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ABSTRACT

PhD THESIS

WITNESS PSYCHOLOGY AND PSYCHOLOGY OF LEGAL TESTIMONY

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Key words: witness, minor child witness, undercover witness, legal testimony, legal psychology, honest, dishonest.

INTRODUCTION

The problem of witness psychology was often approached within the scholarly literature as a result of the separate research strategies and also by presenting different opinions of psychologists, legal advisers and criminologists. Most of the works indicated the complexity of the phenomenon and the necessity of encouraging the interdisciplinary activities in order to analyze the multiple implications raised by the problem at an individual and social level. However, the specific factors of the respective field of interest were given priority within the study.

Is it possible for an honest witness to distort reality? Is it possible for the testimonies of the dishonest witnesses to be accurate and true? What do we know about the witnesses whose testimony is taken into consideration within the judicial procedure? Is their testimony infallible? Is it possible for these witnesses to intentionally or unintentionally distort reality, so that the persons appointed to assess the truthfulness of witness testimony not to become aware of this fact? These are some of the questions that we intend to elucidate within this thesis.

Most of the authors emphasized the utility of creating a practical science of testimony in order to study memory errors and the means used to identify the signs of truth. The question that we raised at first referred to the extent to which the testimony of a healthy, honest individual who was determined to tell only the truth, could be considered as a faithful account of the facts. This study requires the systematization of methods, procedures and the identification of the features that need further research.

Part I. THEORETICAL BASIS

Chapter I. WITNESS PSYCHOLOGY AND PSYCHOLOGY OF LEGAL TESTIMONY

Psychology is, without any doubt, indispensable in all the stages of the enactment of justice. We deem psychology as a scientific discipline that results from a systematic

accumulation of facts. This scientific field of study tends to establish the laws governing the formation of mental acts, as general truths that can be verified or examined, both in laboratory conditions and in everyday life.

The legal psychology is defined as a “distinct, formative applied and professional cultural discipline of the magistrate in a State governed by the rule of law. The primary goal of the legal psychology is the gradual and thorough study of the individual involved in the judicial drama, in respect of gaining knowledge/information, and of the highlighted psychological laws that are able to establish the objectivity and the correct interpretation of the human behaviours with a final judicial and criminal purpose.”

We have to notice the fact that the psychological aspects encountered during the examination process of the witness and legal testimony are of a great variety and are influenced both by the diversity of cases and by the large number of levels directly related to the personality and behaviour of the persons involved.

This chapter presents: the subject matter of legal psychology, the witness and the legal testimony from the perspective of the legal psychology and the criminal proceedings law, by analyzing the testimony, the witness-magistrate relationship and the evaluation procedure of the testimony. We also made reference to the history of witness evidence and the role of eyewitnesses in other fields.

Chapter II. STAGE OF RESEARCH IN THE FIELD OF WITNESS AND LEGAL TESTIMONY PSYCHOLOGY

Within this chapter we analyzed the results of the first research in the field of witness psychology and of legal testimony psychology, as well as the results of the recent research.

The simple report of the first research results proves the statement referring to the necessity of knowing and understanding the witness psychology and the legal testimony psychology. The latest research results will constitute a warning sign for the legal practitioners who are called to establish the truthfulness of the witnesses' testimonies.

Among the first research undertaken within the testimony field we quote an experience conducted by a British amateur psychologist, Davey, in 1894.

However, the first author who conducted a scientific approach on testimony was A. Binet, and his example was followed by Stern.

In Romania, after a series of three renowned works on the criminal mentality issue – *Psihologia deviațiilor morali [Psychology of the Mentally Disturbed People]*, *Debilitea mintală [Mental Retardation]* and *Delincentul minor [Minor Delinquent]*, within the study entitled *Psihologia martorului [Witness Psychology]*, Professor Alexandru Roșca approached the second fundamental problem of the legal psychology, namely the testimony problem.

The analysis of the most recent research starts from the observation that the memories of a witness are of great importance for the termination of a legal proceeding. However, no one can objectively assess whether the witness recalls the facts correctly or not, given that there is no previous objective statement of the event that constitutes the object of the testimony.

The reference points of this analysis comprised the study of the witnesses' testimonies referring to the reliability aspect of the respective persons in regard to their own memories and the faithfulness of the testimony, the post-event reconstruction and the impact of the external suggestions, the false memories created by questionnaires and interrogations and the function of emotional factors in forgetting. From the previous stated factors we made reference to the repeated memories, flashbulb memories, updating interferences, contextual effects and repression.

Part II. HONEST WITNESS

Chapter III. PSYCHOLOGICAL ASPECTS OF THE TESTIMONY FORMATION PROCESS

Criminological studies have highlighted the characteristics of honest testimony, namely the testimony made under oath that is not dishonest, does not come from the dishonesty of the witness and shall not fall under criminal law.

One cannot deny that in some cases, even this type of testimony can be as damaging as the dishonest testimony. The analysis of the determinant factors is this time part of the legal psychology field. In these circumstances, the testimony depends on the more or less precise way in which the respective person perceived the situation that he/she must provide

information about. The testimony also depends on the more or less faithful way in which the situation or the experience was preserved by the memory and the more or less precise way in which the respective person is able to express his/her personal impressions in order to implement in other persons' memories his/her own representation of the facts.

Starting from these findings, our approach covers the specific stages of the testimony formation process and highlights the data provided by the scholarly literature.

The sensory reception represents a neural process of detection, intake and encoding of information, finalized by the formation of simple or complex-global images. The reception reflects the capacity of our sensory organs to maintain the informational relationships with the environment, thus representing the process in which the information from the environment is interpreted in order to allow us to find its significance. In other words, even in the most peaceful situations, the environment provides us with a large amount of information. It is compulsory to assimilate and interpret a part of this information in order to adequately interact with the environment.

From the perspective of the approached subject we are interested in the manner in which the three-dimensional information, more precisely "the real world", is perceived by our senses and also the manner in which the information is processed and operated in order to provide us with a basis for the interaction with the environment.

