

EYEWITNESS PSYCHOLOGY AND EXAMINATION TECHNIQUES

TANIK PSİKOLOJİSİ VE SORGULAMA TEKNİKLERİ

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ABSTRACT

Eyewitness testimony is an instrument that has an important place in law. The eyewitness's testimony is critical in terms of clarifying the events and understanding the truth. The examination is crucial to take the witness's testimony who comes before the judiciary most healthily and reliably. Judges aim to reveal the truth when making their decisions and be fair in doing so. While making decisions, they try to fulfill them with their intelligence, legal education, and judicial duties. Witness psychology and witness statements are other issues that will help judges decide on some cases. The witness's credibility naturally depends on what he remembers about the crime and the criminal. For this reason, it is necessary to focus on the psychology of the witness. However, the way and method of examining the witness are influential in his answers. From this point of view, the significance of examination techniques, which directly affect the issue of accessing enlightening information about the crime event, emerges. Cross-examination, on the other hand, is a method that lawyers can use to take the statement of the witness. All examination techniques, especially cross-examination, can impact the psychological state of the witness. It is also thought that these techniques and question styles have the power to determine how the witness will respond. In this article, the methods of asking questions to the witness and their results are evaluated in the psychological context, but also the cross-examination techniques are mainly discussed. How the cross-examination methods are applied, what it causes, and the striking effects of cross-examination on the questions are also evaluated. In this way, the differences between the types of examination and the consequences of cross-examination on witness expression and psychology were revealed.

Keywords: Eyewitness Psychology, Eyewitness Testimony, Techniques of Examination, Cross-Examination

ÖZ

Tanık ifadesi, hukukta son derece önemli bir yere sahip olan bir enstrümandır. Tanığın ifadesi olayların aydınlatılması ve hakikatin anlaşılması bağlamında kritik bir önem taşır. Sorgulama ise yargının karşısına çıkan

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tanığın vereceği ifadeyi en sağlıklı ve güvenilir şekilde alınması adına yapılan önemli bir işlemdir. Hakimler kararlarını verirken gerçeği ortaya çıkarmayı ve bunu yaparken adil olmayı amaçlar, karar verirken sahip oldukları zeka, aldıkları hukuk eğitimi ve yargısal görevleri ile yerine getirmeye çalışırlar. Hakimlerin kimi konularda karar vermesine yardımcı olacak diğer bir husus ise tanık psikolojisi ve tanık ifadesidir. Tanığın güvenilirliği doğal olarak suç olayı ve suçlu ile ilgili hatırladıklarına bağlı olup bu bağlamda tanık psikolojisi üzerinde durmak gereklidir. Bununla birlikte tanığın sorgulanma tarzı ve yöntemi vereceği yanıtlar üzerinde etkilidir. Bu açıdan bakıldığında ise suç olayı hakkındaki aydınlatıcı bilgiye ulaşma konusunu direkt olarak etkileyen sorgulama tekniklerinin önemi ortaya çıkmaktadır. Çapraz sorgu ise tanığın ifadesinin alınabilmesi için hukukçuların kullanabileceği bir metot olarak karşımıza çıkmaktadır. Başta çapraz sorgu olmak üzere tüm sorgulama teknikleri tanığın psikolojik durumu üzerinde etki gösterebilmektedir. Ayrıca, bu tekniklerin ve soru tarzlarının tanığın nasıl bir yanıt vereceğini belirleyebilme gücüne de sahip olduğu düşünülmektedir. Bu makalede tanığa soru sorma metotları ve sonuçları psikolojik bağlamda değerlendirilmiş olmakla birlikte çapraz sorgu teknikleri ağırlıklı olarak ele alınmıştır. Çapraz sorgu metotlarının nasıl uygulandığı, nelere yol açtığı ve çapraz sorgunun sorgulanan üzerindeki çarpıcı etkileri de değerlendirilmiştir. Bu şekilde sorgu türleri arasındaki farklılıklar ile çapraz sorgunun tanık ifadesi ve psikolojisi üzerindeki etkileri ortaya konmaya çalışılmıştır.

Anahtar Kelimeler: Tanık Psikolojisi, Tanık İfadesi, Sorgulama Teknikleri, Çapraz Sorgu

INTRODUCTION

Questioning the eyewitness is a court action conducted before a judge. In this article, the questioning of the eyewitness has generally considered the lawyer's role. However, cross-examination can also be used by a prosecutor. In the cross-examination, the prosecutor or the lawyer questioned the eyewitness as the person asked the question that we are confronted with. According to CMK 201 in Turkish Law¹, In addition to the eyewitness, the defendant, the expert, and the other persons in the hearing can also be questioned. However, the examination procedures mentioned here are mainly directed toward the eyewitness. "The public prosecutor, who attends the hearing in the capacity of defense counsel or attorney lawyer; may directly ask questions to the accused, to the participant, to the witnesses, to the experts, and the other persons called to the hearing by the discipline of the hearing." "In courts serving as a committee, the judges forming the committee may ask questions to the persons mentioned in the first paragraph."² Under this law, "direct examining" of the eyewitness is possible.

Examining witnesses can be difficult and grueling, but it should not be overlooked that it can be decisive in the course of the case. The primary purpose of the examination is to obtain information about the subject of the case and the event and to reveal the truth. It will be a great

¹ **Criminal Procedure Law (Ceza Muhakemeleri Kanunu)**, No. 5271, In Turkish Law, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5271.pdf> / erişim tarihi: 02.05.2022.

² **Criminal Procedure Law**, 201/2, No. 5271, in Turkish Law.

advantage for the examiner to have some knowledge about the subject and have a good command of the examination techniques.

In Turkish Law (Article 53 of the CMK), there are some issues, such as the importance of telling the truth before hearing the witness and swearing that he will tell the truth. It has been pointed out what kind of questions can be asked to the witness, the situations that can elucidate the judge about the issue, and especially questions about their relations with the suspect, accused, or victim.³ The things to be said to the witness and the questions to be asked are also discussed in another article.⁴ In this context and based on the law, the concepts of questioning the witness are explained and described.

Witness testimony and examination are also important in American law. It is known that cross-examination is used as an effective method used primarily by lawyers. In many cases in America, Although he is very successful with his statements and explanations, lawyers lose cases because they cannot cross-examine enough.⁵ According to this determination, it is pointed out how vital cross-examination is, especially in the hearings in the USA.

The purpose of writing this article is to benefit from examination techniques by taking into account the psychology of witnesses and examining them in detail. It should be known that the style of question asked to the witness impacts the answers he will give, and this may also affect the achievement of the purpose of the examinations made to understand the truth. Judges aim to reveal the truth when making their decisions and be fair in doing so. While making decisions, they try to fulfill them with their intelligence, legal education, and judicial duties.⁶ Witness psychology and witness statements are other issues that will help judges decide on some cases.

There are many differences between examination techniques. In particular, direct examination and cross-examination were emphasized, and a helpful ground was tried to be prepared for the evaluation of their advantages and disadvantages. Understanding the differences between examination methods is also essential in ensuring that witnesses' testimony is healthy and reliable.

Asking questions is one of the qualities that an examiner needs to be competent. In this way, the examiner will have the opportunity to clarify the issue with his questions to the witness.

³ **Criminal Procedure Law**, 53, 58/1, No. 5271, in Turkish Law.

⁴ **Criminal Procedure Law**, 59, No. 5271, in Turkish Law.

⁵ MCGEHEE, E. Jack, "A Guide to Direct Examination and Cross-Examination", **GPSolo**, 2014, Vol. 31 No. 5, pp. 1-10.

⁶ KÜÇÜKAY, Alper, "Karar Vermenin Psikolojisi", **Türkiye Adalet Akademisi Dergisi**, 2018a, Sayı 35, p. 608.

Thus, the judge will also affect his thoughts and perceptions about the subject of the case and reveal his role in the decision-making process. In addition, issues such as accuracy, suggestibility, and deliberate distortions of false accusations cannot be adequately understood without considering eyewitness psychology.

