



The judicial perspective in the assessment of testimonial evidence

La perspectiva judicial en la valoración de pruebas testimoniales

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Abstract

The present study seeks to approach how judicial practice values testimonial evidence. In this regard, through semi-structured interviews conducted within the framework of a Project Initiation Project, we sought to determine the relevance attributed to this means of evidence when deciding a case and what criteria are used to assess testimonies. The methodological work also allowed us to verify certain assertions stemming from how legislation and doctrine treat this type of information as evidence, often in a subsidiary manner, which analysis is focused on the person testifying. Thus, it was possible to appreciate the way in which this centralism is used, the general distrust in this means of proof and how the expectations that are held in it are not really fulfilled.

Keywords: *Testimonial evidence; assessment of evidence; witness; testimony; credibility.*

Resumen

El presente trabajo busca aproximarse a cómo la práctica judicial valora la prueba testimonial. En ese sentido, a través de entrevistas semiestructuradas realizadas en el marco de un Proyecto Fondecyt de Iniciación, se buscó determinar la relevancia que se le otorga a este medio de prueba al momento de decidir un asunto y cuáles son los criterios que se utilizan para valorarlo. El trabajo metodológico permitió comprobar algunas afirmaciones derivadas de la forma en que la legislación y doctrina trata este tipo de información, muchas veces de forma subsidiaria, cuyo análisis se centra en la persona que declara. Así, fue posible apreciar la manera en que influye dicho centralismo, la desconfianza general en este medio de prueba y cómo no se cumplen realmente las expectativas que se tienen del mismo.

Palabras claves: *Prueba testimonial; valoración de la prueba; testigo; testimonio; credibilidad.*

I. INTRODUCTION

The study of testimonial evidence, according to the most traditional doctrine, could be described as merely formal, focusing on the requirements that must be met for this means of proof to exist.¹ In this way, most of the expected characteristics are nothing more than an echo

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¹ROCCO (2023), p. 376.

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of what the legislation establishes and/or an interpretation thereof, regardless of the type of evidentiary system.

The treatment that the legislator has given to testimonial evidence, along with the analysis conducted by legal doctrine, has implicitly given rise to three major issues.² First, a significant degree of mistrust toward this means of proof when it comes to decision-making.³ Second, partly the cause of this mistrust, is the fact that everything related to testimonial evidence tends to be associated more with the witness than with the evidence itself. This has been examined in other works that emphasize the centrality of the subject.⁴ Finally, testimonies are often attributed characteristics that are either impossible or extremely difficult to achieve in practice.⁵ All of this affects the assessment of this means of proof, and it is noteworthy that these types of characteristics are common across all systems of evidentiary evaluation and do not depend on any particular reform. Thus, we may assert that they are intrinsic to testimonial evidence in general.

Regarding the first issue, the mistrust surrounding testimonial evidence has made possible that a sort of hierarchy among the means of proof emerges,⁶ with documentary evidence at the top, understood by many as infallible,⁷ and scientific evidence, which is often semantically and epistemically overvalued.⁸ Thus, it has been argued that it is very difficult, or outright impossible, to make decisions based solely on testimonial evidence.⁹ One example of this, in Chilean legislation, is the way in which the probative value of public instruments differs from that of testimonial evidence, with the former being granted greater weight.

The second aspect, namely the so-called centrality of the subject, results in the court's question of when to believe being answered primarily in terms of who is testifying.¹⁰ Thus, if the witness, for instance, has some kind of relationship with the parties, there is an immediate tendency to distrust the person and to diminish their credibility, as is the case with witness inadmissibility ("*tachas*"),¹¹ in Chilean civil procedure. The problem this generates is that the content of the witness's statement is disregarded, and, consequently, the declaration is tainted by the identity of the person delivering it.¹²

In response to the situation described, it has been proposed to distinguish between two elements contained within testimonies: (i) the witness or subject, and (ii) the testimony itself or the product of the statement, in order to place them on equal footing when assessing testimonial evidence, without allowing one to prevail over the other in a way that might unduly distort the outcome of such assessment.¹³

² ROCCO (2023), p. 376.

³ CONTRERAS (2017), p. 305.

⁴ GONZÁLEZ (2021), pp. 167-170.

⁵ GONZÁLEZ (2024).

⁶ DE PAULA (2019), p. 42.

⁷ GONZÁLEZ (2022), p. 23; GASCÓN (2020), p. 254.

⁸ GASCÓN ABELLÁN (2013), p. 182.

⁹ DE PAULA (2019), p. 43.

¹⁰ GONZÁLEZ (2021), p. 170.

¹¹ FRICKER (2021), pp. 97-103.

¹² GONZÁLEZ (2021); GONZÁLEZ (2019).

¹³ GONZÁLEZ (2021), p. 230.

Regarding the third point mentioned, concerning certain expectations that testimonial evidence should fulfill based on the characteristics attributed to it, these would include: (i) a coherent and consistent statement; (ii) one that is complete; and (iii) one that provides all the expected information.¹⁴ Now, why should these be considered mere aspirations? A fully coherent and consistent account is unlikely to emerge from a free-form statement, and if it does, it may raise suspicions about the witness being coached, which is undesirable. Likewise, in practice, we cannot expect a complete statement that delivers all the desired information, since factors such as memory and recall cast doubt on that possibility.¹⁵ Moreover, a statement does not always serve to prove all the factual elements required; in certain instances, only a specific detail may be useful, particularly when it is connected to other means of proof.¹⁶

The foregoing gives rise to the question of whether the doctrinal treatment of testimonial evidence corresponds to what actually occurs in practice. Thus, are decisions made solely on the basis of this means of proof? What level of confidence is placed in it? Does centrality of the subject truly exist when evaluating testimonial evidence? Are such high expectations really placed on this means of proof, or do courts take a more realistic view of it? Is it possible to assess testimonies at all?

Several previous studies have attempted to address the aforementioned questions by establishing a theoretical-conceptual framework and applying it to the analysis of selected examples drawn from judicial practice.¹⁷ However, legal doctrine, particularly in the procedural field, has greater impact when it is connected to what actually occurs, in this case, within the courts of justice. For this reason, the methodologist Andrés Ahumada Salvo was commissioned to conduct interviews, based on the criteria that will be outlined, centered specifically on how testimonial evidence is assessed, although the findings are also applicable to other declarative means, such as party statements. This study, therefore, will describe the issues raised through a dialogue between the theoretical content examined and the qualitative results obtained from conducting semi-structured interviews with various judges.

Some of the results to be reviewed may be surprising, while others confirm doctrinal intuitions. Thus, *grosso modo*, we can confirm that testimonial evidence is indeed an undervalued means of proof. However, this undervaluation stems from broader and more complex reasons than those often studied. Furthermore, although there is a subject-centrality in the witness, this approach does not necessarily taint the testimony; on the contrary, it can play an explanatory role. The criteria used to evaluate the account, rather than the subject, differ from those traditionally provided. For example, while coherence emerged as one of the most important criteria in the interviews, gestural behavior was also meaningfully linked, in addition to motivation, interest, and interpersonal connections.

In this way, the invitation made in other papers to revisit the study and analysis of testimonial evidence is renewed. This call primarily aims to foster a convergence between doctrine and judicial practice, allowing both to enrich each other and contribute to a better approach to the handling and evaluation of means of proof.

In what follows the methodological process followed for the development of interviews with judges will be described, accompanied by a detailed analysis of the results obtained. In

¹⁴ GONZÁLEZ (2024); RODRÍGUEZ (2017), p. 218.

¹⁵ DIGES (2018); GONZÁLEZ (2024).

¹⁶ GONZÁLEZ (2023), p. 202.

