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RESEARCH ON THE DEFENDANT'S PERSONALITY DURING THE PRELIMINARY INQUIRY

By

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ABSTRACT

[Text] This textbook examines the significance, goals, and volume of research on the personality of a defendant undergoing enquiry for a crime, and the significance, as evidence, of information on the defendant's personality and behavior. Recommendations are made for organizing research on the defendant's personality on the basis of a generalization of legal practice, and the specific methods of such research are presented; the issue of reflecting information on the defendant's personality in the indictment is discussed.

CHAPTER I

SIGNIFICANCE, GOALS, AND VOLUME OF RESEARCH ON THE DEFENDANT'S PERSONALITY

§1. Significance of Research on the Defendant's Personality[1]

In order to further reinforce socialist legality, workers of the procurator's office, internal affairs agencies, and the court must constantly improve the methods of their activity against criminality and systematically raise the quality and culture of the preliminary inquest and court examination.

As we know, the chief goal of inquiry and examination of a criminal case is to establish the truth. However, it would be erroneous to believe that to achieve such truth it would enough to simply establish the fact of a crime and determine the person that committed it.

According to existing law the court, procurator, examining magistrate, and the individual conducting the inquest are obligated to take all steps prescribed by law to thoroughly, completely, and objectively analyze the circumstances of the case and to reveal the circumstances that both convict and acquit the defendant, and the circumstances aggravating or mitigating his responsibility. Careful study of the defendant's personality is one of the conditions insuring compliance with these requirements of the law. This is why, when defining the general sentencing principles, the Fundamentals of USSR and Union Republic Criminal Law and the criminal codes of the union republics, establish that in its sentence the court must take account of not only the nature and degree of social danger of the crime committed but also the personality of the defendant.

Among circumstances subject to demonstration in a criminal case, the law includes circumstances affecting the degree and nature of the defendant's responsibility as well as other circumstances characterizing his personality.

It is also important to study the defendant's personality because a number of articles in union republic criminal codes contain criteria pertaining

directly to the criminal's personality (commitment of a crime by an individual recognized to be an especially dangerous recidivist, or by an individual who had been convicted for the same crime earlier, and so on). Thus these criteria must be clarified for a correct description of the defendant's actions.

Moreover in order that the court could prescribe justifiable punishment for the accused, the case material must contain exhaustive information on the defendant's personality.

Undervaluation of data describing the defendant's personality hinders achievement of the goals pursued by the punishment, since it reduces its effectiveness. This can be explained by the fact that individualization of punishment is a mandatory condition of its effectiveness.

Criminological research has demonstrated that crimes are committed by people differing sharply from one another in their way of life, behavior, and moral countenance.

For example among those convicted for murder, there are individuals who had shown themselves to be negative earlier: They had either committed a crime or serious administrative violations, or they had associated with criminal elements, or they had not wished to work honorably and conscientiously, or they had abused alcohol, behaved amorally, and so on. But among individuals that had committed a murder we can also encounter those who had conducted a normal way of life earlier, without manifesting any sort of antisocial behavior: They worked, participated in social life, behaved normally at home, and so on. The degree to which these two groups of criminals are socially dangerous differs. Naturally different punishments would be required to correct them as well.[2]

Understanding the importance of deeply, thoroughly studying the defendant's personality, most examining magistrates devote due attention to this factor. Sufficiently detailed information on the defendant's personality are collected together in the materials of many criminal cases. However, we can often encounter situations in which the defendant's personality had not been studied with sufficient depth. This is why it was specially noted in Order No 43, 20 July 1959, of the USSR General Procurator "Concerning the Practice of Procurator Agencies in Instituting Criminal Proceedings and Maintaining Surveillance Over Correct Application of Criminal Punishment" that examining magistrates are clearly deficient in revealing the circumstances characterizing the defendant's personality, his former activity, his attitude toward work, the family situation, and his behavior at home, even though all of this has important significance to the court's determination of a penalty corresponding to requirements of the law.[3]

As is noted in Decree No 3, 19 June 1959 of the Plenum of the USSR Supreme Court "Concerning the Practice of Courts in Applying Criminal Punishment," the courts often accept cases that have not been investigated satisfactorily,

in which the circumstances characterizing the defendant's personality and his former activity are insufficiently clarified, even though this does have important significance to resolving the issue of prescribing a valid, commensurate penalty.

Incidents encountered in investigatory and court practice in which information on the defendant's personality is ignored lead to unjust sentences. The reasons for this lie in the fact that some investigators still have a very narrow concept of their task in studying the defendant's personality. They believe that studying the defendant's personality means obtaining the data foreseen by the questionnaire portion of the record of evidence in the interrogation and to attach to the case a description of the accused from his last place of work and a reference as to presence or absence of former convictions.

Presence of meager information on the defendant's personality in the case materials extremely hinders and sometimes even precludes the court's possibility for fulfilling the requirements of the law--considering the defendant's personality when prescribing the punishment.

We know of cases in which sentences have been reversed and the criminal cases have been returned for additional inquiry because during the preliminary inquest and court examination data describing the defendant with sufficient completeness had not been established.

Higher levels of legal authority have indicated the need for clarifying data on the defendant's personality many times.[4]

Finally, we cannot ignore the significance of thorough analysis of the defendant's personality to educational goals. The fuller and broader the analysis of the defendant's personality, the greater is the educational significance of the legal process.

Because all evidence collected in a case, including data on the defendant's personality, are evaluated conclusively by the court, it is very important for these data to be perceived by the court fully and correctly. Participants of the process must not only present materials characterizing the personality of each defendant to the court, but they must also analyze them appropriately and evaluate them correctly.

§2. The Goals of Studying the Defendant's Personality

Discussing the goals of studying the defendant's personality, we should keep in mind two aspects, namely the particular and the general.

In the particular aspect the defendant's personality is studied on the basis of a specific case, inasmuch as this is necessary for proper inquiry into a crime, clarification of the circumstances promoting its commission,

for resolution of the issue of prescribing punishment and, finally, for reeducating the convict.

In the general aspect the personality is studied on the basis of a group of cases examined by the court concerning crimes of a particular category committed within a specific time period. Such an analysis is conducted to reveal the causes behind criminality and to develop, on this basis, measures directed at preventing it. The personality of criminals can be studied in the general aspect within the framework of a rayon, an oblast, and even a republic.

Both aspects are closely associated with each other inasmuch as the reasons behind each particular crime are the principal elements of research on the causes of crime as a whole.

Let us examine the goals, volume, organization, and methods of studying the criminal personality within the framework of a criminal process pertaining to a specific case.[5]

The purpose of such research is to obtain exhaustive information on the defendant and the accused, necessary for correctly solving many problems associated with examination of a criminal case. Let us dwell on them in greater detail.

Information is required on the defendant's personality chiefly to solve a number of problems, both in criminal law and those associated with execution of the sentence, in particular:

1) The impossibility of instituting criminal proceedings against an individual and bringing him to trial when certain conditions foreseen by law (the individual is underage, he is irresponsible, the statute of limitations has expired), release the individual from criminal liability and punishment;

2) the possibility for releasing an individual from criminal liability and punishment because the individual has ceased to be socially dangerous;[6]

3) the possibility of releasing an individual who had committed a crime from criminal liability through transfer of the case to a comrades' court or through payment of bail. Practice shows that one of the basic causes of errors made in releasing an individual on bail lies in undervaluation of data describing the guilty individual's personality and in the absence of careful analysis of the data. Correct analysis of the personality provides a possibility for eliminating these errors and promotes the most suitable resolution of the issue of social influence;

4) the qualifications behind the actions of an individual who had committed a crime. Gathering information on the defendant's former activity and clarifying former convictions, we can establish such qualifying criteria as recurrence or especially dangerous recidivism. In a number of cases,

information on the defendant's personality may help the examining magistrate discover the true motive behind the crime committed and clarify its actual role in the crime. The practice of examining such crimes as murder, destruction of property, and arson demonstrates that such crimes are committed in response to the most diverse motives. Without establishing the motive we cannot consider the crime to be fully revealed. But it is impossible to reveal the true motives behind a crime without a deep analysis of the defendant's personality. This is why absence of information describing the defendant's personality can lead to incorrect description of his actions and even a legal error;

5) the presence of circumstances affecting the degree and nature of the defendant's responsibility, inasmuch as some circumstances may be closely associated with the defendant's personality and can be established only through analysis of the personality;[7]

6) the form and size of the penalty that is the most suitable for correcting and reeducating an individual who had committed a crime. Inasmuch as punishment is not only a penalty for a committed crime but also has the purpose of correcting and reeducating the convict, it must be just, and it must have a reeducatin, influence on the criminal. According to existing law an incorrespondence between the punishment prescribed by the court and the convict's personality, and insufficient data on the defendant's personality are grounds for reversal or alteration of a sentence (see, for example, articles 342 and 343, RSFSR Code of Criminal Procedures). These two grounds are mutually related: If the case does not contain the necessary information on the personality of the accused, the court prescribes the punishment blindly; the punishment unavoidably becomes impersonal, being out of correspondence with the convict's personality--that is, it loses its individualistic orientation and, together with it, its effectiveness. Meanwhile, individualization of punishment, its commensurateness and justice are important, fundamental premises of Soviet law. This is why in its decrees and decisions the USSR Supreme Court has many times turned the attention of the courts to the need for its considering information on the defendant's personality when determining the form and size of the penalty;[8]

7) the form of the corrective labor institution in which the individual must serve his sentence. In order that it may properly select the methods for reeducating each convict the prison administration must have information on the convict's personality (on his former activities, his way of life, his record of convictions, and so on). Unfortunately this information is often absent from the sentence, basically because it is not contained in either the indictment or in other materials of the case. Moreover, in a number of cases the court undervalues the role of information describing the defendent's personality and does not reflect it in the sentence.

Information on the defendant's personality is no less important to solving a number of problems in criminal proceedings, chiefly the following problems:

1) Application of suppression measures, inasmuch as prior to such application the personality of the suspect or the accused must be taken into account. The law of criminal action obligates the individual conducting the inquiry, the examining magistrate, the procurator, and the court, concerned with this problem, to take account, in addition to other circumstances, the personality of the suspect or the accused, the nature of his activities, his age, his state of health, and the family situation. Consequently in order to select the most suitable suppression measure and to avoid groundless arrests, appropriate information on the personality must be available, and it must be evaluated properly. However, an analysis of cases in which defendants were kept under arrest and were subsequently released because the court imposed a punishment upon them not associated with imprisonment, demonstrates that in a number of cases procurators groundlessly sanctioned arrests of defendants without considering their personalities and the mitigating circumstances (for example young or old age, poor state of health).

> The procurator of one rayon in Gor'kovskaya Oblast arrested B. and M., who were accused of stealing a boat and selling it for 20 rubles. During the first interrogation B. and M. fully confessed and explained that they had stolen the boat while under the influence of alcohol. Both defendants were regularly employed, behaved well at work, and were never noted to have done anything reprehensible before. Under such circumstances their arrest was not a necessity. The suppression measure imposed upon them was selected without considering their personalities and the gravity of their act.

2) The moment counsel is permitted to begin participating in the case (the age of the accused, presence of physical and mental deficiencies);

3) the causes behind the crime being investigated and the conditions promoting its commission, without clarification of which it would be impossible to take steps to eliminate them--that is, to prevent the crime. Moreover, preventing crimes is the most important task of crime-fighting agencies. An analysis of investigatory and court practice would show that when investigating and examining cases the procurator's office, internal affairs agencies, and the court often restrict themselves to establishing the crime and the guilty individuals. Meanwhile, in a number of cases the causes behind the crime and the conditions promoting its commission remain unclarified. When adequate attention is devoted to studying the defendant's personality, this shortcoming can be eliminated and the requirement of the law of criminal action that the causes and conditions promoting commission of the crime must be revealed can be satisfied. This is explained by the fact that only through deep analysis of the defendant's personality can we reveal the circumstances promoting both the individual's antisocial attitude, his views, and his habits on one hand, and transformation of these intentions into a criminal intent or criminal carelessness.[9] This is why we must agree fully with A. A. Gertsenzon's opinion that "the success in revealing and eliminating the causes and conditions promoting commission

of a crime depends in many ways on the extent to which the examining magistrate and the court are able to correctly and thoroughly study the defendant's personality";[10]

4) problems arising in examination of a case by a court of appellate jurisdiction and other higher courts. Absence of information on the convict's personality from the case materials can lead either to groundless reduction of the punishment prescribed in the sentence, or to groundless rejection of such reduction. Unfortunately, as special research has shown, courts of appellate jurisdiction are still not taking sufficient account of circumstances characterizing the convict's personality when checking the legality and justice of the sentences.[11]

Finally, the examining magistrate needs information on the defendant's personality to resolve a number of criminal issues.

First of all, having detailed information on the defendant's personality the examining magistrate would be able to suggest and test a hypothesis as to participation of a particular individual in the crime under investigation more successfully. A careful analysis of facts describing the personality of the accused or the suspect would permit the examining magistrate to gain a deeper understanding of the circumstances behind the crime committed and to correctly determine the ways for clarifying the circumstances as yet unknown to him and the circumstances to which he may have not turned his attention, had he not possessed certain information concerning the defendant's personality (information on former convictions, on his way of life and behavior, on personality traits, and so on).

Secondly, such information is required for successful conduct of certain investigatory actions. For example, having information on the personality of the accused the examining magistrate would be able to select the most successful tactics for interrogating him and establish contact with the person being interrogated, which goes a long way in promoting success in the interrogation and in establishing the truth of the case, as well as better determination of the tactics of confrontation.

Information on the defendant's personality, and chiefly on his occupation, way of life, ties, and experience in committing crimes may be useful to investigatory acts such as search. Such information would also be of considerable assistance to the examining magistrate in searching for the accused if he makes himself unavailable for questioning, and in implementing measures to compensate for material losses inflicted by the accused.

Third, information on the defendant's personality would help to reveal other crimes committed by the defendant and to establish all conspirators in the crime and other individuals participating in it. As we know, it is often very difficult to establish all participants of a crime and the criminal activity of the defendant in full volume, and for this reason the examining

magistrate must often do a great deal of work. This is explained by the fact that commission of a crime by a group of individuals or commission of repeated crimes means severer punishment. Therefore the defendant tries to conceal conspirators or crimes he had committed earlier. Thus even in cases where the defendant provides valid statements concerning the nature of the indictment imposed upon him, he will rarely provide information on conspirators and former criminal activity, hoping that the examining magistrate would not learn this information. Unfortunately cases still occur in which certain examining magistrates who, after establishing that a defendant has a committed a crime for which criminal proceedings had been instituted, believe that their mission has been completed at this point and do not take steps to reveal all conspirators and other crimes committed by the defendant.

These are the basic premises characterizing the goals of research on the defendant's personality conducted during the preliminary inquest and the court examination of a specific case.

§3. The Volume of Research on the Defendant's Personality

The question as to what information characterizing the personality of the defendant should be clarified during the preliminary inquest and court examination of a criminal case has important practical significance. Analysis of the personality must produce specific recommendations for procurator's office, investigatory, and court officials as to how to obtain all necessary data on the defendant's personality with minimum time and effort.