I. EYEWITNESS PSYCHOLOGY

In addition to knowing that it is challenging to evaluate eyewitness testimonies, psychological factors such as misremembering memories, trusting a memory, and effort to remember are also crucial for witness testimony. Eyewitness memories are often seen as critical sources of information, particularly for investigating and learning about what happened during a crime. The criminal justice system considers eyewitness testimony to determine the truth about criminal events. Eyewitnesses can remember crime scenes, conversations, or other details about the crime and may even identify criminals. An eyewitness who is fairly certain remembers the event and has no reason to lie provides strong evidence for the judge.⁷ However, the opposite of this situation, or when we consider other very different psychological dimensions, it may be possible for undesirable and misleading results to emerge. Although it plays a critical role, especially in criminal investigations and decision-making, it is stated that eyewitness statements are often unreliable and a factor that can lead to wrongful convictions.⁸

The opinion that will be formed after the information obtained during the examination of the witness plays an essential role in the judge's decision. It basically represents a mental reasoning process. When cognitive algorithms are considered, factors such as calculating probabilities affecting the reasoning process, reasonableness, consistency of statements, psychological suitability, and the need to make clear and error-free inferences are encountered.⁹ At this point, it should not be overlooked the effect of a well-prepared lawyer on the subject of the case on the decision-maker, with his appropriate interventions during the hearing and the questions he directed to the witness.

Witness reliability is also a different subject of research, and the ratio of the similarity between the witness' statement regarding the crime and the actual event constitutes one of the main points here. Although controversial, the prevailing view at present is that there is a

⁷ WELLS, Gary L., Memon Amina, Penrod Steven D., "Eyewitness Evidence: Improving Its Probative Value", *Psychological science in the public interest: a journal of the American Psychological Society*, 2006, 7 (2), pp. 45–75.

⁸ GARRETT, Brandon L., *Convicting the Innocent Where Criminal Prosecutions Go Wrong*, **Harvard University Press**, Cambridge, MA and London, England, 2012.

⁹ KÜÇÜKAY, 2018a, p. 610.

consistent, if not perfect, positive relationship between trust and (offender) recognition accuracy. In addition, a significant number of recent empirical studies suggest that trust can be a highly reliable indicator of accuracy that theoretically fits with recognition memory models.¹⁰ According to the analysis of the value of the trust-accuracy relationship in real-world cases, it is also stated that there are lots of cases where witnesses with high confidence at the beginning are eventually wrong.¹¹ However, suppose confidence is based on cues and not the strength of the memory itself. In that case, the cues may constitute a more direct and valid relation to a memory's accuracy than does confidence. It also seems plausible that the clues that witnesses relied on were not always the most accurate predictors. Therefore, if clues to the strength of memory can be identified and measured, such clues can better estimate accuracy than confidence judgments.¹² It seems that the memory of the witness and the clues about the event he witnessed are the factors that ensure his reliability.

There are other factors that affect the reliability of witness testimony. While factors such as focusing on the weapon (if any), disguise or mask, and stress decrease reliability, exposure time to the event and distinctive perpetrator characteristics increase reliability.¹³ Considering such details, with their impact on witness psychology and testimony, can make it easier for judges, in particular, to hear and evaluate witness testimony.

Regarding witness psychology, another issue that may be particularly relevant in criminal law is criminal responsibility. It is essential to know its effect on a person's mental health and its expressions in this context. The past records and statements (if any) of the witness should be examined in this regard. At this point, the psychological state of the witness and a psychiatric disorder, if any, emerge as a subject that needs to be evaluated well. Some psychological issues that need special attention are listed below.¹⁴

- defendant's statements before and after the offense

¹⁰ WIXTED, John T. / MICKES, Laura / CLARK, Steven E. / GRONLUND, Scott D. / ROEDIGER, Henry L., "Initial eyewitness confidence reliably predicts eyewitness identification accuracy", **American Psychologist**, 2015, 70 (6), pp. 515–526.

¹¹ BERKOWITZ, Shari R. / GARRETT, Brandon L. / FENN, Kimberly M. / LOFTUS, Elizabeth F., "Convicting with confidence? Why we should not over-rely on eyewitness confidence", **Memory**, (Hove, England), 2022, 30-1, pp. 10–15.

¹² GUSTAFSSON, Philip U. / LINDHOLM, Torun / JÖNSSON, Fredrik U., "Predicting Accuracy in Eyewitness Testimonies With Memory Retrieval Effort and Confidence", **Frontiers in Psychology**, 2019, Volume 10, pp. 1-10.

¹³ CUTLER, Brian L. / WELLS, Gary L. "Expert Testimony Regarding Eyewitness Identification", Edited by Jennifer L. Skeem, Kevin S. Douglas, Scott O. Lilienfeld, **Psychological Science in the Courtroom**, The Guilford Press, New York, 2019, p. 100.

¹⁴ SCOTT, Charles L., "Evaluation of Criminal Responsibility", **Textbook of Forensic Psychiatry**, Edited by Liza h. Gold, Richard L. Frierson, The American Psychiatric Association Publishing, 2018, p. 287.

- presence of any mental health symptoms close to the time of the crime, especially psychotic symptoms such as paranoia, delusions, hallucinations
- presence or absence of substance use
- presence of antisocial personality traits or disorder
- history of a similar offense indicating a possible pattern of criminal behavior
- history of malingering psychiatric symptoms

One of the most critical issues to consider in witness psychology is cognitive structure and memory. Memory (Episodic) is a neurocognitive, brain/mind-based system that enables people to remember past experiences. It allows mental time travel in subjective time, from the present to the past, thus allowing one to recall one's own previous experiences through awareness. Retrieving information from episodic memory (remembering or conscious recall) is dependent on a particular mental function called "retrieval mode".¹⁵ According to other researchers, memory is a restructuring process. According to this approach, post-incident information provided by the police, prosecutor, judge, media, other eyewitnesses, family, and friends can change the eyewitness's memory of the crime and the eyewitness's memory of the perpetrator of the crime.¹⁶ In addition, eyewitnesses are often unaware that their memories of the crime or the perpetrator have been replaced by post-event information. Also, once an eyewitness's memories of the event are changed, it will be quite, if not impossible, to restore the eyewitness's earliest memory about the crime or the perpetrator.¹⁷

Memory is actually a structure that is more important than expected. In fact, it is stated that memory is the glue that holds our thoughts, impressions, and experiences together. Beyond this definition, past and future lose their meaning without memory, and self-awareness is lost.¹⁸ Memory, which is formed by storing the acquired and learned information in the brain, has functions such that this information is used when necessary. This function is, of course, valid in the context of a healthy memory.¹⁹ From a witness's point of view, the process encountered during an examination is an example of the memory retrieving (remembering) information in this way. This memory, remembering, and expressing process is almost like bringing the past to the present moment.

¹⁵ TULVING, Endel, "Episodic Memory: From Mind to Brain", **Annual Review of Psychology**, 2002, 53:1, pp. 1-25.

¹⁶ LOFTUS, Elizabeth F., Greene Edith, "Warning: Even memory for faces may be contagious", **Law and Human Behavior**, 1980, 4 - 4, pp. 323-334.

¹⁷ LOFTUS, Elizabeth F., "Dispatch from the (un)civil memory wars", **The Lancet**, 2004, Volume 364, Supplement 1, pp. 20-21.

¹⁸ MARKOWITSCH, Hans J., Memory and Amnesia, **Principles of Behavioral and Cognitive Neurology**, Published by Oxford University Press Inc., New York, 2000, p. 257.

¹⁹ MARKOWITSCH, p. 263.

When the formation of memory and its functions are examined in more detail, it is seen that there is a gradual neuropsychological process. In the first place, information enters the nervous system through the sense organs (eyes, ears, etc.). Short-term memory, the storage of a limited number of information items, is limited to a time interval that can be measured in seconds. The recently acquired information is encoded in the brain's associative cortex and transferred to a process where relevance is assessed, subjected to further associations, integrated with pre-existing information, and leads to consolidation. The data belonging to the memory encoded in this way in the brain formed the basis of memory.²⁰

On the other hand, information retrieval depends on triggering mechanisms originating from certain brain parts such as the limbic system, prefrontal, and anterior temporal cortex. The retrieval of information from memory, that is, recall, takes place at the level of milliseconds.²¹ This neuropsychologically based event can actually be seen as a process that works during the testimony of a witness, as it is in every moment of life.