¹⁷ GONZÁLEZ (2023), p. 202.

this context, the mistrust towards testimonies will first be addressed, followed by the subject-centered approach, and finally the criteria used to assess the account, such as gestural behavior, coherence, and motivation. Lastly, some final reflections will be presented on the importance of integrating the perspectives of doctrine and judicial practice in the analysis of testimonial evidence assessment.

II. METHODOLOGY

Within the *Proyecto Fondecyt de Iniciación* (Fondecyt Initiation Project) named “*Del testigo al testimonio: una reconstrucción pragmática del testimonio en el derecho procesal. Bases para una reforma de las pruebas declarativas*” (“From the Witness to the Testimony: A Pragmatic Reconstruction of Testimony in Procedural Law. Foundations for a Reform of Declarative Evidence”) falls the present series of interviews conducted by the methodologist Andrés Ahumada Salvo, technical assistant of the project.¹⁸ For the development of these interviews, a qualitative sampling design was constructed, through which semi-structured interviews were conducted, representing the importance of the court's evaluation and the role of judges regarding declarative evidence within the process. The focus was on testimonial evidence, but on several occasions, the points made in the interviews could be extended to other declarative means of proof.

The qualitative sample was constructed by including judges from courts with common competence in the regions where the percentage of urban population exceeds the national average. The selection of judges with common competence was based on the fact that, in terms of evidence assessment, they apply both a legally predefined evidentiary system (“*prueba legal o tasada*”) in civil matters and one of rational evaluation of evidence (“*sana crítica*”) in reformed procedures, which makes it possible to reflect different approaches to the evaluation of declarative evidence by the same interviewee. This is because the study does not focus on a specific system, but rather on a more general analysis of which aspects are relevant for courts when faced with the assessment of testimonial evidence. It should be noted, however, that no judges with exclusive civil competence participated in the interviews.

The selection criterion for territories with a higher urban population was based on the fact that these areas exhibit greater social differentiation,¹⁹ which allows for the examination of multiple subjective factors that may affect the credibility of those who testify, such as different types of employment, religion, family relationships, positions held in the workplace, and so on. Accordingly, the technical expert noted that “in urban areas, greater relevance is given to criteria that are considered when evaluating testimonial evidence (...)”.²⁰

According to information from the *Instituto Nacional de Estadísticas* (National Statistics Institute, “INE”),²¹ urbanization reaches 88.4%, and for this reason, the inclusion

¹⁸ Andrés Ahumada Salvo, lawyer and Master in Social Sciences with a specialization in Sociology, determined how to structure the interviews based on the meetings held, conducted the interviews, and subsequently delivered a report on the results. The types of questions asked and the bibliographic sources related to testimonial matters were consolidated during various meetings and provided by the author, drawing on her expert guidance.

¹⁹ CAMARERO *et al.* (2020).

²⁰ Original text: “*en las zonas urbanas se le otorga mayor relevancia a criterios que son considerados al momento de valorar la declaración testimonial (...)*” This is expressed in the delivered report, p. 1.

²¹ INSTITUTO NACIONAL DE ESTADÍSTICA. *Resultados Censo 2017*. Available in: <http://resultadoscenso2017.cl/Region?R=R06> (Last consulted: 12/07/24).

criterion involved judges from the regions of Arica (91% urbanization), Tarapacá (95% urbanization), Antofagasta (96% urbanization), Atacama (91% urbanization), Valparaíso (91% urbanization), Metropolitana (96% urbanization), and Magallanes (92% urbanization).

The sample design was constructed with the collaboration of the *Instituto de Estudios Judiciales* (Institute of Judicial Studies, “IEJ”), who reported that this research project sought participants for the completion of these interviews.²² Then, judges who met the inclusion criteria were sent an email informing them about the study and attaching the informed consent form. If they wished to participate, they were required to return the signed document. The informed consent sent to them was developed in accordance with the criteria of the *Comité de Ética de la Investigación de la Facultad de Derecho de la Universidad de Chile* (Ethics Committee of the Research of the Faculty of Law at the University of Chile).²³

The interviews were conducted via video call. In this way, the general aspects of the informed consent were reviewed, and then questions were asked according to a guideline, with the order being adjusted depending on the responses.²⁴ These responses were recorded and transcribed, after which they were anonymized. The sample was determined by the principle of redundancy or saturation, a value that was reached in the 13th interview. This principle refers to the fact that the repetition of interviews no longer provides additional information, and therefore, the process was stopped once there was exhaustion of the data provided in the interviews.

The decision to use the semi-structured interview was due to its emphasis on the perspective of the person and their experiences, allowing for the gathering of more information than through the thematic rigidity of other instruments such as a questionnaire. The information obtained was analyzed using the content analysis formula. For this purpose, various sections of the interviews were coded with pre-established codes²⁵ that summarized the key words of the research conducted.²⁶ In this way, it is also possible to see how the issues with testimonial evidence are transversal across different types of procedural systems. As an example, the analysis of the interviews will show how the centrality in the witness is reflected in

²² On July 3, 2023, an email was sent to the *Instituto de Estudios Judiciales* (Institute of Judicial Studies) explaining the project, the type of interview, and the number of judges needed.

²³ On August 24, 2023, the *Comité de Ética de Investigación de la Facultad de Derecho de la Universidad de Chile* (Research Ethics Committee of the Faculty of Law of the University of Chile) reviewed and approved the ethical aspects of the Fondecyt Initiation Project No. 11220191, titled “Del testigo al testimonio: una reconstrucción pragmática del testimonio en el derecho procesal. Bases para una reforma de las pruebas declarativas” (“From the Witness to the Testimony: A Pragmatic Reconstruction of Testimony in Procedural Law. Foundations for a Reform of Declarative Evidence”) for which Professor María de los Ángeles González Coulon is the principal investigator, as well as the commitment to conduct the necessary ethical follow-up throughout the duration of the research.

²⁴ The questions asked can be found in Appendix 1 attached at the end of this text.

²⁵ Throughout the interview, new topics also emerged, such as academic background, interest in the outcome, and belonging to rural or urban areas, which had not been considered as codes but were incorporated due to the frequency with which the interviewees referred to them.

²⁶ The dimensions used were personal characteristics of the interviewee, characteristics of the court, credibility, truth, characteristics of the narrative, evaluation of the narrative, evaluation of the person, testimonial evidence, party statements, and testimonial evidence. From all these dimensions, 30 codes were derived, which were used for the analysis of the interviews.

both the legally predefined evidentiary systems (*“prueba legal o tasada”*) and the systems with free evaluation of evidence (*“libertad probatoria”*).

Once the codes that could be observed in each passage of the responses from the interviewees were identified, it was determined which ones appeared most frequently in the same idea or argument put forth by the judges interviewed. In other words, using the Atlas - Ti version 9 software, a co-occurrence analysis was conducted between the codes. This way, patterns were observed in which certain codes were more frequently related to each other, thus reflecting a relationship between the key words that represented each of those codes.²⁷ The qualitative results proposed in this research stem from this analysis.

III. DISTRUST IN TESTIMONIES

A historical review of testimonies allows us to affirm that they are a primary source of knowledge;²⁸ in other words, regardless of the medium we use, the final link in the chain will always be a testimony. Later, mainly due to issues of materiality, medium, and the development of commerce,²⁹ testimonies began to be distrusted in favor of written documents,³⁰ forgetting that, in most cases, a significant source of the information we must rely on will be found in this type of evidentiary medium.

