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1. Why a witness protocol?

Witness statements take a prominent place in our criminal justice system. The criminal proceedings are aimed at finding the truth. In the light of this, it is important that witnesses state truthfully and that the statement corresponds to reality. In the context of this protocol we use the term reliable in this respect. The reliability of a statement can be influenced by various factors, including the observation and memory process and the process of recalling a memory.

Taking a statement of someone who has been confronted with serious violence or other forms of oppression and fearful situations is no easy task for both the witness and the professionals involved. During an examination, witnesses can relive violent emotions and even incur traumas again (secondary victimisation). It is important to prevent this as much as possible. Even for the professionals who are involved in such an examination in whatever role, such an examination can become a traumatic experience due to the seriousness of the facts being discussed or the intensity of the emotions that arise. Proper preparation and guidance by an involved psychologist and the examining magistrate and with measures tailored to the witness can prevent (new) traumas in the witness and an excessive emotional burden on other persons present during the examination . The witness protocol was drawn up by the Witness Knowledge Centre[1] *[Kenniscentrum Getuigen]* and psychologist George Smits as a tool for the professional to safeguard the interests of all persons involved.

1.1 Protocol target group

The protocol has been written for the hearing of witnesses with traumatic experiences. Whether there is a witness who for this reason requires special attention can be mapped on the basis of factors related to the witness as a person, the nature and consequences of the crime, the possible consequences of acting as a witness and other specific circumstances. If there are clues in the file that suggest that additional measures should be taken in connection with the vulnerability of the witness, the witness protocol offers a range of possibilities. The process to be followed is made as transparent as possible.

1.2 Protocol objectives

The protocol serves the following four objectives:

1. Optimisation of the circumstances of the examination so that the witness can speak freely, truthfully and to the best of his/her knowledge and belief;
2. Optimisation of the circumstances so that judges, lawyers and prosecutors can exercise their examination (rights) as well as possible;
3. Prevention of secondary victimisation regarding the witness;
4. Prevention of secondary traumatisation regarding the professionals.

The theoretical background to these objectives is discussed below in Chapter 2.

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[1] The Witness Knowledge Centre is an initiative of the District Court of The Hague which is being developed in the International Crimes Bureau of the District Court of The Hague. The trial of international crimes regularly involves hearing witnesses about events from a distant past that have been traumatising for the witness. The knowledge gained during these examinations led, among other things, to the development of a protocol for hearing witnesses that require special attention (BAB witnesses) and a protocol for hearing traumatised witnesses.
The Witness Knowledge Centre is in line with the existing structures for sharing knowledge, such as the SSR (in which we collaborate to learn more about witnesses) and the justice network (via the wiki pages and the MKO). The goal is also to seek collaboration with other courts.
For more information about the objective, the expertise and the current state of affairs, see the Vision Document Witness Knowledge Centre.
For questions related to witnesses, the witness protocol and the assessment of reliability, we are available through Kenniscentrum.Getuigen.rb-dh@rechtspraak.nl.

In the context of the above mentioned under 1, it is important to guide the witness in such a way that the witness does not have to endure too many emotions during the examination. Emotions have a direct effect on people's memory. Someone who becomes emotional will remember at that moment especially the details that are directly related to the trauma; they do not have to be important for the examination. Other factual information, such as who was present and when something exactly happened, is at such a moment often difficult to retrieve by the witness. Because the intention of the examining judge is to have the witness state what his observations and experiences have been as clear and specified as possible, working on an emotionally safe environment is important for the hearing to succeed. A witness who does not have to deal with violent emotions can generally better describe the facts in terms of content than a witness who does (re)experience violent emotions. Thus, efforts to prevent excessive emotions during the examination are also relevant for the final assessment of the reliability of the statement made and the judicial finding of fact.

The witness protocol is mainly focused on the interest of the witness. The witness may be harmed by secondary victimisation. The core of secondary victimisation is (a sense of) renewed victimisation, triggered by the criminal proceedings themselves, and the negative effect this can have on the victim[2]. It may be a result of insufficient respectful treatment and insufficient consideration of the emotional and psychological state of the witness. Secondary victimisation must be prevented. On the other hand, a well-executed examination can even contribute to trauma processing. However, this is not an objective in itself of a witness hearing.