The impact of personal mood on memory can be seen in three stages of the witnessing process: the first witnessed period (coding period), the potentially misleading information period (period after the event), and finally, the period in which the information is remembered and the reason for the incident (recall period).²² Social perception and assessments have a very positive effect on distinguishing, remembering, and interpreting information about people and events. Loftus's studies have shown that people can easily be mistaken due to exposure to misinformation in the post-event period, and consequently, false reports can be edited.²³ In the post-event period, the (incorrect) information provided by the (wrong) directing questions can have a similar effect. The impact of questions on witness memory and statement can be seen in the following examples:

Q: How fast was the red truck when the roadside barn was crossing while traveling on the main road?

Although there is no barn in the original place, the witness can say that there is a barn with this question.

Even the question style affects statements:

Q: Did you see this lamp broken?

or

²⁰ MARKOWITSCH, pp. 263-266.

²¹ MARKOWITSCH, pp. 268-271.

²² FORGAS, Joseph P. / LAHAM, Simon M. / VARGAS, Patrick T., "Mood Effects On Eyewitness Memory: Affective Influences on Susceptibility to Misinformation", 2005, **Journal of Experimental Social Psychology**, 41, pp. 574-588.

²³ LOFTUS, Elizabeth F., "Eyewitness Testimony With a New Preface", **Harvard University Press Mathieson Don**, 1996, LexisNexis NZ Ltd.

Q: Did you see a broken lamp?

Examinations that are aware of these subtleties and the details are also crucial for achieving favorable results. Although the witness does not know that the lamp is the lamp, it can be the lamp. In this case, the witness has made a kind of memory error. This result may have been unintentional. New records can be added afterward to the original tracks in memory. Strong memories, however, are more resistant to misleading than weak ones.²⁴ Thinking more constructive and eloquent can increase the tendency to transfer to the mind by accepting it as it is without much thought to the incorrect details.²⁵

The mood of the witness should be considered relevant to the event because the mood is extremely efficient in memory and recall. If other conditions are considered equal, mood and emotion-matched / compatible information make it easy to remember and reveal.²⁶ Several studies have been carried out, which have led to the fact that a positive mood requires less effort in terms of information processes and has laid the ground for using more systematic strategies.²⁷ On the contrary, a negative mood is thought to be a more prudent effect on information processes. When we associate these theories with witness psychology, it is understood that witnesses in a negative mood are less affected by misleading information than people with positive emotions who pay more attention to situational details. A negative mood increases the accuracy of the witness by supporting and consolidating information with the memory of the witness while reducing possible misleading information.²⁸ According to the outcome of the work of Forgas et al., the tendency of eyewitnesses to misleading details increases in a positive mood and decreases in a negative mood.²⁹ As can be understood from these studies, positive and negative moods have an asymmetric impact on information processing. While the witness experienced significant effects on the mood, memory, and information processing processes while living, the other variables were assumed to be fixed. However, it should be kept in mind that other personal variables may impact the accuracy of eyewitness testimony.

According to psychologists, people, events, and memories assume some of the uncertain or unoccupied parts of the memory records or completing them by others. People often fill in

²⁴ BRAINERD, Charles / REYNA, Valerie F., "Fuzzy-Trace Theory and Lifespan Cognitive Development", **Developmental Review**, 2015, Volume 38, pp. 89-121.

²⁵ FIEDLER, Klaus / ASBECK, Judith / NICKEL, Stefanie, "Mood and Constructive Memory Effects on Social Judgement", **Cognition and Emotion**, 1991, 5, pp. 363-378.

²⁶ BOWER, Gordon H. / FORGAS, Joseph P., "Mood and Social Memory", In Forgas, J.P. (Ed.), **The Handbook of Affect and Social Cognition**, 2001, Psychology Press, pp. 95-120.

²⁷ FORGAS / LAHAM / VARGAS, 2005, pp. 575-576.

²⁸ FORGAS / LAHAM / VARGAS, 2005, p. 576.

²⁹ FORGAS / LAHAM / VARGAS, 2005, p. 585.

gaps in their minds and remark according to what they hear.³⁰ These filling and additions in minds can often be unconscious. In terms of the witness, this condition becomes more critical for the accuracy and clarity of the statement. In many cases, various experiments and research have determined words formed and can change the meaning and quality of images in people's minds. For example, there is even a slight but significant difference between the crashing or hitting of vehicles in an accident. The witness statement shows how important even some words are. Hence, it is usually the central purpose of removing false expressions and revealing the fact. Sometimes details can be the key to reaching the truth of the case.³¹

One of the most compulsive parts of the trial is to decide whether the witness gives a correct and complete testimony during the examination. Decision-making may be more critical in some criminal cases.³² In the context of witness psychology, many factors play a role in witness reliability.

So what role do examination techniques play in witness testimony? How do question styles affect these statements? Do examination techniques influence witness psychology? These questions can be better answered when examination techniques are reviewed in more detail.

II. EXAMINATION TECHNIQUES

A. Direct Examination

Eyewitnesses are an essential part of the judicial strategy, especially in terms of investigating the crime and revealing the evidence.³³ The distinguishing feature of the examination here is that the judiciary carries it out. The process called testimony and examination consists of the statement of the person accused of the crime about the incident. Statements made about information that is not related to the event do not constitute an examination and should not be evaluated within the scope of the examination.³⁴ The purpose of the examination authority is to settle the case.³⁵

³⁰ FISHER, George / TVERSKY, Barbara, "The Problem with Eyewitness Testimony", *Stanford Journal of Legal Studies*, 1:1, p. 26.

³¹ RESNICK, Marc L., "When Eyewitnesses Misremember: The Delicate Balance Between Forensic Investigation and Memory Evidence Assessment", *Proceedings of the Human Factors and Ergonomics Society Annual Meeting*, 2014, Volume: 58 issue: 1, pp. 539-543.

³² RICHTER, Robert I., Senior Judge, District of Columbia Superior Court, "Examination and Cross-Examination of Trial Witnesses A Judicial Prospective", [http://www.abgm.adalet.gov.tr/eng/pdf/makaleler%20\(EN\)/article%203.pdf](http://www.abgm.adalet.gov.tr/eng/pdf/makaleler%20(EN)/article%203.pdf).

³³ SHAPIRO, Lauren R., "Eyewitness Testimony for A Simulated Juvenile Crime by Male and Female Criminals with Consistent or Inconsistent Gender-role Characteristics", *Journal of Applied Developmental Psychology*, 2009, Volume 30, Issue 6, p. 649.

³⁴ YURTCAN, Erdener, *Ceza Yargılaması Hukuku*, B. 5, Alfa Yayınları, İstanbul, 1994, p. 142.

³⁵ ŞAHİN, Cumhur, *Sanığın Kolluk Tarafından Sorgulanması*, Yetkin Yayınları, Ankara, 1994, p. 99.

It is understood from the concept of direct examination that the parties directly ask questions to the witness, accused, participant, or expert. Direct examination is an abbreviated and rapid type of inquiry that leads to curiosity and attentive listening about the event rather than a narrative. The direct examination takes place concisely and powerfully.³⁶ In this type of examination, non-suggestive questions can be used to question the eyewitness. “What happened then?” style questions are thought to be boring and repetitive. Instead of such questions, it would be more beneficial to ask the witness questions asking for a positive answer.³⁷ Asking quality questions in a direct examination will ensure that the examination achieves its purpose. After analyzing the available evidence, the most critical decision is how to obtain further evidence. Asking questions in chronological order is also essential for a clearer understanding of the beginning and end of the event. On the other side, it is also substantial for the witness to give a supportive statement on the subject of the case and rank the causes of the incident according to the logical flow of the prosecution investigation. Varying questions and giving examples while asking questions to the witness can increase attention and focus.³⁸ At the beginning of the examination, it may be an excellent start to have the witness explain the expression and meaning of the public event and visual images in the witness’s mind.³⁹ Questions about whether the witness actually saw the event or what it was the first thing he saw can help support this mental imagery and clarify the visuality of the event. The purpose of the trial is to reach the facts in the claimant’s case by linking the mind and conscience of the judge. Usually, the use of clear and understandable language makes this link more effective. Beginning with a troubling or tiresome question may interrupt communication from the very beginning. Therefore, it may be better to start with a simple question in some situations. An informal opening may make progress more comfortable in the examination. During the questioning of the witness, objecting to inquiries and preventing or disrupting the flow of the hearing can be seen as a threat that decreases the importance and effect of the witness. Careful selection of the first words at the beginning of the examination and the particular form of questions together may prevent the directing objections in the hearing.⁴⁰

Establishing eye contact is an essential technique used in examinations. Once the witness is sworn in, the well-prepared examiners should not feel the need to look at the notes

³⁶ MCGEHEE, 2014, p. 2.