These are the first ideas that can be explicitly observed in the interviews conducted. Thus, in one interview, the response regarding the advantages of testimonial evidence for decision-making was as follows:

“It depends on what you’re trying to prove. Documentary evidence is often the evidence. At least in civil matters, documentary evidence constitutes full proof when it comes to public documents, the status of a contract, the date—so there’s nothing... in civil matters there are certain things that, if you prove them with documentary evidence, even if you present forty witnesses, you won’t be able to discredit what the document says. So, I’m not sure that you can answer that so broadly, because it really depends on what you want to prove and how you want to prove it, in general... that’s why I say... the value of the item you’re claiming is something that, by law, you cannot prove with witnesses but of course can with documents (...)” (Interview N°3).

This distrust toward testimonial evidence has been based primarily on the alleged variations that a narrative might present as more people become involved in it.³¹ Generally, it has been argued that the main reason not to trust oral testimony is that people lie, that is, they deliberately do not tell the truth.³² Related to this is the idea that the tendency to be untruthful is reflected in those individuals who are closest to the parties involved. An example of this is the regulation concerning witness inadmissibility (*“tachas”*), particularly the list of individuals included in it.

Studies on the psychology of testimony have moved beyond the idea that “everyone lies” and have established that, as a general rule, the issue is not that people deliberately do not want to tell the truth, but rather that the accounts they provide do not necessarily correspond

²⁷ GUPTA (2024).

²⁸ PÁEZ (2014).

²⁹ BELTRÁN (2021).

³⁰ PINO (2002), pp. 30 & ff.

³¹ DIGES (2018), pp. 21-25.

³² DIGES (2018), p. 22.

to the truth due to memory or recall problems caused by various factors, such as the traumatic nature of the event, the passage of time, and so on. In this regard, DIGES notes that:

“From the perspective of the psychology of testimony, as we mentioned, we see other threats to the correspondence between testimony and reality, based on what we know about how memory works. The first of these, easy to understand, is forgetting or the degradation memory undergoes over time (...).”³³

This distrust can initially be observed in how legal doctrine, echoing legislation, has addressed the issue, generally based on a legally predefined evidentiary system (“*prueba legal o tasada*”). As BELTRÁN aptly notes, in general terms, it is possible to state that the legally predefined evidentiary system merely reflects or makes explicit maxims of experience that are characteristic of a system based rational evaluation of evidence (“*sana crítica*”). Therefore, what is stated, whether more or less explicitly, applies to all types of proceedings, regardless of the system of evidentiary assessment,³⁴ meaning that the issue raised is not exclusive to any particular evidentiary system.

Thus, if we focus on the strict definition of testimonial evidence, it is built upon the witness, who is supposed to be completely independent.³⁵ Then, the legislation, anticipating the possibility that the witness may lie, has established in civil matters, in Articles 357 and 358 of the Chilean Code of Civil Procedure (“*Código de Procedimiento Civil*”, “CPC”), a list of persons who are disqualified from testifying, that is, “suspicious persons” who, for various reasons, might deliberately not tell the truth.³⁶ Similarly, although in Chile the reformed procedures state that there are no disqualified witnesses or challenges, in Spain, Article 376 of the Spanish Civil Procedure Act (“*Ley de Enjuiciamiento Civil Española*”, LEC/2000), while noting that testimonial evidence is to be assessed according to the rules of sound judgment, nevertheless still considers witness inadmissibility (“*tachas*”).³⁷

The distrust toward testimonial evidence, and even more so toward party statements, that has been developed by legal doctrine and legislation is also a matter of concern in judicial practice. Based on the interviews conducted, we can state that, as previously mentioned, there is reluctance to rely on testimonies as the sole means of proof for making a decision, and that they should only be used as a form of evidence that complements other means of evidence presented at trial.³⁸

³³Original text: “Desde la psicología del testimonio, como apuntábamos, vemos otras amenazas a la correspondencia testimonio-realidad, basándonos en lo que conocemos sobre el funcionamiento de la memoria. La primera de ellas, fácil de comprender, es el olvido o la degradación que sufre la memoria con el paso del tiempo (...)” DIGES (2018), p. 23.

³⁴BELTRÁN (2021).

³⁵ROCCO (2023), p. 376.

³⁶Original text: “por tanto, solo respecto a la prueba testifical se mencionan otros medios de prueba específicos y se afirma que la prueba testifical es inadmisibles para probar hechos ya probados mediante documento o confesión de parte, con lo que realmente se sugiere una idea de jerarquía” DE PAULA (1968), p. 63.

³⁷Art. 376. “Los tribunales valorarán la fuerza probatoria de las declaraciones de los testigos conforme a las reglas de la sana crítica, tomando en consideración la razón de ciencia que hubieren dado, las circunstancias que en ellos concurran y, en su caso, *las tachas formuladas* y los resultados de la prueba que sobre éstas se hubiere practicado”

³⁸GONZÁLEZ (2023), p. 202.

The distrust toward this form of evidence not only implies reluctance to use it as the sole means of proof for decision-making, but it also results in the indirect creation of a certain hierarchy among different forms of evidence. Thus, DE PAULA states: “Therefore, only with regard to testimonial evidence are other specific means of proof mentioned, and it is asserted that testimonial evidence is inadmissible to prove facts already proven through documents or party confession, which really suggests an idea of hierarchy.”³⁹ Similarly, in one of the interviews, it was mentioned that testimonial evidence is used, in certain cases, as a complement to documentary evidence (Interview N°1), as follows:

“Generally, testimonial evidence is accompanied by some form of documentary evidence, which allows for comparison, further exploration, and/or complementing. Now, it has rarely happened to me, or in a few trials, at least I don't have any particular case or matter in mind, where there was purely testimonial evidence or it was the only evidence. Generally, even if two or three witnesses declare the same thing, in the same sense, it is still requested that some additional background be provided to help compare or complement what is said with testimonial evidence, keeping some kind of correlation with the instrumental evidence.”

The idea of a hierarchy of means of proof, where testimonial evidence would be at the bottom of the pyramid, is confirmed by the qualitative results obtained in this research. For example, if we review the following excerpt from one of the interviews, when the respondent is asked about aspects other than the testimony that are considered when evaluating the means of evidence, the interviewee asserts that:

“For one, it is important to always check if the testimony starts to find support in other elements of evidence. When one begins to realize that in different parts of the testimony there are corroborating elements that, throughout the entire narrative, begin to be verified, repeat, and vary between the two, one starts to assign them greater weight” (Interview N°2).

Thus, from the interviews conducted, it is possible to deduce that testimonial evidence is used to contextualize, emphasizing the idea of a secondary form of evidence for decision-making. As an example, the following interview excerpt, which refers to the supposed advantages or disadvantages of testimonial evidence, indicates that:

“The advantage of testimonial evidence, I would say, is mainly related to the possibility one has of accessing certain contextual explanations, often more than the fact itself” (Interview N°11).

Finally, the aforementioned reluctance and the use of this means of proof as contextual background can be better explained by the fact that it is embedded within a holistic narrative. According to ACCATINO, evidentiary reasoning can be structured around two types of models: atomistic and holistic.⁴⁰ It is the holistic type of narrative that the interviewed judges identify as being used in matters of testimonial evidence. This type of narrative involves, to some extent, highlighting:

³⁹ Original text: “por tanto, solo respecto a la prueba testifical se mencionan otros medios de prueba específicos y se afirma que la prueba testifical es inadmisibile para probar hechos ya probados mediante documento o confesión de parte, con lo que realmente se sugiere una idea de jerarquía” DE PAULA (2019), p. 42.

⁴⁰ ACCATINO (2014), p. 18.

