

Правоохранительная функция – это одно из относительно самостоятельных и обособленных направлений деятельности специально уполномоченных органов и должностных лиц государственной и муниципальной власти, институтов гражданского общества и отдельных граждан в сфере правоохраны и обеспечения правопорядка в обществе [6, с. 5].

Среди органов, реализующих правоохранительную функцию государства, особое место принадлежит органам внутренних дел [2, с. 17].

Завершая исследование на тему «Теоретические аспекты правоохранительной функции государства» хотелось бы выдвинуть ряд предложений:

- создание условий для проведения исследований посвященных теоретическим вопросам правоохранительной функции государств и прилегающих к ним областям;
- проведение сравнительно-правовых анализов института правоохранительной функции развитых государств;
- усовершенствование института взаимодействия правоохранительной функции с другими функциями и формирование перспектив;
- развитие и совершенствование института обеспечения и претворения в жизнь правоохранительной функции со стороны государственных органов по реализации прав и свобод человека и гражданина;
- усовершенствование института сотрудничества и взаимодействия государственных органов с гражданским обществом по реализации правоохранительной функции государства.

Список библиографических ссылок

1. Балтабаев С. А. Понятия «правоохранительная функция», «правоохранительная деятельность», «правоохранительный орган» и их соотношение // Издательство «Проблемы науки» : сайт. <https://ipi1.ru/images/PDF/2016/45/ponyatiya-pravookhranitelnaya-funktsiya.pdf> (дата обращения: 31.03.2019).
2. Жихорева Р. Е. Реализация правоохранительной функции государства в сфере экономики : автореф. дис. ... канд. юрид. наук : 12.00.01. М., 2017. 28 с.
3. Зырянов С. М. Правоохранительная функция государства. *Вестник Московского университета МВД России. Юридические науки*. 2017. № 5. С. 45–50.
4. Карпова Н. А. Правоохранительная функция правового государства : автореф. дис. ... канд. юрид. наук : 12.00.01. М., 2007. 159 с. URL: <http://www.dslib.net/teoria-prava/pravookhranitelnaya-funkcija-pravovogo-gosudarstva.html> (дата обращения: 31.03.2019).
5. Конституционные права и свободы: проблемы интерпретации и реализации в национальных правовых системах : сб. ст. междунар. науч.-практ. конф. (г. Новополюк, 28–29 окт. 2016 г.) : в 3 т. / Полоц. гос. ун-т, Регион. учеб.-науч.-практ. юрид. центр ; редкол.: И. В. Вегера (отв. ред.) и др. Новополюк : ПГУ, 2016. Т. 2. 328 с.
6. Концепция правоохранительной политики в Российской Федерации / Саратов. филиал учреждения Рос. Акад. наук, Ин-т государства и права РАН. Саратов, 2011. 21 с. URL: http://www.igpran.ru/filials/Koncepciya_Pravooxr_Politiki.pdf (дата обращения: 31.03.2019).
7. Лычковский Д. Н. Конституционно-правовое обеспечение неприкосновенности личности в республике Беларусь : автореф. дис. ... канд. юрид. наук : 12.00.02. Минск, 2018. 28 с.

Получено 03.04.2019

УДК 343.1

Jan K. SEIGEL, Esq.

*Counselor At Law, Seigel Law
(New Jersey. United States of America)*

HOW TO REFUTE STATE'S EVIDENCE IN A DEFENSE SUMMATION

The evidence has been introduced. Except for summations, the case is complete. How does the defense counter or refute the evidence against the accused? Remember, it is not the burden of the defense to prove or disprove, merely to raise reasonable doubt. There are two types of evidence, direct and circumstantial, and the approach differs depending on the type of evidence the State is relying on.

Direct evidence usually comes in the form of eyewitness testimony. For example, assume the defendant is charged with bank robbery. The State may present a witness who was driving past the bank and claims that as she was driving her car she observed the defendant leave the bank, take off his mask,

and get on a waiting motorcycle. She is the only witness to identify your client. How best to refute her testimony?

Anticipating this issue (the author always prepares his summation before the trial starts so he knows what evidence must be produced during trial) hopefully during cross examination you have established that:

- (1) the witness did not expect to see a masked man leave the bank,
- (2) she only saw him for a matter of seconds, and
- (3) at the same time she saw the man take off his mask, she was driving her car.

Despite whatever points you made on cross-examination, you must now convince the jury of reasonable doubt in regard to her identification. Calling this independent witness a liar is the wrong approach. The defense of “mistaken identity” is the better approach. But how do you sell it?

I like to tell the jury that this problem of mistaken identity was on my mind all weekend and while watching a football game on television, it suddenly dawned on me how to explain it. During the football game the attackman scored a goal which the referee allowed, but in my opinion and the opinion of the fans watching, should have been disallowed because the attackman was “off-sides”. Thankfully, the referee went to instant replay which showed the attackman was clearly off-sides and the goal was disallowed. Tell the jury that is when you realized the football play was relevant to this case.

In the football game, there was a referee:

- (4) whose only function was to look for offsides,
- (5) who was a paid professional trained to observe,
- (6) who knew the players were coming to the goal, and
- (7) who had sufficient time to observe.

Despite all of the above, the referee still made a mistake. Ask the jury, it is so unlikely that the State’s witness, not expecting to see what she did, not paid to observe, with only seconds of time, and making her observation while operating her car, also made a mistake? This is also a good time to remind the jury of the finality of their verdict. There is no instant replay to correct their mistake.