³⁷ ARCHER, Dawn, “Cross-Examining Lawyers, Facework and the Adversarial Courtroom”, **Journal of Pragmatics**, 2011, 43, pp. 3216–3230.

³⁸ MCGEHEE, 2014, p. 2.

³⁹ MCGEHEE, 2014, p. 2.

⁴⁰ ARCHER, 2011, pp. 3220-3228.

he has prepared and should not leave their eyes on the witness. In this way, eye contact with the witness can be established more effectively. Because missing or not seeing the witness's face can pose a considerable risk. So that during the hearing, it may be necessary to ignore the fact that there may be bodily reactions that support a critical point in the clarification of a gesture or event that includes a response statement. The examiner should pay attention to the eyewitness testimony, the face of the witness, and the body language.⁴¹ For example, a grimace may actually be an answer. Some reactions may be important points for clarifying the event. The examiner's use of these reactions and statements from the witness may help to explain the incident. In this way, the examiner will be able to test the consistency of expressions and body language.

The fact that the witness's attention is not divided is crucial for asking questions. It is advantageous for the examiner to have the ability to see and evaluate the changes in the witness and his testimony, which he directed or spontaneously developed. Adjusting the verbal tone of speech is also essential in regular conversations. A monotone tone can make the witness's testimony move in dull and low attention; on the other hand, a high tone can increase the judge's interest with the attention focused on the witness and the continuity of the conversation. The use of smooth and fluent narratives and the speed and rhythm of expressions arouse interest, while the decision-maker can continue to focus on the subject.⁴²

A three-way conversation is part of the examination. In an excellent direct examination, the voices seem to pass between two curious people talking about an exciting topic. At this point, the judge is like a third person involved in the conversation. The compelling examination of an examiner is provided by a bright tone and a consistent mood. This mood can be caused by the examiner behaving in a competent, respectful, realistic way with self-confidence that will reveal their mind and heart.⁴³

Programming - priority, and post-effect are used effectively in direct examination. The most remembered information is displayed first and last. It is beneficial to plan by creating an outline of the witness statement by taking this situation. An intelligent examiner begins to ask

⁴¹ WELLMAN, Francis, **The Art of Cross-Examination**, pp. 8-10-55-123. <https://delhihighcourt.nic.in/library/articles/the%20art%20of%20cross%20examination%5B1%5D.pdf> erişim tarihi: 07.10.2022.

⁴² CHAPPELLE, Wayne / ROSENGREN, Kent, "Maintaining Composure and Credibility as an Expert Witness During Cross-Examination", **Journal of Forensic Psychology Practice**, 2001, 1:3, pp. 51-68.

⁴³ MCGEHEE, 2014, pp. 3-4.

questions based on the position of the witness in the case and then plans questions to make the witness testify in a way that builds a finalized case.⁴⁴

B. Cross-Examination

The basis of the cross-examination is to make the witness fit to reveal the material fact you set and do that with planned questions. For the witness statement and the cross-examination, the examiner must be prepared very well and in a way that this preparation will be able to control the file, its parties, and the witness.

Cross-examination is an advanced reasoning process used in the Anglo-Saxon legal systems as a highly developed and systematic form of asking the parties to ask questions to the object of the query.⁴⁵ The cross-examination is involved in Article 6 § 3 (d) of the European Convention on Human Rights. With this article, the European Convention on Human Rights has been inflicted upon members of the European Convention on cross-examination.⁴⁶ As it is known in Turkish law, Article 201 of the Code of Criminal Procedure provides the possibility of examination within the scope of asking questions directly to the prosecutor and the lawyer with the title Direct Question. The Direct Question in with CMK article 201:

“Public prosecutor, lawyer, or attorney attending the hearing; they may direct questions to the accused, the witnesses, the experts, and other persons invited to the hearing by the hearing discipline. The accused and the participant may also ask questions through the chief judge or the judge. When the question is asked, the chief judge decides whether the question should be directed. The relevant person may ask questions again. In the courts serving as a committee, the judges forming the committee may ask questions to the persons mentioned in the first paragraph.”⁴⁷

Being successful in cross-examination is essential, but the real goal is to ensure that the truth is achieved by getting the desired statement from the witness. Questions for reaching the fact are determined in advance and directed to the witness during the hearing.⁴⁸ In this way, it is seen that the examiner is actively involved and intervening in the trial process. Therefore, we can emphasize that cross-examination practices are crucial for prosecutors and lawyers.

⁴⁴ MCGEHEE, 2014, p. 4.

⁴⁵ KARAKAYA, Naim, Ceza Muhakemesi Hukukunda Avukatın Soru Sorma Yetkisi, **Avukatlar İçin El Kitabı IV**, Türkiye Barolar Birliği Yayınları, 2014, pp. 1-82.

⁴⁶ **Çapraz Sorgu (Cross Examination) ve Portekiz**, HSK, <http://www.hsk.gov.tr/Eklentiler/Dosyalar/dd7069fe-3e12-4280-92a8-bc323983d56e.pdf>/ erişim tarihi: 12.05.2022.

⁴⁷ Criminal Procedure Law, 201, No. 5271, in Turkish Law.

⁴⁸ RABIANSKI, Joseph / CARN, Neil G., “Cross Examination: How to Protect Yourself and The Appraisal Report”, **The Appraisal Journal**, 1992, 60-4, pp. 472-482.

The cross-examination aims to perform a controlled, targeted result. If the examination is done well, the witness will not be able to put forward any more evidence that they have an aggressive or assertive attitude. If the query is insufficient, the witness can reverse the result. The two most difficult situations encountered in the cross-examination are avoiding the maneuvering area / relaxing area with questions and knowing the time to stop. When asked more than the required number of questions, it is possible for the witness to stay in the maneuver area, which is not desirable. Using the closed-ended questioning technique, which can only be yes or no, the questions can be avoided by asking the witness to use the escape point or the maneuver area. A set of questions with yes answers while the witness can turn the situation to his advantage, no-answer questions indicate that the witness is weak or inadequate.⁴⁹

An example of cross-examination is displayed below:⁵⁰

Question: You are not a doctor

Answer: No

Q: You have never studied toxicology

A: No

Q: You do not know the scientific theories that support alcoholmeters

A: No

Q: You don't even know how alcoholometers work

A: No

Q: You actually have no idea how the alcohol meter shows 0.20 after being pulled by the police to the side of the road

A: No

To perform a competent cross-examination, the examiner must know when to end the examination.⁵¹ It is significant to conclude that the effect on which the examiner is intended on the judge, in other words, when the point is highlighted by turning the witness to the desired position. After this maximum point, asking questions or being treated early and ending the examination before the desired situation may cause the examiner to prevent from giving the desired result. Therefore, to obtain the maximum benefit from the examination, the targeted effect should be provided when the examination is completed. This situation is very important for the success of cross-examination.⁵²

The questions are crucial in determining the quality of the cross-examination. The examiner's planning of the questioning and the use of the questions produced by his purpose helped him dominate the courtroom. It is also significant to repeat and confirm the claims and

⁴⁹ MCGEHEE, 2014, p. 4.

⁵⁰ MCGEHEE, 2014, p. 4.

⁵¹ MCGEHEE, 2014, p. 5.