“(…) how, although the facts that are subject to proof in a proceeding can (and, as we will specify in the following section, must) be broken down into a set of propositions corresponding to the various constituent elements of the factual hypothesis of the applicable legal norm, the meaning of those propositions as object of proof depends on their integration into a coherent whole”.⁴¹

In this way, it is difficult to sufficiently justify a ruling based solely on testimonial evidence, and for that reason, in cases where this type of evidence predominates, a holistic narrative becomes necessary, more so than in situations where the background is mostly made up of documentary evidence.

The idea expressed by the various interviewees is consistent with what I have proposed in other studies, in the sense that testimonial evidence allows for the generation of inferences in relation to other background elements, which can, at the same time, be validated through other forms of evidence presented at trial,⁴² which was demonstrated in the carried out analysis, where the code “holism” was almost always linked to the code associated with testimonial evidence, highlighting the strong connection between these concepts. Thus, the statement gains relevance that “to achieve greater reliability in testimony, corroboration through the joint assessment of the body of evidence is necessary.”⁴³

IV. CENTRALITY IN THE SUBJECT

In the previous section, we outlined that the distrust of testimonial evidence can be reflected, in civil procedural matters, in the institution of witness inadmissibility (“*tachas*”).⁴⁴ Witness inadmissibility (“*tachas*”) has been defined either as a mechanism to prevent a witness from testifying or as a means of reproaching the credibility of the witness;⁴⁵ in both cases, the distrust toward the witness due to their possible interest is reflected. If, when evaluating testimonial evidence, the question is: When should one believe the testimony?⁴⁶ we can see that the answer is largely tied to the person giving the testimony, that is, to the witness.

The fact that testimonial evidence is studied with a focus on the witness is not trivial, as this subject-centered approach can lead to the contamination of the information being provided. Consequently, its evaluation will not be entirely rational, since it may be influenced by characteristics of the witness that range from their relationship with the parties to their nationality, gender, academic background, and so on.⁴⁷

The assertion that in testimonial evidence there is a centrality of the subject is not only ascertained due to the regulation and the existence of witness inadmissibility (“*tachas*”). The doctrine also mentions, in order to complement the definition of testimonial evidence, certain

⁴¹Original text: “(…) relieve cómo, aunque los hechos que son objeto de prueba en un proceso puedan (y, según precisaremos en el siguiente apartado, deban) descomponerse en un conjunto de proposiciones correspondientes a los diversos elementos constitutivos del supuesto de hecho de la norma jurídica aplicable, el sentido de esas proposiciones como objeto de prueba depende de su integración en una totalidad coherente” ACCATINO (2014), p. 33.

⁴²GONZÁLEZ (2023), p. 201

⁴³Original text: “para obtener una mayor fiabilidad del testimonio, es necesaria la corroboración que se produce por la valoración conjunta del acervo probatorio” GONZÁLEZ (2023), p. 202.

⁴⁴For example, articles 357 and 358 of the Chilean Code of Civil Procedure.

⁴⁵RIVERA (2011), p. 190.

⁴⁶PÁEZ (2014).

⁴⁷GONZÁLEZ (2019).

qualities that the witness must possess. Among these, and aside from impartiality, we must add complete independence; the requirement that the facts the witness recounts were known to them through one of their senses, and that their statements be complete.⁴⁸ Then, the fact that the concept of testimony revolves around the witness is yet another demonstration of the aforementioned centrality.

Judicial practice is not foreign to the outlined factor. The interviews conducted confirmed that the examination and analysis of this type of evidence primarily focus on the person giving the testimony. In the figure presented below, the aspects related to the witness are shown in red, while those linked to the narrative itself are in green. The prominence of the subject is easily identifiable, with at least 12 criteria identified by the interviewees related to the characteristics or qualities of the witness, such as their nationality, gender, academic background, biases, and prejudices. In contrast, only three criteria associated with the narrative were identified: motivation, coherence, and consistency, which will be analyzed in more detail in the following section.

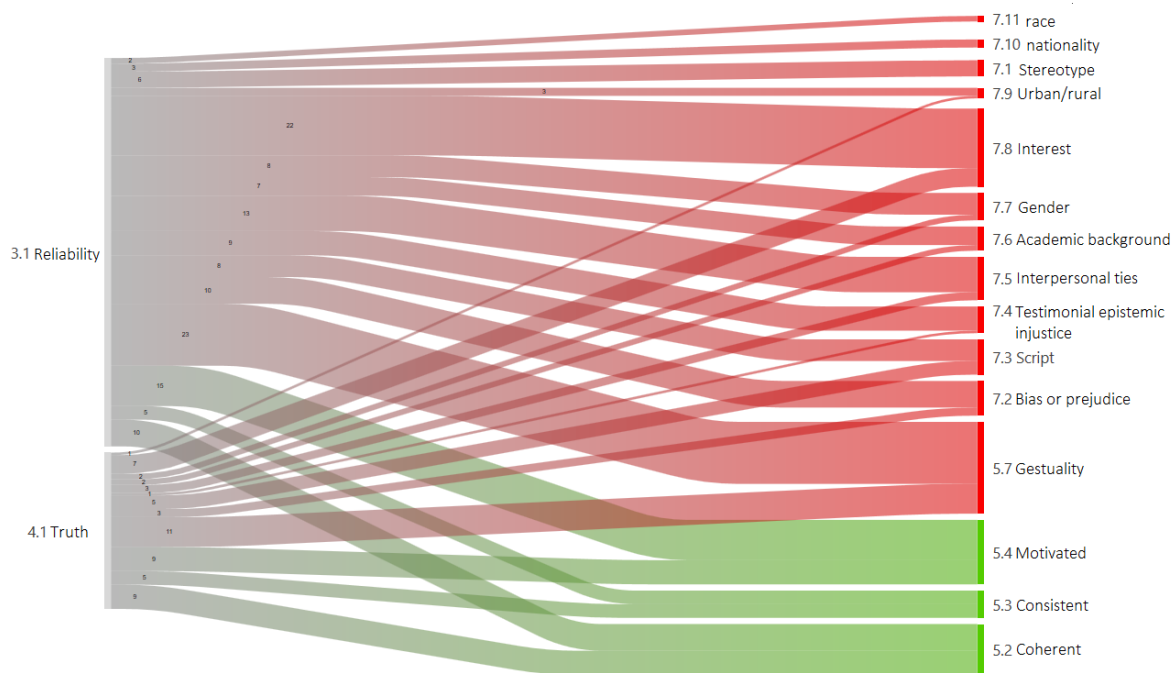


Figure N°1, created by the technical assistant of the Fondecyt Initiation Project, Mr. Andrés Ahumada Salvo, in his final report.

The interviewees have stated that certain qualities of the person giving testimony significantly influence how the proposed account is evaluated and, ultimately, the testimonial evidence at the trial. Now, due to the semi-structured interview format, they were not directly asked whether the characteristics they considered had a negative or positive connotation. Despite various responses that indeed indicate that the witness's persona influences the court's decision-making, we cannot necessarily assign a negative connotation to that influence. Some of those qualities are seen as a way to better explain a narrative or understand the account, providing it with a certain context.

⁴⁸GÓMEZ COLOMER *et al.* (2019), p. 289; MATURANA & MONTERO (2010), p. 985.

As can be seen from the previous table, one of the qualities identified by the interviewees as important regarding the witness is race or nationality. While at first this might be considered a negative quality, something that should not be taken into account when assessing testimony, due to the presumed presence of prejudice in such análisis,⁴⁹ the interviewees indicate that it is, on the contrary, used to prevent the use of stereotypes and/or biases in the ruling.