Criminology utilizes information from other sciences including pedagogics and psychology to develop the methods for revealing and investigating crimes successfully. This information must also be considered in the development of methods for studying the defendant's personality.

Psychologists note that the personality "manifests and characterizes itself through the individual's attitudes. Attitudes toward society and people, toward the self, and toward the individual's responsibilities to the society and to labor are significant attitudes."[12] This is why we must study not only the mental properties of the subject but also their manifestation in interrelationships with the environment and in his acts and behavior if we are to gain a thorough impression of the defendant. Sociologists define personality "as a social property of the individual, as the sum of socially significant traits integrated within him, shaped in the process of direct and indirect interaction of the given individual with other people and making him, in turn, a subject of labor, cognition, and communication."[13] Therefore when investigating a crime the criminologist must devote his attention chiefly to circumstances characterizing the defendant's behavior in different conditions and in different periods of his life; we are referring in particular to behavior in the family, in the school, at work, in his circle of acquaintances, in the past, and in complex living situations. In this case the researcher must direct his attention chiefly at facts demonstrating the attitude of the defendant to his surroundings and to labor.

Data characterizing the defendant's personality must be collected just as carefully as evidence pertaining to the crime, and they must be reflected in the appropriate documents of the proceedings (the indictment, the sentence, and so on).

In this case it would be erroneous to believe that collection of information characterizing the defendant's personality should be restricted to a volume necessary for establishing the content of the crime and revealing circumstances that may aggravate and mitigate responsibility. The range of such information must be broader; in this instance the researcher must base himself on the significance of such information to a multifaceted, complete, and objective analysis of all significant circumstances of the case, of course with a consideration for the features of the specific crime.

The examining magistrate is interested not only in circumstances that must be proven and the procedural resources by which he establishes the facts he seeks, but also in data which may help in performing procedural tasks even though they may not have legal significance. For example, having information indicating that the defendant is straightforward and principled, the examining magistrate would be able to select the correct tactics for interrogating the given individual. This is why research on the defendant's personality can range, in the criminological aspect, beyond the procedural bounds both with respect to the volume of information gathered and the resources used to gain such information. In particular, such information may be established by search. However, in this case it cannot be included among the case materials until it is procedurally formalized.

We believe that all information can be divided arbitrarily into the following six groups:

1. Demographic information (last name, first name, middle name, age, place of birth, place of permanent residence, nationality, native tongue).

2. Information describing the social countenance of the defendant (education, adherence to party principles, attitude toward his military obligation, occupation, the nature of his pursuits, place of work, position at work, time of service, attitude toward work, participation in social life, presence of military and other special and honorary titles, and orders and medals).

3. Information on the defendant's living conditions.

4. Information on the defendant's health (presence of chronic, including mental or nervous diseases; place of treatment; release from military duty or recognition of disability in connection with illness, and so on).

5. Information characterizing the defendant's way of life, circle of acquaintances, and behavior (pursuits during leisure time; basic interests and hobbies; consumption of alcohol; attitude toward surrounding individuals at work and at home; commission of amoral deeds, administrative violations,

and crimes in the past; measures of administrative or social influence, or measures of punishment; behavior after imposition of such measures or after serving out the punishment);

6. Information on the defendant's moral and intellectual qualities and character traits (boldness, kindness, unselfishness, timidity, cruelty, passion, and so on).[14]

Let us examine the content of such information in greater detail and its significance to examination of a case.

1. Demographic information must be clarified because, on one hand, it identifies the specific person and, on the other hand, it is needed in resolving issues associated with the rules of criminal law and the law of criminal action that must be applied to him.

It is impermissible to direct a criminal case to court for which the basic vital statistics of the defendant have not been revealed. A familiarization with the practice of the USSR and RSFSR supreme courts would show that absence of precise information on the defendant's last name and his age from the case materials would mean reversal of the sentence.[15]

Moreover the age of the defendant must be established so that we can determine whether or not he can bear responsibility for the commissioned crime. By law, a person less than 14 years old is not subject to criminal responsibility, while individuals from 14 to 16 years old bear such responsibility only in relation to a few crimes listed in the law. Educational measures can be implemented against individuals below 18 years of age and committing a crime, and they can be turned over to a juvenile affairs commission. When punishment is prescribed, an individual who was below 18 years of age at the time of the crime cannot be sentenced to death, and the term of imprisonment cannot exceed 10 years; nor can he be sentenced to exile or deportation.

Knowledge of the defendant's age is also necessary in resolving the issue of amnesty. The defendant's age must also be taken into account in selecting the suppression measure and in permitting counsel to enter the case (in cases pertaining to crimes by juveniles, counsel is permitted to participate in the case from the moment an accusation is made).

Information on the defendant's native tongue is required for compliance with the requirements of the law of criminal action governing the rights of the accused.[16]

As investigatory practice shows, establishment of the defendant's true identity sometimes leads to revelation of other crimes he had committed.

> For example in one case the defendant immediately confessed of a crime and stated that he, Fomin, a resident of L'vovskaya

Oblast, had been released by amnesty but had lost his personal documents. The confession and the appeal to close the case quickly put the examining magistrate on guard and raised his suspicion that the defendant may be trying to conceal other crimes in this way. Making inquiries concerning his place of birth, the place of his last residence, the place of his conviction, and the place at which he served his sentence, as communicated by the defendant during the interrogation, the examining magistrate established that his statements were not true. Then the examining magistrate carefully studied various notes taken from the defendant and sent requests for establishing his identity to all addresses on these documents. A photograph of the defendant was attached to each request. Soon a response was sent from Luganskaya Oblast stating that a certain Ivanova had recognized the person on the photograph to be her fiance, Fedorov, located in Leningrad, and reported his address. Making an inquiry at this address the examining magistrate revealed that Fedorov had committed larceny and concealed himself. Thus another crime committed by the defendant was revealed.

Unfortunately we still encounter incidents in practice in which investigatory agencies fail to reveal the true identity of the defendant, who often figures into the materials of a case under assumed names, sometimes several.

2. Information on education, adherence to party principles, attitude toward military obligations, occupation, the nature of pursuits, place of employment, position at work, time of service, attitude toward work, participation in social life, and presence of military and other special and honorary titles as well as orders and medals is required not only to gain a general description of the defendant but also to evaluate his actions. In particular, knowing the defendant's level of general education and the extent of his intellectual development, we can reveal more correctly his attitude toward the offense he had committed and establish whether or not this person had acted intentionally and maliciously or had made an error.

As far as malfeasances are concerned, information as to possession of adequate education by the defendant, his time of service, and his experience is necessary to insure completeness of the inquiry, inasmuch as such information has important significance to making a proper decision on the case.

Information on the defendant's attitude toward labor and social activity is no less important to describing the defendant and evaluating his actions. It is not by chance that criminal law foresees a possibility for releasing a person who had committed a crime from punishment if it is recognized that in view of subsequent irreproachable behavior and an honorable attitude toward labor this person could not be interpreted as socially dangerous at the time of examination of the case in court.

Information as to the defendant's possession of orders and medals as well as special and honorary titles is required both in describing the defendant and to insure that the procedures established by criminal law for rescinding titles and decorations held by persons convicted of a serious crime. However, this does not exhaust the significance of careful revelation of these circumstances. Sometimes after such circumstances are revealed, another crime committed by the defendant may be revealed. Following some particular motive (profit, vanity, and so on), some persons not possessing decorations or titles may promote themselves as decorated individuals or as individuals to whom some sort of titles had been awarded. Sometimes they do this to conceal their true identity and avoid suspicion and exposure. With this purpose these individuals acquire the appropriate decorations and documents (orders, medals, ribbons, order records, diplomas, certificates, and so on), representing them as their own.

3. Information on the defendant's living conditions at the time the crime was committed would help the examining magistrate to reveal the causes and conditions promoting the crime and to take steps to eliminate them.

By revealing the material situation of the defendant, his living conditions, and his work, we can reveal the causes promoting the crime, which in turn would permit us to establish the truth of the case, determine the social danger of the defendant, and take the necessary steps to prevent similar crimes.

It is not by chance that criminal law interprets commission of a crime stemming from concurrence of serious personal or family circumstances, and under the influence of threat or compulsion, or in response to material or other dependence as circumstances mitigating responsibility.

Special attention should be devoted to determining the living conditions of a defendant who is not of age or is young (up to 25 years old). In such cases we need to gather information on circumstances influencing the shaping of his personality--the attitude of the parents toward him and their way of life, his interests prior to becoming of age, his behavior at home and in school, the negative influence of adults, the age at which he began to consume alcohol, the age at which he dropped out of school, the age at which he began working, and so on.

Information on the defendant's living conditions sometimes helps to establish the true motives behind the crime. Moreover, information on the defendant's family situation is required by both the examining magistrate and the court to properly resolve the issue of selecting such a suppression measures as imprisoning the individual, and the issue of the nature and size of the penalty that must be prescribed for the accused.

4. According to criminal law an individual who was in a state of irresponsibility at the time he committed a crime is not subject to criminal responsibility. Consequently the need for revealing the defendant's mental

state follows from the law. However, we should state that examining magistrates do not always devote due attention to revealing the defendant's mental state. Even in cases when the circumstances of a crime afford the grounds for doubting the mental integrity of the defendant (unmotivated actions, his special viciousness, presence of mental illnesses in the past, and so on), some examining magistrates do not clarify this issue, even in cases concerning crimes for which the defendant could receive the highest form of punishment.

Familiarization with the practice of the USSR Supreme Court would show that failing to examine the defendant's mental state in situations in which, judging by the circumstances of the case, such examination was necessary, would mean reversal of the sentence and a demand for retrying the case.[17]

However, some examining magistrates go to the other extreme and prescribe expert examination by a forensic psychiatrist in all murder cases without exception. Such a practice is incorrect because such examination must be conducted only when grounds for it are present.

Clarification of other issues associated with the defendant's health has significance to correct resolution of the issue of imposing imprisonment upon the defendant as a suppression measure, and in describing the punishment. Moreover, data on the defendant's health are required by the examining magistrate to resolve the issue of permitting counsel to participate in the case, since in criminal cases in which persons cannot exercise their right of defense in view of their physical or mental deficiencies, counsel is permitted to participate in the case from the moment an accusation is made.[18] Meanwhile, in cases pertaining to persons who had committed a socially dangerous act in a state of irresponsibility, as well as persons contracting mental illness after committing a crime, counsel is permitted to participate in the case from the moment mental illness is established.

In a number of cases clarification of information on the defendant's health is required if we are to establish the circumstances behind the crime being investigated (for example in cases pertaining to infection by venereal disease), and if we are to expose simulation and aggravation.

If the defendant is a woman, then if the grounds are present we must determine whether or not she is pregnant. Commission of a crime while pregnant is a mitigating circumstance. Moreover a woman who is pregnant at the time she commits a crime or at the time a verdict is rendered cannot be sentenced to death, exile, or deportation.

5. Information on the defendant's behavior, way of life, and circle of acquaintances is necessary not only for his description but also to insure completeness of the inquiry. In particular, establishment of the fact that an individual against whom criminal proceedings are instituted for embezzlement had been living beyond his means would have important significance as evidence.

Investigating a case instituted in connection with declaration of theft of goods that had allegedly occurred from the storage room of a store, testing the theory that the store manager had staged the theft the examining magistrate established that the latter, who had worked at the store for one and a half years, regularly drank with workers of the village general store. Moreover witnesses testified that he had acquired a number of valuable articles, including a motorcycle and bicycle, within a short period of time. When the property was described it was found that out of 42 objects that were seized, 30 were entirely new. The examining magistrate attached a statement of the village general store's accounting office concerning the wages of the store manager to the case (he received about 100 rubles per month). His family consisted of five individuals and servants, and no one beside himself worked. Taken together with other evidence, these facts permitted the examining magistrate to expose the store manager's appropriation of material valuables entrusted to him and his attempt at staging the theft.

Failure by an examining magistrate to carefully examine the defendant's way of life prior to the moment he committed the crime under examination can hinder full exposure of his criminal activity. Usually such a shortcoming occurs in cases in which adequate attention is not devoted in examination of a crime committed by a recidivist to revealing the way of life of the defendant in the time from his release from prison to his arrest for the crime under examination.

Examining a case in which Shestakov, who had been convicted in the city of Lugansk, was accused for participating in a gang rape, the examining magistrate did not study the defendant's personality, restricting himself to an examination of only this crime. Had he become interested in Shestakov's personality and his past, he would have established that the latter had not been occupied in socially useful employment and had been convicted of larceny in 1946. Released from prison, in December 1947 he was once again convicted of larceny. After serving his sentence, in 1954 Shestakov was convicted of larceny for a third time. Possessing such data the examining magistrate should have been more critical of Shestakov's testimony that after serving his last sentence he worked in civil service and had not committed other crimes prior to his arrest. Unfortunately the examining magistrate sent the case to court without doing so. Later, when in prison, Shestakov reported that he had committed many thefts in Luganskaya Oblast and another rape. Inquiries into his statement established that after his release, Shestakov had not worked anywhere for 3 years and committed 28 thefts of state and personal property, and a rape.[19]

As far as information on the defendant's ties is concerned, it is necessary in revealing his conspirators and, in addition, it may help the examining magistrate reveal valuables acquired in a criminal manner, which defendants often conceal from relatives and acquaintances.

Information on the defendant's past life and activity is necessary in obtaining the fullest impression of him as a family member. It is very important for the examining magistrate and the court to know whether the defendant had worked honorably or had not worked anywhere. As has been noted correctly in the literature, "to evaluate the social danger of an individual it is important that we must not fail to evaluate his past life, activity, and behavior preceding his assumption of a criminal course, or his behavior in the past in general; on tne contrary we are even obligated to do so in proper fashion."[20]

However, data on a defendant's past activity not only describe the defendant but also can sometimes help the examining magistrate establish the circumstances of the crime and the guilt of the given individual, as well as to reveal others who had committed the crime together with him.

> Exa ining a case instituted in response to a statement by the manager of Store No 13 that a theft had been committed by unknown criminals, the examining magistrate developed the suspicion that a theft had not really occurred, but rather that it was staged by the manager . Testing this hypothesis the examining magistrate became particularly interested in the suspect's former activity. He revealed that the suspect had formerly been manager of Store No 4, which he surrendered to another individual and himself assumed management of Store No 13. Interrogating the individual who had accepted Store No 4 from the suspect and the individual who had surrendered Store No 13 to the suspect, the examining magistrate established that a considerable shortage was revealed when the suspect surrendered Store No 4; the suspect compensated this shortage on the same day, bringing in various goods borrowed from the manager of Store No 13, from whom he subsequently accepted this store. Thus it was found that the shortage revealed in Store No 13 after the "theft" had existed before it. The exposed suspect confessed of staging the theft with the purpose of concealing the shortage.

