info/news/25437.html>
27. http://www.etika.az/?page_id=37
28. Sudebnaja-rhetoric.
29. books.house> sudebnaya-etika / theme ... sudebnoy.html.
30. bib.social> ... methodology-sudebnoy-expertise.
31. libma.ru> uchebniki / osnovy_sudebnogo_krasnorechija.