

# WITNESS TESTIMONY FROM A PSYCHOLOGICAL ASPECT

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## Abstract

As we will see below, psychology has a great influence on law and these two branches of science would be unthinkable in today's world without each other. They complement each other in many fields and are in constant interaction. Accordingly, today there is a special branch of science called forensic psychology. It deals with witness testimony as its most important part, and the subject of connecting these two sciences. The paper systematically describes forensic psychology from its very beginnings, its origin to the methods that are used today in this science when evaluating testimony. In the second part, psychology and law are described as separate scientific disciplines which, over time and under the influence of research and collaboration of scientists from both scientific disciplines, grow into a separate science, as a result of the need and progress in improving interpersonal relations and improving the legal and social order. In the third part entitled forensic psychology, its methods and their application, the methods used in modern times and without which the functioning of modern society and the legal system would be unthinkable today are listed and described. In the fourth part, called the characteristics of testimony, the basic concept of forensic psychology is described, which is witness testimony. In the fifth part, called the application of psychology in the evaluation of statements, the influences that can significantly change the witness's perception of reality, as well as the scientists who contributed to these investigations, are listed. In the sixth part, some characteristics by which we can recognize a false statement to some extent are presented and its clear difference compared to a false statement is described. In the conclusion, the author presents his critical opinion on forensic psychology as a science and the importance of evidence in court proceedings, as well as the possibility of its development in the future.

Keywords: Law, Psychology, Science, Witness, Testimony

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## 1. Psychology and law

Although psychology and law differ significantly, they have in common that the sciences are interested in human behavior. While psychology investigates human behavior more, law is concerned with regulating and sanctioning interpersonal relationships. The connection between law and psychology also resulted in the emergence of a special branch of science called legal psychology, whose main activity is to understand the functioning of the legal system with the help of psychological methods.

Making a judgment is a set of mental actions, the essence of which is to establish or deny the

connection between certain phenomena, and the outcome of the trial process is a judgment or evaluation, made with more or less certainty that there is or is not a connection between the phenomena. Verdicts, as a rule, appear as verbally formulated statements, and the trial process is studied by verifying statements. In contrast to logic, which is primarily interested in the basic forms of judgments and their characteristics, psychology is concerned with the study of mental, and primarily cognitive, processes involved in making judgments.

The development of legal psychology is best described by dividing it into four periods: initial, psychological, forensic and contemporary.

The initial period, the beginning of the 20th century, is marked by research into the reliability of witness testimony. Here we can highlight the work of scientists William Stern, Alfred Binet, Sigmund Freud, Hugo Munsterberg, and John Wigmore. During this period, it is characteristic that psychologists were ready to offer their ideas, but lawyers did not accept them. In the psychological period, at the beginning of the thirties of the 20th century, the cooperation between psychology and law revived again. During this period, significant research was conducted in the area of criminal behavior patterns and cognitive processes relevant to testimony. The most famous scientist of this era is Harold Burr with his book "Legal Psychology". During the forensic period, in the fifties and sixties of the last century, psychologists began to participate as experts in court proceedings. In the last modern period, there is a realization of the need for psychologists in law and an increase in the number of psychologists who teach at law schools. We can also point out here that psychology and law can be in three types of relationships: psychology of law, legal psychology and psychology in law. The psychology of law refers to how law affects society, behavior among people. In legal psychology, psychology studies the legal system and seeks the factors that influence the enforcement of law. In our country, this relationship is a special scientific discipline and is called forensic psychology. Psychology in law is the most common relationship between these two sciences, the legal system uses a psychologist and his knowledge to clarify the specific system, this relationship is also called forensic psychology.

It is also important to emphasize the role of the psychologist as an employee in the justice system, which can be in several areas. There we have: 1. assessment of the abilities and personality of perpetrators of criminal acts, 2. participation in the treatment of perpetrators of criminal acts, 3. education and selection of certain groups of employees in the judicial system, 4. advisory work and 5. research work.

In the last ten years, the trial process has been intensively investigated in the Laboratory for Experimental Psychology of the Faculty of Philosophy in Belgrade.

## **2. Forensic psychology , its methods and their application**

The subject of the study of psychology is the features of human behavior, while law focuses on the laws that regulate such behavior.