Information on the role of a defendant's criminal activity is necessary for proper qualification of the crime he committed, for resolution of the issue as to the degree of his social danger and, consequently, for determination of the form and size of penalty that must be imposed upon him. Establishment of the defendant's past would insure proper resolution of the issue as to the suitability of recognizing the individual to be an especially dangerous recidivist.

Moreover we should keep in mind that information on crimes committed by a defendant in the past, particular on the methods, sometimes plays an important role in exposing all of his criminal activity, and in some cases revelation of the defendant's criminal past helps to establish the motives of the crime under investigation.

Information on former convictions is also needed by workers of corrective labor institutions so that they can properly determine the conditions under which the convict is to serve his sentence.

Finally, information on former convictions of the defendant also plays a no less important role in examination of criminal case by a higher court.

> Shilov was subjected to criminal proceedings for stealing goods from a store at which he worked as a guard. In the course of the inquiry and court examination of the case the defendant's personality was not studied, nor was it determined whether or not he had been convicted formerly. The materials of the case stated: "According to his own testimony he had not been convicted formerly." The procuracy dropped the sentence prescribed to Shilov by the rayon peoples' court to 5 years in prison, and then halved this sentence in compliance with an amnesty ukaze. Later, however, it was revealed that Shilov had been convicted many times for misappropriation, being paroled before serving his full sentence in the last case. Thus in compliance with the amnesty ukaze Shilov, as a habitual thief and as an individual who had been released on parole and once again committed a crime, was not subject to amnesty.

Unfortunately despite a directive from the USSR Procurator's Office examining magistrates do not always devote due attention to clarifying the former criminal activity of a defendant, restricting themselves sometimes to information provided by the defendant himself during interrogation, which is not always true.

6. Information on personal qualities and character traits of the defendant helps the examining magistrate not only to completely describe the defendant but also to gain a deep understanding of the causes behind the criminal act, and to establish the subjective side of the crime and, chiefly, the motives behind it, as well as the role of the defendant in it.

The habits of the defendant, his physical features, his character, temperament, presence of unfavorable qualities (greed, cowardliness, cruelty), and so on must be revealed. The importance of carefully studying the character, which is defined as the "individually, clearly pronounced and qualitatively unique psychological traits of a person, influencing his

behavior and acts,"[21] stems from the fact that character traits are "complex individual features of a person that are sufficiently indicative of him and permit prediction of his behavior with known probability.... Knowing the character traits of a person we can predict his actions with a certain probability."[22] Therefore, having studied the particular character traits of the defendant the examining magistrate would be able to hypothesize as to whether or not the defendant could have performed certain actions and, if he had performed them, he would be able to determine the true motives behind them. It is no less important to study the temperament, inasmuch as it "is the most general characteristic of every individual, the most basic characteristic of his nervous system, and this system makes a particular impression on all activity of each individual."[23]

As a rule, M. S. Strogovich notes, "presence of a motive as a subjective factor is usually derived from other objective facts--from the defendant's behavior, from the fact of a dispute with his victim, from threats the defendant had made, from the profit (material or other) the defendant would have enjoyed if the victim were to be eliminated, and so on. Making such a conclusion on the subjective motives, the intentions of the defendant from objective facts is a very complex matter: The same facts may produce different motivations, experiences, and intentions in different people. Therefore a conclusion on subjective motives, intentions, and so on based on objective facts established in the case must be made with great caution, as a result of an analysis of the defendant's personality features."[24]

Practice shows that an individual often decides to commit a crime after his minor offenses do not promptly receive a proper assessment on the part of comrades at work, social organizations, and state agencies. An offense that is not suppressed in time is repeated once again and becomes a bad habit. For example coarseness in relation to servants, neighbors, innocent persons, or coworkers can develop, in time, into malicious pranks, while cynical, coarse communication with a woman may lead to a crime against morality. It stands to reason that not every rude individual or cynic progresses to crime, but every hooligan had formerly been coarse and tactless in relation to surrounding individuals, and every rapist had at some time manifested a cynical, insolent relationship toward a woman.

Moreover, analysis of the defendant's character traits would provide a possibility for clarifying whether or not circumstances exist that mitigate or aggravate responsibility.

Inasmuch as the defendant's personality is manifested in the crime he committed as well, the examining magistrate must clarify the circumstances behind the crime not only within the limits necessary for establishing the content of the crime but also from the standpoint of the personality traits the defendant displayed in its commission. With this purpose it is important to gather information on the concrete expression of the defendant's participation in the crime under examination: Had he had the initiative, or did he act under the influence of other persons? What

is the form of guilt and the motive? When did the idea arise, and was it manifested in preparations for the crime or in its concealment? Had the implement of the crime been prepared beforehand? If the crime had been committed carelessly, in what form was it committed? Did the defendant commit the crime while sober or in an intoxicated state (if he had been intoxicated, then what was the degree of drunkenness, how much did he drink and when, and how did he normally behave when intoxicated?)? Did he drink on purpose prior to the crime, or was he intoxicated irrespective of the crime?[25]

Such is the range of information that must be clarified in research on the defendant's personality. It stands to reason that this list of information on the defendant's personality cannot be interpreted as mandatory and exhaustive. The nature of the information required must be determined by the examining magistrate with a consideration for the form of crime, the specific circumstances of the crime being investigated, and the defendant's personality. Some information may often be found to be surplus, while sometimes other data not examined here may be required. It all depends on which aspects of the defendant's personality have a bearing on the motive, the modus operandi, and other circumstances of the crime being investigated. Therefore the range of information characterizing the defendant's personality and requiring clarification, as well as the depth to which it is studied, will differ for a case of misappropriation of state or public property, or for a case of abuse of position on one hand, and for cases of murder, robbery, and rowdy behavior on the other. In particular, when investigating a murder for profit it is important to gather detailed information on the defendant's material living conditions. If the criminal was materially secure, then murder committed by him for a profit motive would indicate especially clearly that both the act and the defendant's personality are socially dangerous. But if it is obvious that murder had been committed for profit under the influence of real need, an extremely rare case under our conditions, then this may be recognized as a mitigating circumstance. At the same time if the murder occurred during a fight and the participants were drunk, material conditions do not play the decisive role. In this case it is important to establish such circumstances as delivery of the defendant to a sobering station, his public censure at his place of residence, petty rowdyism committed by him, and such character traits as coarseness, impudence, impertinence, and so on. If the crime was committed at the place of work then the defendant's attitude toward labor, his compliance with labor discipline, participation in social life, measures of administrative and social influence imposed against him, and so on acquire special significance. Under other conditions, for example when a wife murdered a husband out of jealousy, these circumstances would not have significant meaning to the case, while the behavior of the defendant in the family, her relationship to her husband, and some character traits (hot temper, cruelty, suspiciousness, and so on) would turn out to be extremely important.

In a murder case aggravated by rape we need to clarify whether or not the defendant was mentally or physiologically deviant, and we need to establish whether or not he had encroached upon the honor of women in the past or displayed character traits such as impertinence, cynicism, and lack of discipline. The list of these questions demonstrates by itself that they are specific to a crime committed on sexual soil.

Special attention should be devoted in an inquiry on violations of labor protection regulations to gathering information on the defendant's past activity and on his attitude toward his service obligations; meanwhile, in a case of malicious evasion of alimony payment special attention should be devoted to the moral countenance of the defendant and his attitude toward the family.

The range of information on the defendant's personality to be clarified will differ significantly, in the same way, depending on whether the defendant is an individual who lives and works in a certain place and had committed a crime for the first time, or he is a criminal recidivist working nowhere, not having a permanent place of residence, and leading a parasitic way of life.

However, we should not conclude from the above that no attention should be devoted to information on the defendant's personality not associated directly with the circumstances of the crime. This information has significance to correct examination of the case. It helps the examining magistrate to properly evaluate the evidence he possesses and, in a number of cases, to reveal new evidence, and it helps the court to take full account of the personality of the individual committing the crime, to properly determine his social danger, and thus to promote individualization of the punishment.

In this connection we cannot agree with the opinion of M. S. Strogovich, who believes that the defendant's work at his place of employment and public work have no significance as mitigating circumstances in a case of premeditated murder for profit, out of jealousy, and other base motives, and that "if the court were to take account of such work, even though it may be quite positive, as a mitigating circumstance, this would doubtlessly be a distortion of the tasks of court activity."[26]

It would appear that B. Korsakov and A. Lyubavin take the correct approach. They write that "the defendant's attitude toward his work and social obligations would have differing significance in a case of malfeasance and in a murder case. In the first case his attitude may be not only a mitigating or aggravating circumstance when determining the punishment, but it may also encourage release from punishment. In a murder case, meanwhile, it appears to us that it would not have such a decisive significance, but we cannot fully negate its significance as a circumstance affecting the size of the penalty, and on this basis we cannot exclude it as evidence from a case of this category."[27]

It is not by chance that the Plenum of the USSR Supreme Court stated in Decree No 4, 4 June 1960, "On Court Practice in Cases of Premeditated Murder," that "it is very important in murder cases to clarify data on the personality of the accused, which should include not only his first name, middle name, last name, and age, but also information on his family position, his pursuits, his attitude toward work, his behavior at home, his past, and other information describing the positive and negative aspects of the accused."[28] In another decree the Plenum of the USSR Supreme Court turned the attention of the courts to the fact that "when resolving the issue of guilt the court must not examine actions incriminating the accused in isolation from the positive aspects of his activity."[29] This is why in all cases information on the defendant's personality must be clarified in a volume and completeness that would insure establishment of not only the content of the crime but also all other circumstances characterizing the defendant's personality and having significance to the case. In particular, "those aspects of the defendant's personality which are in correspondence or, oppositely, in direct conflict with the nature and features of the criminal act being examined by the court and thus having an influence on the decision on the defendant's guilt and on the extent of his responsibility, are subject to analysis."[30] As Yu. Manayev correctly notes, "the personality of the individual at fault must be evaluated in its concrete manifestations, and not only in crimes but also in other living situations."[31]

At the same time we should emphasize that when studying the defendant's personality we must not invade his intimate life if it does not have a bearing on the crime being studied and the causes promoting its commission.

FOOTNOTES

1. The presentation in this work on research on the defendant's personality pertains in equal measure to the personality of a suspect, of course with a consideration of his status in the proceedings.

2. Mud'yugin, G., and Stepichev, S., "What Research on Murder Cases Has Shown," SOVETSKAYA YUSTITSIYA, No 24, 1966.

3. SOTSIALISTICHESKAYA ZAKONNOST', No 9, 1959.

4. See for example the decision on the Krylov case (BYULLETEN' VERKHOVNOGO SUDA RSFSR, No 5, 1966, p 12); on the Aliyev case, on the Blednov and Budayev case, and on the Sinitsin case ("Sbornik postanovleniy Plenuma, Prezidiuma i opredeleniy Sudebnoy kollegii po ugolovnym delam Verkhovnogo Suda RSFSR 1961-1963 gg." (Collection of the Decrees of the Plenum and Presidium and Decisions of the Collegium for Criminal Cases of the RSFSR Supreme Court, 1961-1963), Izd-vo Yuridicheskaya Literatura, 1964, pp 155, 156). Thus, altering the sentence in the case of Blednov and Budayev, the Collegium for Criminal Cases explained its action by the fact that the court had prescribed an excessively severe punishment for these individuals

without a consideration for their personalities and, in particular, for the fact that they "had not been convicted formerly, possess young children, and have done socially useful work at the kolkhoz."

See Leykin, N. S., "Lichnost' prestupnika i ugolovanaya otvetstvennost'" (The Personality of the Criminal and Criminal Responsibility), Izd-vo LGU, 1968, for greater detail on the significance of the criminal's personality to resolving the issues of release from criminal responsibility, institution of criminal proceedings, and prescription of punishment.

5. An examination of issues pertaining to research on the criminal's personality based on a group of cases would range beyond the bounds of the present work, since this is a subject of criminological analysis (concerning this, see for example Sakharov, A. B., "O lichnosti prestupnika i prichinakh prestupnosti v SSSR" (The Personality of the Criminal and the Causes of Criminality in the USSR), Gosyurizdat, 1961; "Voprosy metodiki izucheniya i preduprezhdeniya prestupleniy" (Issues in the Procedures for Studying and Preventing Crime), Gosyurizdat, 1962; Gertsenzon, A. A., "Vvedeniye v sovetskuyu kriminologiyu" (Introduction to Soviet Criminology), Izd-vo Yuridicheskaya Literatura, 1965; Stepichev, S. S., "Research on Individual Types of Crimes and Practical Use of Its Results," in "Problemy iskoreneniya prestupnosti" (Problems in Uprooting Crime), Izd-vo Yuridicheskaya Literatura, 1965; "Sovetskaya kriminologiya" (Soviet Criminology), Izd-vo Yuridicheskaya Literatura, 1966; "Kriminologiya" (Criminology), Izd-vo Yuridicheskaya Literatura, 1968).

6. See for example the decision of the Collegium for Criminal Cases of the RSFSR Supreme Court in the Ivanov case ("Sbornik postanovleniy Prezidiuma i opredeleniy Sudebnoy kollegii po ugolovnym delam Verkhovnogo Suda RSFSR 1957-1959 gg." (Collection of Decrees of the Presidium and Decisions of the Collegium for Criminal Cases of the RSFSR Supreme Court, 1957-1959), Gosyurizdat, 1960, pp 23-24).

7. Altering the sentence in the Simontenkova case, in which Simontenkova was sentenced to 2 years of imprisonment for stealing a lady's purse containing money, and deciding that this punishment was arbitrary, the Collegium for Criminal Cases of the RSFSR Supreme Court explained its decision by the fact that the convict, a mother of two young children, was pregnant at the time she committed the crime. Simontenkova had not been convicted formerly, and she had returned the stolen article to its owner. Simontenkova's husband, who had formerly been a teacher, was a pensioner at that time, stricken with pulmonary tuberculosis. All of this indicates concurrence of difficult family circumstances for Simontenkova (SOVETSKAYA YUSTITSIYA, No 11, 1959, p 88).

8. See for example the decision of the Collegium for Criminal Cases of the USSR Supreme Court in the Omel'kovich case and the Molashvili case; in particular, denying a protest by the USSR General Procurator, who requested

change of sentence for Molashvili from death by firing squad to 15 years of imprisonment, the collegium explained its action by stating that "Throughout his whole life Molashvili had not worked anywhere and led a parasitic way of life. In 1949 he was convicted of speculation; after serving his sentence he was again convicted for robbery; nor did he seek employment anywhere after completing his sentence in 1958, less the working days accrued" (BYULLETEN' VERKHOVNOGO SUDA SSSR, No 5, 1962, pp 34, 35); USSR Supreme Court Plenum Decree No 7, 26 August 1966, "On Improving the Activity of Court Agencies in Fighting Crime" (BYULLETEN' VERKHOVNOGO SUDA SSSR, No 5, 1966, p 14).

9. "Sovetskaya kriminologiya," Izd-vo Yuridicheskaya Literatura, 1966, p 185.

10. "Voprosy metodiki izucheniya i preduprezhdeniya prestupleniy," Gosyurizdat, 1962, p 14.