In addition, this protocol is in the interest of the professionals involved in the examination. The existence of a protocol and following this protocol will help them to ask questions in the right way and also means that they do not have to feel inhibited to ask further or to take a critical attitude if necessary. The psychologist involved will help them to intervene if the witness experiences a lot of emotions. In spite of the intense emotions experienced by the witness, the examination can continue now that the psychologist who is present monitors the well-being of the witness.

[2] M. Wijers & M. de Boer, *Een keer is erg genoeg, Verkennend onderzoek naar secundaire victimisatie van slachtoffers als getuigen in het strafprocesrecht, Den Haag:* WODC 2013.

2. Theoretical background witness protocol

When hearing a witness, the memory of the witness is the key element. The information derived from the witness's memory contributes to the finding of truth. In certain cases, the judge is often largely dependent on the observation of the witness and thus on his memory for gathering his information.

2.1. How the memory works

In a witness hearing, it is mainly about the long-term memory. This memory is subdivided into an implicit and an explicit memory. The implicit memory is also called the non-declarative memory and has information without words, such as conditioning and priming (reacting fast).
The explicit memory, the declarative memory, has information that can be expressed in words. This explicit memory can again be subdivided into a semantic part (facts and knowledge) and an episodic part (events).
Then there is also the autobiographical memory, which is covered by the episodic memory and which is about the life experiences that the person remembers, for example what someone did last weekend.

When hearing the witness more thoroughly, questions are asked regarding the semantic memory, which concerns facts and knowledge, as well as specific events that are stored in the episodic memory. Sometimes, when asking more in-depth questions, the autobiographical memory can be helpful to get to other information from the episodic memory, for example by asking what kind of work the witness did at the time of a certain event or where the witness lived at the time.

The memory is supported by various memory systems (Janssen, 2016) such as sensory perceptions: hearing, seeing, tasting, smelling and touching. When asking further questions you can ask for sensory memories. Various areas of the brain play a role in this, for example: controlling processes, attention processes and self-referential processes (how you assess a situation yourself). These are located in the cortex. Recollection of emotion (Hippocampus among others) as well as visual processes (St. Jacques, 2012) is in the limbic system. In the self-memory system (Conway, 2000), events are initially stored as unique events. If such an event occurs more frequently, it can be saved as a general event and it becomes difficult to retrieve details of specific events. The memories can be retrieved indirectly, but this is usually a slow and sometimes a fast process. Quick retrieval occurs when, for example, the person becomes aware of a sensory perception (stimulus) in which the limbic system gives a direct response in the form of a reminder. Incidentally, this is often involuntary.

2.1.1 Recalling memories

Memories are not stable, they can change constantly. There are four factors that influence the reproduction of memories:

a. Time lapse. The longer it has been since the event took place about which questions are asked, the harder it is for someone to recall the memories (Janssen, 2011).
   In this respect the reminiscence effect can also be pointed out (Rubin, 1986). This means that most people remember the events between the ages of 10 and 30 best. However, this effect is mainly linked to positive experiences.

Advice: use timelines or continue to question autobiographically.[3]

b. The way in which the memory is retrieved. If a person makes an effort to remember, this is voluntary. But the memory can also be retrieved involuntarily by the examination. Then reliving the traumatic experience is fierce and seems very realistic to the witness. These involuntary memories are more often linked specifically to emotional and physical responses.

   Advice: help witnesses on the cortex (to calm down), maybe take a break, use an empathetic silence.

c. The circumstance in which the personal situation or event is remembered. It is different to recall memories in a witness examination than in a conversation with friends in which the person actually wishes to discuss things, as a social function with others or to get a clear self-image.

   Advice: creating safety and a peaceful atmosphere is important.

d. Interference. The memories are triggered by proactive interference and retroactive interference. This means that memories are triggered by association with the things that happened before a specific situation or after a specific situation.

   Advice: here it may be wise to explore for interference. If the witness emphasises what preceded or what happened afterwards, first follow the witness and then go back to what you want to know.

