

PSYCHOLOGICAL CONSIDERATIONS REGARDING THE TESTIMONY AND THE WITNESS

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***Abstract:** From the perspective of judiciary psychology the testimony is a result of an observation and involuntary memorization process of a juridical event followed by the reproduction of that event in an oral or written provided to the criminal prosecution authority or court house.*

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Introductory aspects

From the perspective of judiciary psychology the testimony is a result of an observation and involuntary memorization process of a juridical event followed by the reproduction of that event in an oral or written provided to the criminal prosecution authority or court house.

The testimony has to be investigated apart of the witness, under every aspect, including the psychological perspective, this being the logic of the investigation. In this case, Enrico Altavilla in his work "Psichologia giudiziaria" insists upon the fact that" the psychological phenomenon of the testimony has a double aspect, subjective and objective: the psychological capacity of the individual to be able to testify, the capability of the object or event to become an object of testimony.

In order to do so the following aspects should be considered:

- the ability to testify. That is the aspect of the judicial event of becoming an object of evidentiary hearing, considering that some aspects are in expectance of the testimonial evidentiary hearing;
- memorability. The ability of the object to be memorized;
- faithfulness. Represents the individual's ability to remember the judicial event and testify for it;
- truthfulness. Represents the subjective availability of the individual to tell the truth.

In a lawsuit, the evidence is presented according to the provisions of the witnesses. This evidence indicates a certain number of difficulties represented by: the involuntary errors that the witnesses frequently commit, the retention of some witnesses to testify, fear of suffering

future consequences for their testimonies, rigged judicial affairs, trial exploitation, certain instructions given by lawyers to witnesses, etc.

The studies of Vidail and Magnol have highlighted the lack of faithfulness of the judicial testimony that are: a fully faithful testimony is an exception; a truthful witness can make mistakes; the size and the faithfulness of a judicial testimony diminishes as the age of the events grows; the value of the testimony is not proportional with the number of witnesses, and a minority can be truthful against a strong majority, a large number of strange, unknown individuals are taken as witnesses and they deform the truth with their personal disturbances and psychological lacks.

From a psychological point of view, the testimony is the result of the interaction of psychic assets of the individual that transfers the information and the reality of the percept. Hence, the scientific critique of the testimony implies knowledge of the testimony emitter in a contradiction with his personality: honesty, correctness, modesty, and generosity in contradiction with untruthfulness, insincerity, individualism, cowardice, egocentrism. The scientific critique of the testimony also implies knowledge of the subject with reference to the physical and psychical condition, the relations of the subject with the judicial environment and reference to the lawsuit participants. In general, this is the psychological problematic of the judicial testimony, which is highlighted by criminology and the judicial psychological studies by offering solutions that permit the illegal and solid evaluation of the testimonial evidence.

A lot of opinions have existed concerning the probative force of evidence. Hence, due to the fact that the witness's evidence is very simple to administrate and evaluate it is often perceived with doubt, skepticism, and thus the credibility of this evidence is diminished.

A similar opinion has been conceived that the testimonial evidence is apparently fragile, sometimes deceptive and with a random value.

In doctrine there is a conclusion according to which the testimony represents the process of filtering reality through the subjectivity of the witness but also through the subjectivity of the judicial authority that measures the probative value of the witness statements, also considering that there are some aspects of testimony relativity. The most important aspects are: the imperfection of the sensory organs, distorted psych processes, the general opinion (according to which the witness testimony has to be a faithful reproduction of reality)

Witness - magistrate relation from a psychological point of view

In the case of the testimony process a lawsuit relationship "witness-magistrate" is created, which although a judicial relationship, it is a psychological communication relationship between the witness and the magistrate with respect to the lawsuit rules.

The judicial relationship "witness-magistrate" represents the starting base of judicial lawsuit activities as identification, administration, appreciation and measurement of evidence with the purpose to give solutions to judicial causes, not regarding their nature. The essential condition of the psychological communication between the witness and the magistrate is that the witness is trustworthy, fearful, without interest or indifference and the magistrate can help the witness to gain courage, responsibility in order to uncover the truth.

The relationship between witness and magistrate is in the interest of the magistrate due to the fact that in the modern criminal lawsuit, the magistrate is the last individual entrusted with the verification of the reliability and legal administration and appreciation of the evidence discovered in the criminal lawsuit. The magistrate can correct eventual errors of the law enforcement authority committed before the magistrate's decision. Also it is possible that the magistrate can perform the first audience if the defense requires the audience of individuals that were not audited in prosecution.