Stereotypes are an issue that judges must be alert to in the exercise of their judicial function. ARENA points out that, regarding stereotypes, it is necessary to identify which ones are legally relevant in the sense that they are unacceptable and should therefore be avoided in judicial decisions.⁵⁰ If we were to define them, stereotypes are the attribution of a certain characteristic to members of a group solely because they belong to that group.⁵¹ Then, if these stereotypes involve a negative attitude, we are dealing with prejudice.⁵²

In the judicial sphere, prejudices must be avoided both generally and to prevent them from being mistaken for maxims of experience.⁵³ The interviewees have indicated that, contrary to what was mentioned in earlier sections, namely, that the witness's qualities may taint the testimony, focusing the analysis on the witness's qualities allows judges, in some cases, to avoid prejudice rather than incorporate it.

Below is a portion of an interview in which it is stated that, for the application of knowledge regarding child-rearing practices in the Haitian community, the factor of nationality is highly relevant. This response arises from the question concerning biases regarding the process in order to be able to determine whether the information being provided might involve the use of biased or prejudiced information:

“If I am convinced, for example, that Haitian people are not good caregivers because they have child-rearing customs different from mine, and I haven't studied issues related to interculturality, and someone gives me that information, I take it as if... and I fail to make the distinction between whether that information comes from an actual observation, like ‘Look, I noticed she would leave the child with just anyone to take care of, and I didn't think that was right,’ which sometimes we internalize as opinions. But if I then ask, ‘What is the person's nationality?’ and they tell me she is Haitian and that community-based child-rearing is part of their custom, then there is a content that may potentially be biased, because either I or the person giving the statement might be assuming that this is not an appropriate way to care for a child, and that, in turn, could reveal a perceived neglect in parenting that might justify separating her from her son or daughter” (Interview N°11)

In this context, certain characteristics of the witness may be relevant for avoiding prejudice in the court. In other respects, some interviewees mention that identifying specific qualities can be used to detect the presence of negative stereotypes coming from the witness themselves, and by recognizing them, the court can avoid adopting those prejudices, biases, or stereotypes in a broader sense. For instance, in Interview N°11 it is stated: “I pay close attention

⁴⁹ FRICKER (2021), p. 97.

⁵⁰ ARENA (2016), p. 52.

⁵¹ ARENA (2016), p. 52.

⁵² ARENA (2016), p. 52.

⁵³ BELTRÁN (2021), pp. 141-142.

to that because, ultimately, if I don't pay attention to the witness's biases, I will end up relying on biased information (...)"

It also occurred that judges justified the importance of the person giving testimony in order to dismiss the statement, not for the traditionally studied reasons related to witness inadmissibility (*"tachas"*), but because there may be linguistic, cultural, or even academic barriers that could hinder the assessment of testimonial evidence.

By way of example, at the end of one of the interviews it is noted that it is important to highlight the context in which the court operates and to consider the different situations that arise, since

"(...) these are different realities, because people have almost no knowledge of our legislation. Therefore, they don't know much about what is expected from a witness's statement—what they should say, how they should say it, how to provide reasoning, or even how questions are asked, they form in which they should speak" (Interview N°4).

Along the same lines, an example is given of certain communities that, due to their culture, assign different value to property, and this must also be taken into account.

Language, as a personal characteristic, is another factor that judges spontaneously mention as important to consider when assessing the subject's traits, since, especially when no interpreter is provided, the witness

"(...) cannot clearly express their ideas, and despite one's efforts, it ends up being a very brief interrogation because they are unable to convey their point. That could be a significant factor, whether they have a good command of the Spanish language or whether the party ensures that an interpreter is present" (Interview N°13).

Along the same lines, the usefulness of the testimony for making a decision may also be affected by the academic background of the person giving the statement.

All the factors outlined can be said to fall within the broader concept of general epistemic injustice, understood as a situation in which certain speakers find themselves in an unjust and disadvantaged context that hinders both their understanding and their ability to make others understand their experience of disadvantage,⁵⁴ the consequence of which is that such marginalization "(...) produces conceptual gaps or flawed ways of understanding and interpreting phenomena, identities, and lived experiences".⁵⁵

In this context, if we analyze the interviews from the perspective of the reasoning behind the judgment, we once again observe the pattern highlighted during the evaluation of evidence: the elements related to the person of the witness carry more weight than those of the narrative itself. This is reflected in the figure presented below, where the red-coded elements are more frequently linked to the code related to the judgment. Thus, it can once again be seen that the subject's personal characteristics form the central focus of testimonial evidence.

⁵⁴ FRICKER (2021).

⁵⁵Original text: "(...) produce lagunas conceptuales, o formas erradas de comprender e interpretar fenómenos, identidades y experiencias vividas" COLOMA & RIMOLDI (2023), p. 282.

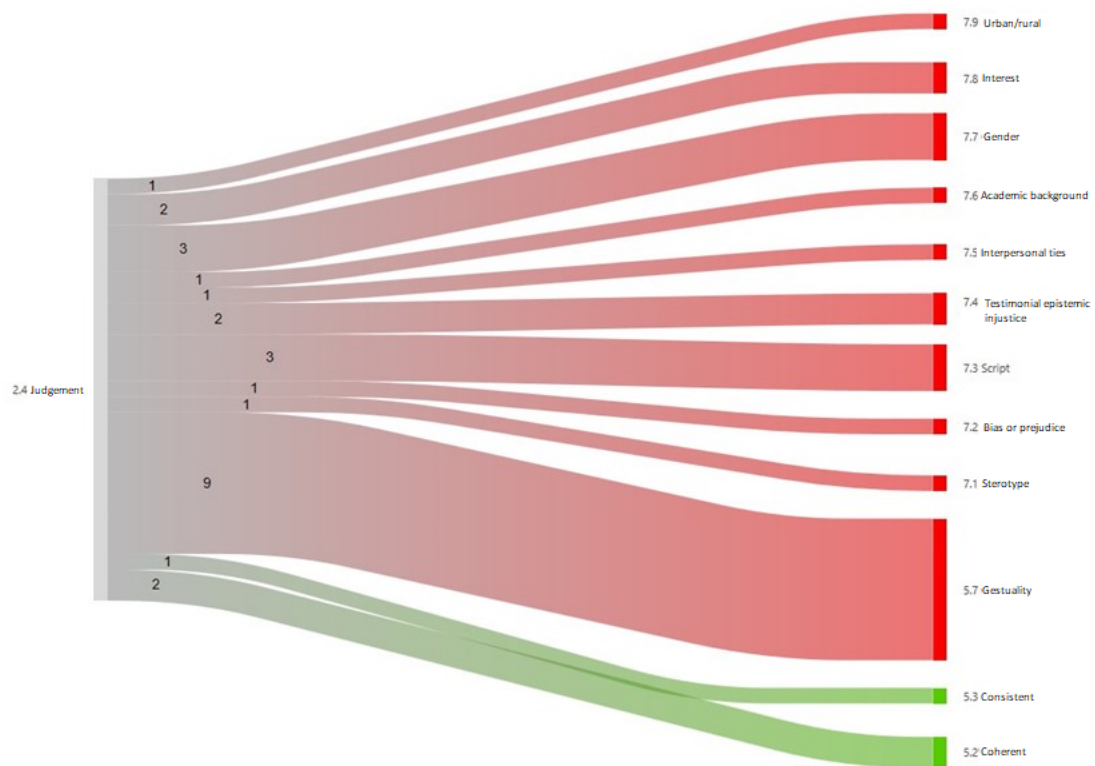


Figure N°2, created by the technical assistant of the Fondecyt Initiation Project, Mr. Andrés Ahumada Salvo, in his final report.