11. Mel'nikova, Yu., "Consideration of Data on the Convict's Personality by the Court," SOTSIALISTICHESKAYA ZAKONNOST', No 1, 1969.

12. Kovalev, A. G., "Psikhologiya lichnosti" (Psychology of the Personality), Izd-vo Prosveshcheniye, 1965, p 14.

13. Kon, I. S., "Sotsiologiya lichnosti" (Sociology of the Personality), Politizdat, 1967, p 7.

14. We note that authors of works devoted to research on the defendant's personality propose a different categorization of information making up in its entirety the volume of such research. For example N. T. Vedernikov developed the following classification for information on the personality of a subject who had committed a crime:

    1. Biographical data.
    2. Information on material situation.
    3. Information on health and the psychological features of the guilty individual.
    4. Social-production description.
    5. Sociopolitical description.
    6. Social-domestic description.
    7. Attitude of the guilty individual toward his act and his behavior in the course of the inquiry ("Izucheniye lichnosti prestupnika v protsesse rassledovaniya" (Research on the Criminal's Personality During an Inquiry), Tomsk, 1968, p 33).

    The authors of the present book had also grouped information on the defendant's personality somewhat differently in their previous work. For example in the first edition of this book (Moscow, 1961) and in the book "Voprosy metodiki izucheniya i preduprezhdeniya prestupleniy" (Moscow, 1962) this information was divided into 10 groups, and it was divided into eight groups in the article "Volume and Methods of Research on the Defendant's Personality" (SOTSIALISTICHESKAYA ZAKONNOST', No 3, 1965).

N. S. Leykina proposed dividing information on the criminal's personality subject to clarification during an inquiry and court examination of a case into the following four groups:

1. Biographical data and psychophysical features.
2. Psychological features.
3. Social-production description.
4. Social-domestic description ("Lichnost' prestupnika i ugolovnaya otvetstvennost'," Izd-vo LGU, 1968, pp 127-128).

However, despite differences in both the names of the proposed categories and the distribution of individual indices among these categories, all authors believe that research on the defendant's personality must produce information describing, with adequate completeness, the subject as an individual and as a member of society.

15. See for example the decision on the Shitiv (Shchyetye) case and the M. case ("Sbornik postanovleniy Plenuma i opredeleniy Kollegiy Verkhovnogo Suda SSSR po voprosam ugolovnogo protsessa, 1946-1962 gg." (Collection of Decrees of the Plenum and Decisions of the Collegium of the USSR Supreme Court Concerning Issues in the Criminal Process, 1946-1962), Izd-vo Yuridicheskaya Literatura, 1964, pp 252, 253). Thus the Collegium for Criminal Cases of the RSFSR Supreme Court denied the protest of the RSFSR Deputy Procurator and agreed with the decision of the peoples' court, according to which the case against Krylov was returned for additional inquiry because the agencies of preliminary inquiry had not fully clarified data on Krylov's personality; in particular, they had not established his place of birth precisely (BYULLETEN' VERKHOVNOGO SUDA RSFSR, No 5, 1966, p 12).

16. The decision of the Collegium for Criminal Cases of the USSR Supreme Court concerning the case of Leshchevskiy and Misyunas stated that providing an interpreter to a defendant unfamiliar with the language in which the legal proceedings are being conducted is one of the constitutional principles of Soviet justice, and failure to comply with this principle would mean reversal of the sentence (Sbornik postanovleniy Plenuma i opredeleniy Kollegiy Verkhovnogo Suda SSSR po voprosam ugolovnogo protsessa, 1946-1962 gg.," p 17).

17. See for example the decision in the Arakelov case, in which it was stated that when data are present producing doubt in the mental integrity of the defendant, investigatory agencies and the court are obligated to call a psychiatric expert commission (Sbornik postanovleniy Plenuma i opredeleniy Kollegiy Verkhovnogo Suda SSSR po voprosam ugolovnogo protsessa 1946-1962 gg.," p 134).

18. Thus the Collegium for Criminal Cases of the USSR Supreme Court reversed the sentence in the Kirillova case inasmuch as Kirillova was deaf and the case was examined by the court without participation of counsel (Ibid., p 21).

19. From materials of the Lugansk Procurator's Office.

20. Karpets, I. I., "Some Issues in the Methodology of Criminal Law and Criminological Research," SOVETSKOYE GOSUDARSTVO I PRAVO, No 4, 1964, p 101.

21. Levitov, N. D., "Voprosy psikhologii kharaktera" (Problems in the Psychology of the Character), Moscow, 1956, p 14.

22. "Psikhologiya" (Psychology), Uchpedgiz, 1948, pp 439-440.

23. Pavlov, I. P., "Dvadtsatiletniy opyt raboty" (Twenty Years' of Experience in Work), Medgiz, 1956, p 299.

24. Strogovich, M. S., "Material'naya istina i sudebnyye dokazatel'stva v sovetskom ugolovnom protsesse" (Material Truth and Legal Evidence in the Soviet Criminal Process), Izd-vo AN SSSR, 1955, p 372.

25. Mud'yugin, G., and Stepichev, S., "Research on the Personality of the Defendant and the Victim During Inquiries into Murders and Bodily Assaults," SOTSIALISTICHESKAYA ZAKONNOST', No 12, 1966.

26. Strogovich, M. S., op. cit., p 278.

27. Korsakov, B., and Lyubavin, A., "Research on the Defendant's Personality," SOTSIALISTICHESKAYA ZAKONNOST', No 2, 1959, p 23.

28. BYULLETEN' VERKHOVNOGO SUDA SSSR, No 4, 1960, p 50. Thus the Collegium for Criminal Cases of the USSR Supreme Court indicated in its decision on the case of Shtan'ko, convicted for murder, that the attitude of the accused toward his social obligations also had important significance to the question of punishment in such cases as well. In particular the collegium explained this decision by the fact that "the testimony of witnesses and the description attached to the case indicate that the collectives and the administration of the enterprise in which Shtan'ko had worked describe him as a good comrade without any faults, and that Shtan'ko had been recognized many times for good indices in fulfilling his production assignments" (BYULLETEN' VERKHOVNOGO SUDA SSSR, No 5, 1960, p 35).

29. "Voprosy ugolovnogo protsessa v praktike Verkhovnogo Suda SSSR" (Issues in Criminal Process in the Practice of the USSR Supreme Court), Yurizdat, 1948, p 74.

30. Grodzinskiy, M. M., "Court Analysis of the Defendant's Personality," ZHURNAL MINISTERSTVA YUSTITSII, No 8, 1916, p 69.

31. Manayev, Yu., "Individualization of Punishment With a Consideration for Circumstances Characterizing the Guilty Individual's Personality," SOTSIALISTICHESKAYA ZAKONNOST', No 9, 1967, p 35.

CHAPTER II

SIGNIFICANCE OF INFORMATION ON THE DEFENDANT'S PERSONALITY AND HIS BEHAVIOR AS EVIDENCE

§1. Significance of Information on the Defendant's Personality as Evidence

The question as to the significance of information obtained by studying the defendant's personality as evidence should be answered on the basis of the general premises of the theory of evidence in the Soviet criminal process and the requirements of the law of criminal procedure.

According to Article 16 of the Fundamental Principles of Criminal Legal Proceedings of the USSR and the Union Republics, evidence in a criminal case would include any facts on the basis of which inquest agencies, the examining magistrate, and the court establish, in the order prescribed by law, the presence or absence of a socially dangerous act, the guilt of the individual committing this act, and other circumstances having significance to proper resolution of the case. These data are established through testimonies by witnesses, the victim, the suspect, and the accused, through conclusions of an expert, through material evidence, and through the records of investigatory and court actions and other documents.

If the facts obtained through a study of the defendant's personality are to be permitted as evidence in a case, they must, first of all, establish presence or absence of a crime, the guilt of the individual committing it, or other circumstances having significance to proper resolution of the case; secondly, the facts must have been obtained by due process and from sources foreseen by law.

According to Article 69 of the RSFSR UPK [Code of Criminal Procedures] and appropriate articles of the UPK of other union republics, all circumstances having significance to a case, including those characterizing the defendant's personality, can be established by investigatory agencies, the examining magistrate, and the court only on the basis of evidence obtained through due process--that is, by law. This of course does not preclude the possibility of unofficial discussions with representatives of society, with acquaintances of the defendant, and with his relatives and other individuals who might have

knowledge of significant circumstances characterizing his personality. But information obtained in this manner is not admissible, and it can serve only as leads in searching for and collective evidence.[1]

Besides information from other individuals, communication with the defendant by the examining magistrate in the course of inquiry may produce a certain impression on certain qualities of the defendant. In this connection the following question arises: Does the examining magistrate have the right to use such observations as grounds for his conclusions on the nature of the case in his indictment or in another procedural document summarizing the results of the inquiry? A positive answer to this question would conflict with the law. The examining magistrate and the court can make conclusions as to presence or absence of circumstances having a significance to the case only on the basis of evidence--that is, facts obtained by due process. However, this does not mean that observation of the defendant's behavior does not have any general significance to research on his personality. On the contrary it is necessary, and it often makes it possible to establish extremely important data.

> Thus in a misappropriation case the examining magistrate turned his attention to the fact that the accused, A., who had been chief of a department of workers' supply, was uneducated. This information did not correspond to that in the case indicating that he had a special education, which he received not long before the case was opened. The examining magistrate decided to check the documents pertaining to his education. His inspection showed that the school certificate A. presented when applying to a tekhnikum was false.

It follows from this that as with information obtained from sources other than legal proceedings, the personal observations of an examining magistrate, which are not a substitute for evidence, help to determine the direction of inquiry.

The demand for attaining truth in a case is incompatible with the use of information on the defendant's personality that is general, nonspecific and, therefore, unable to be checked out. Therefore general information containing assertions that the defendant is "irresponsible," "uncorrectable" or, on the other hand, "morally strong," "has authority," and so on should be recognized as inadequate. Such judgments acquire significance only to the extent that they derive from specific facts concerning the behavior of this person. To an equal degree, not every act by the defendant can be interpreted as one characterizing his personality. Only those acts which reflect relatively stable behavior of the defendant should be used to describe the personality.

A particular set of information on the defendant's personality must be clarified in each case. However, this information is variable in its significance to legal proceedings and can be divided into two basic groups.

The first includes data on the defendant's personality included within the object of proof in the case, mandatory clarification of which is foreseen by the law of criminal action (Article 68, RSFSR UPK). Data on the defendant's personality, which characterize the subject as an element of a crime (age, responsibility) and identify him (last name, first name, middle name, sex, and other demographic data), as well as data having significance as aggravating and mitigating circumstances, and circumstances promoting commission of the crime, are included in this group. The second group includes data on the defendant's personality existing as facts of evidence--that is, facts of an auxiliary nature serving as a resource by which to establish the circumstances contained within the object of proof.[2] These data reflect traits and properties of the defendant's personality usually having significance as indirect evidence.

It stands to reason that this division is arbitrary inasmuch as the same data may pertain to both the first and the second group, and sometimes simultaneously to both. For example information on the defendant's occupation and nature of pursuits is usually included within the object of proof in the case; at the same time it can sometimes play the role of indirect evidence in cases pertaining to crimes requiring certain occupational skills. However, this should not serve as grounds for confusing information on the defendant's personality contained within the object of proof and remaining outside it. Correct resolution of the question of placing certain information on the defendant's personality into the first or second group would insure completeness of the evidence of the case and its objective evaluation. Meanwhile, failure to consider such a division may distort definitions, as a result of which circumstances that must be proven would be interpreted as evidence, and this in turn may lead to erroneous conclusions in resolving the question of guilt.

The significance of information on the defendant's personality as evidence, when it plays the role of indirect evidence of guilt or innocence of the given person, is the most complex question. Therefore we will examine it in greater detail.

The significance, as evidence, of certain information characterizing the defendant's personality depends chiefly on the specific circumstances of the case being investigated. For example, information on the defendant's attitude toward his service obligations may be significant as evidence, if criminal proceedings are instituted against the individual for negligence or malfeasance. The same may be true for information on his behavior within the family if criminal proceedings are instituted against him for murdering his wife or avoiding payment of alimony.

As M. S. Strogovich rightfully notes, "when an official is accused of negligence in his obligations, the attitude of the accused toward his service obligations prior to the event which served as the grounds for instituting criminal proceedings has very great significance; in this case, the defendant's

former service may shed light on the defendant's action that serves as the object of the given case: Is a truly negligent attitude toward service obligations obvious in the defendant, or is this a chance error, a solitary case of delusion, an unintentional failure?"[3]

The significance, as evidence, of information on attitude toward service obligations displayed by an individual against whom criminal proceedings are instituted for malfeasance has been noted several times by the Collegium for Criminal Cases of the USSR Supreme Court.[4]

But if the accused is subjected to criminal proceedings for, as an example, robbery or moonshining, then information on his attitude toward service obligations or on his behavior within the family would not have, in this case, significance as evidence in relation to the crime. However, it would characterize the defendant and, consequently, it would have significance as circumstances affecting the degree and nature of his responsibility, and therefore it should be contained within the object of proof in the case.

The significance of information characterizing the defendant's personality as evidence in a case has been noted in a number of decisions of the Collegium for Criminal Cases of the USSR Supreme Court.[5]

The opinion has already been suggested in legal literature that information reflecting traits and properties of the defendant's personality not only has significance to prescription of the punishment. It can also play the role of indirect evidence of the guilt or innocence of this person. M. M. Grodzinskiy had written that when analyzing the question of a person's guilt the examining magistrate must study the defendant's personality, "inasmuch as this would be required for revealing the personal properties and traits of character that may be in correspondence or in conflict with the given act and, in particular, with his motive, and which would strengthen or weaken the evidence gathered in the case against the given person," and that "analysis of the defendant's personality may also be found to be necessary and useful when the court must resolve the basic question as to whether the given person committed the act or the latter had not been involved in the crime serving as the object of court examination."[6]

Ya. O. Motovilovker also shares this point of view. His opinion is that in a case of fraud involving falsification of records, information having significance as evidence would include the fact that the defendant had used the same method to falsify records earlier, since "there is a hypothetical, objective relationship between use of a competently falsified record in this case and the circumstance that the defendant has certain skills and experience in falsifying records for criminal purposes. Ignoring this circumstance, in our opinion, would not promote establishment of truth in the case."[7]

It appears that this point of view is correct.[8] In fact, in a criminal case involving counterfeiting, establishment of the fact that the defendant

had made use of similar procedures earlier to manufacture counterfeit money does have certain significance as evidence even though it does not prove that precisely this person had committed the crime being investigated. In particular, establishment of this fact would refute the defendant's testimony that he does not know how to produce counterfeit money.

Thus, as is true with presence of special knowledge, capacities, or skills used earlier for criminal purposes, the physical, mental, moral, and ethical qualities of the defendant as well as traits of his character may have significance as evidence in the evaluation of the entire sum of evidence gathered in the case.[9]

Thus some information on the physical properties of the defendant (for example in a crime requiring considerable physical strength) and on his health (for example in a case involving infection with venereal disease) may be used as evidence in the objective aspect of a crime.