Self-observation is a method characteristic of psychology. The main disadvantages of this method are that it can be subjective, also during subsequent introspection, the observation can be distorted due to the passage of time. However, it is important to point out that this method is one of the most important and that without it there would be no other methods such as a survey or a psychological experiment.

Observation in natural conditions is the kind of observation of reactions and events in the environment that can be seen or measured. This observation can also be called behavior observation, it must be thoroughly planned and systematically carried out. This observation can be long-lasting and is often used in forensic psychology, for example, when sentencing a certain group of offenders.

Survey research is also an important psychological method when observation is not possible. It is very important that the questions asked to the respondents are clear and simple. It can be carried out on the entire population or only on a certain part, then we are talking about a sample. The disadvantage of the method is that it is possible to find out only what the respondents want to say.

Case studies are characteristic of forensic psychology, and various techniques are used to obtain the knowledge that is needed. The data collected in this way are characteristic only for that case, this is noted as the main drawback of this method.

The experiment is the most reliable psychological method because it enables examination of the causes of certain events and their consequences. During the experiment, under controlled conditions, some phenomenon is deliberately caused for the purpose of observation and observation of the results. The phenomenon that is studied is called the dependent variable and the factor that is introduced is called the independent variable.

The dominance of objective procedures in research influenced the improvement of objective methods and contributed to the development of psychology as a science. We learn about many psychological phenomena on the basis of objective indicators that can be monitored on a large number of people.

### **3. Characteristics of the statement**

The basic concept around which forensic psychology began to develop is the testimony of eyewitnesses. The testimony has procedural legal significance as the hearing of a party in court proceedings, as a means of proof. In addition, from the psychological side, the statement also represents the expression of certain contents that the person experienced through his senses and created a certain image. Expression implies perception, memory and expression.

Perception is very important, vision is particularly important, but other senses such as hearing, smell, touch, taste are also important. Perception can thus be affected by deficiencies in these senses, which can call certain observations into question. Illusions can also appear here, which can significantly affect the credibility of observations.

Memory is the ability to acquire and retain information. There are three types of memory: 1. sensory memory, 2. short-term memory, 3. long-term memory.

Expression requires perception and memory. The person then verbalizes his observation related to a specific event. But also when testifying, there is always a certain possibility that the testimony is not credible, due to various circumstances affecting the person giving it.

Partial presentation of a traumatic event is the result of experiencing a threat, fear and lack of support from the environment.

In many criminal processes in which the injured parties are children, mentally handicapped or mentally ill persons, in cases where there is a lack of material evidence that a criminal offense took place, the testimony of the injured party is almost the only evidence.

### **4. Application of psychology in the evaluation of statements**

It has been proven that memory and perception of events are not perfect, they can be affected by numerous factors such as fear, surprise and others. The most important scientists who investigated this are Buckhout, Wells and Murray.

Three things are necessary for the credibility of a statement: 1. perception or acquisition of information, 2. memory and retention of information, 3. guesswork. Thus, we can say that a criminal offense is a complex event about which an eyewitness needs to acquire, retain and present certain information. Presentation of this information can be in the form of police interrogation, identification of the suspect, display of photo-robot, testimony in court proceedings.

Furthermore, it is also important to note that the way information is presented has an impact on its credibility, for example free guesswork is the most reliable way, because people only present what they

clearly remember and no other information and answers were offered to them. When guessing, care should be taken to instruct the person that there are no irrelevant details and that everything is important, it is also important not to expect one person to have noticed all the facts, that is why it is always necessary to question several people. Furthermore, it is important to take a statement from the person as soon as possible after the criminal act, because over time the person will gradually forget the details of that event. Suggestive questions disrupt the correctness of memory: through cognitive (unsubstantiated memory or confusion related to content) and socio-motivational mechanisms (need for conformation).

## 5. False and wrong statement

Lying is an act by which a person consciously and intentionally tries to convince another, successfully or unsuccessfully, of events or things that are not in accordance with the real state.