In literature it is stated that memories can be retrieved more easily if the witness can speak in "I have" or "I am" terms (declarations). Hereby the witness may be asked to speak in "I language" and not to speak in the second person singular. Working with timelines also promotes the recalling of memories (Bluck, 2005). By using timelines you can ask the witness to draw a timeline and then plot the events with dates on it.

2.2 Witnesses and trauma

2.2.1 Traumatic experiences and flashbacks

It is known that witnesses of war violence have often had several traumatic experiences, even if they themselves have not been subjected to that violence. This means that they fall under the definition of *victim* in Dutch law, in which everyone who suffers financial loss or other disadvantages as a direct consequence of a criminal offence is classified as a victim. This other disadvantage can also consist of emotional damage.
Research by Scholte (2004), for example, shows that about 44% of people in Afghanistan have experienced 8 to 10 traumatic situations. Similar results were also found among residents of Sudan (Neuner, 2004). The report "Echoes of Testimonies" (2018), a study into long-term effects of witnesses for the ICTY, showed that the 300 respondents had gone through a total of 2884 traumatic experiences during the war.

Witnesses who have had to deal with other forms of serious violence can also suffer from trauma. These other forms of violence can consist of or take place during (long-term) domestic violence, rape, human trafficking and all kinds of inhuman treatment. Even persistent verbal abuse can cause trauma.

[3] The advice given under the factors is the advice of the protocol to the (examining) judge.

Post-traumatic stress disorder (PTSD) can arise through traumatic experiences. It is therefore not surprising if witnesses have or have had PTSD. Complaints that witnesses have include re-experiences including reliving the feelings of fear, avoiding thoughts about the threats that have been going on, negative thoughts and moods and hyperactivity. However, even people who do not have or have not had problems with PTSD can get intense re-experiences during an examination.

Traumatic experiences are stored in the limbic system of the brain and with stimuli the limbic system "emits" intense emotions and images. In that way people can get a re-experience. A re-experience brings discomfort, that is, the person with the re-experience can be quite unbalanced, which makes it more difficult for the witness to get to some (other) memories.

Another effect of reliving emotions and experiencing excessive emotions is that witnesses will avoid thinking about what happened, or clam up (getting a blackout). Furthermore, negative changes in thinking and mood can occur. This also has direct consequences for the examination. Witnesses start feeling less safe with negative thoughts or feelings and this can influence the way in which they answer questions; they become less accurate. That is undesirable.

2.2.2 Emotions that are related to traumas

In psychology we have primary and secondary trauma-related emotions. Primary emotions are those that are directly present during the trauma and can be relived. Secondary trauma-related emotions did not arise immediately during the traumatic event; it is mainly about shame and guilt. Mourning and feelings of sadness are also part of this (Jongendijk, 2016)
The difference between guilt and shame is that guilt has to do with the feeling of failing others. Shame focuses on the inner side of the person himself, (Drozdek, 2012). For example, there may be shame because the person himself survived the war and the other did not. During the discussion of the memories, these emotions can play a role, which means that people sometimes cannot or do not dare to tell the entire truth.

During the hearing of witnesses violent emotions may occur, making it extra difficult for witnesses and for various reasons it is important to ensure a climate in which the witness feels safe. This contributes to the best possible witness examination. It will also help the witness to answer the questions as accurately as possible.

2.3 Optimising the circumstances

An optimal examination situation is important for the well-being of the witness and promotes the quality of answering the questions by the witness. What is an optimal examination situation for the witness?

- Research (Brewin, 2001, Janoff Bulman, 1989 and 1992, Foa, 1999, Winkel, 2007) shows that in order to prevent secondary victimisation, four factors are important, i.e.:
- predictability
- safety
- manageability and control
- fairness

These factors together determine the overall picture of an optimum situation for the witness. The factors will be discussed in more detail below.

2.3.1 Predictability

The witness must know what awaits him during the examination. Good provision of information in advance about the hearing means that the witness knows the purpose of the examination, that his examination plays a role in criminal proceedings and that (critical) inquiries can be made. The procedure and the role of all persons involved should also be explained, and information can be provided about the building and the examination room, whether the examination is public or closed, who may be present, etc. Agreements can also be made about breaks and announcements can be made about the maximum duration of the examination. The examining magistrate would do well to inquire about what the witness's previous experiences have been, for example during police examinations. Sometimes witnesses have had less positive experiences in previous examinations.