Information on a defendant's work skills and occupation (in particular, welding skills in a safe-cracking case, knowledge of anatomy in a murder case involving dismemberment of the corpse) has considerable significance to the question as to whether or not the defendant could have committed an act that may incriminate him.

Unique features of the defendant's character may also be of no less significance.

External characteristics may sometimes have significance to the question as to whether or not the individual accused is the one who had committed the crime.

Information on the criminal matching distinctive characteristics of the accused, particulary the finger prints, which would be evidence of that person's presence in the place in which they were detected, can be used as indirect accusatory evidence. Identification of the individual on the basis of typical outward characteristics can also serve as indirect evidence.

The outward characteristics of the criminal may be reflected in the clues and objects discovered at the place of the crime. Marks made by the hands, legs, and teeth, as well as hair, clothing, and cigarette butts revealed during an inspection are valuable sources of information on the personal features of the criminal. In some cases the agreement or disagreement of such information with information on the defendant's personality may lead to conviction, while in other cases it may lead to exoneration.

However, we must not forget that the significance of such information to revealing a crime is considered not only by investigators and the court but also by the criminals themselves. Therefore to disorient the investigator they sometimes intentionally wear shoes of the wrong size or leave objects belonging to other people at the place of the incident, and so on. But such traps would not hinder establishment of the truth if information on

the criminal's personality having significance as indirect evidence is subjected, together with other materials of the case, to thorough inspection and careful, critical evaluation during the inquiry and the court examination.

Thus information on the defendant's personality may play the role of indirect evidence (both that which condemns and that which exonerates) used in resolving the issue as to the person's participation or nonparticipation in the crime under investigation, his guilt or innocence, and the goals and motives of his actions.

However, not all information on the defendant's personality can have significance as indirect evidence of his guilt. In particular, it would be wrong to use the defendant's past record of convictions as evidence of his guilt in the crime being investigated, since presence of a criminal record in the past acquires significance only after the person's guilt in the case under examination is proven.

A record of convictions cannot serve as evidence of guilt of the defendant in a case presently under investigation or examination.

> The USSR Supreme Court Plenum dismissed a case against Davydov, who was convicted of robbery, rape, and assault, stating that there were grounds in the case materials for concluding that agencies of preliminary investigation had not taken steps to reveal and establish the persons who had committed the crime. Criminal proceedings were instituted against Davydov in this case due to one-sided, unobjective assessment of information on Davydov's personality, from which we can see that he had been subjected to criminal action in the past and was convicted for gangsterism.[10]

However, although the fact of former convictions cannot serve as evidence of the defendant's guilt in the case undergoing investigation or examination, this should not preclude investigation of the information in the case in which the accused had been convicted earlier.

A distinction should be seen between information indicating a former conviction--that is, a verdict of guilty for the particular person, and evidence that served as the grounds for such a verdict. Facts, including information on the defendant's personality, contained in a case in which the defendant had been convicted earlier, retain their significance as evidence after the sentence is passed. They can be used as evidence once again when the individual is subjected to criminal action a second time.

According to the interpretation of Article 88 of the RSFSR UPK, a verdict of guilt or innocence in another case can serve as a document in the materials of a case presently under investigation. The significance, as evidence, of such a verdict as a document is not restricted to certification of the fact of former conviction. It contains information on the defendant's personality,

a description of the criminal act indicating the place, time, and method of its commission, the nature of guilt, and the motives and consequences of the crime, and other information that had been checked out in its time. Because facts that may have significance to a new case are presented in it, citing the sources, the verdict satisfies the demands imposed upon derived evidence.

In this case we should emphasize that, in the first place, it is not the conclusions of the court on a former case but rather the facts upon which these conclusions were based that have significance as evidence in the case under examination in regard to the defendant's guilt or innocence; secondly, these facts must be subjected to the same thorough testing as all other evidence. Since a verdict used as a document in another case is secondary evidence, then the initial source--that is, the materials of the case in which it was made, can be used to check the data it contains. As a rule a case that has been investigated and examined in a qualified manner contains complete information on the defendant's personality, on his capabilities, habits, and ties, and so on. Therefore if we know that the defendant had been subjected to criminal action in another case, the latter deserves serious attention on the part of the examining magistrate and the court.

Discussing the possiblity for using information on the defendant's personality as indirect evidence, we should recall that no item of such information taken separately can serve as grounds for concluding on the guilt or innocence of the defendant. For such a conclusion, indirect evidence pertaining to the defendant's personality must be evaluated in its entirety and in combination with all other evidence gathered in the case. Presence of only information on the suspect's personality describing his negative side cannot be used as evidence of his guilt. As M. M. Grodzinskiy rightfully noted, "particular items of information on the defendant's personality cannot serve as independent evidence in the case because just the presence of known tendencies, habits, and features in the defendant cannot be used as grounds for a definite conclusion as to whether this person had or had not committed the given act; moreover, such information does not even afford a possibility for structuring a hypothesis on this issue of any logic whatsoever."[11]

Use of indirect evidence requires meticulous work, knowledge, and experience on the part of the examining magistrate and the court. They must know how to determine whether or not certain circumstances, including those characterizing the defendant's personality, can or cannot play the role of evidence under the given specific conditions. In particular, the most important criterion in evaluating the significance, as evidence, of a particular circumstance characterizing the defendant's personality must be the motive for the crime. We usually cannot interpret these circumstances as evidence if the motive is not clarified. We know that "not knowing the motive, we cannot understand why a person seeks one goal rather than another and, consequently, we cannot understand the true meaning of his actions."[12]

This is why, "if presence of a certain motive and its incorrespondence with the personal properties of the defendant are established, then this circumstance would serve as one of the arguments indicating that the defendant had not committed the crime; but when the reverse relationship holds the court would possess extremely important evidence as to the guilt of the given individual."[13]

In turn, as we had already noted, data on the personality have important significance to clarifying the motives behind a crime. In particular, this is stated directly in Decree No 4, 4 June 1960, of the USSR Supreme Court Plenum "On Court Practice in Cases of Premeditated Murder." "All of these data must be revealed," the decree states, "not only to determine the degree of the defendant's social danger and to prescribe the punishment, but also because they may have significance in a number of cases to revealing the circumstances of the crime and, in particular, the motives behind its commission."[14]

The main point is that when evaluating the significance, as evidence, of certain items of information characterizing the defendant's personality, investigators and workers of the procuracy and the court must evaluate the available evidence on the basis of their own internal convictions, grounded on a multifaceted, complete, and objective examination of all circumstances of the case in their entirety, guiding themselves by law and socialist justice.

§2. The Significance of the Defendant's Behavior as Evidence[15]

In addition to the data on the defendant's personality examined here, so-called "behavioral evidence" has great significance as evidence. Such indirect evidence is unique, in particular, in that it is produced by the defendant himself, who exposes himself through his own behavior. But its uniqueness is not restricted just to this alone. While evidence pertaining to the defendant's personality is in a sense static in nature (for example the properties, knowledge, and habits of the defendant at the moment the crime was committed), behavioral evidence reflects the defendant's personality in its dynamics--in his actions and statements. While data characterizing the defendant's personality exist independently of the crime incriminating him, behavior evidence is, on the contrary, closely associated with the crime. Moreover only that behavior of the defendant which is associated with the crime has significance as evidence. But if an association cannot be established between the defendant's behavior and the crime under investigation, then such behavior cannot serve as evidence. This is precisely why manifestations of the defendant's physical or moral state cannot be used as evidence. Reactions of the defendant to particular court proceedings may vary. For example a defendant may speak without pauses as if he were reciting a text by heart, or he may search for his words; he may remain indifferent, or he may become embarrassed; he may become embarrassed or indignant; he may pale or redden; he may cry or laugh, and so on. Such reactions

by the defendant depend basically upon his character or temperament, the state of his nervous system, and so on. It is practically impossible to establish the cause behind a particular psychophysiological reaction by the defendant and its association with his guilt or innocence. Therefore these reactions by the defendant are not treated as having significance as evidence in either Soviet criminal action or court practice and investigation.

Nor can a defendant's silence (his refusal to answer certain questions or to give any testimony at all) serve as evidence. This silence may be motivated, in the first place, by personal considerations of the defendant not associated with committing a crime, for example a reluctance to betray the true criminal; secondly, and what is most important, giving testimony is the right of a defendant and not an obligation. It stands to reason that reluctance of a defendant to exercise his right is not evidence of his guilt.

However, this does not mean that the examining magistrate and court should remain indifferent to the way the defendant reacts to questions. Confusion, avoidance of a direct response, sudden embarrassment, and reactions similar to these should be interpreted as unique indicators of the circumstances that should be checked out. Thus while such manifestations of the defendant's behavior do not have significance as evidence, they do have criminological significance, sometimes being the grounds for structuring an appropriate hypothesis.

Only the following forms of the defendant's (suspect's) behavior are recognized as evidence, irrespective of whether they are manifested after or prior to the crime:

1) Behavior associated with avoidance of impending punishment;

2) display of an awareness that would condemn the defendant--that is, awareness of events and the nature or circumstances of the crime which could be known only to persons guilty of the crime;

3) other forms of behavior indirectly indicating the defendant's recognition of his own guilt.

The first group of behavioral evidence, which is the largest, includes all forms of behavior manifested by the criminal to avoid responsibilities for the act.

This "defensive reaction" is manifested clearest of all by a criminal after he learns that agencies of preliminary inquiry suspect his participation in the crime. But even before this he sometimes tries to conceal the act from surrounding individuals.

Trying to avoid responsibility the criminal often does things which an innocent person would not do (for example he may destroy his clothing or simulate mental illness). In an attempt to find a likely explanation for

the consequences of the crime he often devises one version after another, failing to note that they contradict one another.

Because it is unnatural for an innocent person, such behavior raises suspicions among surrounding individuals, including the examining magistrate. But if it is subsequently revealed that such behavior could not have been elicited by neutral causes, it acquires significance as evidence, transforming into behavioral evidence.

Behavioral evidence of the first group includes the following types: Direct avoidance of investigation by the defendant, false testimony, falsification of evidence (including staging), and concealment and destruction of clues of the crime and other evidence. However, if these actions are part of the crime being investigated and are themselves subject to proof, then they cannot be interpreted as behavioral evidence (for example lying in a perjury case, avoidance of prosecution in a case of escape from the place of pretrial imprisonment).

Direct avoidance of investigation by the defendant can be expressed through concealed change in place of residence, living and hiding with false documents, simulating mental illness, and so on. Practice shows that such behavior by the defendant usually testifies to his participation in the crime.

Naturally, only true avoidance of investigation can be behavioral evidence; for example the defendant's failure to appear for interrogation cannot be interpreted as indirect evidence of his guilt. The cause of such behavior may not be associated with commission of a crime, and therefore we must always first clarify why the defendant failed to appear for interrogation.

Among methods of concealing the truth, we usually encounter false testimony by the defendant, or his falsehood in private letters, discussions, and so on. The defendant often advances a false version, and sometimes not just one but several mutually exclusive versions in succession; as one version is refuted by the examining magistrate he suggests another.

However, lying by the defendant is hardly always evidence of his guilt. Circumstances not associated with participation of the defendant in the crime may be the cause of lying. Therefore lying by the defendant can be interpreted as behavioral evidence only after an investigation excludes all neutral causes, and a desire of the defendant to mislead the examining magistrate and conceal his participation in the crime under investigation remains as the sole cause. Moreover, not every falsehood has significance as evidence. For example it is entirely obvious that false denial of guilt by the defendant is not evidence condemning him, even though it is engendered by a desire to avoid punishment. In this case it does not matter whether he falsely denies commission of the crime as a whole or some particular element of the crime, for example the intent.

Only the defendant's false denial of evidence condemning him or false alibis can have significance as evidence. As with all indirect evidence, these facts of lying by the defendant become evidence when a causal relationship can be hypothesized between such evidence and the defendant's guilt. For example if the defendant falsely asserts in a murder case that he had normal relationships with the victim, and if the examining magistrate establishes that they hated each other, then the defendant's participation in the crime could have been the cause for such testimony.

In such cases we unavoidably encounter the question: What is the reason for falsehood? After all, if the defendant is innocent then it would appear that he would have no need to lie, denying entirely harmless facts and thus hindering the inquiry. This produces the logical hypothesis that the most probable cause of the defendant's lying is his desire to avoid responsibility for the commissioned crime. This conclusion is also confirmed by the following considerations. In the Soviet criminal process, defendants do not bear criminal responsibility for false witness. On one hand the law encourages the defendant to give true testimony, interpreting open-hearted repentence as a mitigating circumstance and, on the other hand, it interprets the most malicious form of a defendant's lying--accusation of an innocent person--as an aggravating circumstance. Court practice interprets persistent lying by the defendant in the same way.[16]

The law of criminal action also imposes sanctions for a defendant's attempt at hindering establishment of the truth in the course of inquiry: Article 89 of the RSFSR UPK interprets such behavior by the defendant as grounds for imposing suppression measures on him. But, as we know, the defendant's falsehood lies at the basis of such attempts.[17] Therefore when the defendant knowingly lies, the probablity that such lying is elicited by his participation in the crime is usually rather high.

Falsification of evidence, the most widespread practices being false testimony by witnesses, especially false alibis by the defendant, and fabrication of false documents, is the gravest behavioral evidence. An example of falsification of documents may be notes from the victim prior to his death written by the murderer to establish an apparent suicide.

But while the writing of false documents enters into the objective side of the crime being investigated, it is not behavioral evidence. For example the writing of ficticious orders for removal of valuables being stolen is a necessary element of the method of the misappropriation and, therefore, cannot be interpreted as behavioral evidence.

Sometimes criminals try to use devised evidence to turn the suspicion of investigatory agencies to an innocent person. For example when committing murder, robbery, theft, and other crimes requiring that an individual be present at the place of the crime, criminals may leave the documents and property of others there.

Often the criminal creates an entire complex of devised evidence with the intention of staging the entire crime. The purpose of such staging is either to confirm a false version suggested by the criminal or to lead the examining magistrate himself to a false conclusion of advantage to the criminal. Criminals closely associated with the object of transgression resort to staging. Fearing that they may be suspected of the crime they try to direct the inquiry along a false path.

The first group of behavioral evidence also includes the defendant's destruction or concealment of clues of the crime and objects having significance as material evidence, for example removing blood spots from clothing or burning objects on which they remain, and destroying traces made by footwear and vehicles or compromising documents.

The more valuable the destroyed object and the less probable the causes of its destruction other than a desire to conceal clues of a commissioned crime may be, the more significance destruction of evidence has as behavioral evidence. Discovery of property held by the defendant, associated with the crime and concealed in unusual places (for example in the ground, in hay) also serves as evidence of the defendant's guilt.

The significance of awareness of the crime as evidence is grounded on the fact that most crimes are commissioned without witnesses, and therefore only the criminal can usually know of the crime's details (with the exception of the victim if he had been present and remained alive).

