

# PSYCHOLOGY OF WITNESSES AND VICTIMS IN ESTABLISHING THE TRUTH IN CRIMINAL TRIALS

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**Abstract:** *This paper analyzes aspects pertaining to the psychology of witnesses and victims in criminal trials, by pointing out the influence of stress and trauma on the credibility of testimony. The importance of efficiently managing perjury is underlined to ensure an equitable trial. The paper points out the presence of psychological factors which play a crucial role in determining the credibility of testimony and in correctly recalling traumatic events.*

**Key words:** *credibility of testimony, psychology of witnesses, perjury, psychological impact, memory.*

## 1. Introduction

Psychology, as a discipline based on the study of facts and psychological and behavioral processes, much like personality, entails an essential position in understanding the experience and perception of individuals who are involved in criminal trials, whether as witnesses or victims.

What is a witness? The Criminal Procedure Code points out that witnesses are seen as other procedural subjects and their testimony is evidence in finding out the truth. Article 114 first alignment of the Criminal Procedure Code states that “any person who has knowledge about facts or circumstances which can be entered into evidence in a criminal procedure are considered to be witnesses”.

What about the victim? It is also the Criminal Procedure Code which presents the victim, the injured party, as a main procedural subject along with the suspect. Article 79 of the Criminal Procedure Code mentions that the injured party is the “person who suffered a physical, material or moral injury as a result of the crime”.

Within a criminal trial, psychological factors such as stress, anxiety and suggestive influence can have a significant effect on the credibility of witnesses’ testimony. It is essential to acknowledge and understand their effects on the manner in which the act of justice is performed. To guarantee an equitable and fair trial, the witnesses’ testimony must be approached with attention and balance. Understanding these aspects can help prevent judicial errors and protect the rights and interest of all interested parties.

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Numerous studies have been performed, studies which have demonstrated that evidence is imperfect, because of the interpretation and credibility of statements. This type of evidence is crucial in criminal trials, as it is based on the words and facts as seen by the witness. However, despite attempts to obtain precise and honest information, different factors can tamper with the efficiency and precision of testimony. Such a factor is human bias, as emotions, personal perceptions and other subjective factors can affect the interpretation and recollection of events. For example, strong emotions, such as fear or anger impair the capacity of a witness to objectively and precisely present events. (R.S. Edelstein, K.W. Alexander, G.S. Goodman, J.W. Newton, 2004, p. 308-346).

Given that each person has a unique personality and reacts in a different manner to shock or traumatic circumstances, it is essential to understand the way trauma can affect memory and the capacity of witnesses and victims in criminal trials to correctly recollect events. Anxiety and stress caused by trauma can affect memory and can lead to the formation of distorted or false memories, which can be perceived as the truth but are in fact, not accurate.

Furthermore, intense emotions, as anger or a desire for revenge can have a significant impact over the manner in which victims and witnesses recollect and describe traumatic events within criminal trials. The capacity to perceive and process objective information can be affected by strong emotions which can lead to subjective interpretation or escalation of certain parts of the described events. As a result, testimony can be exaggerated or distorted, which can affect the credibility of witnesses before the court of law.

However, we must distinguish between false testimony and perjury, which entails the intention of the witness to declare the truth. There are two levels of truth: the real truth and the perceived truth (P. McClellan, 2006, p. 655-665). There are numerous situations in which a witness, without lying, does not present the truth. In these circumstances, the witness provides a false declaration which he believes to be the truth. The memories which are the basis of this statement are called false memories. According to our Criminal Code, in article 273 first alignment "the deed of the witness who, within a criminal, civil or any other trial, makes false statements or does not present the entire truth regarding essential facts and circumstances about which he gives testimony" is considered perjury. The lawmaker aimed to regulate the violation of the witnesses' obligation to conduct themselves in a manner that does not affect the act of justice, as it is known that the declaration of witnesses is essential in establishing a connection between the judicial truth and the material truth (S. Bogdan, D.A. Șerban, 2020, p. 456). Most times, the statements of witnesses are essential in finding out the truth and it would be difficult to imagine how they can be devoid of credibility, especially when solving the case depends on the testimony of the witnesses. "Guilt must be established with attention, especially in the case of the witness, as there is a possibility that he is not of bad faith, but merely has a distorted perception about what is real (he may not exactly recollect the time, the dimension and so on)" (C. Rotaru, A.R. Trandafir, V. Cioclei, 2022, p.123)