The sensory reception represents the first stage of the event transformation into testimony. In this stage, the subject acquires information about the event which now constitutes the object of the sensory reception. Along with the general information – brightness/light reflection, temperature, precipitation etc. – that will help the subject situate the event in time and space, the sequence of deeds sends the visual information – the colour of a car, the driving speed, the sound of the impact, the cry of the victim etc., as well as the potential tactile information (for example, mud splash etc.) or olfactory information (the smell of gas etc.).

Sensations are the reflection patterns of the properties of objects and real world phenomena that act directly on the receptors. Such properties of the objects are the following: weight, colour, taste, smell, temperature etc.

As opposed to perception, which represents the mental process of the reflection of objects within the complexity of their properties, the sensations reflect the objects'

properties. The scholarly literature emphasized the fact that it is extremely difficult to establish the differences in practice between sensations and perceptions.

Perception represents the reflection of objects and phenomena when they act upon receptors. We have to notice the fact that the individual can identify an object even by a single property - for example, we recognize a flower because of its smell. In this case the identification is possible only on the basis of our previous experience.

The processing (decoding) of information represents another important stage within the formation process of the testimony.

The inquiry demonstrated that our sensory apparatus does not receive the image of objects and phenomena, but only shapes/lights, sounds, scents etc. that will be synthesized and integrated within the entire system only at a cortical level, in the cerebral cortex. In addition, they will be processed and decoded.

Processed information is stored through the imprint procedures (recollection) and the preservation procedure of the elements relative to the content of the witnessed action. The imprint (engram formation) is not a mechanical action carried out on the mental mass, but the formation of functional traces, similar to those resulting from the recording on a magnetic tape.

In the part dedicated to the information storage we analyzed the autobiographical memory that represents the memory of personal events, the memory of real life. It is related to the episodic memory.

Considering the witnesses' testimony on which is based the most part of the court judgment, we can raise a series of problems of practical importance, such as: To what extent is the statement of a presumably honest witness true and uninfluenced by adjacent information? To what extent can the questions addressed to witnesses influence the manner of episodic memory activation and, therefore, the statement of the facts?

We introduced and discussed the results of the research undertaken with regard to the memory failures, traumatic memory alteration, forgetting and retrieval-induced forgetting of the autobiographical memories.

The reactivation of previously received, decoded and stored contents (information) represents the last stage of the testimony formation process and envisages the identification

of objects, persons or situations formerly perceived by the subject and their verbal reproduction (description, report).

Chapter IV. MINOR CHILD WITNESS

Even since the oldest times, the development of different legislative systems regarding the hearing of minor children as witnesses was supposed to take into consideration the biological and psychological characteristics of the childhood and adolescence.

The main concerns of the legislators were directed towards the minor child's criminal liability and civil liability in tort, the prosecution and judgment procedures for the minor children involved in different antisocial acts, the punishment systems, but also the respective protection means.

One cannot formulate valid conclusions on the competence of the minor child witness without holding detailed information regarding the witness's cognitive development – memory, vocabulary, comprehension and concept assimilation etc. Watching the development of these processes is compulsory in order to evaluate the memorizing ability of the minor children in real contexts, such as the courtroom.

Within the contents of this chapter we presented: the international legislation within the juvenile justice field with reference to the minor children's testimony in civil and criminal cases, the institutions involved in juvenile justice, the reflection of demands regarding witness protection of the minor children within the European jurisprudence, the moral judgment development in children, the functions of the minor children before the judicial authorities, the statement of the minor child as a witness, aggrieved party, accused and defendant.

The psychological characteristics of the legal testimony in the case of minor children have also required the inquiry of the aspects regarding the credibility of the minor children's testimony, of the factors that influence the suggestive degree (external suggestions, repeated suggestive interviews, incriminating context).

Tactical rules regarding the hearing method require psycho-social skills for the persons involved in the inquiry and judgment process of the cases with minor children. In order to determine the truth in criminal cases the most relevant features are both the professional training of the police officer or magistrate (predominantly of a legal nature) and

some psychological characteristics of their personality that, combined with those of other persons' involved in the judicial scenarios, facilitate the progress of the judicial action.

The tactics for listening require specific features in the case of the minor child as a witness, aggrieved party, accused or defendant. Found at the beginning of the social integration, the minor children, according to the criminal legislation, or the children, in compliance with the international legislation, represent a category harder to interrogate, as stated in the previous chapters.

The aim of the psychologist within the hearing procedure of the minor child witness constitutes the object of our study because the psychologist is viewed as an expert in the child's development. If his involvement is compulsory from a legal point of view, the psychologist is considered an expert who expresses his opinion regarding the psychological development of the child, the consequences of abusive behaviours on the child and a specialist who provides appreciations with regard to the measures that must be taken in order to recover the child.

Chapter V. PSYCHOLOGY OF THE UNDERCOVER WITNESS

In most of the legal systems, the witnesses who refuse to testify in a lawsuit are constrained to do it. Such an obligation may be valued but it is equitable only in the case when the witness is not afraid for his life, his family life or his close friends' life. In the case when the intimidation risk of the witness increases, the rights and obligations of the persons requested to testify must be recognized.

Consequently, the state has the correlative obligation to offer protection to the testifying witness, in compliance with Articles 2 and 8 from the European Convention for the Protection of Human Rights and Fundamental Freedoms, articles that guarantee the right to respect the persons' private and family life, providing the protection for private and family life.

The witnesses, their family members or their close friends can be exposed to various dangers, threats, intimidations and blackmails, given the gravity of the facts and the characteristics of the complex phenomena that they witnessed. This is the reason why some

of the persons who possess useful information regarding the judicial truth refuse to present themselves as witnesses before the court.