⁵² RABIANSKI / CARN, 1992, p. 481.

defenses during the examination. In this context, the first thing that needs to be done is to formulate efficacious questions during the preparation phase. Practical questions should have the characteristics of the directive, short, simple, and control provider. Because open-ended questions that only have not the answer yes or no can cause the questioning to be removed control from the examiner. Loss of control prevents the cross-examination from reaching its objective.⁵³

During cross-examination, such questions are avoided. For example: did you, do you, is there? Because questions that are intriguing, controversial, repetitive, and request expressions reduce the quality and effectiveness of cross-examination. Therefore, they are considered questions and phrases other than the primary purpose of the cross-examination.⁵⁴

To summarize, the interrogative who can perform an authentic and practical examination is another major factor determining the quality of effective cross-examination. It is significant to make an impressive start, both mentally and conscientiously, and to conduct cross-examination in such a way that the examiner can have a precise and reliable impact on the judge according to the description. To produce this effect, the examiner should have the ability to examine and use it properly.

C. Qualifications That the Examiner Should Have

The lawyer who makes the examination should have some skills. The main ones are friendly, polite, and respectful, to produce the impact expected in the examination, to be able to manage the examination, to aim to reach the truth, and be able to complete the inquiry when the desired result can be listed.⁵⁵

A practical examiner should be cautious about the questions they will choose when questioning. During the examination, it should not suggest particularly irrelevant details, should not ask questions that they do not know, should not give a chance to make a statement other than the answer to the witness question, and should not ask why.⁵⁶ The lawyer acting cautiously in this way will be able to accomplish retain the initiative in the examination. The examiner who pays attention to these criteria will be able to reach the truth or conclusion quickly he wishes to achieve by avoiding situations that would prevent the cross-examination from

⁵³ MCGEHEE, 2014, p. 5.

⁵⁴ VORA, Nilay U., “Radical Cross-Examinations”, *Minority Trial Lawyer*, **ABA Section of Litigation**, 2015, Vol. 13, Issue 2, pp. 1-4.

⁵⁵ MCGEHEE, 2014, p. 6.

⁵⁶ MCGEHEE, 2014, p. 6.

reaching his goal. In the cross-examination, in particular, it is necessary to ask the witness to take witness statements against the defendant, confirm that the witness testimony is false, and reveal the weak points of the incident. In this way, the attorney or prosecutor will try to influence the opinion of the judge through the testimony of the witness and the credibility of the witness or the support of his defense.⁵⁷

The questioning quality is affected by the interrogating jurist by establishing questions on the witness. When the witness is asked the question, the examination must start with the guiding questions and then must be completed; the statement reinforces the emphasis of the witness by the examiner who is sure of the answers of the witness. It is aimed to increase the effect of the witness statement on the judge with such examination.⁵⁸ The purpose of cross-examination is to reduce the credibility of the other party's witness by revealing weak points in his story.⁵⁹ In this context, a question with a negative perception can help the examiner to retain the examination process. Thus, it can be targeted to damage the credibility of the witness statement by imagining a negative impression about the witness.

Another factor that determines the quality of the cross-examination is that the examiner can evaluate any objections that may arise during the examination before starting the questioning. It will be advantageous for the examiner to question the objections before the examination and prepare their questions accordingly. In this way, the examiner, who aims to make an effective examination, should identify and organize the questions that will meet the objections during the statement and prevent the loss of administration and speed in the questioning. Examination with such a preparation provides the opportunity to undermine the credibility of the witness statement and the effect of the witness statement, and control to result of the testimony. In summary, it is recommended not to forget to take into account any objections that may occur to keep the query under control.⁶⁰ The objections that the examiner prepared for the examination may face generally can be expressed as a question that does not carry goodwill, open to discussion, misinformation, to prove the facts that have not yet been confirmed, to give up the question, to ask the question to respond, to misrepresent, to go beyond honesty, to be based on rumor. Therefore, the quality of the examination can be increased both by the examiner preparing the question and by the objections that can be received and ready for

⁵⁷ READ, Frank T., "Ceza Muhakemesinde Anlatıcı Soru ve Çapraz Sorgu Teknikleri", **Türkiye Barolar Birliği Yayınları**, 279, Ankara, 2015, pp. 25-30.

⁵⁸ MCGEHEE, **2014**, p. 6.

⁵⁹ READ, **2015**, p. 14.

⁶⁰ MCGEHEE, **2014**, pp. 6-7.

the objections. Developing in a way that does not leave rift points to reach the desired result with an efficacious examination will maximize the quality of the examination.⁶¹ To summarize, judges or other examiners can conduct more effective examinations with adequate preparation and subject-oriented mental process management.

D. Features of a Good Examination Techniques

For a good examination, preparation should be made before the questioning by planning the questions. In the preparation phase, in particular cross-examination, questions should be designed with a closed-ended questioning technique; in other words, to get a yes or no answer. In this way, it is tried to eliminate the possibility of directing the opposite party's case through a good preparation process.⁶²

With the cross-examination that a well-established examination systematic, the examiner is questioned on the fact that the eyewitness did not see the facts, the deficiencies in remembering and observation, the prejudice, and their questioning about the suspects, increasing the effectiveness of cross-examination.^{63 64}

During the preparation for the examination, it should generally be detected which questions can be asked to the witness after determining the material fiction and contradictions. At this stage, the examination will be targeted that will reveal that contradicts evidence at event fiction of counterparty or discordant points in itself by the lawyer.⁶⁵ While sorting the questions in the cross-examination, it is recommended to start with the second most significant weak issue to refute and then keep the most important weak point to the end, emphasizing all weak points detected as a good query systematic.

It was stated that it should be possible to have control over the witness in the examination, and it would be possible to take into account the following issues:⁶⁶

- What did the witness say?
- What did the witness say before the trial?
- What did the other witnesses say consistently?

⁶¹ MCGEHEE, 2014, pp. 6-7.

⁶² RABIANSKI / CARN, 1992, pp. 481-482.

⁶³ LEINFELT, Fredrik H., "Descriptive Eyewitness Testimony: The Influence of Emotionality, Racial Identification, Question Style, And Selective Perception", *Criminal Justice Review*, 2004, Volume 29, Number 2, pp. 317-340.

⁶⁴ SHERMER, Lauren O'Neill / ROSE, Karen C. / HOFFMAN Ashley, "Perceptions and Credibility: Understanding the Nuances of Eyewitness Testimony", *Journal of Contemporary Criminal Justice*, 2011, 27 (2), pp. 183-203.

⁶⁵ KARAKAYA, 2014, p. 72.

⁶⁶ KÜÇÜKAY, Alper, "Tanık İfadesi ve Çapraz Sorgu Psikolojik Bir Bakış", *Türkiye Adalet Akademisi Dergisi*, 2017, Sayı 32, p. 444.

- What evidence does not leave any doubt?
- What is most reasonable?

The direct question and the cross-examination are the processes in which the witness's credibility reveals the evidence, the evidence is shown, and the facts believed to be the case are expressed to the judge. During direct questioning, the ability to communicate with the witness is at the forefront, while the cross-examination discredits the witness's reputation at the end of the query; believing and using your own style to reveal the truth is desirable.⁶⁷ In particular, the role of lawyers in cross-examination is to be accusatory in the witnessing process of the other party, to discredit and nullify the statements.⁶⁸

E. Effect of Question Style on the Result in Cross-Examination and Risks

The struggle of witnesses with cross-examination questions often results in the exchange of statements.⁶⁹ Adults, as well as children, can declare inconsistent expressions with a cross-examination. In the study of psychologists Jack and Zajac, it is seen that the questions during cross-examination reduce the reliability of the expression in children up to 10 years of age.⁷⁰ Witnesses who are younger than adults are generally more oriented and under the influence, but there is no age-related change in the consistency of remembrances and expressions under conditions of asking impartial questions.⁷¹ Regardless of age, people are more likely to change their original answers by being asked the same question as a cross-examination rather than being asked simply. According to psychologists, the cross-examination has caused this negative impact, especially on adults who think the first statement was inadequate and their second statements were given better. It also appears that adults tend to change their answers less when they can remember their detailed memories of the event.⁷² In other words, we can think that adults are doing meta-cognitive surveillance on their answers. With this surveillance, adults have had the chance to correct the wrong statements or responses they had previously given in their second queries. If we evaluate the cross-examination in this sense, we can accept that it has a positive side as well as some negative aspects.

⁶⁷ MCGEHEE, 2014, p.10.