2.3.2 Safety

If the witness does not feel safe, there is a chance that he will not provide the correct information. The insecurity will trigger fear. Non-verbal signals of doubt about the credibility of the witness during examination will give the witness a sense of insecurity (De Winter, 1996, Winkel, 1999). Professionals should learn to act professionally during the examination, which can reduce or prevent such signals.

In addition, physical and social emotional safety plays a role. Physical feelings of insecurity arise from fear of reprisals; risks that the witness expects to encounter after the examination. Taking measures regarding the arrival, presence and departure of the witness at the place of the hearing may possibly increase the sense of physical security of the witness.
Social-emotional safety is also about the personal integrity of the witness. In this area, safety is created by treating the witness correctly and responding seriously to emotions that arise during the examination.

2.3.3 Manageability and control

At this point the witness is particularly concerned with being taken seriously. This is given substance by identifying intense emotions and then taking a time-out and keeping the help of the psychologist available.

2.3.4 Fairness

The witness must feel that he is being treated fairly. In this respect, the management of expectations by the examining magistrate during the preparatory interview plays an important role.

3. Legal framework

3.1. The purpose of a witness examination

The hearing of witnesses in criminal proceedings is one of the means that can help in establishing the facts that are important when assessing a case. Questions are asked to the witness that he/she must answer from his/her own observation or experience. By asking questions to the witness, investigation is also carried out into the question whether what the witness says is in line with what actually took place. The reliability of the statement will be assessed. Critical in-depth questioning may therefore be required.
The various parties to the proceedings often opt for a different approach during the hearings.
This chapter contains a concrete elaboration of the responsibilities and powers of the examining magistrate in relation to the hearing of a witness. Those responsibilities and powers are briefly described below.

3.2. Obligations and interests of witnesses

In the Netherlands, someone who is called or summoned to appear before a judge as a witness in a criminal case is obliged to come to the court (art. 213 Code of Criminal Procedure - Cp). In the case of a right of non-disclosure, the witness may refuse to answer questions, but he must appear and may not lie. The witness who has no right of non-disclosure is obliged to truthfully answer the questions asked (art. 215 Cp), which means that the witness must tell what he/she knows. If the examining magistrate considers this necessary, the witness is obliged to take the oath or make the solemn affirmation, after which the witness continues to state under oath (art. 216 Cp); refusing is punishable (Article 192 Criminal Code - Cc). Rendering intentionally incorrect statements under oath is also punishable (perjury, Article 207 Cc).
Under certain circumstances, the judge has the right to arrest the witness and keep him/her in custody if he/she refuses to answer questions without having the right of non-disclosure (art. 221 et seq. Cp).

Pursuant to Article 8 of the European Convention on Human Rights (ECHR), the right to a private life, witnesses have the right that in life, freedom and security their interests are also taken into account during the examination (ECHR 26 March 1996, No. 20525/92, Doorson vs. the Netherlands, among others). This right includes the interest not to incur psychological or emotional damage during the examination. Article 3 ECHR, the prohibition of inhuman treatment, can sometimes also play a role. These interests of witnesses may not be unnecessarily violated in criminal proceedings. This may mean that measures must be taken in an examination situation to safeguard those interests.

There are witnesses who are also victims. They have their own position. The right they have to protection in examination situations has been further specified. On 25 October 2012, the European Parliament and the Council adopted the Directive "Establishing minimum standards on the rights, support and protection of victims of crime" (the Directive). This guideline was implemented in the Netherlands by law of 8 March 2017. The decision of 24 August 2016[4] provides a number of specific indications for the hearing of witnesses during the preliminary investigation and for the trial of the case in court (Articles 7, 9-12 of the Decree).