In Romania, the institution of the undercover witness has been governed by the provisions of the Romanian Law No. 682 from December 19th 2002, law that guarantees the protection and assistance of the witnesses whose life, physical integrity or personal freedom is threatened as a consequence of holding information or data regarding the act of committing serious offences, information provided or agreed to be provided to the judicial authorities. This information plays a decisive part in the process of revealing criminals and in solving cases.

The witness protection program, hereinafter referred to as the Program, represents the specific activities undertaken by the National Office for Witness Protection with the support of the central and local public authority administrations, in the view of defending the life, the physical integrity and health of the witness protected persons.

Within the undercover witness chapter we analyzed the following items: the cumulative conditions that must be fulfilled in order to include a person in the Program, the protection measures that can be provided, the hypothetical conditions that constitute the termination of the Program. Among the cases when the protection measure is withdrawn we find the situation in which the protected witness provides a false testimony.

In what concerns the particular features of the institution from the perspective of the witnesses' psychology, we note the undisputed fact that in the case of serious crimes comprised within the provisions of the witnesses' protection law, the witness is exposed to potential acts of revenge from the offender and his/her accomplices. In this case, the State, through the agency of the protection program, must respond to the specific needs of the witness, whose testimony is crucial for the finding of truth.

For the assessment of the inquired persons' testimony we identify the same problems as in the case of the honest or dishonest witnesses. In respect of the characteristics of the undercover witness's institution, the deliberate cessation of the program was brought under regulation, but only in the hypothetical case when the witness is found guilty of false testimony.

In addition, Art. 21 of the Romanian Law No. 682/2002 stipulates that the "deed of the protected witness (for the purposes of this law) of misleading the criminal prosecution

body or the court of law by means of the presented data and information” shall be punished by imprisonment from 5 to 10 years.

We note that the legislator should anticipate a certain doubt of truthfulness regarding the depositions of the undercover witnesses and therefore they control and dictate the use of testimonies only to the extent to which they corroborate with facts and circumstances that result from the evidence of the case. Some authors indicated that the specification regarding the corroboration of the witnesses’ testimony (referred to as anonymous witness) with unquestionable evidence was compulsory.

Chapter VI. HONEST TESTIMONIES. CASUISTRY

It is almost impossible for the court laws to identify the cases in which honest witnesses provided testimonies that were not entirely true. This is due to the fact that the judge is bound to remove the depositions of the witnesses that are not corroborated with the other evidence for the case, but cannot decree upon the fact that the witness was dishonest. This finding is mentioned within the grounds of the decree, without bringing forth other legal consequences.

Thence, with the intention of providing support to the practitioners, we presented within the previous chapters a full report on the results of the inquiry, both classic and part of the “new wave”.

However, we identified some case studies from the judicial practice that are part of the “history of the most important legal proceedings” and that are relevant for the inquiry of the honest witnesses’ depositions. But these cases also constitute colossal judicial errors because they constituted the basis of the death penalty and execution of the defendants, based on the depositions of the honest witnesses who were influenced by the religious beliefs and the antipathy against the defendant within the Calas Trial, by one of the offender’s physical resemblance with the defendant in the Courier Trial in Lyon.

We indicated that number of years passed from the resolutions adjudicated by law courts or the place where they were pronounced is not relevant, given the fact that, since the development of the institutionalized justice, the testimonies of witnesses had raised enormous

problems for those required to assess their depositions in what concerns the aspect of the testimony's fidelity.

The Calas Trial indicates the fact that to the unintentional errors of the witnesses regarding what they heard at the moment of the event occurrence there were added other factors. However, it is important to identify the fact that these honest witnesses were influenced by the antipathy that the inhabitants of Toulouse had shown towards Calas, because of his attitude towards his sons who expressed their intention to convert to Catholicism. Given the fact that the forensic expertise did not provide indisputable conclusions, these unfaithful testimonies were at the basis of the death penalty decision.

In contrast with the Calas Trial, that was sometimes disputed, this last case, known in the scholarly literature under the name of "The Lyon Courier Affair", was introduced into the legal annals as a classic example of judicial error due to the inconsistencies of the witnesses' depositions. The exoneration of Joseph Lesurques, the mail courier, was never pronounced, but it was demonstrated that he was sentenced and executed by beheading for a crime he did not commit. All this because the honest examined witnesses had mistaken him for the real responsible.

Even though the comments upon this case study indicated that the examined witnesses were honest only at first, a scrupulous inquiry of the deposition of facts revealed the fact that one cannot identify the elements in order to support the presupposition that the witnesses had become dishonest during the trial. As a matter of fact, the witnesses identified Lesurque because of his physical resemblance with Dubosque. Furthermore, it was reported that seven witnesses had declared without hesitation that he was one of the four riders who stopped at "La Chasse" Inn. The deposition of the other witnesses, except for the two women from the aforementioned inn, could be analyzed from a suggestive point of view, but one cannot state that the depositions were dishonest. One cannot eliminate the possible influence on the depositions due to the post-event information, taking into consideration the great impact of the trial on the public opinion of that time.

The judicial error within the "Țundrea Case" was brought forth within the Romanian law courts' practice. Marcel Țundrea was sentenced in 1992 to 25 years of imprisonment for the rape and murder of a 14-year-old girl, Mioara Gherasie. The victim was living in the

Pojogeni village, in Gorj County, and a neighbour of Marcel Țundrea's parents. The girl was raped and murdered by the insertion of stones into the oesophagus.

At that moment, Țundrea's guilty verdict was established on the basis of the depositions provided by an old lady living in the village, named Elena Negrea. It was confirmed that the witness' deposition represented the main evidence of the accusing party, but the judicial authority did not notice that or refused to pay attention to the fact that the depositions of Elena Negrea were inconsistent and contradictory.

However, it is indisputable that the DNA expertise performed in 2004 proved the innocence of the convicted individual, who served 12 years in prison.

Within the chapter dedicated to the honest witness, we mentioned another category of testimonies that reveal an increased level of faithfulness. At present, under the Romanian Law No. 221/1990, the Romanian civil judicial authorities solve cases whose main objective is to establish the indemnification of the persons persecuted by the communist regime during March 6th 1945 and December 22nd 1989.