## 2. The impact of psychological factors over the credibility of testimony

People, once involved in a criminal trial, can be profoundly affected by the solemn procedure before the court of law and the pressure of giving testimony. This solemn procedure, much like the pressure and tension it entails, can exercise psychological pressure on the witnesses and on the victim by affecting their capacity to state the events in a clear and precise manner.

The initial stage involves criminal prosecution and the involvement of the person who leads the criminal prosecution, the witness, taking the oath and giving the statement or the solemn declaration. The oath can contain reference to divinity, according to article 121 third alignment "I do solemnly swear to tell the truth and not conceal anything that I know. So help me God!"; however, the oath can differ depending on the religious faith of the witness or, in case of the atheist witness, it will become a solemn declaration, according to alignment 5 of the same article "I will tell the truth and conceal nothing that I know". The moment of taking the oath represents an extremely important psychological moment with repercussions over the witness, who is legally obliged to declare the truth" (T.B. Butoi, 2019, p. 95) „Stress considerably destroys neurons and prevents the formation of new ones; as a result, there are deficiencies in focus and the capacity to remember events is affected as well as rational and critical thinking", (A. Nelepcu, 2022). This is one of the psychological factors which can have a devastating effect over the credibility of witness testimony.

"The factors which affect the credibility of eyewitnesses include:

- Age of the witness: Children and older adults can be far less credible due to loss of memory (T.N. Odegard, M.P. Togliola, 2013, p. 95-118)
- Level of stress at the time of the incident: high levels of stress impair or affect memory.
- The focus point of the witness during the incident. Studies show that a low level of stress increases concentration and allows the witness to keep in mind more details (For more information, see the American Association of Psychiatry – Guideline for the diagnose and statistic classification of mental disorders, 2016, p. 271 – 280).

Several factors can influence the accuracy of recollecting events and the features of a certain face, over which we have little or no control. Considering the right circumstances, these factors will influence the way in which a person's memory remembers the specific traits which distinguish one face from another. (Haber, R. N., & Haber, L., 2000, p. 1057–1097).

During questioning or court hearings, the witnesses can be exposed to suggestions or suggestive questions from the lawyers or other parties in the trial. These suggestions can affect the memory of witnesses and can influence the way in which they remember the events or even their perception of a certain event. In some cases, the witnesses can be led to make statements which are inaccurate or to misinterpret information, which can affect the credibility of their testimony. "It is not recommended to ask questions which entail a forced choice, as they oblige the witness to choose an answer which was predefined by the investigator ("was the t-shirt blue or green?", "was he drinking beer

or wine?”, “did he have a knife or a sword?”), negative questions, as they induce a negative answer (“don’t you remember what he was wearing?” – induces the answer “I don’t remember”, “wasn’t he in the apartment?” – induces a no answer), but also multiple questions, as they diminish the witness’ concentration (“did you see John there? What was he wearing? Was he standing or running? Or “how did the apartment look? Did the door show signs of forced entry? Was there light? Was there anyone else over there?”).” (E. Cazan, D. Matei, R. Gavriș, coordinator: R. Budăi, 2020)

It is recommended to use open questions, in which case a yes/no answer is not possible nor choosing one option, which consequently means that the witnesses must provide the answer themselves without any external influence.