[4] Decree of 24 August 2016, laying down rules for the rights, support and protection of victims of criminal offences (Decree on victims of criminal offences), Stb 2016, 310

3.3. The right of the defence to interrogate

Pursuant to the ECHR, the defendant has the right to have witnesses for the prosecution examined as well as witnesses for the defence. Most of the witness hearings before the examining magistrate take place at the request of the defence with the aim of exercising the right of examination. In the Netherlands this right is exercised by letting the defendant's lawyer ask questions directly to the witness. In a number of cases the witness is (also) heard during the trial.
Exercising the right to examine is an important means for the defence to assess the reliability of witness statements. In this way the defence can also verify the lawfulness of the way in which evidence has been obtained. In this respect it is important that critical in-depth questions can be asked and that the witness continues to answer the questions.
The interest of the defence in being able to exercise the right to examine a witness may conflict with other interests, for example the interest of a witness not to be heard (again).

If the interests of the witness are to be protected by restricting the right to examine, compensatory measures must be taken. For the threatened witness this is regulated in detail by law. For certain other witnesses, solutions are sought and found in practice, such as hearing in a child-friendly examination room without the presence of the parties.

3.4 The examining magistrate's control over the examination

The examining magistrate is the person who conducts the witness examination and who is in control. The examining magistrate determines the manner in which the hearing takes place, taking into account the legal rules. In this respect, the examining magistrate must weigh the interests of the parties and the witness.

The public prosecutor and the lawyer are both authorised to attend the hearing; this power is subject to different criteria for each. If the examining magistrate considers this to be in the interest of the investigation, the defendant may also be given the opportunity to attend the hearing (art. 186a Cp). This rarely happens in practice.

Both the public prosecutor and the lawyer have the right to put questions to the witness. The examining magistrate does have the power to prevent the witness from answering certain questions (Article 187b Cp). The examining magistrate can also prevent that a certain answer given by the witness comes to the attention of the public prosecutor, the defence and the defendant, for example if the witness would experience a serious inconvenience as a result, and take measures to this end (Article 187d Cp). This does not mean that the examining magistrate can prevent the question from being asked, he can only do so with regard to the answer. In such a case, the examining magistrate may even order that the witness be heard without the presence of the defence and the public prosecutor.

After permission from the examining magistrate, others may also attend the hearing of a witness (Article 187c Cp). If the witness is also a victim, the witness can be assisted during the examination by a lawyer and a person of his choice (Article 51c, paragraph 2 Cp).

The measures to be described in this protocol, which can be advised by the psychologist, fall within the competence of the examining magistrate. When addressing the question whether to follow the recommendations, the examining magistrate will always have to consider which interests are the most

important in this case. The protocol aims to provide procedural clarity. The examining magistrate will state in the official record of examination how the evaluation of interests has been made.
The trial judge can take this into account when hearing the criminal case in court and thus answer the question whether and to what extent the statement made by a witness can be used as evidence.

4. The witness protocol

In the previous chapters, the usefulness and necessity of a witness protocol as well as the legal framework of the witness protocol have been explained. The witness protocol consists of four phases, namely an exploratory phase, a preliminary interview, the examination and aftercare, which will be explained below.

4.1 Exploratory phase

Objective	To assess vulnerability and to take measures
Persons involved	Examining magistrate, psychologist

The exploratory phase starts with an assessment of the vulnerability of the witness and is carried out by the examining magistrate on the basis of the criminal file. The exploratory phase focusses on the question whether it is necessary to engage a psychologist for a vulnerable witness and whether it is necessary to take (additional) measures during the examination. The possible vulnerability of a witness can be determined by the following factors:

a. Factors related to the person: age (children or elderly), personality, disabilities (including cognitive disabilities), mental illness or psychological problems (trauma-related problems and/or lack of social support).
b. Factors related to the nature of the crime: in particular victims of sexual and/or gender-based violence, children who are victims of violence and victims of torture or other crimes involving excessive or persistent use of violence.
c. Factors related to specific circumstances, such as a significant increase in stress or anxiety due to relocation, fear of retaliation, adaptation problems due to cultural differences or other factors such as external pressure.

The clerk often has insight into the file at an early stage in the proceedings and can therefore play an important role in recognising signals that may point to a witness who requires special attention. For example, the age of the witness or the nature of the crime. If the file includes such signals, the clerk can discuss this with the examining magistrate in order to take measures[5].