The eyewitnesses of the aforementioned events are former detention colleagues, but given the long period of time that has passed, the only persecuted persons alive are the ones who were investigated and arrested during their studentship. Even in these cases, we are confronted with depositions of individuals over 70 years old, but which indicate a high degree of faithfulness precisely because of the traumatic effects of the events they lived. It is indeed remarkable the fact that even the depositions of the persons that participated indirectly to the torment of the convict and his/her family, including relatives and friends, provide an extremely high degree of faithfulness.

Part III

Chapter VII. DISHONEST WITNESS

The crime of perjury is comprised within the Criminal Code together with other crimes that impede the justice, namely: defamatory denunciation, non-denunciation of crimes, omission to inform the legal authorities, aiding and abetting a criminal, omission to

summon the legal authorities, illegal arrest and abusive investigation, abusive treatment, illegal repression/restraint, detention and destruction of documents.

The study focused on identifying the dishonest witness and diagnosing the perjury aims at outlining the long-awaited responses by the legal practitioners to some of the relevant questions from the legal psychology field, set forth in the introduction of the thesis. Extremely important from the perspective of legal psychology are also the content and the quality of the assessment undertaken by the false witness in the period between the official writ of summons of the false testimony and until the testimony's withdrawal, on the supposition that this will occur.

We emphasized in another context the fact that most of the authors interested in this field, psychologists, legal advisers, criminologists, have noticed the complexity of the phenomenon and the need of encouraging the interdisciplinary activities in order to analyze the multiple implications that the problem raises at the individual and the social level. These implications prioritize the specific factors of the respective field of study. Therefore, we take part to this discussion that makes reference to the same phenomenon, to the use of different terminologies that are often mistaken and mixed up, even though these terms derive from denotations, from a specific reflection within a certain inquiry field or from a certain evolution stage of the inquired problem. These terms are only partially overlapped and mixed because they were created starting from different description criteria.

The chapter is dedicated to the study of the identification instruments in the case of the dishonest witness, the psychological facts that are honest, the warranties and legal means of identifying the dishonest witness and the criteria for inquiring the truthfulness of the legal testimony. Other objectives of the study were the following: the status of the witness in relation to the parties of the trial, the source of the testimony, the social-ethical and psycho-behavioural condition of the witness and his/her interest towards the administered evidence.

We notice thus that we are dealing with a field in which it is difficult to define and mark the boundaries between error and dishonesty and between faithfulness and honesty, even though the insincere statement generates important consequential effects regarding the process of truth finding within the judicial procedure, with the final stage of leading to criminal liability.

Chapter VIII. DIAGNOSING PERJURY

The research was conducted with **two objectives** in view:

1. to diagnose perjury and
2. to identify the clues of perjury.

In psychology, lying is defined as an extremely complex behaviour which needs to be highlighted, explained and assessed against the context of all personality factors and according to the mental age and the normality or abnormality state of the culpable person. Therefore, the child up to 6-7 years old is a pseudo-liar who lives in a peculiar world, featuring *sui generis* mixtures of real and imaginary, which only appears altered to the adult, who cannot transcend the metaphysical and symbolic meanings of the child's language.

With normal adults, lying is a phenomenon of variable frequency and scope, dependent on the interpersonal relations, the personality traits and predominantly on the character. Identifying the forms of lying with adults constitutes a toilsome process, due to the life experience from which the adult benefits, assisting him/her to camouflage everything under deceiving appearances. Yet, in order to identify false testimonies we need a set of rules based on which we will establish, with each case, the honest or dishonest nature of the testimony.

With a view to the aforementioned objectives, we established the working **hypotheses**:

1. Perjury has an intentional foundation in most cases.
2. The relevance of the social-ethical condition, education level and criminal history with persons guilty of the crime of perjury.

The observation and the case study were the methods and instruments employed. In order to justify the use of the case study method for the inquiry of the witness's and deposition's psychology, we find that the legal psychology often deals with fields which allow scarce or no direct research. It is self-evident that we cannot enter a court room to study the witness during the testimony and address questions, as the psychologist cannot

attend the deliberations of the judges or the jurors, in other law systems, so to analyze their way of examining and assessing the content of the witness's deposition.

The same hindrances will be encountered in the study of the honest-minded witness's memory, yet on another level. It is irrefutable that a scientist who studies memory in the laboratory has the privilege to know whether the recollections of a participant are faithful or not. The explanation is simple, as he is the one who creates the event which the witness is trying to recollect, and has the opportunity to compare the participant's response with the objective reality. With witnesses, whose deposition renders a decisive consequence on the judgment of the court, no one may objectively assess whether their memory are accurate or not, due to the lack of an objective account of the initial event. With dishonest witnesses, the case study enables us to establish the motive of the testimony, those psychological triggers which lead a person to make a false deposition self-consciously.

We deem that the usefulness of the case study in the surveyed filed allows us to explain the connections which are too complex for inquiry strategies or for experimental strategies, and pursuant to the legal provisions which govern the development of trials before court jurisdiction, are not allowed.

We analyzed **case studies** regarding the conviction of certain witnesses for committing the crime of perjury in cases with the following objects: robbery, high risk drug traffic, sexual assault of minor children, traffic with infants, procurement and coupling, respectively granting support to an organized criminal group, driving under the influence of alcohol, homicide, abuse, theft, illegal tree felling, bodily injury, usucapian.

Furthermore, we examined two false testimonies, drawn from the fable of literary pieces: Magheru and Raskolnikov's Trials.

Conclusions on the Dishonest Witness. Upon examining the conviction decrees delivered for the crime of perjury, we may identify those motives which bore a dominating character for the persons who testified insincerely. In the large sense of the term, the motif refers to "everything that triggers, supports and directs one person's activity".

The consequence of the motivational factors weighs hard in each of the examined study cases, and we highlighted them after displaying the actual and legal state.