V. ANALYZED CRITERIA REGARDING THE NARRATIVE

It has been noted that the assessment of testimonial evidence is based on the witness, which, aside from contaminating the testimony, would imply either omitting the information provided or considering it only tangentially. In the case of the interviews conducted, judges were asked which elements or criteria most frequently informed their evaluation of the statement, regardless of the person. Motivation and coherence of the statement were mentioned as such criteria, along with interest, interpersonal ties, and gesturing.

5.1. Gesturing

Gesturing, which was once studied from the psychology of testimony as non-verbal language to assess testimonies, has developed in the following way:

“When we talk about non-verbal communication, we are not only talking about a mode of communication, but also the large amount of information that forms part of this type and the complexity involved in categorizing it, which justifies the use of a conceptualization by negation, meaning that non-verbal communication consists of everything that is NOT verbal communication (understanding the verbal as everything related to words). In this sense, clothing, the way of walking, the qualities of the voice, gestures, posture, silence, physiological reactions, facial expressions, among other elements, are issues encompassed by non-verbal communication, and like all communication, they inherently involve the transmission of information”.⁵⁶

⁵⁶ Original text: “Al hablar de comunicación no verbal, no sólo hablamos de una modalidad de comunicación, sino que la gran cantidad de información que forma parte de dicha especie y, la

In other words, the elements we might consider external to the person, such as their gestures, emotions, or forms of expression, should be included when evaluating evidence. For example, a person who is calm should be believed more than someone who is constantly sweating during their statement, because it is presumed that the latter is nervous because they are lying.

Although gesturing could be considered a kind of bias related to these “gestures,” according to interview practices, gesturing is considered the most relevant criterion for evaluating testimonies, regardless of the difficulty of later using them to justify a ruling, obviously in cases where there is direct interaction with the court, especially in certain matters such as moral damages, suffering, or emotional impact. This can be illustrated with the following response, in which the interviewee themselves refers to crying and the value attributed to that behavior:

“Crying is generally not evidence, but it can be very relevant in a case where one of the facts to be proven involves some type of emotional impact—I’m thinking of a domestic violence case, for example. (...)” (Interview N° 9).

In certain circumstances, the emotional correlate is considered important because it allows the person to express their feelings and, at the same time, is regarded as a sign of naturalness within the trial hearing. Let’s examine the following excerpt:

“I think it’s important to tell... to prepare the witness and say: if at any point you feel uncomfortable, if you want, for example, to have a glass of water or take a break because you’re feeling affected, or if you want to physically express that you’re affected, to prepare them, to explain to the witness how they should behave in those situations. Because I also think it’s important for the witness to feel the confidence, the ease to be able, besides testifying, let’s say, but also to physically express something, like if they feel like crying or, I don’t know, making some expression that’s important for them. To ask and tell them that there are some limits that must be maintained in terms of behavior during the hearing, but that there are also expressions that it would be important, for example, for them to be able to express.” (Interview N°4).

Moreover, among the elements of the testimony, they associate gestures more strongly with determining the credibility of the account itself. In this way, Interviewee N° 10 mentions, when referring to the possible advantages of testimonial evidence for making a decision, that:

“You start picking up on it, and the truth is that body posture, the details they sometimes give, how they give them, all that nonverbal narrative that comes into play when giving testimony is really relevant, and you assign more or less credibility to a witness because of those kinds of things as well. Not just because a testimony might be coherent, because sometimes a testimony can be very coherent, but it seems rehearsed, and then, when someone asks a question, maybe one that catches the witness off guard or one they weren’t prepared for, that’s when contradictions start to

complejidad que conlleva lograr categorizarla justifica que se opte por una conceptualización por la negativa, es decir, que la comunicación no verbal está compuesta por todo lo que NO es comunicación verbal (entendiendo lo verbal como todo lo relativo a la palabra). En tal sentido, la vestimenta, la forma de caminar, las cualidades de la voz, la gestualidad, la postura, el silencio, las reacciones fisiológicas, las expresiones faciales, entre otros elementos, son cuestiones abarcadas por la comunicación no verbal y que, como toda comunicación, lleva implícita la transmisión de información” MICHELETTI (2023), p. 2.

show up, and you can notice that the credibility that may have seemed solid at first might not be so much after all” (Interview N° 10).

Gesturing, as an essential element in the assessment of testimonial evidence, takes on particular relevance in cases of gender-based violence when we analyze how the victim’s statement is evaluated, understanding that this statement is also epistemically a testimony.⁵⁷ This can be seen in the following response, which addresses a question about how a court can incorporate into the judgment the paraverbal elements that the interviewee themselves referred to as relevant. Moreover, in this case, it becomes possible to demonstrate the construction of the ideal victim stereotype, that is, “the prejudices that shape the expected behavior of a victim of sexual violence”:⁵⁸

“When you ask me, you know what, yes, I tend to think it’s more sincere when there’s an emotional correlate.

I’m talking about, like, my wife’s husband used to beat her, and I don’t start crying or sobbing, but my voice does break right at that moment, like, look, I remember it and it’s hard for me to talk about it, but in a way that, well, maybe you could be the best actor in the world, but it seems so sincere that it’s hard not to believe it, and that goes for party statements too, of course, I’ve had party statements in a domestic violence trial with sobbing, with things like: “calm down, ma’am,” for example that one was on Zoom, but she was at home, and I said: if you have a little glass of water there, I see one, have a sip, no one’s rushing you, that kind of thing” (Interview N°7).

In the case of this particular criterion, judges, although they consider it decisive for evidentiary assessment, are also aware of the difficulty of incorporating it into the judgment, since doing so would deviate from a rational evaluation, being mediated instead by a perception of how a specific gesture by the witness, for example, not making direct eye contact, might be interpreted as a sign of concealment, when it could simply be nervousness about facing a judicial process. An assessment is rational if it is “(...) based on a set of elements or evidence which is, in turn, a subset of the set of all the available elements of judgment,”⁵⁹ and is subject to criteria of logic and rationality.⁶⁰ Relying on subjective elements makes achieving that goal more difficult. This way, Interviewee N°3, when asked about the benefits of considering bodily expressions, states:

“That tells you everything, the person’s expression. I mean, not everything, but it tells you a lot, what the person is like for you, how the account isn’t just made up of words, but also of body language. Nonverbal language really is important.

The thing is, it’s a bit more complicated to use it in a judgment, because you can’t write in a ruling, “No, you know what, I don’t think the witness was truthful because their body language told me they weren’t being truthful.” That gives way to say no, but you... but yes, when – which is what happens when the witness’s body language tells you that what they’re saying isn’t quite true – you can, in a way, pay more attention to the other pieces of evidence, to build your conviction” (Interview N°3).

⁵⁷ GONZÁLEZ (2021); VÁZQUEZ (2015), pp. 51-52.

⁵⁸ Original text: “aquellos prejuicios que afectan al comportamiento esperado de una víctima de violencia sexual” HERNÁNDEZ (2023), p. 41.

⁵⁹ Original text: “(...) basada en un conjunto de elementos o pruebas que es, a su vez, un subconjunto del conjunto de todos los elementos de juicio disponibles” FERRER (2007), p. 40.

⁶⁰ FERRER (2007), p. 45.

In conclusion, the judges interviewed explicitly highlight the difficulty of arguing the use of nonverbal language in their rulings, since, as we have pointed out, the use of gestuality strays from a rational decision. However, even in the face of the impossibility of a rational justification in this regard, the interviewees still consider it a relevant criterion, which makes it dangerous, because if used, it would not be reflected in the decision, and therefore, consequently, would be impossible to control.