Manifestation of an awareness of guilt may be conscious (when the defendant confesses his guilt) or unconscious (when he denies his guilt).

Unconscious manifestation of awareness is of especially great interest. In this case the defendant, who does not want to reveal himself and who does not recognize the significance of his behavior, talks about circumstances of the crime, of which he would not have been aware had he not been a participant. A person who lies often forgets that he wants to conceal some particular circumstance and accidentally mentions it or a fact associated with it. This is understandable. There are two events in his memory at the same time--the one that actually occurred, which he wants to conceal, and the imaginary one, which he intends to discuss. Thus he must in a sense banish that which had occurred (and which is therefore remembered well) from his memory, and remember that which had not occurred and which the individual made up. Thus it is easy for him to make a slip.

Often a criminal demonstrates his awareness of the crime by actions rather than words. For example a husband who had murdered his wife, concealed her body, and asserted that he did not know why she disappeared, may begin to sell her property or marry another woman. The murderer performs these actions calmly, because he knows that his wife will not return, but he fails to realize that surrounding individuals may conclude properly from his behavior that he knows the true cause of his wife's disappearance--her

death. If this could not have been known to anyone other than the criminal, then it would follow from the husband's awareness that he was obviously a party to the concealed death of his wife.

Sometimes criminals show their awareness through inaction, manifesting criminal intent prior to commission of the crime.

A typical example of such inaction is the behavior of some women in infanticide cases in the period prior to birth of the child. If the future mother decides to simulate birth of a dead child she will fail to go to an obstetric hospital at the time of labor and will not call for a physician or midwife. But if the future mother decides to conceal birth altogether she would not even seek gynecological advice or apply for pregnancy leave. Such behavior indicates the woman's desire to conceal her pregnancy and birth of the child. But if the child disappears after birth, murder may be a cause of its disappearance. The woman would know beforehand that the child will disappear, but she naturally could not have predicted that it would be stillborn, and therefore the conclusion that the defendant had arrived at the idea of murdering the child immediately after its birth beforehand is logical and common in such situations.

Conscious display of awareness is observed when an exposed defendant confesses his guilt and therefore does not conceal that he knows what happened. Such information is obtained from the defendant by interrogation, by presenting victims or material evidence to him for identification, by performing investigatory experiments, by digging up objects from a place he designates, and usually by checking his statements at the scene of the crime.

On rare occasion we encounter behavioral evidence taking the form of the defendant's display of his unawareness of the facts. His awareness of circumstances which, were he innocent, would have been known to him, may turn out to be very persuasive evidence. This is precisely the basis for the widespread procedure of checking the explanations of persons suspected of theft. Suspecting that a suitcase (rucksack, purse, and so on) in the suspect's possession was stolen by him, he is asked to list and describe the objects in it. The thief is unable to do so.

Sometimes a defendant's assertion that a certain object belongs to him can be refuted by the fact that he does not know the characteristics, properties, and details of the given object.

Often he is unable to recognize an object that he suggests is well known to him.

> In her testimony, defendant Terletskaya often cited witnesses Gorev and Zhaboyedov, with whom she said she was acquainted. When the examining magistrate found Gorev and showed him to Terletskaya, she declared that this was Zhaboyedov, who had visited her together with Gorev, whom she also knew. But

> when Zhaboyedov was presented to her in a line-up with other men she declared that she had never seen any of them before.[18]

Acts and statements by a defendant indirectly indicating his awareness of his guilt can vary in nature.

> Learning that the procurator's office called in one of the participants of a misappropriation for questioning, store manager B. sent him a letter asking him not to "give him away"; leaving for the inquiry, B. left a note for his wife, informing her that he may possibly not return home because he will probably be arrested.

This category also includes display of heightened interest by some particular person in the inquiry or in public opinion on the case, which allegedly has no relationship to him whatsoever.

Often, a criminal in hiding who is not yet suspected by the investigatory agencies asks often and persistently about news on the crime in his letters to relatives. Sometimes he even underscores such sentences.

A criminal often tries to learn for himself how the inquiry is going and, chiefly, who is suspected of the crime he committed, sometimes even spying on the investigator.

It stands to reason that the significance of such behavior as evidence is not always equal: Frequently such behavior may be elicited by extreme curiosity or the erroneous apprehensions of an innocent person. Therefore this category of behavioral evidence has less significance than the first two.

As with other indirect evidence, the significance of behavioral evidence to the proceedings depends on the extent to which a relationship can be established between the given facts and the defendant's guilt. M. S. Strogovich states that behavioral evidence "may be a product, in some cases, of precisely the fact of commission of the crime by the defendant, while in other cases it may not be associated with the crime."[19] Thus as with any item of indirect evidence taken alone, several explanations can be possible for each item of behavioral evidence, permitting "only a hypothesis as to its causal relationship to the crime under investigation."[20]

As an example erroneous apprehensions of an innocent person and his improper selection of the means of defense may be neutral causes of some behavioral evidence. As with all indirect evidence, behavioral evidence becomes more persuasive as it becomes more difficult to explain it by the causes above. For example a defendant's lying may be explained relatively often by a neutral cause, staging hardly ever permits such an explanation, while destruction of a corpse practically excludes it. Therefore we cannot agree with statements encountered in the literature that behavioral evidence is only of secondary importance and can be used only in combination with other

forms of indirect evidence, inasmuch as every item of behavioral evidence can be explained by neutral causes. But, as we know, this is typical of every item of indirect evidence taken alone. And while we cannot, of course, make a conclusion as to the defendant's guilt on the basis of an individual item of behavioral evidence (as is the case with any other item of indirect evidence), the totality of various items of behavioral evidence may lead to this conclusion, which may be no less persuasive than one made on the basis of the totality of other facts. It stands to reason that this conclusion can be reached only on the condition that the investigator complies with the requirement of the law of criminal action that the evidence by checked out carefully, thoroughly, and objectively.

As is the case with other facts treated as evidence, behavior can be used as evidence only in the event that, first of all, it falls within the definition of evidence in a criminal case and, secondly, it is evaluated objectively--that is, in full compliance with the requirements of the law of criminal action.

FOOTNOTES

1. For greater detail, see "Teoriya dokazatel'stv v sovetskom ugolovnom protsesse" (Theory of Evidence in the Soviet Criminal Process), General Part, Izd-vo Yuridicheskaya Literatura, 1966, pp 272-273.

2. For greater detail see "Teoriya dokazatel'stv v sovetskom ugolovnom protsesse," General Part, pp 185-218.

3. Strogovich, M. S., op. cit., p 277.

4. SUDEBNAYA PRAKTIKA VERKHOVNOGO SUDA SSSR, No 5, 1955, p 9; No 1, 1956, pp 11-12.

5. See for example the decision on the case against G., BYULLETEN' VERKHOVNOGO SUDA SSSR, No 3, 1960, p 40.

6. Grodzinskiy, M. M., op. cit., p 57.

7. Motovilovker, Ya., "Significance of Data on the Defendant's Personality as Evidence," SOTSIALISTICHESKAYA ZAKONNOST', No 9, 1959, p 33.

8. M. S. Strogovich holds the opposite point of view, feeling that "data on the defendant's personality has significance only in regard to determining the degree of the crime's danger and the responsibility of the defendant for the crime proven to have been committed by him, but such data by itself are not evidence that the defendant had committed the crime" (Strogovich, M. S., op. cit., p 279).

9. Motovilovker, Ya. O.; "Nekotoryye voprosy teorii sovetskogo ugolovnogo protsessa v svete novogo ugolovno-protsessal'nogo zakonodatel'stva" (Some Issues in the Theory of the Soviet Criminal Process in Light of New Legislation on Criminal Action), Kemerovo, 1962, pp 116-117.

10. BYULLETEN' VERKHOVNOGO SUDA SSSR, No 5, 1959, pp 17-18.

11. Grodzinskiy, M. M., op. cit., p 58.

12. Teplov, B. M., "Psikhologiya" (Psychology), Uchpedgiz, 1954, p 178.

13. Grodzinskiy, M. M., op. cit., p 91.

14. BYULLETEN' VERKHOVNOGO SUDA SSSR, No 4, 1960, pp 50-51.

15. This section was written by G. N. Mud'yugin.

16. See for example SOVETSKAYA YUSTITSIYA, No 7, 1965, p 17.

17. This is why attempts by some officials to deny any sort of significance of a defendant's falsehood as evidence on the basis that it is allegedly always legal and that our law is supposedly indifferent to all forms of defense selected by a defendant to justify himself (including, for example, even false testimony by a defendant taking the form of slandering an innocent person), are groundless.

18. From materials of the Sverdlovskiy Rayon Procurator's Office, Leningrad.

19. Strogovich, M. S., op. cit., p 373.

20. Grodzinskiy, M. M., "Uliki v sovetskom ugolovnom protsesse" (Evidence in the Soviet Criminal Process), Yurizdat, 1945, p 79.

CHAPTER III

METHODS OF RESEARCH ON THE DEFENDANT'S PERSONALITY DURING THE PRELIMINARY INQUIRY

§1. Organization of Research on the Defendant's Personality

The work of collecting information describing the defendant's personality must be conducted basically during the preliminary inquiry, since during its examination the court does not always have the possibility for eliminating omissions made by the examining magistrate and is forced to postpone hearing of the case until supplementary data are obtained on the personality of the accused, or to return the case for further investigation.

Being part of the work of an examining magistrate on a specific case, research on the defendant's personality must be conducted on the basis of a plan. Only in this way would it be purposeful in nature and insure the fullest collection of information on the defendant's personality with a minimum of the examining magistrate's time and effort. This is why the plan written for investigating a case must mandatorily foresee clarification of information on the defendant's personality. Thus while investigating other circumstances of the case the examining magistrate would be collecting information on the defendant's personality. For example, interrogating a witness on circumstances of the event being investigated, he may also clarify questions pertaining to the defendant's personality.

Presence of such questions in the plan of investigation would guarantee their prompt and, from the standpoint of continuity, more correct clarification, and it would eliminate the need for repeated interrogation of witnesses, encountered in practice, conducted with the purpose of filling the gaps of the first interrogation.

As we had already noted the case materials can include only that data on the defendant's personality which were obtained by due process. In particular, valuable data could be obtained by questioning the defendant himself about his life.

In this connection we should note that for an entirely incomprehensible reason some examining magistrates do not devote adequate attention to clarifying

the biography of the suspect, and then the defendant, being interrogated. After filling the questionnaire portion of the interrogation record, they immediately go on to the circumstances of the crime being investigated and fail to make use of the possibility for obtaining important personality information from the suspect and the defendant himself. This is why it would be suitable to begin the first interrogation of an individual suspected of a crime with thorough clarification of his biography. This would permit the examining magistrate not only to obtain detailed data on the defendant's personality, but it would also help to establish appropriate contact between the examining magistrate and the individual being questioned. Moreover, having information describing the personality of the individual being questioned, particularly that pertaining to his education and his past, the examining magistrate would find it easier to determine the tactics for interrogating the given person.

Information can also be obtained on the defendant's personality by questioning his relatives, family members, neighbors, acquaintances, and fellow workers. However, all testimony must be checked out carefully and confirmed by other objective evidence.

The public may be of great assistance to the examining magistrate in collecting data on the defendant's personality. Presenting information on the crime to meetings of laborers, he could appeal to those present with a request to thoroughly describe the defendant--his way of life, his behavior at work and at home, his attitude toward his service obligations, his social work, and so on. The minutes of the meeting, as well as statements of the examining magistrate's public assistants indicating that they had completed their assignment of collecting information on the defendant's personality, should be attached to the case. When necessary, moreover, some individuals at the meetings who presented important information concerning the defendant's personality can be questioned as witnesses. This would permit the examining magistrate to clarify all circumstances characterizing the defendant known to these individuals more thoroughly.

Valuable data on the conditions and way of life of the defendant, his ties, his personal qualities, and his traits of character can be gleaned from documents revealed in his possession during a search (for example, a list of names, a diary).[1]

Discussing the organization behind research on the defendant's personality during the preliminary inquiry, we must not fail to dwell on the practical forms this research takes, all the more so because there are certain difficulties involved.

In our opinion the best way to solve this problem would be to introduce into investigatory practice a special, so-called investigatory questionnaire, which has been used in recent years by investigatory agencies of a number of republics and oblasts. The questions contained within the questionnaire insure collection of information required for deep, thorough analysis of

the defendant's personality, and for establishing the causes of the crime and the conditions promoting its commission. It would be best to fill in this questionnaire during investigation of the most dangerous crimes, separate questionnaires being recommended for each accused person.

The investigatory questionnaire consists of three parts: Two are filled in by the examining magistrate investigating the case, and the third is filled in by the procurator or his deputy maintaining control over examination of criminal cases in courts, after the case is examined in the court of original jurisdiction.

The first part of the questionnaire contain questions pertaining to the crime: A brief description of the crime; the scene, time, method, and weapon of the crime; presence of conspirators; the state of the defendant at the time the crime was committed; the motives of the crime; information on the victim, on the loss, and so on.

The second part contains questions pertaining to the defendant's personality. In addition to clarifying general biographical data (sex, age, party membership, education, place of employment, position at work, time of service and, if the defendant was not employed, the length of his unemployment and the reason for it, place of residence, family situation), the questionnaire also foresees clarifying the material situation and living conditions of the defendant and his family; the conditions under which the defendant was raised and lived in the family; a description of surrounding individuals; the question as to whether or not legal proceedings had been instituted against the defendant earlier (when, for what reason, the sentence, the time of the sentence served, the grounds for release); the question as to whether or not measures of social or administrative influence were used against the defendant, and if yes, then the sorts of influence in relation to particular acts, whether or not the defendant confessed, and so on.

The third part of the questionnaire reflects data characterizing the course and quality of the preliminary inquiry and the results of the case's examination by the court of original jurisdiction, namely: Who instituted the proceedings in the case? Was the public encouraged to reveal and investigate the crime, and what way was its participation specially expressed? The circumstances which, in the examining magistrate's opinion, promoted commission of the crime, and the measures taken by the examining magistrate to eliminate them; the dates at which the crime was committed and discovered, the case was opened, and inquiry and court examination were completed; the punishment; the work done by the court to eliminate the circumstances promoting the crime. A statement is made here as to whether or not data in the questionnaire on the crime and the criminal's personality were confirmed through court examination of the case.

If the crime was committed by several defendants, then in order to eliminate repetition of questions not pertaining to the personality of each defendant, the responses are written only on one questionnaire.

In order that the questions contained within the questionnaire would reflect the specific features of certain types of crimes most fully, it would be suitable to use several variants of such questionnaires, written with a consideration for the specific features of each type or of certain groups of crimes.

Introduction of an investigatory questionnaire into practice would, on one hand, promote careful research on the defendant's personality and, on the other hand, permit us to obtain the raw data required for studying and preventing such crimes.