The main motives for perjury in the casuistry submitted to analysis were:

- Exercise of pressure and threats on the witness by the defendant in whose favour the testimonies were made so as to obtain the desired course of testimonies.
- The fear of negative consequences in respect of the trial, more specifically the fear of justice and a possible conviction. This reason primarily occurred with witnesses with criminal history, but also with witnesses who, in their turn, were involved in criminal trials for the same deed and in relation to the crime for which the defendant they witnessed for was on trial.
- Kinship and romantic relations.

If kinship was identified as the primary motif of perjury with the first examined case study, with other cases, such as drug traffic, we found that the motif consisting of a romantic relation between the witness and the defendant superposed with another motif, also decisive, namely the witness's concern with the drug traffic deed not being proved, as she was also involved.

A concurrence of motives also revealed the cause of perjury in the case of sexual assault of a minor child, where the defendant's wife witnessed falsely due to the threats made by the defendant's relatives, and also due to the sense of fear, provided the defendant was short-tempered.

Of relevance for our study proved the fact that no case was found where perjury was determined by granting of material goods. Moreover, I did not find any cases where perjury was determined by: desire to falsely accuse an innocent person, feelings of hatred or enmity or other related reasons.

We find that, regardless of the reason which accounted for the false testimony, the distortions which have an intentional basis tend to lead the testimony to the direction desired by the subject, more specifically by the defendant in whose favour the testimony is made. With all cases, the police officer, the prosecutor or the judge shall wonder to what extent the respective witness is free of the influences which may lead to perjury.

The displayed conclusions account for the first stated hypothesis regarding the intentional foundation of perjury.

With respect to the second hypothesis of our research, the examined case studies revealed the fact that the stated criteria bear a decisive role in the majority of the cases: with 60% of the cases the defendants are second offenders, namely persons who have committed

crimes and were convicted before (it is worth to mention the case of the defendant who witnessed falsely during the period when he was in the penitentiary of Gherla together with the defendant beneficiary of the false deposition); with over 50% of the cases, the persons guilty of committing the crime of perjury benefit mostly from compulsory education and no case was identified where the offenders had university education; with a significant percentage of cases - 40% - the false witness originates from an environment not alien from the criminal law, even if they have no criminal history. We deem these criteria relevant for the evaluation of witnesses in the sense that the insincere testimony cannot lead to a criminal conviction, as it is an irrelevant deed.

The second stated hypothesis is thus certified, and the analyzed criteria, together with those referred to in the chapter destined to the diagnosis of perjury, compel to be observed when assessing these depositions.

Instead of Epilogue

It is indispensable that the theories we set forth and the conclusion we reach be able to pass the test of practice. That is because science and practice are integral parts of the whole. Theory enlightens practice, whereas practice proves the theory, working in a continuous circuit, and inverse connection is efficient in both ways. This consideration proves valid if we take into consideration that Freud's psychoanalysis, Adler's individual psychology, Jung's analytical psychology as well as Adolf Meyer's bio-sociology derived from the needs of practice and thereafter restructured the theory itself.

The sentence delivered by the law court upon administering the evidence is not only passed as a punishment for the offender, according to the principle of equality between deed and reward, the very principle behind the law of talion, it is also passed to defend the human kind, who have a right to life and safety, as well as to defend society itself, acting simultaneously to prevent further crimes.

This is also the reason why the judicial act is not only conducted upon the formal letter of the law, but also according to the principle of justice it pursues.

The discussion calls forth an elucidation of the truth, associated with various qualities: cruel, virtuous, mild, sharp, brutal, insidious, etc. The famous saying *dura lex sed lex* renders the quality of truth upon which justice is established.

Yet this truth may not be defined through the deductive establishment of the law from a sequence of abstract principles, deemed axiomatic, but solely through the bio-psycho-social and cultural background of the human condition, seen as a whole. With these considerations in mind, we appreciated that the judgment passed by the law court, in order to render the truth and justice we referred to, ought to be based on irrefutable evidence. The law court proceedings, with this purpose in mind, is a toilsome task. We can make this assertion as with all criminal cases the judgment will also be based on the witnesses' testimonies, which are less than faithful even in the case of honest-minded witnesses. All the more difficult is the judges' decree in the case of dishonest witnesses, who intentionally mean to mislead the court.

The scientific deposition critique therefore entails a thorough knowledge of the psychological process behind the testimony, of the main stages it undergoes - perception, remembrance, reproduction -, of the wide range of objective and subjective factors which influence the testimony in one way or another. In other words, the knowledge of the key psychological elements is compulsory, meaning the psychoanalysis of witnesses and depositions.

We set forth the conclusions of our research in the chapters focusing on the honest-minded and dishonest witnesses. Although it was not our intention to debate on the topics raised thoroughly, we believe that with both categories of witnesses, the conclusions may be of help to the practitioners.

The argumentation of our outcome and conclusions regarding the dishonest witness was conducted by setting forth the casuistry existing at the law courts of Cluj County. Starting from these cases, we finally accomplished a synthesis and tried to identify the main reasons which lie at the foundation of false depositions.

We hope the cases studied with respect to the honest-minded witness will also assist practitioners in gaining a holistic image of the current approach of the witness psychology and legal testimony. That is because the paper addresses directly the persons called to assess the witnesses' depositions, regardless of the category they fall under.

We are aware that there are shortcomings to the present paper. Some information may not have been revealed, some has been neglected, and some must have been omitted. Yet,

each beginning leads to an end and we are trying to draw our endeavour to an end, hoping that sometime in the future, someone will continue and improve it.