The investigator who draws the attention of the witness commits the crime of false testimony “by asking a certain question regarding a certain circumstance, he can realize that circumstance is essential and, as a result, any alteration of the truth can to pervert the course of justice. The express question addressed to the witness relating to the essential circumstances is a condition of achieving the objective side of the crime of false testimony.” (M. Udrouiu, G. Zlati, V. Constantinescu, 2021, p. 122)

### **3. Memory and the recollection of traumatic events**

The word „memory” comes from the Latin word „memoria”. It is a logical and cognitive process, which illustrates the ability of the human brain to codify, store, keep and remember information. Sometimes, people who suffered a trauma can block memories of traumatic events, which can later be recovered during trial. These blocked memories can be susceptible to external influence and can be distorted or inaccurately interpreted depending on the context and pressure of the questioning or the investigation. Trauma can significantly affect the functioning of memory. People who have experienced traumatic events can suffer from amnesia or can have difficulty in remembering specific details of certain events. Amnesia can affect both honest testimony as well as false testimony, as witnesses can have difficulty in remembering and accurately stating information because of the effects of trauma over their memory. Testimony given by these people can create a fine line between false testimony and perjury, which entails the witness’ or the victim’s intention to declare the truth. In a variety of different contexts, an individual who offers testimony can be placed in a complicated and confusing situation, in which he does not misinterpret reality, but his statement does not correctly present reality. Such situations occur when the witness accidentally provides incorrect information which he honestly believes to be true. Such cases are characterized by the appearance of false memories, which are the basis of this distorted presentation. To understand the complexity of memory and the recollection of traumatic events and to evaluate testimony in the context of trials, time is an important factor. “The Polish psychiatrist and forensic specialist Pawel Horoszowski believes that recollection of facts is more accurate after two or three days from the time they were initially perceived, especially in case of crimes which are likely to cause a certain emotional state.” (T.B. Butoi, 2019, page 113). Throughout the entire hearing, it is extremely important to identify and effectively manage the cases of false testimony as

they are vital components for ensuring the just and equitable administration of criminal procedures. This can be achieved by the thorough examination of the credibility of the testimony, along with the capacity to distinguish between authentic testimony and fabricated testimony. By using such techniques, the professionals of the legal system are capable of bringing a valuable contribution in supporting the integrity of the judicial trial, by also protecting the rights and interests of all parties.

Regarding the tactical procedures for questioning witnesses, in Romania there is no official set of recommendations for such procedures and the specific methods of questioning or hearing witnesses are not standardized or generally accepted. "After the deposition was obtained from the witness, the procedure will continue with the analysis of the deposition in connection with every other evidence, if it is aligned with other testimonies or not, if it is relevant or not; it will also be analyzed according to three aspects: the extent of the testimony; fidelity; the degree of subjective certainty". (Butoi, 2019, p. 165).

Other techniques and methods employed to this end are the analysis of nonverbal and verbal behavior, using cognitive interviews to stimulate memory and recollection of events, performing polygraph tests to measure the physiological reactions and the performance of additional investigation in order to verify the details of events. Psychological analysis of statements is also employed to identify signs of lies and misinterpretation.

#### **4. Conclusion**

Based on the investigation on the psychology of witnesses in criminal trials, it is obvious that the psychological factors play a crucial role in establishing the credibility of testimony and the recollection of traumatic events. Factors such as stress, anxiety and suggestive influence can distort memories and affect the ability of the witnesses to objectively and precisely state events. It is essential that the legal systems carefully approach the evaluation of testimony in order to guarantee an equitable and fair trial with the respect of the principle of finding out the truth. Identifying and effectively managing false testimony is essential in ensuring the integrity of the judicial process and the protection of the rights of all parties involved. It is equally important that the investigators employ adequate interrogation techniques and consider the complexity of the memory and the recollection of traumatic events in evaluating the credibility of testimony. Despite the importance of information pertaining to eyewitnesses in criminal investigations, police officers are inadequately trained to interview witnesses. They commit avoidable mistakes which significantly reduce the amount of information provided by eyewitnesses and contribute to inaccurate memories. Certain interviewing techniques derived from lab research are provided to facilitate the recollection of events by eyewitnesses. The efficiency of these techniques is examined in extensive lab research and in the field regarding the implementing of a new procedure of questioning (Cognitive Interview). There are certain recommendations for the improvement of the quality of training for police investigators to make psychological research more relevant to the judicial system. (Fisher, 1995, p. 732–764).

Finally, a careful analysis of each case and the enforcement of appropriate sanctions for perjury or false testimony are crucial to maintain confidence in the judicial system and to promote justice and equity in a society.

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