The second type of evidence is circumstantial. Proof is by deduction not eye witness testimony. For example, assume it is your birthday tomorrow and your boyfriend calls and tells you he will be the first to give you a card and present on your birthday. He tells you to look outside your door when you wake up. That night it snows. In the morning you wake and look outside and see freshly fallen snow. You also notice footprints from the street leading to your door. You open your front door and see a card, a present, and a flower. You open the card and its signed “Love, your boyfriend”. Despite not seeing your boyfriend come to your house that morning, you may deduce from other facts that he indeed had come. This is an example of circumstantial evidence, which at times can be even more persuasive than direct evidence.

Circumstantial evidence is often used by police who charge a defendant with possession of drugs where they find drugs at his feet, under the presumption that he dropped (or “offed” the drugs in street talk) the drugs as the police approached. Although the police never saw the defendant “drop” the drugs, the police use circumstantial evidence to show that the defendant was in possession of the drugs. This charge is so common that these cases are referred to as “dropsy” cases. How to refute or raise reasonable doubt?

Once again it is never a good idea to call the police “liars”. The better approach in defending a circumstantial evidence case is to argue that the witness “jumped to a conclusion”: that the witness added 1+1+1 and got 4 not 3. Your argument will loosely follow this scenario:

- the police saw the defendant in a high drug area,
- the defendant is a known drug user,
- when the police approached the defendant, they found drugs at his feet, therefore
- the defendant “dropped” the drugs and the drugs were his.

The defense? Not necessarily so! The police simply “jumped to a conclusion”. We all jump to conclusions in our everyday life. I use myself as an example. I tell the jury that just this past weekend my family was to visit another family for the afternoon. My wife is known for baking the very best chocolate cookies. She baked a batch to take to the family we were to about to visit. When she took the cookies from the oven to cool, she told our children not to eat any as we were bringing them as a gift. A few minutes later, I saw my six year old son with chocolate all over his mouth. I grabbed him and starting spanking him telling him Mommy had just told him not to eat the chocolate cookies. He started cying and saying “But Daddy, but Daddy”, and I kept spanking and saying “But Daddy, nothing - Mommy told you not to eat them”.

At that point my wife came out asking why I was spanking my son. I told her I was punishing him for eating the cookies. She said “he didn’t eat the cookies, I gave him a chocolate bar”. I felt very badly. I had observed some facts, but “jumped” to the wrong conclusion – just like the police “jumped to the wrong conclusion” in our case. The drugs, although by his feet, were not his. Also remind the jury, that the defendant’s punishment, if wrongfully convicted, will be far worse than the wrongful spanking suffered by my son.

Remember these two approaches to refute – or at least raise reasonable doubt – to the State’s evidence.

Received 25.03.2019

УДК 341.123:341.231.14-055

Olena USTYMENKO,

Candidate of Science of Law

Associate Professor of the Constitutional and International Law Department Faculty № 4,

Kharkiv National University of Internal Affairs;

ORCID ID: <https://orcid.org/0000-0002-5169-0123>

GENDER EQUALITY IN THE UNITED NATIONS

The issue of gender equality is quite relevant nowadays and a great number of scholars all over the world pay attention to this problem. There are different international documents related to the gender equality and ways of fighting against the discrimination. The importance of research into gender parity is based on various factors, among them: unequal employment and educational opportunities for men and women, dramatic difference in salaries and wages, medical care, out-of-date legislation, high qualities to achieve the leading position, physical, sexual or domestic violence against women etc. For example, over 2.7 billion women are legally restricted from having the same choice of jobs as men. Of 189 economies assessed in 2018, 104 economies still have laws preventing women from working in specific jobs, 59 economies have no laws on sexual harassment in the workplace, and in 18 economies husbands can legally prevent their wives from working [1]. Labour force participation rate for women aged 25-54 is 63 per cent compared to 94 per cent for men [2]. Women tend to spend around 2.5 times more time on unpaid care and domestic work than men [3]. Furthermore, women are just 13 per cent of agricultural land holders.

According to this statistics, we consider that the issue of gender inequality affects on the policies, directions and programs of states and international organizations, such as the United Nations, Interpol, the Council of Europe, Europol, the Organization for Security and Cooperation in Europe (OSCE), the Organization of American States (OAS) etc.

The United Nations (the UN) is seen as leading the call for gender equality as a part of a human security strategy in the twenty-first century [4]. We should indicate that the UN engages women in all aspects of their policies and programs. In our study we will describe some documents and institutions within the UN, which are concerned with the gender equality.

Firstly, one of the most important international documents in the sphere of gender equality is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted by the United Nations General Assembly and entered into force on 3 September 1981 after the twentieth country had ratified it. The Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women [5]. Nowadays the Convention on the Elimination of All Forms of Discrimination Against Women is adopted by international treaty and 189 states ratified it; especially Ukraine ratified it in 2003.

The Convention on the Elimination of All Forms of Discrimination Against Women focuses on and includes articles regarding non-discrimination, sex stereotypes, and sex trafficking; women’s rights in the public sphere with regard to political life, representation, and nationality; economic and social rights of women in regard to education, employment and health; women’s right to equality in marriage and family life, and equality before the law; and establishes the Committee on the Elimination of Discrimination against Women. Resolutions 1325 and 1820, adopted in 2000 [4].