BIBLIOGRAPHY

- Adler, A. (1991), *Cunoașterea omului*, București, Editura Științifică.
- Aionițoaie, C., Butoi, T. (1992), *Ascultarea învinuitului sau inculpatului*, în Vol. *Tratat de criminalistică*, București, Editura Carpați.
- Anghelescu, I., Asanache, G., Barbu, ș.a. (1978), *Tratat practic de criminalistică, Vol. II*, București, Serviciul Editorial.
- Barnier, A.J., Hung, L. (2004). Retrieval-induced forgetting of emotional and unemotional autobiographical memories, *Cognition and Emotion*, 18(4), 457-477.
- Beccaria, C. (1965). *Despre infracțiuni și pedepse*, București, Editura Științifică.
- Bogdan, T., Dragan-Cornianu, R. (1983). *Comportamentul uman în procesul judiciar*. București, Serviciul Editorial și Cinematografic.
- Bogdan, T. (1973), *Probleme de psihologie judiciară*, București, Editura Științifică.
- Bogdan-Tucicov A, Chelcea S., Golu M., Golu P., Mamali C., Pânzaru P., (1981), *Dicționar de psihologie socială*, București, Editura Științifică și Enciclopedică.
- Bower, G. H. (1981), *Mood and memory*, *American Psychologist*, 6, 129-148
- Brown, R., Kulik, J. (1977). Flashbulb memories, *Cognition*, 5, 73-99.
- Buneci, P., (2006). Martorul protejat, *Revista română de drept penal* nr. 1, București, R.A. "Monitorul Oficial", p.43-49.
- Buneci, P., Butoi, I.T. (2004). *Martorul pe tărâmul justiției*. București, Editura Penguin Book.
- Buș, I. (1997). *Psihologie judiciară*, Cluj-Napoca. Editura Presa Universitară Clujeană.
- Buș, I. (2000). *Psihodetecția comportamentului simulat*, Cluj-Napoca, Editura Ingram.
- Buș, I., David, D. (2003). *Psihologie judiciară. Poligraf și hipnoză*, Cluj-Napoca, Editura Tritonic.
- Buș, I. (2003). *Psihologie Judiciară*, curs universitar. Cluj-Napoca: UBB.
- Butoi, I.T., Butoi, T.B. (2002). *Psihologia interogatoriului judiciar*, București, Editura Enmar.

- Butoi, T. (2004). *Interogatoriul. Psihologia confruntării în procesul judiciar*, București, Editura Pinguin Book.
- Butoi, T. (2003). *Tratat universitar de psihologie judiciară – teorie și practică*, București, Editura Phobos.
- Cernea, E., Mocuț, E. (1994). *Istoria statului și dreptului românesc*, București, Casa de editură și presă Șansa S.R.L.
- Chassaingne, M. (1929). *L'affaire Calas*, Paris, Librairie Academique.
- Chelcea, S. (1982). *Experimentul în psihosociologie*, București, Editura Științifică și Enciclopedică.
- Ciopraga, A. (1979). *Evaluarea probei testimoniale în procesul penal*. Iași, Editura Junimea.
- Colby, A., Kohlberg, L., Gibbs, J., Lieberman, M.A. (1983). A longitudinal study of moral judgement, *Monographs of the society for research in Child Development*, 48, 1-2.
- Crombag, H.F., Wagenaar, W.A., Koppen, P.J. (1996), Crashing memories and the probleme of source monitoring, *Applied Cognitive Psychology*, 10, 95-104.
- Curci, A., Luminet, O., Finkenauer, C., Gisle, I. (2001), Flasbulb memories in social groups: A comparative test-retest study of the memory of French President Mitterand s death in a French and a Belgian group, *Memory*, 9, 81-101.
- Dabu, V., Borza, R. (2010). Investigator sub acoperire. Martor. Neconstituționalitate, *Revista de drept penal nr. 2*, București, R.A. „Monitorul Oficial”, p.26-48.
- Damasio, A. (2005). *Eroarea lui Descartes*, București, Editura Humanitas.
- Dicționar de psihiatrie și psihopatologie clinică*. (1998). București, Editura Universul Enciclopedic.
- Dongoroz, V., Kahane, S., Antoniu, G., Bulai, C., Iliescu, N., Stănoiu, R. (1975), *Explicații teoretice ale Codului de procedură penală român. Partea generală, vol. I*, București, Editura Academiei R.S.R.
- Eminescu, Y. (1992), *Din istoria marilor procese*, Iași, Editura Junimea.
- Enăchescu, C. (2005). *Tratat de psihologie morală*, București, Editura Tehnică.
- Floriot, R. (1968). *Les erreurs judiciaires*, Paris, Flammarion.
- Gazzaniga, M.S., Irvy, R.B., Mangun, G.R. (2002), *Cognitive neuroscience*, New York: 2nd Editura
- Gherasim, D. (1981), *Buna-credință în raporturile juridice civile*, București. Editura Academiei R.S.R.

- Gilligan, C. (1982). *In a different voice*, Cambridge, MA, Harvard University Press.
- Giurgiu, N. coord. (2005). *Ghid de practici instituționale în instrumentarea cauzelor cu minori*. Iași, Editura Asociației Alternative Sociale.
- Golunski, S.A. (1961), *Criminalistică*, București, Editura Științifică.
- Gorphe, F. (1924), *La critique du temoignage*, Paris, Dalloz.
- Grămadă, S.I., Lupașcu, C., Agrosoaie, I. și Astărăstoae, V. (2004). Considerații privind coeficientul de fidelitate al mărturiei infantilo-juvenile, *Romanian Journal of Legal Medicine*, 12 (2), p. 145-148.
- Grumman, C. (1998), *More former patients come forward to assail psychiatrist*, Chicago Tribune, N.W. 8.
- Hanga, V., Cronț, Gh., Floca, I., Georgescu, V.Al., Grigoraș, N., Herlea, Al., Marcu, L.P., Matei, I., Mioc, D., Sachelarie, O., Stoicescu, N., Strihan, P., Șotropa, V., Vulcănescu, R. (1980), *Istoria statului și dreptului românesc, vol. I*, București: Editura Academiei R.S.R.
- Hyman, I.E., Husband, T.H., Bollings, F.G. (1995). False memories of childhood experiences, *Applied cognitive psychology*, 9, 181-197.
- Holden, M.W. (1998), *Settlement survey*, Chicago Lawyer.
- Iluț, P. (1997), *Abordarea calitativă a socioumanului*, Iași, Editura Polirom.
- Jurcău, N., Megieșan, G.M. (2001). *Psihologie generală și a dezvoltării*. Cluj-Napoca, Editura U.T. Pres.
- Jurcău, N., Niculescu, R. M. (2002). *Psihologie școlară* Cluj-Napoca, Editura U. T. Pres.
- Kohlberg, L. (1969). *Stages of Moral Reasoning din Stage and Sequence: The Cognitive Development Approach to Socialization*, Handbook of Socialization Theory and research, Editura D.A. Coslin.
- Kurtines, W., Greif, E.B. (1974). The development of moral thought: Review and evaluation of Kohlberg s approach, *Psychological Bulletin*, 81, 453-470.
- Larson, C.U. (2003). *Persuasiunea*, București, Editura Polirom.
- Loftus, E.F., (1975), Activation of Semantic Memory, *American Journal of Psychology*, 86, 178-193.
- Loftus, F.F., Fathi, D.C. (1985). Retrieving multiple autobiographical memories. *Social Cognition*, 3, 280-95.