If there are indications that a particular witness is vulnerable, the examining magistrate may ask a psychologist whether he can give an indication of the emotional (in)stability of the witness and whether special measures during the examination are desirable and, if so, which measures . The examining magistrate inquires whether the witness is willing to have an exploratory interview with a psychologist in order to prepare for the hearing of witnesses. The psychologist is appointed (ex officio) by the examining magistrate as an expert.

If the witness has agreed to a conversation with the psychologist, the psychologist will talk to the witness via a video connection or in person. The conversation with the psychologist serves two purposes. In the conversation with the witness, the psychologist can explain what the objectives of the procedure are[6], so that the witness knows in outline what the procedure looks like. It is important that the criminal case itself is not discussed by the psychologist in order to prevent any influence on the content. This can largely be achieved by ensuring that the psychologist knows nothing about the case.

[5] This paragraph relates to the Dutch system
[6] See chapter 1: objectives of the protocol.

In this way no undesired influence can take place. However, in order to be able to assess whether there are symptoms of PTSD, for example, the psychologist will have to make an assessment and to a certain extent address the potentially traumatic events. The psychologist must then ensure that he does not discuss details and must ensure that he does not influence the witness. On the other hand, he will also have to check which questions can trigger the witness's trauma. This means that the psychologist who does this work must receive proper instruction from the examining magistrate.
In addition, the psychologist must draw up a report in which he/she examines the risk of secondary victimisation, and in which he/she identifies symptoms of a possible Post Traumatic Stress Disorder and emotional instability.
Based on this interview, the psychologist focusses on the following findings:

a. Information about the cognitive and behavioural aspects insofar as relevant to the witness's examination (or: the hearing);
b. Observations with regard to mental state and any specific needs;
c. An estimate of the emotional damage that a professional examination can inflict on the witness and the recovery time thereof;
d. Other background information that is relevant to the examination, such as cognitive level (level of education, degree of literacy, power of abstraction, the degree of being able to express themselves verbally);
e. The recommended special measures;
f. It is also possible to estimate whether witnesses can travel if they are living abroad.

4.1.1 Minimum guarantees of examinations

The minimum standards of an examination must be observed at all times:
- Explain the structure of the interview to the witness;
- Do not ask unnecessary questions about his or her private life, which are not related to the criminal offence;
- Ask short, simple questions, without the use of legal terms and double denials;
- Ask questions that correspond with the educational level of the witness (especially with children);
- Take regular breaks.

4.1.2 Additional/special measures

Examples of special measures that can be taken by the examining magistrate, whether or not based on the recommendations of the psychologist, are:

- No direct eye contact between the witness and the defendant (in the courtroom);
- Examination through a video link where the witness is heard in a witness-friendly environment or from his or her home country;
- Limiting the number of people in the courtroom or examination room;
- Have all questions asked by the (examining) judge; the public prosecutor and the lawyer can submit written questions, follow-up sessions are possible;
- Wearing more casual clothes instead of gowns;
- Judge and witness must sit at the same level (in the courtroom);
- Limiting the taking of notes and the use of computers;
- If the witness does not feel at ease in mentioning names, the witness may tell the (examining) judge and the witness may be asked to write down the names, or names may be submitted in writing;

- The (examining) judge introduces him-/herself to the witness before the examination or the hearing so that the witness knows who is sitting in front of him or her;
- If possible the witness can visit the examination location beforehand, to get familiar with the location;[7]
- The witness may be offered the option of taking someone along (for example a family member) on the day(s) of examination. This person will not be present at the hearing, but can take care of the witness during breaks and afterwards;
- The witness may be offered the option of taking a confidential counsellor into the examination room;
- Presence of the psychologist during the examination in support of the witness.

In addition, the examining magistrate may, whether or not on the recommendations of the psychologist, take the following measures that relate to the questioning, such as:
- Start the examination with a "free narrative phase", followed by specific questions;
- First ask neutral questions that do not relate to the eventual statement to give the witness a moment to adjust him-/herself to the environment;
- Ask questions in a non-judgmental manner;
- Avoid questions that can embarrass the witness (this is linked to the norms and values from his/her culture);
- Follow the pace of the witness;
- Watch the witness closely, if there are signs of nervousness, distraction, withdrawal or emotional reaction, offer the possibility of a break;
- Ask exploratory questions[8];
- Limit the duration of the examination.