⁶⁸ GUTHEIL, G. Thomas / COMMONS, Michael Lamport / MILLER, Patrice Marie, "Personal Question on Cross-Examination: A Pilot Study of Expert Witness Attitudes", **Journal of the American Academy of Psychiatry and Law**, 2001, 29 -1, pp. 85-88.

⁶⁹ JACK, Fiona / ZAJAC Rachel, "The Effect of Age And Reminders on Witnesses Responses to Cross-Examination-Style Questioning", **Journal of Applied Research in Memory and Cognition**, 2014, 3, pp. 1-6.

⁷⁰ JACK / ZAJAC, 2014, pp. 5-6.

⁷¹ TUSTIN, Karen / HAYNE, Harlene, "Defining Boundary: Age-Related Changes in Childhood Amnesia", **Developmental Psychology**, 2010, Vol 46 (5), pp. 1049-1061.

⁷² JACK / ZAJAC, 2014, p. 5.

Another factor affecting and changing the correct statements in cross-examination is the amount of information about the event obtained by the witness. After the event, comprehensive information given to the witness can have a more robust and healthy memory record.⁷³ The second important point is that the information made right after the event was more effective. It is known that the delay between the incident and the examination and the delays caused by the prolongation of the time has a negative effect. As a rule, Fradella explained that the more time has passed, the more memorable it is to recall memories.⁷⁴ Another variable is self-confidence.⁷⁵ It was also stated that the use of complicated words and sentences during the cross-examination caused reductions in the accuracy of the witness statement.⁷⁶ Although cognitive and memory-related variables are essential, it should be considered that there are other factors. It is thought that more work should do on different variables to evaluate the accuracy and consistency of cross-examination better.⁷⁷

The cross-examination is inherently risky. Because the possible uncertainties in the cross-examination may not be useful for the intended purpose of the examiner, or it may be harmful. A cross-examination that is not done correctly and effectively is worse than no cross-examination. It is advisable to abandon the decision of cross-examination if there are no compelling reasons and there are doubts about success. A probabilistic cross-examination is a gamble and only a matter of time to lose.⁷⁸

Melilli proposed some preparations that would give immunity and advantage to the predictable risk of failure in the cross-examination: The first stage is to prepare basic questions that are not risk-free. At this stage, two criteria are significant. First of these criteria in case of favorable circumstances in favor of your case, and the second is the fact that the party agrees on the claim, makes a testimony that is compatible with the claims, or, if it is not, the decision-maker is convinced that the claims are valid through questions. In the second stage of questioning, the examiner will need directive questions. The examiner should aim to influence the judge's decision through the cross-examination, which contains his directive questions,

⁷³ POOLE, A. Debra / WHITE T. Lawrence, "Effects of Question Repetition on The Eyewitness Testimony of Children And Adults", **Developmental Psychology**, 1991, Vol. 27, No. 6, pp. 975-986.

⁷⁴ FRADELLA, Henry F., "Why Judges Should Admit Expert Testimony on the Unreliability of Eyewitness Identifications", **Federal Courts Law Review**, 2006, 3, pp. 2-29.

⁷⁵ ZAJAC, Rachel / JURY, Emma / O'NEILL Sarah, "The Role of Psychosocial Factors in Young Children's Responses to Cross-Examination Style Questioning", **Applied Cognitive Psychology**, 2009, 23, pp. 918-935.

⁷⁶ ELLISON, Louise, "Exploring The Influence of Courtroom Questioning and Pre-Trial Preparation On Adult Witness Accuracy", **University of Leeds Research Report**, p. 1.

⁷⁷ KÜÇÜKAY, 2017, p. 446.

⁷⁸ MELILLI, Kenneth J., "Risk Management in Cross Examination", **American Journal of Trial Advocacy**, 2015, Vol. 38, issue 2, p. 317.

which are implicitly covered by his claims. This can be accomplished by adding suffixes to the question-containing question sentences or making voice tones. In addition to asking questions correctly and grammatically, the witness can be forced to accept these statements by using the statements given earlier. The fact that he rejects the previous statements and the impeachment of the witness with the difference in his statements can provide an optimized result.⁷⁹ In addition to this, statements were given to the police, witness statements, interviews, statements given to the doctor, and statements given to family members and friends, among other sources that provide access to inconsistencies.

Questions that are well-identified and formulated do not include predicted risks for failure. In this way, the witness will have two options to answer if the witness answers the examiner's question, it will give a positive result. Otherwise, the witness will deny the claim. In this case, the examiner may at least try to indict and raise suspicion based on the previous statements of the witness. Thus, the use of cross-examination techniques can be used to bring witness status to the acceptance position.⁸⁰ The pre-trial statements would be very beneficial in the trial process and would enable the examiner to pay attention to the cross-examination beforehand and be advantageous at the hearing.⁸¹ The previous statements should be particularly given point to and studied. The question should be drawn up, noting that the fact that no one can remember or anticipate the statements that he has given previously is impossible.

The ideal cross-examination is only efficient when it is defeating. Moreover, it is enough to ask six questions and then quit to manage the cross-examination better.⁸² It seems that the shorter the cross-examination is more useful and acceptable. A skilled examiner is a well-judged jurist with a division of labor between the query and the closing argument.⁸³ Experienced examiners are known to make very severe preparations for cross-examination before the hearing.

⁷⁹ MELILLI, 2015, pp. 320-321.

⁸⁰ MELILLI, 2015, p. 322.

⁸¹ KÜÇÜKAY, 2017, p. 448.

⁸² MELILLI, 2015, p. 324.

⁸³ MELILLI, 2015, p. 325.

F. Other Questioning Techniques

General question styles commonly used in literature can be listed as directing, open-ended, closed, yes / no questions, negative, double negative, and multiple. These question types can affect the accuracy of witness statements in different ways.⁸⁴

Router questions are the type of implied questions that indicate the desired answers. For example:

“Was his shirt blue?” or, as more routers, “The shirt was blue?”.

These two questions indicate that the person is wearing a white shirt. If the examiner has made a wrong orientation, the router questions negatively affect the accuracy of the answer. This kind of examination can lead to falsifications and distortions of the witness’s responses by causing a crucial change in the representation of the event in memory and in conformity with what the examiner wants.⁸⁵

Various, open-ended questions (example: defining and describing the attacker), closed (example: what color were the man’s shirts?), and yes / no questions (example: the man’s shirt was brown?) could have striking effects on the accuracy and clarity of the witness statement. Question explicating the most accurate answer is open-ended questions. A closed questioning strategy can give you the chance to add details to the witness while reducing accuracy and precision. In general, the more particular the questions, the lower the accuracy of responses. Therefore, police officers were advised to use open forms for examination.⁸⁶

We can adjust how we can ask questions if we can understand the influences on what question types we choose based on our needs. We can select open-ended questions to tell the examiner what the witness can remember. For more specific and closed questions, there should be cases where the examiner asks the witness to remember them. In closed questions, the witness may be prone to the query of the examiner and be inclined to fill in the gaps in his memory, which are unclear or distorted. Yes / no questions may lead to erroneous results due to acceptance and compliance. The tendency to accept is that the witness especially replies yes, regardless of the event content.⁸⁷ Negative, double-negative, or multiple questions can also lead to some problems. Negative and double-negative questions can cause problems because the witness has difficulty understanding the questions. However, it can be seen that the answers are

⁸⁴ WILCOCK, Rachel / BULL, Ray / MILNE, Rebecca, **Witness Identification in Criminal Cases: Psychology and Practice**, Oxford; New York: Oxford University Press, 2008, p. 63.

⁸⁵ GUDJONSSON, Gisli H., **The Psychology of Examinations and Confessions: A Handbook**, 2008, Wiley Online Library, pp. 384-385.

⁸⁶ WILCOCK / BULL / MILNE, pp. 29-60.

⁸⁷ GUDJONSSON, p. 412.

actually known if more simplified questions are asked to the witnesses. Multiple questions include multiple parts and different answers. This kind of question leads to problems because the witnesses cause both the weakness of comprehension of the questions and the only answer, even if they answer two questions. Unclear, confusing questions and language contamination can cause concerns in children and young people. However, since the nature and functions of language are attributable to more than just the speaking of words, it seems necessary to place these words in a social and psychological context. The use of language is crucial in its capacity to include and exclude experiences, create taboos, provoke guilt, and create deep psychological states.⁸⁸

As can be seen, it is known that different psychological states, as well as question styles, have an impact on witness testimony. For this reason, having information on witness psychology can provide considerable benefits in terms of witness testimony.