- Loftus, F.F., Johnson, C.A., Shinamura, A.P. (1985). How much is an icon worth ?, *Journal of Experimental Psychology Human Perception and Performance*, 11, 1-13.
- Loftus, F.F., Miller, D.G., Burns, H.J.(1978). Semantic integration of verbal information into visual memory, *Journal of Experimental Psychology: Human Learning and Memory*, 4, 19-31.
- Loftus, F.F., Palmer, J.C. (1974). Reconstruction of automobile destruction: An example of the interaction between language and memory, *Journal of verbal Learning and Verbal Memory*, 13, 585-9.
- Loftus, E.F., Pickrel, J.E. (1995), The formation of false memories, *Psychiatric Annals*, 25, 720/725.
- Malim, T. (1999). *Procese cognitive*, București, Editura Tehnică.
- Malim, T., Birch, A., Wadeley, A. (1999), *Perspective în psihologie*, București, Editura Tehnică.
- Malim, T. (2003), *Psihologie socială*, București, Editura Tehnică
- Mărgineanu, N. (1975), *Condiția umană – aspectul ei bio-psiho-social și cultural*, București, Editura Științifică.
- McNally, R.J. (2003), *Remembering trauma*. Cambridge M.A., Belknap Press/Harvard University Press.
- Medeanu, T.C. (2006), *Criminalistica în acțiune. Omorul, terorismul și crima organizată, Vol. 2*, București, Editura Lumina Lex.
- Memon, A., Vartoukian, R. (1996). The effect of repeated questioning young children's eyewitness testimony. *British Journal of Psychology*, 87, 403-405.
- Memon, A., Holley, A., Wark, L. (1996) Reducing Suggestibility in Child Witness Interviews, *Applied Cognitive Psychology, Vol. 10*, 503-518.
- Miclea, M. (1999). *Psihologie cognitivă. Modele teoretico-experimentale*, Ediția a II-a revăzută. București, Editura Polirom.
- Miclea, M. (2003). *Psihologie cognitivă*, București, Editura Polirom.
- Miclea, M., Curșeu, P.L. (2003). *Modele neurocognitive*. Cluj-Napoca, Editura ASCR.
- Mihai, Gh. (2003), *Fundamentele dreptului*, București, Editura All Beck.

- Mihuț, E.A., Moca, D. (2006), Ascultarea martorului protejat. Protecția datelor de identitate ale acestuia. Forța probantă a declarațiilor martorului protejat, *Revista Dreptul*, nr. 6/2006, p. 190-200.
- Mitrofan N. (1992) (coordonator și coautor). *Psihologie judiciară*, București, Editura Șansa S.R.L.
- Mitrofan N. (1994) (coordonator și coautor). *Psihologie judiciară*, ediția a II-a, București, Editura Șansa S.R.L.
- Mitrofan N. (2000) (coordonator și coautor). *Psihologie judiciară*, Editura Press Mihaela, S.R.L.
- Montesquieu (1964), *Despre spiritul legilor*, București, Editura Științifică.
- Mucchielli, A. (2002). *Dicționar al metodelor calitative*, București, Editura Polirom.
- Muraven, M., Tice, D.M., Baumeister, R.F. (1998), Self-control as a limited resource: Regulatory depletion patterns, *Journal of personality and social psychology*, 74, 774-789.
- Neisser, U. (1982), *Memory Observed*, San Francisco: W.H. Freeman.
- Nourkova, V., Bernstein, D.M., Loftus, E.F. (2004). Altering traumatic memory, *Cognition and Emotion*, 18(4), 575-585.
- Nuccli, L. (1981). The development of personal concepts: A domain distinct from moral or societal concepts, *Child Development*, 52, 114-121.
- Parot, F., Richelle, M. (2006). *Introducere în psihologie. Istoric și metode*, București, Editura Humanitas.
- Petcu, Marioara (1997). *Psihologie juridică*, Cluj-Napoca, Editura Argonaut.
- Petcu, Marioara (1999). *Delincvența. Repere psiho-sociale*, Cluj-Napoca, Editura Dacia.
- Petcu, Marioara (2001). *Mecanisme psihologiei juridice*, Cluj-Napoca, Editura Argonaut.
- Petcu, Marioara (2005). *Mecanisme psihosociale ale juridicului*, Cluj-Napoca, Editura Argonaut.
- Petcu, Marioara (2007). *Retorica juridică*, Cluj-Napoca, Editura Argonaut.
- Petcu, Marioara (2007). *Abordari psihosociale ale domeniului juridic*, Cluj-Napoca, Editura Argonaut.
- Phelps, E.A. (2006), Emotion and cognition. Insights from Studies of the Human Amygdala, *Annu. Rev. Psychol.*