The psychologist will discuss the individual assessment with the witness, and the wishes of the witness are taken into account, including the wish not to claim special measures. The examining magistrate ultimately decides which recommended measures will be taken. The measures are to be discussed with the public prosecutor, the defence and the interpreter prior to the examination. The parties can, if so desired, ask the psychologist for a further explanation of the proposed measures and/or recommendations.

4.2 Preliminary interview prior to the examination

Objective	Informing and mentally preparing the witness
Those involved	Witness, examining magistrate, psychologist

The examining magistrate and, if appointed, the psychologist, together will talk to the witness. The examining magistrate explains the procedure and the role of the psychologist. In the preliminary interview, for example, the circumstances and course of events during the examination can be explained, such as the role of the clerk, persistence in the statement and explanation of possible audio recordings.

[7] In practice it may be that the clerk picks up the witness and guides him to the place of the hearing. The clerk may also have the task to show the witness the room prior to the hearing and to pay attention to receiving the witness upon entrance.
[8] Exploratory questions are questions that help to reach chronology, by asking about environmental factors (weather conditions, time, light/dark). At the same time, if there is a potential PTSD, flashbacks and dissociation may occur due to questions about acoustic, olfactory, haptic or optical conditions. For that reason it is important that the examining magistrate is informed by the psychologist about the triggers.

If appointed, the psychologist then talks to the witness alone. The psychologist discusses the witness's emotional well-being and he/she looks at stress, anxiety and stress disorder complaints. Furthermore, the psychologist can give advice on how the witness can reduce tension in himself. In addition, the psychologist will ask what the witness is concerned about and what the witness can do to regulate his/her own emotions. They will also talk about how the psychologist can support the witness during the examination.

4.3 Examination

Objective	Informing the parties and conducting the examination
Those involved	Witness, parties, examining magistrate, psychologist

The examining magistrate reports to the parties on the preliminary interview that has just been conducted with the witness. The examining magistrate is in charge of the examination and must ensure that the witness is treated with respect, that the witness is not intimidated and that the risk of secondary victimisation is minimised. If desired, the psychologist will be present during the examination. In that case it is important that the witness and the psychologist are able to see each other well, so that the psychologist can assess on the basis of physiological phenomena whether a time out or other intervention is required and the witness can contact the psychologist if the witness becomes emotional. This also gives the professionals the room to ask questions, they do not have to monitor whether the witness can handle this. It remains necessary that the questions are not offensive or condemning. If the witness avoids questions or there are signs of shame, it may help to explain why questions are being asked about certain details.

4.4. After care

Objective	Evaluating the examination with the witness
Those involved	Witness, psychologist

Immediately after the hearing, the psychologist will speak with the witness to ask how the witness is doing. If no psychologist has been appointed, the examining magistrate can have such a conversation with the witness. The conversation will first only take place with the witness and possibly later with those who accompany the witness. If, after the examination, the witness has a strong emotional reaction related to the trauma, it can be determined whether additional support or assistance is needed by the psychologist. It can also be considered whether a referral to another care provider is necessary.
If the witness comes from abroad and has travelled to the Netherlands (or another country) for the examination, it may be good to offer the witness the opportunity to take a rest day after the examination before the witness travels back home again to pick up his or her daily routine.
In all cases, the witness is given the opportunity to personally contact the psychologist if the witness so desires. If necessary, the psychologist can offer assistance up to a maximum of three weeks after the examination. This assistance may also consist of bringing the witness (again) in contact with a therapist.

Bibliography

Bertsen, D. & Hall, N.M. (2004). The episodic nature of involuntary autobiographical memories. *Memory & Cognitio, 32,* 789-803.

Bluck. S., Alea, N, Habermas,T & Rubin, D.C. (2005). A tale of three functions: The selfreported uses of autobiographical memory. *Social Cognition, 23,* 91-117.

De Boer, M. & Wijers, *Een keer is erg genoeg, Verkennend onderzoek naar secundaire victimisatie van slachtoffers als getuigen in het strafprocesrecht,* Den Haag: WODC 2013.