It is important to distinguish between a false and a wrong statement, because with a false statement a person really believes that he experienced, saw, heard, felt something. By lying, people try to avoid punishment, make some profit, create a positive impression of themselves, protect others, preserve some relationship. There are also many types of lying, from people who tell completely false information to those who do it subtly.

There is no sign or way to detect that a person is lying, but scientists agree that to some extent it could be emotions during testimony. Thus, a person who lies may be afraid of being caught in a lie, as well as overcome with excessive excitement, the person may avoid looking, have nervousness and make mistakes in speech.

The best lie detection interview protocols exist for polygraph testing. A polygraph is a device that measures physiological reactions: skin conductivity, blood pressure, ECG, breathing, etc. The assumption is that a person who lies, while answering the so-called relevant questions to be more excited than when answering the so-called control questions. With a polygraph, it is possible to accurately record even slight changes in physiological reactions and thus indirectly conclude that a person is not telling the truth. However, there is no satisfactory theoretical explanation why people who lie should be more excited when answering relevant questions, and a pattern of physiological reactions that would be directly related to lying has not yet been found.

Furthermore, it is important to point out that the credibility of the statement should be assessed by comparison with other statements and established facts, assessment of the credibility of its provider and analysis of its content. In addition to all of the above, it is important to note that the goal of everything is to establish the truth about an event and not to discover that someone is lying.

Giving false testimony is one of the criminal offenses against the judiciary in Chapter XXIX. Criminal law. Croatian law has traditionally accepted the concept that under the term "judiciary" it includes not only the judiciary, but also the state attorney's office, rather the attorney general's office, bodies that deal with misdemeanors, lawyers and other legal representation. Today, we understand the judiciary as the totality of relations within the framework of the judicial authority, and state bodies and institutions that participate in proceedings before the judicial authority. The incriminations prescribed in this chapter protect the work of judicial bodies from behavior that endangers or prevents the work of judicial bodies and the implementation of tasks, decisions or measures determined by judicial bodies. In addition to giving a false statement (Art. 305), criminal offenses against the judiciary are: failure to report the preparation of a criminal offense (Art. 301), failure to report a committed criminal offense (Art. 302), assisting the perpetrator after the commission of a criminal offense (Art. 303), false reporting of a criminal offense (Art. 304), prevention of evidence (Art. 306), violation of the secrecy of proceedings (Art. 307), disclosure of the identity of a threatened person or a protected witness (Art. 308), rebellion of persons who deprivation of liberty (Art. 309), enabling the escape of a person deprived of liberty (Art. 310), non-execution of a court decision (Art. 311), coercion against a

judicial official (Art. 312) and lastly, forgery (Art. 313.). Giving false testimony is a formal criminal offense that is completed at the moment the testimony is given.

## 6. Conclusion

The testimony of witnesses is what represents the very essence of court proceedings. In order to get this view of events from the witness in the best possible form and more useful for the procedure itself, it is necessary to combine several scientific disciplines such as law and psychology, which eventually happened and the science of forensic psychology was born.

A witness is a person who receives an event with his senses and stores it, if necessary, it is important to present this event during the examination, and this is where the knowledge and methods of scientists, which have been elaborated and researched in different circumstances for years, help us.

It is necessary to create a picture of an event as completely as possible and at the same time to exclude all external influences that could before and can at the moment of giving the statement affect the very essence of the statement. For a long time, the position of psychologists during this process was in conflict with the position of lawyers, which largely prevented the development of improving the quality of the testimony itself.

Only the mutual work of psychologists and lawyers can make it complete, clear, concise and useful in court proceedings. Today, this is recognized in the world, especially in Western countries, where we have a large number of psychologists who work in the courts themselves and help people before and during the testimony itself. Giving evidence as a witness often represents a return to some traumatic experience from the past that they do not remember fondly, so that it can be greatly changed due to the influence of fear, pain suffered and other circumstances. Psychologists also play an important role in the evaluation of the statement itself, where they can help with the assessment of its credibility with their knowledge.

Furthermore, we must take care that in our country we have a sufficient number of psychologists permanently employed in judicial bodies who would help when giving and evaluating statements. It is also necessary to introduce people to the importance of statements and testimonies about events they were present at, without fear of possible consequences, all with the aim of striving towards a modern society and a legal order in which we will all live better.

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