- Pillemer, D.B. (1984). Flashbulb memories of the assassination attempt on President Reagen, *Cognition*, 16, 63-80.
- Porter, S., Xuille, J.C., Lehman, D.R. (1999). The nature of real, implanted, and fabricated memories for emotional childhood events: Implications for the recovered memory debate, *Law and Human Behavior*, 23, 517-53.
- Popescu-Neveanu, P. (1978). *Dicționar de psihologie*. București, Editura Albatros.
- Reid, J.E., Inbau, F.R. (1966), *Truth and Deception, The polygraph (Lie dectector) technique*, Baltimore: The Williams &Witkins Company.
- Richard, J.M., Gross, J.J. (2000). Emotion regulation and memory: The cognitive costs of keeping one s cool. *Journal of personality ans social psychology*, 79, 410-424.
- Ross, C.A. (2001), *Bluebird: Deliberate creation of multiple personality by psychiatrists*, Richardson T.X.: Mantou Communications.
- Roșca, Al. (1934), *Psihologia martorului*, Editura Institutului de Psihologie al Universității din Cluj.
- Roșca, Al. (1943), *Motivele acțiunilor umane*, Editura Institutului de Psihologie al Universității din Cluj la Sibiu.
- Roșca, Al., coord. (1968). *Psihologie generală*. București, Editura Didactică și Pedagogică.
- Roșca, Al.. (sub red.) (1975). *Psihologie generală*, Ediția a II-a, București, Editura Didactică și Pedagogică.
- Rubin, D.C., Kozin, M. (1984). Vivid memories. *Cognition*, 16, 81-95.
- Rudică, T. (2010), *Psihologia contrariilor și paradoxurilor*, București, Editura Politom.
- Smith, E.S., Fredrickson, B.L., Nolen-Hoeksema, S., Loftus, G.R. (2005), *Introducere în psihologie*, București, Editura Tehnică.
- Stancu, E. (2001), *Criminalistica. Știința și tehnica investigațiilor penale*, București, Editura Actami.
- Suciu, C. (1963), *Criminalistica, partea I*, București, Editura Didactică și Pedagogică.
- Ștefănescu, P. (1981). *În slujba adevărului*. București, Editura Medicală.
- Tandin, T. (2005), *Erori judiciare, Vol, I și II*, București, Editura Juridică.
- Teasdale, J.D. (1983). Negative thinking in depression: Cause, effect or reciprocal determination? *Advances in Behaviour Researche and Terapy*, 5, 3-26.
- Theodoru, Gr. (2007), *Tratat de drept procesual penal*, București, Editura Hamangiu.

- Thompson, C.P. (1982). Memory for unique personal events: The room-mate study, *Memory and cognition*, 10, 324-32.
- Thompson, C.P. (1985). Memory for unique personal events: Effects of pleasantness, *Motivation and Emotion*, 9, 277-89, 1985.
- Thompson, C.P., Skowronski, J.J., Lee, D.J. (1987). *Reconstructing the date of a personal Event*. Presented at the Second International Conference on Practical Aspects of Memory, Swansea.
- Toma, D.T. (2005), *Psihologia martorului și tactia ascultării*, București, Editura Focus.
- Țândăreanu, L. (2007), Protecția martorilor în dreptul comunitar și în legislația altor state, *Revista Dreptul* nr. 11/2007, p.197-212.
- Zlate, M. (2000). *Introducere în psihologie*. Iași, Editura Polirom.
- Zorgo, B.(sub red.) (1980). *Probleme fundamentale ale psihologiei*. București, Editura Academiei R.S.R.
- Walker, W.R., Skowronski, J.J., Gibbson, J.A., Vogl. R.J., Thompson, C.P. (2003). On the emotions that accompany autobiographical memories: Dysphoria disrupts the fading affect bias, *Cognition and emotion*, 17(5), 703-723.
- Wessel, I., Wright, D.B. (2004). Emotional memory failures: On forgetting and reconstructing emotional experiences, *Emotion and cognition*, 18(4), 449-455.

Sentences of the law courts:

- The European Court of Human Rights, Decree of March 28th 2002.
- Criminal Sentence no. 674/2010 of the Local Court of Cluj-Napoca, not published.
- Criminal Sentence no. 814/2009 of the Local Court of Cluj-Napoca, final, not published.
- Criminal Sentence no. 800/2009 of the Local Court of Cluj-Napoca, final, not published.
- Criminal Sentence no. 485/2009 of the Local Court of Cluj-Napoca, final, not published.
- Criminal Sentence no. 492/2009 of the Local Court of Cluj-Napoca. Judgment no. 70/A/2010 of the County Court of Cluj, not published.
- Criminal Sentence no. 753/2010 of the County Court of Cluj, not published.
- Criminal Sentence no. 149/2009 of the County Court of Cluj, not published.
- Criminal Matters Judgment no. 47/A/2009 of the County Court of Cluj, not published.
- Criminal Matters Judgment no. 11/A/2009 of the County Court of Cluj, not published.

Criminal Sentence no. 263/2008 of the Local Court of Turda, final, not published.

Criminal Sentence no. 62/2010 of the Local Court of Turda, final, not published.

File no. 2340/P/2008 of the Prosecution Department under the County Court of Cluj, file no. 22035/211/2010 of the Local Court of Cluj-Napoca.

File no. 75/P/2010 of the Prosecution Department under the County Court of Cluj, file no. 24488/211/2010 of the Local Court of Cluj-Napoca.

Criminal Sentence no. 745/2010, delivered for File no. 751/219/2009 of the Local Court of Dej.

Criminal Sentence no. 48/2009 of the Local Court of Huedin, final through the Criminal Matters Judgment no. 215/A/2009 of the County Court of Cluj, not published.

Criminal Sentence no. 135/2009, delivered for File no. 530/242/2009 of the Local Court of Huedin, final, not published.

Internet Sources:

<http://www.psihologiaonline.ro>

<http://www.echr.coe.int>

<http://www.cartiaz.ro>