5.2. Interest in the Trial and/or Interpersonal Connections

In relation to this criterion, it is possible to point out that it is an element that overlaps with centrality in the witness. In other words, we could also have included it in the previous section; however, according to the interviews conducted, the judges place it as part of the assessment of the narrative. This is reflected in various excerpts from the interviews, for example, when they refer to the supposed advantages or disadvantages of testimonial evidence:

“One doesn’t mean to say that we don’t believe them, but we start by considering the interest that exists in order to carry on with the evaluation. It’s like what one does in any case with all witnesses - you begin by seeing to what extent the interests are strong enough to put the reliability of their account at risk; after that, you start digging into the rest” (Interview N°2).

That this element is studied within the criteria that form part of the testimony could be explained by the fact that it acts as a sort of intermediate criterion between agent-related and content-related elements. Additionally, the testimony can, in certain cases, be contextualized by considering the supposed interest of the party. Furthermore, interest is linked to other criteria, such as the plausibility or credibility of the narrative presented.⁶¹ To illustrate this, we refer to what Interviewee N°2 says in response to a question about possible precautions taken when a potential interest is identified:

“One pays much more attention to the corroborating elements that may be present, because the possibility that these interests might deliberately distort the account leads one to rationally press for whether or not these accounts are corroborated by what is later indicated.

This, in relation to interests, one also sees when it involves people who might have a reason to distort information. One tends to assess, in a very different and personal way, the credibility of the account, and you encounter this in practice, because very often those who have a vested interest - whether parties in civil cases, family proceedings, or criminal cases - sometimes come up with accounts that are far removed from anything that could be considered credible, and some are quite outlandish” (Interview N°2).

5.3. Coherence

The coherence of the testimony has been understood as one of the fundamental factors in the set of criteria for believing a given account, with the aim being a narrative free of contradictions, with a clear argumentative line and the ability to explain related facts.⁶² Therefore, from the interviews, it is possible to conclude that for some judges, this evaluative element pertains to an internal feature of the narrative itself.⁶³ However, for others, it refers to external coherence, that is, consistency with other elements of the case, which aligns more

⁶¹ COLOMA *et al.* (2009), p. 324.

⁶² TARUFFO (2008), p. 208.

⁶³ TARUFFO (2008), p. 208.

closely with a holistic structure of evidentiary reasoning.⁶⁴ It could be said, then, that there is something like both internal and external coherence.

This idea of coherence with the other forms of evidence can also be found in some interviews, where it is described how the testimony must align with the other elements presented. Furthermore, an interesting point arises in one of the interviews, where, linked to the notion of coherence, the interviewee broadly suggests that it is a myth that testimonies must function as a whole in order to support a decision, since there are relations between the witness and the parties that can be used in the decision-making process; however, only certain parts of the testimony are useful, while others are not:

“Now, testimonies can be partial, that is, some aspects may be very coherent, closely aligned with other evidence, but there can be another portion of the testimony that does not fit with the rest. So, it’s also possible to break it down in terms of how much credibility is given to certain aspects, while other aspects simply cannot be cross-checked” (Interview N°1).

5.4. Motivation

This criterion refers to how witnesses account for their statements and/or how they have knowledge of the testimony they are giving. In the words of the LEC/2000, this element corresponds to the reasoned basis of knowledge (*“razón de ciencia”*), understood as the justification of the statement by explaining how, when, and where the declared facts were perceived.⁶⁵

The criterion of motivation is also linked to the way in which the witness perceived the events they are recounting. In regard to this, it is important to recall that traditional definitions of testimonial evidence, which are complemented by the characteristics of the witness, state that the witness must have perceived the events through one of their senses.⁶⁶ Therefore, the specific sense through which the events were perceived allows for a better explanation of their account, and for this reason, a distinction is made between eyewitnesses and hearsay witnesses.

Hearsay witnesses are those who testify about “(...) what they heard a third party say about other facts,”⁶⁷ and an eyewitness or, for some, a direct witness, is “someone who testifies about the facts of the case, what they perceived through one of their senses, provided that the information is relevant to the case.”⁶⁸ This classification, as can be seen, allows a return to traditional ideas of hierarchizing types of evidence within a trial, which, following the reasoning already outlined, negatively impacts rational evaluation. The distinction between whether a piece of evidence is considered direct or indirect merely concerns a matter of degree, referring to the number of inferences that must be made.⁶⁹

In this regard, Interviewee N°6, when asked what strategies they would develop if they were a lawyer aiming to obtain a good outcome in their litigation strategy concerning testimonial evidence, states:

⁶⁴ TARUFFO (2008), pp. 218-219.

⁶⁵ PICO (2023), p. 610

⁶⁶ PICO (2023), p. 610

⁶⁷ Original text: “(...) lo que escuchó decir a un tercero sobre otros hechos” RUA (2020), p. 74.

⁶⁸ Original text: “aquel que declara sobre los hechos del caso, lo que percibió por alguno de sus sentidos, siempre que se trate de información relevante para el caso” RUA (2020), p. 75.

⁶⁹ GONZÁLEZ (2003), p. 45.

“I would say the following: ‘Ask the judge, let’s say, the magistrate, when they identify you, whether you can give reasons for your statements, whether you can explain your answers’, because in my case, I also tell them: answer directly what you are asked. If they ask you, ‘Is it true that you came by bus?’ and you actually came by taxi, you say no. Then, after that, you can give reasons for your answer, such as: ‘I came by taxi because it’s closer, or it’s too far otherwise, or it’s more convenient, etc.’

You can give reasons for your statements. So that’s what I would tell someone who is going to respond to interrogatories (“absolver posiciones”): tell the truth but then ask to be allowed to explain your answer” (Interview N°6).

VI. SOME FINAL REFLECTIONS

The interviews conducted with judges generally reflect the way traditional doctrine has directly or indirectly treated testimonial evidence. Thus, it confirms the idea that this form of evidence is not considered sufficient, by itself, to support a judicial decision. This is due to a clear distrust of testimonies, the inherent complexity of their evaluation, the difficulty of them independently meeting the evidentiary standard, or simply because it is very hard for a statement to provide all the necessary information to resolve a matter.

Regarding the centrality of the witness, this is confirmed by the interviews. For some judges, knowing who the witness is serves to undermine the credibility of their statements or question some of the information provided; but for others, knowing who is testifying allows for better contextualization and explanation of their testimony. That is to say, in certain cases, this centrality harms the process, and we should return to the agent/product distinction; but in others, this approach helps strengthen the testimony by explaining the information provided, thereby allowing testimonial evidence to gain more weight when making a decision.

Regarding the elements of the narrative, the interviews reveal that gestures are often used unconsciously and present a problem. The tendency, as discussed in previous sections, has been to avoid using nonverbal language, as it generates certain “idealizations” of the witness's behavior that affect a rational decision. Therefore, although its use may seem obvious, it is important to consider how it influences the perception of the credibility of the narrative.

The criterion of interest and interpersonal connections, although for the interviewees it is an element of the narrative, I believe it exists in a grey area between being part of the analysis of the centrality of the subject or an element of the testimony. Perhaps it could be interpreted as foundational to the narrative because, as we have already pointed out, some characteristics of the witness, rather than contaminating, help contextualize the statement being given.

Motivation, understood as the justification of the statements, and the coherence of the narrative are criteria used to assess the quality of testimonies as good or bad accounts. However, it must be remembered that good accounts can be false, and bad ones can be true.

This last point leads us to a reflection that aligns with one outlined in a 2023 article: although the elements analyzed may make testimonial evidence more or less reliable, as the judges themselves point out in their interviews, this type of evidence becomes more reliable for decision-making when it is corroborated by other means of proof. Hence the importance of incorporating more background information into the trial, since, as a general rule, although exceptions may exist, such as in cases involving massive data, the more information available, the better the decision.