Because the second copies of questionnaires filled out remain with the agencies responsible for monitoring the cases, their use to study individual types of crimes and categories of criminals would not present difficulties. Basing ourselves on the goal of analyzing questionnaires filled in during a certain period of time (a month, quarter, year, or several years), for this purpose we would need to select those questionnaires which pertain to cases concerning crimes of a certain type (group), or crimes commissioned by a certain category of individuals (for example, questionnaires pertaining to cases concerning all crimes against the individual committed by juveniles, or to cases concerning crimes of profit commissioned by recidivists).

The practice of using investigatory questionnaires to study individual types of crimes and the persons responsible for them has justified itself, as the experience of a number of procurator's offices has shown. This can be explained by the fact that, on one hand, presence of investigatory questionnaires has made it easier to do this work because the need for requesting the criminal cases from court archives and studying them is eliminated and, on the other hand, the questionnaires contain more substantial data, necessary for the research, which are usually not clarified in a case if an investigatory questionnaire is not filled out during its examination. This is why introduction of the investigatory questionnaire has been evaluated favorably by practical workers.

Of course filling in an investigatory questionnaire means additional work, which would have to be done by the procurators and examining magistrates. However, there can be no doubt that this labor would pay for itself, since the reward would be a rise in quality of not only the preliminary inquiry but also court examination of the case.

Considering the practical value of the investigatory questionnaire, in 1965 it was recognized suitable to fill in a special description certificate in two copies for each underage criminal, one remaining with the procurator's office and used to make the appropriate generalizations, and the other being sent together with the criminal case to the court or to the place at which measures of social influence are to be implemented. In turn, the court adds to this description certificate information revealed during examination of the case and sends it together with the sentence to the detention unit for attachment to the convict's personal file. If punishment does not involve

imprisonment, then this document is sent to the collective at the place of employment (study) of the convict and, when the court dismisses the case, to a commission for juvenile cases.

By filling in this description certificate we can obtain detailed information on the personality of an underage offender and on the nature, causes, and conditions of his offense. Considering the above, there are grounds for agreeing with A. A. Gertsenzon, who believes it suitable to impart procedural significance to such a questionnaire, since it makes research on the criminal's personality binding and would result in thorough analysis of the crime.[2]

§2. Methods for Collecting Information on the Defendant's Personality

Methods for studying the personality have been developed by other sciences including psychology and pedagogics. The examining magistrate can use the following methods to collect information on the defendant's personality:

1) A method of observation in which the investigator studies manifestations of the subject's mind by personal perception; this method and the discussion method are used in interrogation;

2) a biographical method involving collection and generalization of biographical information. This information, obtained from the autobiography of the subject, his diaries, correspondence, from testimony by individuals knowing him, and from other sources permits us to clarify the subject's life's path and thus trace the development of his traits of character and the way the past predetermined his present mental countenance;[3]

3) a method of generalizing independent characteristics--that is, generalizing information on the personality gleaned from different sources independent of one another (from different individuals and collectives, illuminating the subject from various aspects and under various conditions--at work, at home, in communication with relatives, friends, neighbors, and fellow workers). Information obtained in this fashion and then mutually supplemented, checked, and corrected, makes up a general description, which permits the investigator to correctly understand and evaluate the personality.[4]

Positive results can also be attained by application of such methods as studying the domestic situation, documents describing the personality, and products made by the hands of the subject. Finally, there is the questionnaire method.

An analysis of investigatory practice would show that failure to use psychological methods and ignorance of their proper use would not only have an effect on the quality of research on the defendant's personality but also lead to other significant omissions in the investigation, particularly to the investigation's incompleteness. However, when using these methods we should remember that research on the defendant's personality conducted during investigation has its own unique features and is directed at attaining goals

differing from the goals of psychology and pedagogics. These unique features stem from the special form of personality research and the different legal statuses of the investigator and the subject. The personality of a defendant is studied within the bounds of competence of the agency conducting the investigation.

Having presented some general premises on methods for studying the defendant's personality, we will now examine specific recommendations on collecting information describing his personality.

1. In most cases it is not difficult to obtain basic, so-called demographic data on the defendant. Usually the defendant himself furnishes his last name, first name, middle name, age, place of birth, place of permanent residence, nationality, and native tongue. The examining magistrate checks the information given to him with personal documents (passport, labor card, and other personal documents). Either the documents, or their copies, or a record of their inspection are attached to the case.

Sometimes it is very important to establish the defendant's age precisely. Therefore if documents attesting to the age of the given individual are absent or doubt arises as to the information they contain, steps must be taken to establish the true age. With this purpose a duplicate of the birth certificate should be demanded from the appropriate civil document registrar. If for some reason it is impossible to establish the defendant's age on the basis of documents, it is recommended that a forensic medical expert commission be called to answer the following questions: What is the age of the given person, or has he reached some particular age?

Cases are often encountered in investigatory practice in which the examining magistrate is forced to perform meticulous work of significant volume to establish the defendant's identity. Trying to conceal their past, some criminals, chiefly recidivists, change their true name and use other people's documents, usually acquired in a criminal manner. Criminals often make various changes in identity documents, altering their name and year of birth. Living with false documents, criminals are forced to independently "extend" their expiration dates, and to legalize their residence in a particular place, to enter information on their place of work and registration using homemade stamps. This is why documents seized from a defendant must be studied carefully, relying on the assistance of criminologists when necessary. In this case the following is recommended: Inspect the form, the signatures of officials, the stamp, the photograph, and the owner's signature; gain an acquaintance with its content and compare it with other documents possessed by the defendant; compare the photograph on the document with the defendant's appearance and the owner's signature with the defendant's signature; turn attention to the presence of the signs of alteration (erasures, eradications, additions, alterations of signatures, alterations of stamp impressions, and so on).

When the grounds are present, the opinion of a criminal expert can be used to establish the method used to manufacture the document or its parts and

to alter the initial content, the sequence in which its parts were filled in, and the method used to produce the stamps it bears.[5]

When necessary, in order to check the authenticity of the defendant's personal documents, inquiries should be directed to the institution that issued them, with a request to send a photograph of the individual who received the document.

> Investigating a case involving robberies in Tashkent by two criminals, who stated that their names were Bulavkin and Manuilov at the time of their arrest, by inspecting the personal documents of the arrested individuals the examining magistrate established that signs indicating substitution of photographs were present on the passport and the certificate of release from military duty bearing Bulavkin's name.
>
> Criminological experts established that the photograph on Bulavkin's passport was composed of two parts, and that with the exception of the right lower corner the photograph had been reglued. The photograph on the certificate of release from military duty was also reglued, and the missing part of the impression of the stamp had been subsequently drawn in.
>
> Learning of the expert's conclusion Bulavkin stated that his real name was Chernov, and that he had purchased the documents bearing Bulavkin's name from an acquaintance who had disappeared. However, by checking the fingerprints and the identity of Bulavkin-Chernov the examining magistrate established that he had been convicted earlier for a major theft as Mikhayl'chenko and had escaped.. Thus it was found that the defendant's real name was Mikhayl'chenko. It was established through further investigation that the real Bulavkin had committed two robberies in Tashkent together with Mikhayl'chenko, sold his documents to the latter, and traveled to his home in Gomel'skaya Oblast, where he obtained new documents to replace ones which had been supposedly stolen from him.[6]

The need for carefully checking the defendant's personal documents stems from the fact that cases have occurred in which falsified documents have been taken to be real as a result of an inattentive attitude toward such a check, and the criminal managed to avoid prompt exposure.

If it turns out that the defendant had used someone else's documents, steps must be taken to establish the true owner. Sometimes yet another crime can be revealed in this way.

The following case can serve as an example demonstrating the role of careful analysis of documents seized from a suspect.

> Valentin Zakharovich Kanyshkin, a suspect in a crime, was detained by police in Armavir Station on the basis of a verbal description given to them by the examining magistrate. In the interrogation he gave his name as Valentin Ivanovich Volkov. He had no documents in his possession. The detained individual was recognized by a number of witnesses as Kanyshkin.
>
> On the same day a passport, a military identification card, and a certificate of release from prison bearing the name of Valentin Zakharovich Kanyshkin, born in 1929, were found in a garbage can in Armavir Station. The fact that Kanyshkin gave his name as Volkov alerted the examining magistrate, and he decided to carefully check his identity.
>
> Examining letters and photographs seized from Kanyshkin the examining magistrate discovered that a photograph of some young person bore the inscription: "As a memento to V. V. Z." Since this photograph was in Kanyshkin's possession the examining magistrate hypothesized that it had been a gift to him and that the letters on the back side of the photograph were his initials--that is, "Volkov, Valentin Zakharovich."
>
> Another photograph showed a young man in a military uniform of civil war time, resembling Kanyshkin. The name Volkov was written on its back. Judging by all of this evidence, this was Kanyshkin's father.
>
> The results of the examination permitted the hypothesis that Kanyshkin was Volkov.
>
> Revealing that Kanyshkin had received letters from Rostov-on-Don while working at a lumber mill, the examining magistrate traveled to this city and established that Kanyshkin was in fact Valentin Volkov, not Zakharovich but Ivanovich, born 1927.
>
> It turned out that Valentin Ivanovich Volkov was convicted in 1945 for stealing money from a store. In 1947 he was once again arrested for theft; however, desiring to conceal his former conviction and represent himself as underage, when arrested he gave his name as Valentin Zakharovich Kanyshkin, born 1929. The defendant's identity was not checked, and he was convicted as Kanyshkin. After serving his sentence Volkov received documents bearing the name Valentin Zakharovich Kanyshkin.[7]

In the event that the defendant had changed his place of residence and work often or he does not have a permanent place of residence and certain occupations, and equally so if the examining magistrate has grounds for believing that the defendant had given an assumed name and was using someone else's documents, attempting in this way to conceal his criminal record, it would be a good idea to send his fingerprint record to internal affairs agencies for confirmation. Practice shows that this often produces favorable results, helping to expose criminal recidivists.

If the defendant is going under an assumed name, then a criminological expert commission having the purpose of identifying the individual by outward characteristics, and a commission of graphologists called to identify the individual by his signature can be of great help in establishing his identity. Thus if the defendant declares that he is not the individual who, judging by the case materials, had done certain things at a particular place, it is recommended that the personal file of the given individual be demanded from his place of work or the corrective labor institution in which he served his sentence. Having such materials, the appropriate expert commissions can establish whether or not the photograph of the defendant is truly his and whether or not he had written the text of the autobiography or other documents in his personal file.

As an approximation the following questions can be posed to these expert commissions:

a) Is the photograph presented for investigation truly that of the given individual;

b) are two photographs, presented for investigation, of the same individual;

c) was the text of the document presented for investigation written by the given individual?

The fingerprint record in the prisoner's personal file should also be used to identify the individual.

An investigative inquiry can be sent to the place of the defendant's residence or place of birth to establish the defendant's personality, requesting information from people knowing him and attaching to the order a photograph of the defendant, which could be presented to witnesses for identification. In addition a check should be made on the validity of information furnished by the defendant on certain facts that should be known to him if he is the individual he says he is, for example the father's middle name, the mother's first and middle names, her maiden name, presence of brothers and sisters, and their names and ages.

Practice shows that failure to use particular methods to check the defendant's identity would mean incompleteness of the investigation of circumstances important to the case and reversal of the sentence.[8]

Police can significantly help the examining magistrate to establish the true identity of a defendant concealing his name by implementing the appropriate operational measures.

2. There is no special difficulty in obtaining information describing the defendant's social countenance.

To obtain data on education, party membership, attitude toward military duty, occupation, the nature of pursuits, place of employment, position at work, time of service, attitude toward work, participation in the social life of the collective, and possession of military and other special and honorary titles as well as orders and medals, in addition to interrogating relatives, friends, fellow workers, and the defendant himself, it is recommended that the examining magistrate familiarize himself with the defendant's personal file at the place of employment or study, and attentively examine documents presented by the defendant and seized from him during a search. In addition to identity documents, such documents include certificates from the place of employment and residence, educational certificates, documents on state awards, documents awarding particular titles, descriptions from the place of work and residence, copies of records and decrees concerning institution of administrative action, copies of orders concerning fines and bonuses from the place of work or study, decisions of a comrades' court, and so on.

When clarifying such information the examining magistrate must display alertness and not restrict himself only to confirming what the defendant reports. When examining the presented documents it is recommended that he turn his attention to the possibility of alterations. Moreover he should compare their content with explanations of the defendant and other case materials.

If doubts arise as to the authenticity of the certificates, diplomas, testimonials, affidavits, and other similar documents, it is recommended that inquiries be made at the institution issuing these documents, and that the assistance of criminological experts by gained in revealing alterations in the documents.

To clarify the sort of work the defendant had been doing in the past the examining magistrate should examine his personal file or identity cards issued at the former place of employment, or he should make inquiries at the institution or organization in which, according to the defendant's testimony, he had formerly been employed.

It is recommended that a personal description of the defendant be demanded and attached to the case. If the defendant had changed his place of employment or place of residence often in the last few years, then descriptions should be demanded not only from the most recent but also from previous places of employment and housing operation offices. A description

from the most recent place of employment is usually one-sided and brief if the individual had worked there for a short time. In particular, we would have to agree with N. T. Vedernikov, who recommends that the examining magistrate send an extended inquiry together with a list of specific questions subject to illumination in the description to the management of the organization or institution in which the defendant had been employed. He includes the following questions:

1) What is the individual's occupation and how long has he served in this occupation;

2) what is his overall time of service;

3) what is his attitude toward work, and has he been studying to upgrade his qualifications and education;

4) has he been paid bonuses and has he paid fines, for what reason, and what sort of bonuses and fines;

5) did he participate in the collective's social life;

6) other information having significance to the individual's description and the opinion of the organization writing the description particularly in reference to his character (honest, dishonest, reticent, communicative, bold, cowardly, principled, unprincipled, and so on).[9]

In asking for the description the examining magistrate must remind the appropriate officials of the need for compiling an objective description and for discussing it with the public. This is necessary because the descriptions are sometimes unobjective.

We note that descriptions not containing specific information and not providing an impression of the defendant's personality are often attached to a criminal case. This is usually explained by the fact that individuals compiling these descriptions do not know the individuals they are describing.

Therefore in all cases the examining magistrate must check the extent to which information contained in the description corresponds to reality; only after this should he attach it to the case.

3. Information on the defendant's living conditions and, in particular, on his family status, the composition of the family, and on his material and housing conditions can be obtained by interrogating the defendant, members of his family, neighbors, acquaintances, relatives, and workers of the housing operation office. In addition to this the passport, marriage certificate, and the personal file or identity card from the place of employment should be inspected. Moreover, the information required could be requested from the civil status document registrar. When necessary the

examining magistrate can instruct a public assistant to examine the defendant's living conditions, and he can attach the examiner's report to the case.

4. The defendant's mental state is established by a forensic psychiatric expert commission. Such a commission should be called only when data indicating that the defendant or suspect is mentally unstable are present.

First the illness of the defendant, his former illnesses, his place of treatment, and so on must be established by questioning the defendant himself and individuals close to him and, where possible, by demanding the appropriate documents (for example a copy of the disease history).