Brewin, C.R. (2001. A neurocognitive account of postraumatic stress disorder and its treatment. *Behaviour Researc and Therapy*, 39, 373-393.

Conway, M.A. & Pleydell-Pearce, C.W. (2000). The construction of autobiographical memories in the self-memory system. *Psychological Review, 107,* 261-288.

Drozdek, B., Wilson, J. & Turkovic, S. (2012). *Posttraumatische schaamte en schuld*: *De twee Janusgezichten*. In: E. Vermetten, R.J. Kleber & O. Van der Hart (red.),*handboek posttraumatische stressstoornissen* (pp. 663-674). Utrecht: de tijdstroom.

Janoff Bulmann, R. (1992). *Shattered assumptions*: *Towards a new psychology of trauma.*New York: Free Press.

Janssen, S.M.J. & Murre, J.M.J. (2008). Reminiscence bumb in autobiographical memory: Unexplainedmby novelty, valence, emotionality or importance of personal events. *Quarterly Journal of Experimental Psychology, 61* (12), 1347-1360.

Janssen, S.M.J & Rubin, D.C. & St. Jacques, P.L. (2011). The temporal distribution of autobiographical memory: Changes is reliving and vividness over the live span do not explain the reminiscence bump. *Memory & Cognitio, 39,* 1-11.

Janssen, S. (2016). Levensverhalen en psychotrauma. *Narratieve exposureTherapie in theorie en praktijk*.) (blz 65-75). Diemen: Stichting Arq. Diemen P/a Boom uitgevers Amsterdam.

Jongedijk, R.A. (2016). Levensverhalen en psychotrauma. *Narratieve exposureTherapie in theorie en praktijk*.) (blz 100). Diemen: Stichting Arq. Diemen P/a Boom uitgevers Amsterdam.

Neuner, F., Schauer, M., Karunakara, U., Klaschik, C. (2004). Psychological trauma and evidence for enhanced vulnerability for PTSD through previous trauma in west Nile refugees. *BMC Psychiatry*, 4, 34.

Scholte, W.F.,Olff, M., Ventevogel, P., Vries, G.-J. de, Jansveld, E., Lopes Cardozo, B. & Gotway Crawford, C.A. (2004). Mental healt symptoms following war and repression in eastern Afghanistan. *Journal of the American Medical Association*, 292, 585-593.

St Jacques, P.L. (2012). Functional neuroimaging of autobiographical memory.In: D.Berntsen & D.C. Rubin (eds) , *Understanding autobiographical memory:Theories and Approaches* (pp. 114-138) Cambridge: Cambridge University Press.

University of North Texas (UNT), Victims and Witness Section (VWS) of the International Criminal Tribunal for the former Yugoslavia (2016). Echoes of Testimonies, A pilot study into the long term impact of bearing witness before the ICTY.

Wetzler, S.E. & Nebes, R.D. (1986). Autobiographical memory across the adult life span. In: D.C. Rubin (ed.), *Autobiografical memory* (pp 202-221). Cambridge: Cambridge University Press.

Winkel, F.W., de Winter, S. (1996). The perceived credibility of rape victims during a police interview: an experiment among victim assistance workers, in: Graham Davies, Mary McMurran, Clare Wilson & Sally Lloyd-Bostock (Eds.), *Psychology, Law, and Criminal Justice: International developments in research and practice,* Berlin/New York: De Gruyter, p. 3 -13.

Winkel, F.W. (1999). A frustration/negative cue model of unfavorable police treatment of black citizens, *International Journal of Law and Psychiatry*, 1999, vol. 22, no. 3-4, p. 273-287, Amsterdam: Elsevier Science Ltd.

Winkel, F.W., Spapens, A.C., Letschert, R.M. (2006). *Tevredenheid van slachtoffers met 'rechtspleging' en slachtofferhulp. Een victimologische en rechtspsychologische secundaire analyse*, Tilburg: Intervict/ Den Haag: WODC.

Winkel, F.W. (2007). *Post traumatic anger. Missing link in the wheel of disfortune* (oratie Universiteit van Tilburg), Tilburg: Intervict.