BIBLIOGRAPHY

- ACCATINO, Daniela (2014). “Atomismo y holismo en la justificación probatoria”, in *Isonomía*, N° 40, pp. 17-59.
- ARENA, Federico José (2016). “Los estereotipos normativos en la decisión judicial: Una exploración conceptual”, in *Revista Derecho de Valdivia*, Vol. 29, N° 1, pp. 51-75.
- BELTRÁN, Ramón (2021). “Las máximas de la experiencia y su reconstrucción conceptual y argumentativa en sede jurisdiccional”, in *Ius et Praxis*, Vol. 27, N° 2, pp.136-155.
- CAMARERO, Luis, DE GRAMMONT, Hubert & QUARANTA, Germán (2020). “El cambio rural: una lectura desde la desagrarización y la desigualdad social”, in *Revista Austral de Ciencias Sociales*, N°38, pp. 191-211.
- COLOMA, Rodrigo & RIMOLDI, Florencia (2023). “¿Es útil el concepto de injusticia epistémica para los procedimientos penales?”, in *Revista Brasileira de Direito Processual Penal Porto Alegre*, Vol. 9, N°1, p. 261-307.
- COLOMA, Rodrigo, PINO, Mauricio & MONTECINOS, Carmen (2009). “Fundamentación de sentencias judiciales y atribución de calidad epistémica a las declaraciones de testigos en materia procesal penal”, in *Revista de Derecho de la Pontificia Universidad Católica de Valparaíso*, N° 33, pp. 303-344.
- CONTRERAS, Cristian (2017). “La valoración de la prueba testimonial en el proyecto de Código Procesal Civil. Una tarea inconclusa”, in *Revista de Derecho*, Vol. XXX, N° 1, pp. 287-310.
- DE PAULA, Alfonso (1968). *La prueba de testigos en el proceso civil español*, Instituto Editorial Reus S.A.
- DE PAULA, Vitor (2019). *La prueba testifical. Del subjetivismo al objetivismo, del aislamiento científico al diálogo con la psicología y la epistemología*, Marcial Pons.
- DIGES, Margarita (2018). *Testigos, Sospechosos y recuerdos falsos*, Editorial Trotta.
- FERRER, Jordi (2007). *La valoración racional de la prueba*, Marcial Pons.
- FRICKER, Miranda (2021). “Conceptos de injusticia epistémica en evolución”, in *Las Torres de Luca: Revista Internacional de Filosofía Política*, Vol. 10, N° 19, pp. 97-104.
- GASCÓN, Marina (2020). “Prevención y educación: el camino hacia una mejor ciencia forense en el sistema de justicia”, in FERRER, Jordi y VÁZQUEZ, Carmen (eds.), *El razonamiento probatorio en el proceso judicial*, Marcial Pons, pp. 237-265.
- GASCÓN, Marina (2013). “Prueba científica. Un mapa de retos”, in VÁZQUEZ, Carmen (ed.), *Estándares de prueba y prueba científica. Ensayos de epistemología jurídica*, Marcial Pons.
- GÓMEZ, Juan Luis, MONTERO, Juan & BARONA, Silvia (2019). *Derecho jurisdiccional*, Tirant Lo Blanch.
- GONZÁLEZ, Daniel (2003). “Hechos y argumentos”, in *Jueces para la Democracia*, N° 47, pp. 35-51.
- GONZÁLEZ, María de los Ángeles (2024). “¿Es posible valorar la prueba testimonial? Algunas estrategias para lograrlo”, in BORGIA, Gianluca & PEREIRA, Sílvia (dirs.), DELLA,

- Jacopo & GIMENO, Jordi (coords.), *Retos de la prueba en el proceso actual*, Editorial Aranzadi.
- GONZÁLEZ, María de los Ángeles (2023). “Una increíble, aunque verosímil historia de las palabras: fiabilidad, credibilidad y testimonios”, in *Revista Derecho de Valdivia*, Vol. XXXVI, N° 2, pp. 187-204.
- GONZÁLEZ, María de los Ángeles (2022). *Nuevas perspectivas sobre los medios de prueba*, J.M. Bosch Editor.
- GONZÁLEZ, María de los Ángeles (2021). *El testimonio como prueba*, J.M. Bosch Editor.
- GONZÁLEZ, María de los Ángeles (2019). “Repensando el testimonio: la distinción entre agente y producto”, in *Revista Chilena Derecho*, Vol. 46, N° 3, pp. 791-819.
- GUPTA, Ajay (2024). *Qualitative Methods and Data Analysis Using ATLAS.ti, A comprehensive researchers’ manual*, Springer Texts in Social Sciences.
- HERNÁNDEZ, Belén (2023). “Consideraciones en clave de género sobre la valoración del testimonio en delitos contra la libertad e indemnidad sexuales en atención a la jurisprudencia reciente del tribunal supremo”, in *Revista General de Derecho Procesal*, N° 59, pp. 1-58.
- INSTITUTO NACIONAL DE ESTADÍSTICA. *Resultados Censo 2017*. Available in: <http://resultados.censo2017.cl/Region?R=R06> (Last checked: 12/07/24).
- MATURANA, Cristián & MONTERO, Raúl (2010). *Derecho procesal penal*, Legal Publishing Chile.
- MICHELETTI, Pablo (2023). “La comunicación no verbal (CNV) como elemento de valoración de la prueba testimonial en el Sistema Acusatorio Adversaria”, in *Revista Pensamiento Penal*, N° 480, pp. 1-13.
- PÁEZ, Andrés (2014). “La prueba testimonial y la epistemología del testimonio”, in *Isonomía*, N° 40, pp. 95-118.
- PICO, Joan (2023). *Estudios sobre el proceso y la justicia. Estudios sobre la prueba*, Palestra.
- PINO, Miguel (2002). *La tacha de testigos en su evolución histórica hasta la nueva ley de enjuiciamiento civil*, Publicaciones Universidad de Córdoba-UCO Press.
- RIVERA, Rodrigo (2011). *La prueba: un análisis racional y práctico*, Marcial Pons.
- ROCCO, Ugo (2023). *Teoría general del proceso civil*, Ediciones Olejnik.
- RODRÍGUEZ, Ignacio (2018). *Procedimiento civil. Juicio ordinario de mayor cuantía*, Editorial Jurídica.
- RUA, Gonzalo (2020). *Examen directo de testigos*, Ediciones Didot.
- TARUFFO, Michele (2008). *La prueba*, Marcial Pons.
- VÁZQUEZ, Carmen (2015). *De la prueba científica a la prueba pericial*, Marcial Pons.

APPENDIX 1

List of questions related to the selected responses

1. Could you tell me your age and gender?
2. Considering its relationship with other means of proof, what advantages and disadvantages do you identify in testimonial evidence regarding the possibility of making a decision about the subject of the litigation?
3. Do you carry out any kind of conduct or preparation in the moments prior to a statement being given during a hearing? If so, do you distinguish between the type of mean of proof?
4. What behaviors do you exhibit while a statement is being given during a hearing?
5. What behaviors do you exhibit after a statement has been given during a hearing?
6. What criteria do you consider when evaluating a witness's statement during the hearing?
7. What criteria do you consider when evaluating a party's statement during the hearing?
8. If you were a lawyer representing a party in litigation and intended to rely on testimonial evidence, what measures would you take or what recommendations would you give to ensure that the evidence contributes to your legal strategy?
9. If you were a lawyer representing a party in litigation and intended to rely on a party's statement, what measures would you take or what recommendations would you give to ensure that the evidence contributes to your legal strategy?
10. What role do the characteristics of the person giving the statement in a hearing play in your evaluation of the evidence? Do you distinguish between witness testimony and party statements in this regard?
11. Would you like to comment on or elaborate on any of the topics addressed in this interview?