The following questions can be presented for resolution by a forensic psychiatric expert commission:

a) Was the defendant stricken with mental illness at the moment the crime was committed and could he have been responsible for his actions and managed them;

b) was the defendant temporarily ill (pathological drunkenness, pathological affect, twilight beclouding of the awareness, a reactive state, and so on) at the moment the crime was committed, and could he have been responsible for his actions or managed them;

c) is the defendant presently mentally ill, and can he presently be responsible for his actions or manage them;

d) does the defendant have mental deficiencies, and if so, what kind, and for what reason is he unable to perceive, remember, and recall facts significant to the case;[10]

e) does the information on the defendant's mental illness recorded in medical, pensioner's, military, or other documents correspond to the defendant's actual health?

Testimony by the defendant as to presence of illnesses other than mental can be checked by a forensic medical expert commission or by means of questioning the treating physician, as well as by attaching excerpts from the disease history, conclusions made by the medical commission of the military commissariat or the medical commission for determination of disability, and so on, to the case.

5. Information describing the defendant's way of life, circle of acquaintances, and behavior can be collected by various means. Thus information on the defendant's way of life and ties can be obtained by questioning the defendant and individuals knowing him well. The defendant's home could be searched to collect such data. In particular, if the search reveals photographs of individuals who may possibly have a relationship to the crime under investigation, the identities of the individuals on the photographs should be established by questioning the defendant, his relatives, and acquaintances. Moreover in order to establish the defendant's ties the investigator must

carefully familiarize himself with the content of letters, notebooks, lists of telephone numbers, and notes on a loose-leaf calendar discovered and seized during the search.

After establishing the individuals with whom the defendant had associated, in some cases it would be suitable to check whether or not any of them had participated in the crime under investigation. The examining magistrate should turn his attention first of all to individuals, ties with which the defendant had attempted to conceal, and individuals who had suddenly departed from the given population center after the crime was committed and, all the more so, after the defendant was arrested. The possibility is not excluded that immediate departure stems from an attempt to avoid punishment for a crime committed together with the defendant.

> When examining a theft from a store, the examining magistrate who was checking the defendant's ties established that one of his close friends suddenly left the city for points unknown after the defendant was arrested, not even settling his pay at his place of employment. On searching the house in which his parents lived the examining magistrate discovered some of the stolen goods.

Individuals against whom criminal proceedings had been instituted formerly, or who had served their sentence together with the defendant should be checked with the purpose of revealing possible conspirators of an accused recidivist. The possibility is not excluded that one of them may have participated in the crime under investigation. Information on these individuals could be obtained from criminal cases in court archives, or from observation records stored in archives of investigatory agencies.

If not long before commission of the crime under investigation the defendant had been released from the prison in which he had been serving out his sentence for a crime committed earlier, and if it is obvious from the circumstances of the case that the defendant had a conspirator unknown to the investigatory agency, it would be suitable to find out from the administration of the appropriate prison whether or not some person with whom the defendant had friendly relations had been released in the period of interest to the investigatory agency. The possibility is not included that this person was precisely the conspirator of the defendant in the crime under investigation. As practice has shown, such cases occur when the defendant commits a crime en route from prison to his place of residence.

In order to reveal former criminal activity of the defendant, he should be checked against registration data of MVD [USSR Ministry of Internal Affairs] agencies. Statements from MVD agencies are attached to the case.

If as a result of the investigation it is established that the defendant had been convicted formerly, a copy of the sentence should be attached to the case. This would permit the court to properly resolve the question as to whether or not recurrence in the defendant's actions would be an aggravating

circumstance, and to determine his social danger. Attaching just the record of convictions alone to the criminal case is impermissible, because the record would only reflect the fact (or facts) of former conviction and does not provide an impression on the number of crimes committed by the individual (in cases where he had been convicted for several crimes of the same type), or on the methods and circumstances pertaining to the crime.

Thus the record does not have highly important data required by the court for proper resolution of the issue of recognizing or not recognizing the individual as an especially dangerous recidivist. This is why the USSR Supreme Court Plenum specificially indicated the need for attaching copies of sentences to the case in its Decree No 8, 3 July 1963, "Concerning Court Practice in Recognizing Individuals to be Especially Dangerous Recidivists." This is why the examining magistrate is obligated to attach copies of all former sentences, confirmed in due fashion, to the case when the defendant had been convicted in the past.

He should also question relatives, neighbors, and acquaintances of the defendant as to his former criminal activity.

In order to check testimony by the defendant on his way of life in the period from release from prison for a previous crime to the moment of the crime under investigation, it is recommended that inquiries by made at the appropriate institutions at locations where, according to the defendant, he had lived or worked during this period.

6. Information on the personal qualities and traits of character of the defendant and, in particular, on his moral and intellectual qualities, physical features, and presence of certain habits, and so on, could be obtained by detailed interrogation of the defendant himself, members of his family, neighbors, and fellow workers.

If the defendant is in school or had recently graduated from an educational institution, his fellow students, teachers, and class leader should be questioned; these people know his character.

Valuable data could also be obtained through a familiarization with the defendant's diaries discovered in a search. His way of life, intentions, desires, and attitudes toward particular events and people can be learned from them. Information of no less interest could be obtained from personal notes and private letters of the defendant.

The defendant's personality should be researched throughout the entire time of the investigation, beginning from the moment that the criminal case is opened (if it is opened in relation to the given person) or the moment an individual suspected of the crime is revealed.

Information describing the defendant's personality should be gathered not only by the examining magistrate but also by inquest officials, who, instituting the criminal proceedings, perform the immediate investigatory actions.

During such actions inquest officials also collect data on the suspect's personality: For example, when they perform the search they should seize documents describing the suspect's personality. They should obtain his record of convictions, and they should check him against fingerprint data.

The methods of collecting such data are basically similar to those described, for which reason they can be used successfully by inquest officials as well. In this case all they need remember is that some of these methods are unique, depending upon the form of activity of the inquest agencies and not discussed in this chapter. This topic ranges beyond the limits of this work.

After the criminal case concerning a crime for which preliminary inquest is mandatory is sent from the inquest agency to the examining magistrate, according to the law of criminal action officials of the inquest agency must follow instructions of the examining magistrate concerning the case, including collection of information on the defendant's personality.

Surveillance by the procuracy has an important role in insuring proper research on the defendant's personality. Monitoring the work of inquest agencies and the inquiry, the procurator must demand that the officials of these agencies take both investigatory and operational steps to insure that all dat. on the personality of the suspect, and subsequently the defendant, are obtained.

§3. Reflection of Information on the Defendant's Personality in the Indictment

According to the law of criminal action the indictment must contain information on the defendant's personality (see for example Article 205 of the RSFSR UPK). It stands to reason that it should contain only that information on the defendant's personality which would have significance to correct resolution of the case.

Information characterizing the defendant's personality must be written not only in the resolution of the indictment, as is usually done, but also in the descriptive section. In this case while so-called identificational information on the defendant's personality (last name, first name, middle name, year and place of birth, nationality, education, occupation or specialty, place of employment, party membership, family status, permanent place of residence, possession of awards, absence or presence of former convictions) is contained in the resolution, the descriptive section contains information on the defendant's living conditions, his past activities, his health, his attitude toward service, social, and family responsibilities, his way of life, ties, moral countenance, traits of character, and other personal qualities.

The nature of information on the defendant's personality which must be presented in the descriptive section, and its inclusion depend on the type of crime, the specific circumstances under which it was committed, and on the

significance of particular information on the defendant's personality to the case. Only after taking account of all of this can the examining magistrate provide a full description of the defendant's personality in the indictment and, at the same time, avoid encumbering it with facts not having a bearing on the case. For example in a case pertaining to violation of safety regulations, when presenting information characterizing the defendant's personality, we should take account of information on his past activity and on his attitude toward service obligations; in a misappropriation case we should consider information on the defendant's way of life, his ties, his former activity, and so on.

Data characterizing the personality must be presented in a volume permitting a sufficiently full impression of the defendant's personality. Information cited in the indictment must be objective.

If the defendant is a criminal recidivist, then rather than limiting the presentation to a brief mention of this in the resolution, such data should be reflected in the descriptive part. It is recommended that special emphasis be placed upon this in the event that a defendant with a record of convictions commits a similar act once again, and if he commits the crime by the same method. Full treatment of these data in the indictment would help the court to correctly evaluate the defendant's social danger.

Because the problem of presenting information in the indictment on former convictions of the defendant is highly significant and serious errors are often made in practice, it would appear suitable to dwell on this problem in greater detail.

We still encounter indictments in which specific statements that the defendant does not have a record of convictions are substituted by highly indefinite phrases: "Had not been convicted formerly, according to his own testimony." Instead of a statement indicating when the defendant had been convicted formerly, what for, and the reason he was released, we may see "had been convicted formerly," "had been convicted many times formerly," "not convicted by amnesty," and so on. Some examining magistrates do not even clarify the question as to the defendant's former convictions or remain silent on this issue when writing the indictment. As a result the criminal recidivist appears in the indictment and then in the sentence as an individual who was on the dock for the first time.

The indictment must indicate specifically when, by whom, and what for the defendant was convicted, the punishment that was prescribed, and when and in what connection he was released from serving his punishment (sentence completed, early release from punishment, early release from punishment on parole, reduction of the sentence, pardon, amnesty).

Shortcomings in revealing former convictions of the defendant can be explained to a certain extent by the fact that some procurators and examining magistrates are not entirely clear as to whether or not the defendant's former convictions

should be indicated in criminal case materials and, in particular, in the indictment, if remission or cancellation of the conviction had occurred in the order established by law or by amnesty.

Cancellation or remission of a conviction does not affect the qualifications behind the defendant's actions if this is not specifically qualified by law.[11] However, it does not follow from this that former convictions, even when remission or cancellation had occurred, need not be noted in the indictment. This depends on the nature of the crime under examination and of the former crime, as well as the circumstances of the case. Remission or cancellation of a conviction in many cases characterizes the defendant's personality. There is no need to prove that both the examining magistrate investigating a crime by such an individual, the judge who is examining the case and passing sentence, and workers of the prison in which the sentence is to be served must know who the accused, the defendant, and the prisoner are: Is he an individual who is truly on the dock for the first time owing to various and sometimes even chance circumstances, or is he a person who, despite the humanitarianism displayed toward him by cancellation or remission of the conviction, committed a crime once again?

The correctness of the opinion that information on the defendant's former convictions, even if cancellation or remission had occurred, must be reflected in the indictment has been confirmed in legal practice. For example, denying a protest by the RSFSR assistant procurator in the Krylov case, the Collegium for Criminal Cases of the RSFSR Supreme Court stated that it "could not agree with the assertion in the protest that Krylov himself believed that he did not have a criminal record inasmuch as his conviction dated back to 1940. Clarification of this circumstance has significance to Krylov and can produce certain legal consequences, for example assignment to a stricter corrective labor colony."[12]

Thus if the defendant is an individual with a criminal record, this must be stated mandatorily in the descriptive part and the resolution of the indictment. But if cancellation or remission of the conviction had occurred, then there is no need to mention the record of convictions in the indictment's resolution. As far as the descriptive part of the indictment is concerned, mention should be made of remission of the defendant's former conviction and the essence of the actions serving as the grounds for his conviction should be explained only in the event that the former conviction has a bearing on the defendant's description and, in particular, if it indicates that he had not rehabilitated himself (for example if he commits a new crime soon after amnesty), and if such information would have significance as evidence (for example if a new crime is committed by the same method used in the former crime). In the situations listed here, former convictions of the defendant must be indicated in the descriptive part of the indictment irrespective of whether he is a convict or cancellation or remission of the conviction had occurred. If the latter is true, then the procedures leading to cancellation or remission must be indicated mandatorily.

As we had already noted, the defendant sometimes enters the indictment under several last names. This is explained by the fact that some investigators erroneously believe that former detention or conviction of an individual under different names provides the grounds for indicating all names in the indictment, thus releasing them from the need for clarifying the defendant's actual identity. The indictment's resolution must state only the true identity of the defendant. The fact that he had been detained or convicted under other names in the past must be reflected in the descriptive part of the indictment.

The task of the examining magistrate is not only to make maximum use of information on the defendant's personality during the course of preliminary inquiry in the interests of a thorough, complete, and objective investigation of the case's circumstances, but also to facilitate use of this information by the prosecutor, counsel, the court, and other participants of the process. For this purpose not only circumstances pertaining to the crime but also those characterizing the defendant's personality must be reflected in the indictment, citing the appropriate pages of the case. This is why examining magistrates who present data characterizing each defendant at the end of the indictment's descriptive part are doing the correct thing.

Presence of detailed information on the defendant's personality in the indictment promotes successful use of this information in the court examination and complete reflection of information on the convict in the sentence. This in turn has great significance to reeducation of the convict at places of imprisonment.

FOOTNOTES

1. See §2 of this chapter for a deeper discussion on the methods for collecting information on the defendant's personality.

2. See SOVETSKOYE GOSUDARSTVO I PRAVO, No 7, 1960, p 87 concerning research on and prevention of crime.

3. For greater detail on the biographical method, see Rybnikov, N. A., "Autobiographies as Psychological Documents," PSIKHOLOGIYA, Vol 3, Issue 4, 1930.

4. For greater detail on the method of generalizing independent characteristics, see "Lichnost' i trud" (Personality and Labor), edited by K. K. Platonov, Izd-vo Mysl', 1965.

5. For greater detail on issues resolved through technical expert examination of documents, see Vinogradov, I. V., Kocharov, G. I., and Selivanov, N. A., "Ekspertizy na predvaritel'nom sledstvii" (Expert Commissions in the Preliminary Inquiry), Izd-vo Yuridicheskaya Literatura, 1967, pp 44-54.

6. From materials of the Kuybyshevskiy Rayon Procurator's Office, Tashkent.

7. From materials of the Krasnodarskiy Kray Procurator's Office.

8. See, for example, the decision of the Collegium for Criminal Cases of the USSR Supreme Court in the Volchkov case, which reversed the sentence because during the investigation the defendant's statement that he was not the individual who had committed the incriminating offense had not been checked, stating that the individual's identification must be made on the basis of a thorough analysis of conclusions by expert commissions and of the defendant's biographical data ("Sbornik postanovleniy Plenuma i opredeleniy Kollegiy Verkhovnogo Suda SSSR po voprosam ugolovnogo protsessa, 1946-1962 gg.," pp 136-138).

9. Vedernikov, N. T., op. cit., p 65.

10. This issue must be clarified in order that it would be possible, on one hand, to use testimony by a mental patient as evidence and, on the other hand, to avoid cases encountered in practice in which testimony by irresponsible individuals is used as evidence, which occurs when examining magistrates interrogate mental patients without checking their capacity for providing testimony.

11. Thus, for example, a legislator issuing an act of amnesty may not extend its effectiveness to individuals who, having once received amnesty earlier and enjoyed cancellation of the conviction, once again committed a crime.

12. BYULLETEN' VERKHOVNOGO SUDA RSFSR, No 5, 1966, p 12.

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