CONCLUSION

According to the literature, correct statements should contain much detail. The witness's responses to repeated questioning should not be substantially the same. It is seen that the witnesses expressed their statements more naturally, spontaneously, and irregularly in terms of content and grammar.⁸⁹ Especially in cases where the physical evidence is insufficient, the memories of the people who witnessed the event are also used as evidence, which is very important in terms of forensic psychology.⁹⁰ The legal decision stage is not only based on absolute facts. For this reason, the opinions of the witnesses are also included while making the decision. Therefore, the trial is made according to the proven situation led by both the witness and the technique. The science of criminology, on the other hand, gave the judge the ability to recognize and interpret the psychology of the witnesses during the decision-making phase. In this context, the important thing is whether the witnesses tell the truth or not based on their psychology.⁹¹

The effect of witness psychology and interrogation techniques on witness statements can be expressed clearly and unequivocally. It is thought that the impact of the witness

⁸⁸ BRENNAN, Mark, "The discourse of denial: Cross-examining child victim witnesses", **Journal of Pragmatics**, Volume 23, Issue 1, January 1995, pp. 71-91. [https://doi.org/10.1016/0378-2166\(94\)00032-A](https://doi.org/10.1016/0378-2166(94)00032-A).

⁸⁹ YÜCEL, Mustafa T., "Ceza Adaletinde Tanık", **Türkiye Barolar Birliği Dergisi**, 1994/1, p. 102.

⁹⁰ ALPAR, Gül / ER, Nurhan / Boyraz, Fatma U., "Görgü Tanıklığında Bellek Hataları: Olay Sonrası Bilginin ve Tuzak Soruların Hatırlama ve Kaynak İzleme Üzerindeki Etkisi", **Türk Psikoloji Yazıları**, 2007, 10 (20), p. 2.

⁹¹ BALCIOĞLU, İbrahim / KOCABAŞOĞLU, Neşe / BAŞER, Sinem Z., "Tanıklık ve Tanık Psikolojisi", **Türkiye Klinikleri J Psychiatry-Special Topics**, 2011; 4(1), pp. 15-21.

statement on the judge's decision-making process is clearly revealed in terms of revealing the event and the facts and reaching the material truth. All lawyers, especially judges, can take advantage of witness-related processes by making use of some psychological techniques and clues. Witness testimony is an issue that needs to be emphasized because it is an issue that needs to be taken into account in ensuring rights and justice in trial processes. In this context, studies on witness psychology, which are in the common field of law and psychology, reveal information that can be useful, especially for lawyers with the coordination of these two disciplines.

At its best, the field of psychology and law together has produced increased knowledge of several fundamental legal questions that affect hundreds of thousands of people a year.⁹² Psychology contributes to justice by helping courts understand victims' and offenders' minds, psychological states, and eyewitness testimonies.⁹³ This article has been handled with the expectation that it will contribute to the judges in terms of trial processes.

The main point to be reached is to use witness examination techniques to determine the crime and the perpetrator, punish the criminal, reveal innocence, and realize the truth and justice by reaching the truth. Therefore, when direct and cross-examination applications are used as a method to serve this purpose, it can be thought that it can benefit all lawyers, especially judges.

BIBLIOGRAPHY

ALPAR, Gül / **ER**, Nurhan / **Boyraz**, Fatma U., "Görgü Tanıklığında Bellek Hataları: Olay Sonrası Bilginin ve Tuzak Soruların Hatırlama ve Kaynak İzleme Üzerindeki Etkisi", **Türk Psikoloji Yazıları**, Year:2007, Volume: 10, Number: 20, pp. 1-17

ARCHER, Dawn, "Cross-Examining Lawyers, Facework and the Adversarial Courtroom", **Journal of Pragmatics**, Year: 2011, Volume:43, pp. 3216–3230.

BALCIOĞLU, İbrahim / **KOCABAŞOĞLU**, Neşe / **BAŞER**, Sinem Z., "Tanıklık ve Tanık Psikolojisi", **Türkiye Klinikleri J Psychiatry-Special Topics**, Year: 2011, Volume: 4, Number: 1, pp. 15-21.

⁹² **PETRILA**, John P., "Finding Common Ground between Scientific Psychology and the Law", Edited by Jennifer L. Skeem, Kevin S. Douglas, Scott O. Lilienfeld, **Psychological Science in the Courtroom**, The Guilford Press, New York, 2019, p. 404

⁹³ **KÜÇÜKAY**, Alper, "Psychological and Judicial Factors Influencing on Decision Making", **Law and Justice Review**, 2018b, Issue:16, pp. 128-129.

BERKOWITZ, Shari R. / **GARRETT**, Brandon L. / **FENN**, Kimberly M. / **LOFTUS**, Elizabeth F., “Convicting with confidence? Why we should not over-rely on eyewitness confidence”, **Memory**, (Hove, England), Yıl: 2022, Volume: 30, Number: 1, pp. 10–15.

BOWER, Gordon H. / **FORGAS**, Joseph P., “Mood and Social Memory”, In Forgas, J.P. (Ed.), **The Handbook of Affect and Social Cognition**, 2001, Psychology Press, pp. 95-120.

BRAINERD, Charles / **REYNA**, Valerie F., “Fuzzy-Trace Theory and Lifespan Cognitive Development”, **Developmental Review**, Year: 2015, Volume 38, pp. 89-121.

BRENNAN, Mark, “The discourse of denial: Cross-examining child victim witnesses”, **Journal of Pragmatics**, Volume 23, Issue 1, January 1995, pp. 71-91. [https://doi.org/10.1016/0378-2166\(94\)00032-A](https://doi.org/10.1016/0378-2166(94)00032-A).

Criminal Procedure Law (Ceza Muhakemeleri Kanunu), No. 5271, In Turkish Law, <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5271.pdf> / erişim tarihi: 02.05.2022

CHAPPELLE, Wayne / **ROSENGREN**, Kent, “Maintaining Composure and Credibility as an Expert Witness During Cross-Examination”, **Journal of Forensic Psychology Practice**, Year: 2001, Volume: 1, Number: 3, pp. 51-68.

CUTLER, Brian L. / **WELLS**, Gary L. “Expert Testimony Regarding Eyewitness Identification”, Edited by Jennifer L. Skeem, Kevin S. Douglas, Scott O. Lilienfeld, **Psychological Science in the Courtroom**, The Guilford Press, New York, 2019.

Çapraz Sorgu (Cross Examination) ve Portekiz, HSK, <http://www.hsk.gov.tr/Eklentiler/Dosyalar/dd7069fe-3e12-4280-92a8-bc323983d56e.pdf> / erişim tarihi: 12.05.2022

ELLISON, Louise, “Exploring The Influence of Courtroom Questioning and Pre-Trial Preparation On Adult Witness Accuracy”, **University of Leeds Research Report**.

FIEDLER, Klaus / **ASBECK**, Judith / **NICKEL**, Stefanie, “Mood and Constructive Memory Effects on Social Judgement”, **Cognition and Emotion**, 1991, 5, pp. 363-378.

FISHER, George / **TVERSKY**, Barbara, “The Problem with Eyewitness Testimony”, **Stanford Journal of Legal Studies**, Volume: 1, Number:1, pp. 25-30.

FORGAS, Joseph P. / **LAHAM**, Simon M. / **VARGAS**, Patrick T., “Mood Effects On Eyewitness Memory: Affective Influences on Susceptibility to Misinformation”, **Journal of Experimental Social Psychology**, Year: 2005, Volume:41, pp. 574-588.

FRADELLA, Henry F., “Why Judges Should Admit Expert Testimony on the Unreliability of Eyewitness Identifications”, **Federal Courts Law Review**, Year: 2006, Volume:3, pp. 2-29.

GARRETT, Brandon L., Convicting the Innocent Where Criminal Prosecutions Go Wrong, **Harvard University Press**, Cambridge, MA, and London, England, 2012.