The audience in front of the court is different of the audience in prosecution due to the fact that the witness has to answer the questions of the defense and the accusation, which represent opposing interests. In this situation the magistrate has to ensure the objectiveness of the auditions, prevention of stress or suggestive questions to witnesses, essential psychological aspects. There are practical situations where the witnesses change the content of their testimony in the prosecution stage. Usually, the witnesses motivate through inaccuracy in the prosecution stage (constraint, intimidation) or through abusive actions which the final scope that the witness will tell the truth. Furthermore, there are situations where the witness, although he told the truth in the prosecution stage, he has another testimony in the trial stage as a result of advice from lawyers or at the solicitation of the parts. In such situations the magistrate has the obligation to establish when the witness told the truth. The magistrate has the possibility to reappoint the criminal prosecution authorities to establish the motives of the change of mind. It is recommended that other criminal prosecution authorities are sent in order to avoid witness abuse.

In another opinion (Tudorel Butoi), the most efficient solution is represented by testing the witness with the "Lie Detector", test that can

be carried out in front of the court depending on the witness agreement or not. In the future a new technique will be used, announced 2003, that uses a computer (laptop) fitted with a digital camera that studies the movement of the face muscles. This system is more efficient than any other technique of detection. Hence, it can be considered that the dispute in the foreign and national doctrine is settled with regard to the lack of insufficient exigency in the judicial practice to ensure full equality between the defense and the accusation and the cassations of the motivated solutions for witness testimony change.

In doctrine it is mentioned that: "Magistrates are convinced that the number of untruthful witnesses is very big and adjudgements for false testimony are very rare".

In conclusion the relationship between "witness-magistrate" is of big importance, especially for the magistrate, knowledge about psychological events coming in his aid to uncover the truth.

The psychological problem of the truthful judicial testimony

Judicial psychology offers many methods and criterions that allows justice to spot out certain false or erroneous but truthful, and testimonies that are truthless and of bad faith.

The truthful testimony is a testimony that is under oath, is not truthless, it does not come from bad faith of the witness and thus does not fall under the criminal law. A part of the truthful testimonies can have the same effect as the truthless testimonies if the above mentioned are erroneous. From a psychological point of view the analysis of these testimonies has a big importance for those practicing the judicial system.

The causes for truthful judicial testimonies, false in their background content (that is the content that produces judicial effects), are not of criminal or physiological nature but unintentional psychological nature.

According to the criminal trial law, the magistrate has the obligation to examine and establish "the causes of the change of judicial testimonies" through experiments, expertise, biodetection, intersubjective tests, etc.

According to an opinion "The errors and denaturation which appear in the statements of the individuals- or in the witnesses testimonies in the case if judicial testimonies- can be: consequences of the erroneous perception; the behavior that can modify the perception and the reproduction; a bigger time span between the moment of the statement and the time of the judicial case; suggestive questions; witnesses discussions; etc.

In another opinion, the "angle of deviation" is included in the category of testimony change. By this we understand that a truthful testimony represents a projection of reality, from a subjective point of view of the individual and that "between the objective reality and the subjective projection of reality there is an angle of deviation". Concerning the causes for the "angle of deviation", psychological experiments have testified numerous examples of general psychic particularities (subjectivism, subjectivity, constructivism, activism). These affect the human capacity to render reality. Some of the causes are: the existence of minimal and maximum perception boundaries; the human inability to percept all sensory information from the environment; the human brain incapacity to handle all the given information; the added information, etc.

If we wish to know the causes of the "angle of deviation" it is necessary to study the formation of the testimony. This process has an initial moment, that is the judicial event, which is independent of the future witness, and the final moment that is the testimony.

Between the two moments there are four intermediary stages which will be analyzed. It is essential to memorize that the event is the object of the testimony and that the testimony is reflected to the authorities through the disposition of the witness.

The psychological process of the formation of a testimony

According to the major opinion, this process of objective reality knowledge is formed from four stages:

- sensory reception of the information;
- processing and decoding of the information;
- memorization and storage of the information;
- reuse of the information (reproduction and recognizance);

In another opinion this process is simplified only to three stages: perception, memorization and reproduction.

The process of reality recognition depends, in essence, to the capacity of each individual to percept the given information, to process the information, but also to the subjectivism and psychical selectivity, with other words many aspects. These aspects can even influence the mode of rendering or recognition of acts and individuals.

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