GUDJONSSON, Gisli H., **The Psychology of Examinations and Confessions: A Handbook**, 2008, Wiley Online Library.

GUSTAFSSON, Philip U. / **LINDHOLM**, Torun / **JÖNSSON**, Fredrik U., “Predicting Accuracy in Eyewitness Testimonies With Memory Retrieval Effort and Confidence”, **Frontiers in Psychology**, Year: 2019, Volume 10, pp. 1-10.

GUTHEIL, G. Thomas / **COMMONS**, Michael Lamport / **MILLER**, Patrice Marie, “Personal Question on Cross-Examination: A Pilot Study of Expert Witness Attitudes”, **Journal of the American Academy of Psychiatry and Law**, Year: 2001, Volume: 29, Number: 1, pp. 85-88.

JACK, Fiona / **ZAJAC** Rachel, “The Effect of Age And Reminders on Witnesses Responses to Cross-Examination-Style Questioning”, **Journal of Applied Research in Memory and Cognition**, Year: 2014, Volume: 3, pp. 1-6.

KARAKAYA, Naim, Ceza Muhakemesi Hukukunda Avukatın Soru Sorma Yetkisi, **Avukatlar İçin El Kitabı IV**, Türkiye Barolar Birliği Yayınları, 2014, pp. 1-82.

KÜÇÜKAY, Alper, “Karar Vermenin Psikolojisi”, **Türkiye Adalet Akademisi Dergisi**, Year: 2018a, Volume: 35, pp. 607-640.

KÜÇÜKAY, Alper, “Psychological and Judicial Factors Influencing on Decision Making”, **Law and Justice Review**, Year: 2018b, Volume:16, pp. 127-170.

KÜÇÜKAY, Alper, “Tanık İfadesi ve Çapraz Sorgu Psikolojik Bir Bakış”, **Türkiye Adalet Akademisi Dergisi**, Year: 2017, Volume: 32, pp. 435-464.

LEINFELT, Fredrik H., “Descriptive Eyewitness Testimony: The Influence of Emotionality, Racial Identification, Question Style, And Selective Perception”, **Criminal Justice Review**, Year: 2004, Volume: 29, Number: 2, pp. 317-340.

LOFTUS, Elizabeth F., “Dispatch from the (un)civil memory wars”, **The Lancet**, Year: 2004, Volume: 364, Supplement 1, pp. 20-21.

LOFTUS, Elizabeth F., “Eyewitness Testimony With a New Preface”, **Harvard University Press Mathieson Don**, 1996, LexisNexis NZ Ltd.

LOFTUS, Elizabeth F. / Greene, Edith, “Warning: Even memory for faces may be contagious”, **Law and Human Behavior**, Year: 1980, Volume: 4, Number: 4, pp. 323–334. <https://doi.org/10.1007/BF01040624>.

MARKOWITSCH, Hans J., Memory and Amnesia, **Principles of Behavioral and Cognitive Neurology**, Published by Oxford University Press Inc., New York, 2000.

MCGEHEE, E. Jack, “A Guide to Direct Examination and Cross-Examination”, **GPSolo**, Year: 2014, Volume: 31, Number: 5, pp. 1-10.

MELILLI, Kenneth J., “Risk Management in Cross-Examination”, **American Journal of Trial Advocacy**, Year: 2015, Volume: 38, Number: 2, pp. 317-334

PETRILA, John P., “Finding Common Ground between Scientific Psychology and the Law”, Edited by Jennifer L. Skeem, Kevin S. Douglas, Scott O. Lilienfeld, **Psychological Science in the Courtroom**, The Guilford Press, New York, 2019.

POOLE, A. Debra / **WHITE T.** Lawrence, “Effects of Question Repetition on The Eyewitness Testimony of Children And Adults”, **Developmental Psychology**, Year: 1991, Volume: 27, Number: 6, pp. 975-986

RBIANSKI, Joseph / **CARN**, Neil G., “Cross Examination: How to Protect Yourself and The Appraisal Report”, **The Appraisal Journal**, Year: 1992, Volume: 60, Number: 4, pp. 472-482.

READ, Frank T., “Ceza Muhakemesinde Anlatıcı Soru ve Çapraz Sorgu Teknikleri”, **Türkiye Barolar Birliği Yayınları**, Number: 279, Ankara, 2015.

RESNICK, Marc L., “When Eyewitnesses Misremember: The Delicate Balance Between Forensic Investigation and Memory Evidence Assessment”, **Proceedings of the Human Factors and Ergonomics Society Annual Meeting**, Year: 2014, Volume: 58, Number: 1, pp. 539-543.

RICHTER, Robert I., Senior Judge, District of Columbia Superior Court, “**Examination and Cross-Examination of Trial Witnesses A Judicial Prospective**”, [http://www.abgm.adalet.gov.tr/eng/pdf/makaleler%20\(EN\)/article%203.pdf](http://www.abgm.adalet.gov.tr/eng/pdf/makaleler%20(EN)/article%203.pdf).

SCOTT, Charles L., “Evaluation of Criminal Responsibility”, **Textbook of Forensic Psychiatry**, Edited by Liza h. Gold, Richard L. Frierson, The American Psychiatric Association Publishing, 2018.

SHAPIRO, Lauren R., “Eyewitness Testimony for A Simulated Juvenile Crime by Male and Female Criminals with Consistent or Inconsistent Gender-role Characteristics”, **Journal of Applied Developmental Psychology**, Year: 2009, Volume: 30, Number: 6, pp. 649-666.

SHERMER, Lauren O’Neill / **ROSE**, Karen C. / **HOFFMAN** Ashley, “Perceptions and Credibility: Understanding the Nuances of Eyewitness Testimony”, **Journal of Contemporary Criminal Justice**, Year: 2011, Volume: 27, Number: 2, pp. 183–203.

ŞAHİN, Cumhur, **Sanığın Kolluk Tarafından Sorgulanması**, Yetkin Yayınları, Ankara, 1994.

TULVING, Endel, “Episodic Memory: From Mind to Brain”, **Annual Review of Psychology**, Year: 2002, Volume: 53, Number, 1, pp. 1-25.

TUSTIN, Karen / **HAYNE**, Harlene, “Defining Boundary: Age-Related Changes in Childhood Amnesia”, **Developmental Psychology**, Year: 2010, Volume: 46, Number: 5, pp. 1049-1061.

WELLMAN, Francis, **The Art of Cross-Examination**, pp. 8-10-55-123. <https://delhihighcourt.nic.in/library/articles/the%20art%20of%20cross%20examination%5B1%5D.pdf> erişim tarihi: 07.10.2022.

WELLS, Gary L., Memon Amina, Penrod Steven D., “Eyewitness Evidence: Improving Its Probative Value”, **Psychological science in the public interest: a journal of the American Psychological Society**, Year: 2006, Volume:7, Number: 2, 45–75.

WILCOCK, Rachel / **BULL**, Ray / **MILNE**, Rebecca, **Witness Identification in Criminal Cases: Psychology and Practice**, Oxford; New York: Oxford University Press, 2008.

WIXTED, John T. / **MICKES**, Laura / **CLARK**, Steven E. / **GRONLUND**, Scott D. / **ROEDIGER**, Henry L., “Initial eyewitness confidence reliably predicts eyewitness identification accuracy”, **American Psychologist**, Year: 2015, Volume: 70, Number: 6, pp. 515–526.

VORA, Nilay U., “Radical Cross-Examinations”, **Minority Trial Lawyer, ABA Section of Litigation**, Year: 2015, Volume: 13, Number: 2, pp. 1-4.

YURTCAN, Erdener, **Ceza Yargılaması Hukuku**, B. 5, Alfa Yayınları, İstanbul, 1994.

YÜCEL, Mustafa T., “Ceza Adaletinde Tanık”, **Türkiye Barolar Birliği Dergisi**, Year: 1994, Volume: 1, pp. 100-106.

ZAJAC, Rachel / **JURY**, Emma / **O'NEILL** Sarah, "The Role of Psychosocial Factors in Young Children's Responses to Cross-Examination Style Questioning", **Applied Cognitive Psychology**, Year: 2009, Volume: 23, pp. 918–935.